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HEARINGS
 BEFORE THE
 SUBCOMMITTEE ON PUBLIC LANDS
 OF THE
 COMMITTEE ON
 INTERIOR AND INSULAR AFFAIRS
 UNITED STATES SENATE
 EIGHTY-EIGHTH CONGRESS
 FIRST SESSION
 ON
S. 2275

A BILL TO REVISE THE PROCEDURES ESTABLISHED BY THE
 HAWAII STATEHOOD ACT, PUBLIC LAW 86-3, FOR THE CONVEY-
 ANCE OF CERTAIN LANDS TO THE STATE OF HAWAII, AND
FOR OTHER PURPOSES

NOVEMBER 12 AND 13, 1963

Printed for the use of the
 Committee on Interior and Insular Affairs



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HAWAII LANDS

TUESDAY, NOVEMBER 12, 1963

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 3110, New Senate Office Building, Senator Alan Bible (chairman of the subcommittee) presiding.

Present: Senators Alan Bible (Nevada), Clinton P. Anderson (New Mexico), Frank E. Moss (Utah), Len B. Jordan (Idaho), and Milward L. Simpson (Wyoming).

Also present: Jerry T. Verkler, staff director; Stewart French, chief counsel; and Roy Whitacre, professional staff member.

Senator BIBLE. The subcommittee will come to order.

This is an open, public hearing by the Public Lands Subcommittee of the Senate Interior Committee on S. 2275, to revise the procedures established by the Hawaii Statehood Act, Public Law 86-3, for the conveyance of certain lands to the State of Hawaii, and for other purposes. S. 2275 is sponsored by the two able Senators from Hawaii, Senators Daniel Inouye and Hiram Fong, and thus is truly a bipartisan measure.

The text of this bill was drafted by the administration to correct a situation resulting from certain provisions in the land-grant sections of the Hawaii Statehood Act, which was enacted in the 86th Congress.

I will direct that the text of the bill and the letter of transmittal from the Executive Office of the President appear in this hearing record at the conclusion of the oral presentations. Also, for the convenience of the committee, I will direct that the text of the section of the Hawaii Statehood Act dealing with lands in Hawaii be set forth in the record. This is section 5 of Public Law 86-3, found in 73 Statutes at Large, page 4.

I am certain the witnesses we will hear this morning have far more direct knowledge of the facts and circumstances than do I or any other member of the subcommittee. I know they can, and will, explain just what this proposed legislation does, and why it is necessary.

Inasmuch as the administration drafted and recommended the bill, and it is sponsored by the two Senators from Hawaii, representing both political parties, and there has been no opposition to it from anyone in the State, the measure is apparently not controversial in the conventional sense.

Yet it is highly complicated: The Congress is asked to give to the State of Hawaii title now vested in the United States to many thousands of acres of land, some of it tremendously valuable, without

compensation. That bare fact is enough to give any of us pause and cause for question.

However, I hasten to add two very basic considerations:

No. 1, almost all of the lands which are the subject of the bill came into the possession of the United States by the voluntary cession, or gift, so to speak, of the then Republic of Hawaii in 1898; and

No. 2, from the very beginning, all that the United States has had was the naked title. The Hawaii Organic Act of 1900 gave to the government of Hawaii full authority for the administration and management of these lands, except for Sand Island, and, highly significant, the then Territorial government received all income from them.

The subject lands, then, are not "public lands," nor even "lands of the United States" in the ordinary sense of the term, and they cannot be treated as such.

I am certain the witnesses will establish these and other facts with clarity.

Now, unless some member of the subcommittee has a comment to make, at this time, I would like to call on our first witness.

The first witness this morning will be the sponsor of S. 2275, the Honorable Daniel Inouye, Senator from Hawaii.

Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUE, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator INOUE. Mr. Chairman and members of the committee, I thank you for this opportunity of appearing before you this morning.

Approximately 4 years ago, I appeared before this committee to speak in behalf of a bill affecting the interests of a half million citizens of Hawaii. The faith which this committee and Congress had in the people of Hawaii and their record under a Territorial government has been more than justified when we study the record of the State of Hawaii since 1959.

I come before you today once more to urge support of a measure which is necessary to close our territorial chapter, to request certification of a birthright, as it were.

The political future of Hawaii was assured of continued development with the granting of statehood. The economic future of this newest of States is tied to the question of availability of land. The availability of land is a question which S. 2275, introduced as an administration measure, seeks to resolve.

Although any land bill necessarily involves highly complex and technical points due to the very nature of real estate, I believe the basic premise can be simply stated. I shall leave the technical and legal details to our distinguished experts.

We have with us, Mr. Chairman, Dr. Harold Seidman, and Mr. Howard Schnoor from the Bureau of the Budget, and from the State of Hawaii, the Lieutenant Governor William Richardson, and Mr. Peter Lewis, the Deputy Attorney General of the State of Hawaii.

The basic premise of S. 2275 is that there is a fundamental matter of equity involved in the whole issue of the return of surplus ceded land to the State of Hawaii. Under the terms of annexation at the

turn of the century, public lands of the Republic transferred to the Federal Government were to be held in trust for the Territory of Hawaii by the U.S. Government. These lands, classified ceded lands as contrasted to fee land paid for by the Federal Government and not at issue in S. 2275, have been held in trust for 60 years with no monetary compensation to Hawaii.

Together with the administration, I believe it is only fair for the Federal Government to release such ceded land, originally earmarked for specific Federal use and set aside as such under the terms of the Statehood Act of 1959, to the State, provided the United States finds no further Federal use for them.

S. 2275 fully incorporates this idea of equity, tempered with the very practical proviso that such ceded land as is to be returned must be found surplus to the needs of the Federal Government.

Based on the foregoing premise, this bill is essentially new legislation which recognizes that any time limitation for the review of ceded land for the purpose of determining surplusage is unrealistic and inequitable. The 1964 deadline, as stipulated in the Statehood Act, has proven inadequate for review.

But that is not the primary point which I would like to emphasize. Assuming that the 1964 deadline remains as is, there will always prevail permanent uncertainty regarding the status of such ceded land in the event that any parcel be found excess and surplus after the 1964 deadline.

As matters now stand, we simply do not know if the State can receive any ceded land after 1964, even if it, or the Federal Government, can prove excess. The determination of excess and surplus presumably may occur at any given time after 1964, considering the constantly fluctuating nature of Federal Government requirements.

This bill provides that review of such land should be an ongoing process with surplus ceded lands to be returned to the State if ever and whenever they are declared to be surplus to Federal Government needs. If the Federal Government has any reasonable use for any ceded tract, it will always retain rights to it, even after lifting of the deadline.

The second major objective of this bill is to seek the return of land surplus to the needs of the U.S. Government on Sand Island. Sand Island is crucial to the economic development of the State. It lies at the mouth of busy Honolulu Harbor, and can be developed by the State to better its economic situation immeasurably. I am certain that the Lieutenant Governor of Hawaii will attest to this in his testimony.

The consequences of a private corporation claim, and the fact that much of the present acreage on the island is filled land, have beclouded the classification of Sand Island as ceded under the terms of section 5(e) of the Statehood Act.

The fact remains, however, that monetary compensation as such, which is the criterion for fee land, has never been given the territory or the State for Sand Island land. We believe it is ceded land as that term has been generally used.

Most of Sand Island presently is definitely surplus to the needs of the Federal Government, and can be returned immediately to the State of Hawaii, if indeed it is ceded land as covered under the proviso mentioned in the Statehood Act.

This bill would clarify the status of Sand Island as ceded, and return it to productive use. I believe that this is the most appropriate time for this determination, when the general question of the status of ceded land is being resolved.

The status of Sand Island cannot be determined without legislative enactment. As matters now stand, Sand Island cannot be returned without this determination. S. 2275 seeks to correct this situation.

We have spent countless hours and days analyzing this measure, together with Hawaii's delegation to the House, with officials of the Bureau of the Budget, Department of Justice, the General Services Administration, and the State administration of Hawaii.

I believe that this bill is most equitable, completely fair to the interest of the State of Hawaii, and to the Federal Government. It does not impinge upon existing legislation such as the Federal Property and Administrative Services Act of 1949, it does not take away from the Federal Government any land which it has any reason to use, and it does not seek to enhance the personal gain of any private individual or individuals, except the Government and the people of the State of Hawaii.

I respectfully request favorable consideration of S. 2275.

And in closing, Mr. Chairman, if I may, I would like to read into the record a statement from the Governor of Hawaii.

Senator BIBLE. Very well. It may be read into the record.

Senator INOUE. The statement reads as follows:

Mr. Chairman and members of the committee, I am grateful for the opportunity to submit a statement to this great committee of the Senate—a committee which has always been genuinely interested in and most helpful to Hawaii and its people. I thank the committee for the opportunity of permitting the Lieutenant Governor of the State of Hawaii, the Honorable William S. Richardson, to make a statement on behalf of the people of Hawaii in favor of S. 2275.

Your expeditious consideration of this present measure, which has the support of the national administration and all its component parts, is greatly appreciated. Speaking not only for myself but for the people of Hawaii, I give my full and unqualified endorsement to S. 2275, a bill which affects the future status of ceded lands in general and Sand Island in particular.

To the most distinguished chairman and very distinguished members, I extend my deep gratitude for the early attention being given to this measure, and my warmest personal regards.

JOHN A. BURNS, *Governor of Hawaii.*

Senator BIBLE. Thank you, Senator.

Possibly other witnesses will develop this, and you may prefer to depend upon the witnesses who are here from the State of Hawaii and the land people and the budget people, but I think it would be very helpful if we could have for the record in the early part of the hearing exactly how much land we are talking about, what you mean by ceded land, and why you think you can stake out a claim to ceded land, and why it was not taken care of in the Organic Act creating the State of Hawaii.

Senator INOUE. I am certain the witnesses following me, Mr. Chairman, will clear this up.

Senator BIBLE. I would like to know exactly what we are talking about in this bill.

Senator INOUE. If I recall, we have approximately 410,000 acres of ceded lands.

Senator BIBLE. And what do you mean by ceded lands, for the record?

Senator INOUE. These were the lands that were given to the Government of the United States by the Republic of Hawaii at the turn of the century, when we became part of the United States. This was part of the cessation. And these were held in trust by the Federal Government, without monetary compensation, for the last 60-odd years.

Senator BIBLE. This is your definition of ceded lands?

Senator INOUE. I am certain the attorneys here will give a much clearer definition. But out of the 410,000 acres, the major bulk of it is in national parks, and we, the people of the State of Hawaii, have no intentions of ever getting back ceded lands that are within the national park category.

Then you have another large group of lands held by the Federal Government under permits.

Senator BIBLE. Under what, sir?

Senator INOUE. Permits.

The lands that are actually under consideration would be a small portion of the 410,000, I would say approximately 60,000 acres. These are primarily lands being utilized by the Department of Defense, and naturally there is much Federal use for such lands, so when you break down the 60,000 acres, you will find that it involves a very, very small amount.

But, Mr. Chairman and members, I am certain you realize that the circumstances do change, and may change 60 years from now, as they have changed since we became part of the United States.

And if, say, 50 years from now, they find that because of the prevailing political situation in the world they may not need a huge defense structure in the United States, the time may come when the Federal Government will find Schofield Barracks as being surplus to the needs of the United States, and at that time it may be returned to the State of Hawaii for more productive use.

Senator BIBLE. What has happened to the ceded lands, the 410,000, that have been ceded by the State of Hawaii at the turn of the century to the U.S. Government, the U.S. Government having held title to the lands over these years?

What has happened to the revenues from these lands? Does this go to the U.S. Government, or to the State of Hawaii?

Senator INOUE. As far as the State of Hawaii is concerned, we haven't received any compensation for this.

Senator BIBLE. But did the lands ceded to the U.S. Government in turn earn revenue, earn money? Were they revenue-producing lands?

Possibly some of the Hawaiian people will speak on that point.

Senator INOUE. I would prefer, if I may, Mr. Chairman, to leave this question to the experts, here.

Senator BIBLE. Very well.

But this is speaking of 410,000 acres of ceded land. As I understand it, a great amount of that acreage is in national parks.

Senator INOUE. Approximately 230,000, if I am not mistaken.

Senator BIBLE. I think that is what the official report shows. And a great part of the balance is in defense installations. Is this right, sir?

Senator INOUE. Yes.

Senator BIBLE. And about 60,000 acres is what is involved in this bill at this time.

Senator INOUE. But even out of those 60,000 acres, it would be just a minor fraction of that that is actually and practically being considered at this time, because the 60,000 acres are primarily military lands.

Senator BIBLE. I see.

In addition to the ceded lands, we have the problem of Sand Island?

Senator INOUE. The reason why Sand Island was brought into the picture here is that since we are considering the problem of ceded lands in S. 2275, we thought it was the appropriate time to consider Sand Island, because there is a question, a cloud, as to whether Sand Island is actually ceded land or not, and the Federal Government, in its letter of transmittal to this committee, has indicated that they would prefer to resolve this question in favor of the State of Hawaii.

Senator BIBLE. Senator Simpson?

Senator SIMPSON. Mr. Chairman, let me compliment the two fine Senators from Hawaii for their presence here, and for their unity on this matter.

And I want to say your statement, Senator Inouye, was very helpful, very clear.

There is one thing that I would like to ask, and I suppose it will be cleared up by the witnesses who appear.

You speak in your statement, Senator Inouye, of the consequences of a private corporation claim on Sand Island. What is this private corporation claim?

Senator INOUE. This was at the turn of the century, Mr. Senator.

If I may, I would like to leave that to Mr. Seidman and Mr. Lewis, because I am advised they will cover this in great detail.

Senator SIMPSON. As I understand it, and I had my legislative assistant assist me on this, at the time of the annexation of Hawaii, they ceded all of the public land to the Federal Government free of charge, approximately 230,000 acres. Does that sound familiar to you? Is that the original cession?

Senator INOUE. If I recall, Mr. Chairman, it was much more than that. I have been told that it exceeds a million and a half.

Senator SIMPSON. Then, while Hawaii was a territory, our investigation discloses that the Federal Government acquired an additional 20,000 acres of ceded land, free of charge.

Senator INOUE. Right. This is all within the 410,000 acres.

Senator SIMPSON. This 410,000 acres is exclusive of national parks and military reservations—or is it inclusive?

Senator INOUE. It is inclusive, sir. But as far as the Hawaii delegation is concerned, we are not considering that at all. We have no intentions of at any time depleting our national park lands, and if I may, I would like to advise the committee at this time that the national park is presently considering acquiring further State lands to expand our present national park system.

Senator SIMPSON. I have been in your wonderful State a number of times, and I know the beauties of the parks, and the beauties of that wonderful country over there, as well as that marvelous climate. I wish we had it here.

There are a number of questions that I anticipate will be responded to by the witnesses, so that is all I have, Mr. Chairman.

Senator BIBLE. The Senator from Utah.

Senator Moss. As I take it, Senator, any of this land to be returned to the State would be triggered really by the Federal Government, which would make a declaration of surplus to begin with, so there would not be any instance where the State of Hawaii would come in conflict, as it were, with the Federal Government, on any of this land. Is that right?

Senator INOUE. The Senator is correct.

I would like to point out that in my statement I stated that this is not in conflict with the land laws of the United States. Before the State can ever hope to even consider acquiring these lands, all the agencies of the United States must declare that this is excess to their use, and it must be declared surplus. As long as there is Federal use for such lands, the State of Hawaii, under this law, will have no right to it.

Senator Moss. That is the reason the parks would not be involved, Presumably the Federal Government is not going to say that a national park is surplus to its use.

Senator INOUE. That is right, sir.

Senator BIBLE. I would like to ask just one question at this point, Senator Inouye, and that is prompted by the section to which you referred, section 5(e) of the Statehood Act, Public Law 86-3, chapter 3. And you are familiar with it.

Section 5(e) reads as follows:

In five years from the date Hawaii is admitted into the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to subsection (c) and (d) of this Act shall report to the President the facts regarding its continued need for such land or property; and if the President determines that the land or property is no longer needed by the United States, it shall be conveyed to the State of Hawaii.

Why is not that section effective and ample to take care of the things you are requesting now, insofar as ceded lands are concerned?

Senator INOUE. Mr. Chairman, as the bill provides, the August 21, 1964, deadline—this is the 5-year deadline—will be replaced by an indefinite extension of this review.

We have found in the last 4 years that 5 years is most inadequate to review the needs of the Federal Government, going from one agency to another.

And furthermore, to cite some of the problems that may come about with this deadline, let me just cite one example.

At the present time, in the city of Honolulu, the Federal Government is preparing plans for a Federal building. And in this Federal building, in addition to the courts and the legislative offices and the post office, we will have offices for the Coast Guard.

The Coast Guard is now on another parcel of land in Honolulu. And the Coast Guard and all other agencies have declared that this parcel on which the Coast Guard is presently located is surplus to their needs when the Coast Guard moves into the Federal building.

Now, the Federal building will not be completed by August 21, 1964. So, therefore, when the August 21, 1964, deadline passes, even if the Coast Guard land is declared surplus, the State of Hawaii may never get it back.

Then you have another problem very similar to this, where an agency knows that today there is great Federal use for it, such as, say, the Atomic Energy Commission, because of certain exercises out in the

Pacific. But they know that this projected program is scheduled to last for a given number of years, and after that, there is question as to the need for this.

Let us assume that this bill does not pass, and therefore section 5(e) stands unamended, and August 21, 1964, is the deadline. Thereafter, even if the Federal Government 1 day, 1 year, or 10 years later, should declare such parcels surplus, the State of Hawaii, under the present provisions of Hawaii law, would have no rights to it.

We feel this is not equitable, and I do not think this was within the intent of the Members of Congress.

These lands were held in trust by the Federal Government for the people of Hawaii, with the eventual hope that they would be returned, when Federal need was not present.

Senator BIBLE. Your point is that section 5(e) as enacted into the Organic Act is unrealistic, because it puts too hard, too fast, and too short a deadline upon the disposition of this 410,000 acres?

Senator INOUE. Soon after statehood, I am certain no matter how efficient an administration is, a process of procedure has to be set up. That took over a year. Then every agency had to make studies. And let's say when the Defense Department makes a study, it has to go all the way down to the regimental stage, and that takes many, many months.

The study is still going on, and we are afraid that if the deadline is left intact, some of the work may be completed after the passage of the deadline.

Senator BIBLE. You stake out your claim to the 410,000 acres, or such part thereof as is declared surplus to the needs of the Federal Government, upon the grounds that there are always lands held in trust for, first, the Republic of Hawaii, and later the State of Hawaii.

And my attention has been directed to the basic act of 1898, which is in volume 30 of the U.S. Statutes at Large, at page 750. I think it would be well to make this particular act a part of the hearing record. It is entitled "Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States," and it, in part, says that:

The existing law of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenues from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

So I think this is in line with what you are saying, Senator.
(The joint resolution referred to is as follows:)

[Fifty-fifth Cong., 2d sess., July 7, 1898]
[No. 55]

JOINT RESOLUTION To provide for annexing the Hawaiian Islands to the United States.

Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

Until Congress shall provide for the government of such islands all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.

The existing treaties of the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such treaties as may exist, or as may be hereafter concluded, between the United States and such foreign nations. The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution nor contrary to the Constitution of the United States nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine.

Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

The public debt of the Republic of Hawaii, lawfully existing at the date of the passage of this joint resolution, including the amounts due to depositors in the Hawaiian Postal Savings Bank, is hereby assumed by the Government of the United States; but the liability of the United States in this regard shall in no case exceed four million dollars. So long, however, as the existing Government and the present commercial relations of the Hawaiian Islands are continued as hereinbefore provided said Government shall continue to pay the interest on said debt.

There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

The President shall appoint five commissioners, at least two of whom shall be residents of the Hawaiian Islands, who shall, as soon as reasonably practicable, recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary or proper.

SEC. 2. That the commissioners hereinbefore provided for shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 3. That the sum of one hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, and to be immediately available, to be expended at the discretion of the President of the United States of America, for the purpose of carrying this joint resolution into effect.

Approved, July 7, 1898.

Senator BIBLE. Senator Simpson?

Senator SIMPSON. Senator, it occurred to me that the developments disclosed that there are two types of lands. You have some ceded land, which was evidently ceded lands or lands exchanged for ceded lands. And then you have some property evidently acquired by the Federal Government through purchase or condemnation.

Could you delineate the difference between the two, and the amount of acres?

Senator INOUE. This bill, Mr. Senator, applies only to ceded lands. It does not apply to fee lands, lands that were purchased by the Federal Government, either through condemnation or through outright purchase.

Senator SIMPSON. The bill you two have introduced—the ceded lands have nothing to do with the surplus lands?

Senator INOUE. That is true, sir.

Senator BIBLE. Thank you very much, Senator Inouye. I certainly appreciate your appearance here this morning.

Senator BIBLE. We will now hear from the cosponsor of the bill, Senator Fong.

Senator Fong, we are happy to have you with us, sir.

STATEMENT OF HON. HIRAM L. FONG, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator FONG. Mr. Chairman and members of the committee, I have asked my legislative assistant to pass to you another bill, S. 2297, that I have sponsored. There are two bills before you this morning, bill S. 2275, which Senator Inouye has been speaking on, and Senate bill 2297, a bill which I have singly sponsored. And I ask that this committee consider the two bills.

Senator BIBLE. I might say at that point that I have no objection to having the bill before us, but I note that the bill was only introduced on November the 8th, which is just 3 or 4 days ago.

Senator FONG. It incorporates everything here, with one amendment.

Senator BIBLE. I am very happy to have you call the amendment to our attention, but obviously, we will have to send this down to the departments for their reports.

The bill that we are now considering is a bill that comes up to us from the administration, and we, of course, will have to have reports on this. But you comment on it, as you care to, as you go along.

Senator FONG. This can be taken up as a matter of amendment, Mr. Chairman.

Mr. Chairman, and members of the subcommittee: I deeply appreciate this opportunity to appear before you in regard to a matter of great and urgent importance to the people of Hawaii, the transfer of surplus Federal lands to our State.

Land is a very scarce and precious commodity in Hawaii. The State stretches 1,600 miles between its farthestmost points, but our land area totals only about 6,435 square miles, some 4,119,000 acres.

It is important to recall that, prior to annexation by the United States, Hawaii was an independent nation and owned all of its public lands. These public lands, under the joint resolution of annexation, were all ceded to the Federal Government without charge.

The organic act of 1900, however, provided that these lands—

shall be and remain in the possession, use, and control of the governorship of the Territory of Hawaii, and shall be maintained, managed, and cared for by it at its own expense, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the Governor of Hawaii.

On the date of Hawaiian statehood, about 290,000 acres had been set aside for Federal use free of charge, and another 120,000 acres were being used by the Federal Government on licenses, permits, or permission.

Thus, Mr. Chairman, at the time of statehood, the Federal Government was in possession of a total of 410,000 acres of public lands in Hawaii, obtained by it from Hawaii free of charge.

The Hawaii Statehood Act, passed by the U.S. Congress, and signed by President Eisenhower on March 18, 1959, provided for admission of Hawaii into the Union of States.

Senator SIMPSON. Do I understand that the hundred thousand acres was still in the hands of the State of Hawaii?

Senator FONG. It is now controlled by the U.S. Government. It has been used for maneuver, for military purposes. It has not been set aside.

You see, when we were admitted, by joint resolution, we ceded, to the U.S. Government, all of the lands, the public lands, the public buildings, the crown lands of the State of Hawaii.

And then, subsequently, under the organic act, in 1900, the organic act specifically provided that this control should be in the Territory of Hawaii. And at our own expense, we were to manage and control it.

So the naked title is actually in the United States, whereas the use and benefit is in the Territory of Hawaii, except for those lands that have been set aside by Executive order, by the President or by the Governor.

So 290,000 acres have been set aside by Executive order, either by the President or by the Governor, and 120,000 acres are now being used by the Federal Government for maneuvers and military purposes, but have not been set aside.

So, actually in the control of the Federal Government now, there are approximately 410,000 acres.

Senator SIMPSON. Thank you.

Senator FONG. The Hawaii Statehood Act passed by the U.S. Congress and signed by President Eisenhower on March 18, 1959, provided for admission of Hawaii into the Union of States. As part of this act, provision was made for return of lands in Federal possession which were surplus to Federal needs. This was to be accomplished within a period of 5 years after statehood.

Time is running out. It is only 9 months to the August 21, 1964, deadline.

An extension of time is sorely needed, for the necessary paperwork, investigations, and determinations of surplus properties have taken far longer than anticipated.

Furthermore, while there was general agreement that surplus ceded lands were to be returned without charge to Hawaii, a disagreement has arisen between the executive branch, and the State of Hawaii with regard to purchased lands.

Ceded land is public land which the Republic of Hawaii voluntarily gave free to the U.S. Government when the islands became a U.S. territory in 1898, and, subsequently, there were other lands which were given free.

Purchased land is land which the Federal Government acquired thereafter by purchase, condemnation, donation, exchange, or otherwise.

Senator BIBLE. From whom would the U.S. Government purchase the lands? Where was the title?

Senator FONG. By condemnation, by purchase, by exchange. Title to the land is in the Federal Government.

Senator BIBLE. I know it is in the Federal Government now, because they purchased it. Or they condemned it, or it was donated, or it was exchanged. But prior to the purchase, condemnation, donation, or exchange, where was the title to the land?

Senator FONG. In private owners.

Senator BIBLE. Then the Federal Government purchased it?

Senator FONG. That is right.

Senator BIBLE. Then they paid Mr. Jones x number of dollars for the private land?

Senator FONG. Correct. These are purchased lands, as distinguished from ceded lands, which originally belonged to the State of Hawaii or were subsequently acquired by the State of Hawaii and then were set aside for Federal purposes.

Senator BIBLE. With ceded lands, was the title vested in the Territory of Hawaii?

Senator FONG. No, ceded land title went to the Federal Government under the resolution of annexation, but possession and control was still left in the territorial government, except that set aside by Executive order of the President or the Governor.

Senator BIBLE. But prior to annexation, the land was not in private ownership?

Senator FONG. It was in the Republic of Hawaii, prior to annexation.

Senator BIBLE. That is correct. Thank you.

Senator FONG. The section in dispute is subsection 5(e) of the Statehood Act. The House Committee on Interior and Insular Affairs, in its 1960 report on the Hawaii omnibus bill, with which members of this subcommittee are familiar, clearly stated that the Federal land referred to in subsection 5(e)'s reference to land or property held by the U.S. Government in Hawaii "includes * * * all land * * *".

And I would like to ask that the House of Representatives Report No. 1564, page 3, dealing with lands and records, beginning with the words "Section 41," and ending with the word "defined," on the top of page 4, be made part of the record.

Senator BIBLE. The relevant part of the 1960 report of the House Committee on Interior and Insular Affairs will be made a part of the record at this point and the full report will be made a part of the hearing by reference.

(The report referred to follows:)

LANDS AND RECORDS

Section 41 is intended to assure uniformity in the reporting procedure prescribed in section 5(e) of the Hawaii Admission Act. This subsection provided that all Federal agencies having control over land and property in Hawaii which is retained by the United States under the terms of the act shall report

to the President on their continued need therefor and that such land and property as the President determines is no longer needed for Federal use shall be conveyed to the State of Hawaii. The committee takes this opportunity to make clear that subsection (e)'s reference to "land or property that is retained by the United States" includes, in some cases (namely, those covered by subsec. (c)), all land whether it falls within the definition of public land given in the act or not and, in other cases (namely, those covered by subsec. (d)), only public land as that term is there defined.

Senator BIBLE. We will have a staff member check it with you people and see that we are putting in only the part of the House report that deals with this particular problem, involved with 5(e).

Senator FONG. Thank you.

The committee thereby indicated that both ceded and purchased Federal lands in Hawaii were to be reviewed and surplus lands transferred to the State without cost.

On June 30, 1960, the U.S. Department of the Interior issued an official statement in which it stated that the Federal lands referred to in subsection 5(e) of the Hawaii Statehood Act include ceded land and—

also land acquired by the United States by purchase, condemnation, donation, or by any other means * * *

And at this time, I would like to put in evidence the Department of Interior letter of June 30, 1960, Mr. Chairman.

Senator BIBLE. Without objection, that may be done.

(Letter referred to follows:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 30, 1960.

HON. MAURICE H. STANS,
Director, Bureau of the Budget,
Washington, D.C.

DEAR MR. STANS: This will reply to Deputy Director Staats' letter of May 2, relating to certain questions which have arisen respecting section 5 of the Hawaii Statehood Act.

I enclose a copy of the opinion of the Associate Solicitor of this Department for Territories, Wildlife, and Parks concerning the two legal questions presented by your letter, i.e., whether section 5(e) applies to ceded land only, and whether the term "property" as used in that section means real property only. The Associate Solicitor has concluded that both questions must be answered in the negative.

Mr. Staats also requested information concerning Federal lands in Hawaii which are administered or controlled by this Department, with particular reference to the method of acquiring such lands. As of June 30, 1959 (the date of our most recent intradepartmental report on this matter), the United States held title to and the Department of the Interior administered approximately 200,000 acres of land in Hawaii. Of these, 196,040.61 acres comprised the Hawaii National Park, and of this acreage, less than 8,000 acres constituted land other than ceded land or lands in exchange for ceded land. The Fish and Wildlife Service administers the Hawaiian National Wildlife Refuge of 623 acres, of which all were ceded lands made available for the purpose of the refuge by Executive order. Finally, 2.2 acres are held by the Service for the purpose of a fish investigations laboratory. These acres were acquired from the territory and were not ceded lands.

Pursuant to the last paragraph of Mr. Staats' letter, we shall refrain from disposing of any of the foregoing lands, or of any other property, real or personal, held by this Department in Hawaii, pending the resolution of the questions which have arisen.

Sincerely yours,

ROGER C. ERNST,
Assistant Secretary of the Interior.

[Enclosure]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C.

Memorandum.

To: Secretary of the Interior.

From: The Solicitor.

Subject: Construction of section 5 of the Hawaii Statehood Act.

You have requested my opinion concerning two questions which have arisen under section 5 of the Hawaii Statehood Act (Public Law 86-3, 73 Stat. 4):

(1) Does the phrase "land * * * that is retained by the United States pursuant to subsection (c) and (d)" of section 5, as that phrase is used in section 5(e) mean only land ceded to the United States by the Republic of Hawaii under the annexation resolution, and land acquired in exchange therefor?

(2) Does the term "property," as used in subsection (e), apply to real property only?

In my opinion, both questions must be answered in the negative, for the reasons set forth below.

(1) Does the phrase "land * * * that is retained by the United States pursuant to subsections (c) and (d)" of section 5, as that phrase is used in section 5(e), mean only land ceded to the United States by the Republic of Hawaii under the annexation resolution, and land acquired in exchange therefor?

In considering the question whether section 5(e) applies only to ceded lands or lands exchanged therefor, subsections (c), (e), and (g) of section 5 are pertinent:

"(c) Any lands and other properties that, on the date Hawaii is admitted into the Union, are set aside pursuant to law for the use of the United States under any (1) Act of Congress, (2) Executive order, (3) proclamation of the President, or (4) proclamation of the Governor of Hawaii shall remain the property of the United States subject only to the limitations, if any, imposed under (1), (2), (3), or (4), as the case may be.

* * * * *

"(e) Within five years from the date Hawaii is admitted into the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to subsections (c) and (d) of this section shall report to the President the facts regarding its continued need for such land or property, and if the President determines that the land or property is no longer needed by the United States it shall be conveyed to the State of Hawaii.

* * * * *

"(g) As used in this Act, the term 'lands and other properties' includes public lands and other public property, and the term 'public lands and other public property' means, and is limited to, the lands and properties that were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation approved July 7, 1898 (30 Stat. 750), or that have been acquired in exchange for lands or properties so ceded."

Subsection (d) of section 5 relates to "public lands or other public property" which is conveyed to the State of Hawaii under the Statehood Act, but which, immediately prior to Hawaii's admission, is controlled by the United States pursuant to a permit, license, or permission, written or verbal. Such "public lands or other property" may, during the 5 years following Hawaii's admission, be set aside by act of Congress or Executive order for the use of the United States. No question is currently raised concerning subsection (d) and I shall therefore not refer to it further.

I construe sections (c), (e), and (g), when read together, to mean the following: Any lands in Hawaii, ceded or otherwise, which were acquired by the United States pursuant to an act of Congress, an Executive order, or a proclamation by either the President or the Governor, shall remain the property of the United States; but if within 5 years following Hawaii's admission the President determines that such land is no longer needed by the United States, such land shall be conveyed to the State. I base this construction upon a reading of the definitions provided in subsection (g).

The definition of the term "public lands and other public property" is clearly limited to ceded lands and lands acquired in exchange therefor. Section 5(g) so states. The definition of the term "lands and other properties" is equally

clearly not so limited. If it were, two definitions would be pointless. Additionally, the latter term is defined to "include" public lands and other public property, and the word "include" is regarded as a word of enlargement, not of limitation (*People v. Western Airlines*, 268 P. 2d 723, 733 (Calif., 1954)). It is synonymous with "as well as" or "also" (*In re Links Estate*, 47 N.Y.S., 2d 40, 44 (1943)). "Lands and other properties" must thus include more than ceded lands.

What then, other than ceded lands, are included in the phrase "lands and other properties?" The lands other than ceded lands which are included are in my opinion "[a]ny lands * * * set aside [i.e., acquired] pursuant to law for the use of the United States" under act of Congress, Executive order, or proclamation. Those are the lands retained by the United States under section 5(e), and they are thus among the lands which are the subject of the report (and possible later conveyance to the State) under section 5(e).

If ceded lands alone were meant to be included, sections 5(c) and 5(e) would refer to "public lands and other public property." They refer instead to "lands and other properties" and "land or property". The land referred to is thus more than land acquired by the United States under the annexation resolution. It is also land acquired by the United States by purchase, condemnation, donation, or by any other means, so long as the means of acquisition was pursuant to an act of Congress, Executive order, or proclamation. To conclude that only ceded lands are dealt with in sections 5(c) and (e) is to ignore the definitions which the Congress provided. "When a statute defines the meaning of a word it is clearly improper to seek to give such word a different meaning" (*Cothran & Connally v. U.S.*, 276 F. 48, 50 (Va., 1921)). But this is precisely the consequence of construing sections 5(c) and (e) as including ceded lands only.

By the construction I have adopted, I am, of course, required to read the term "set aside" in subsection (c) as synonymous with the term "acquired". To do so may be unusual, but I find nothing to suggest that, as a matter of law, it is incorrect. The words "set aside" are not words of art. The courts have recognized that these words may have various meanings, depending upon their context (*Commissioner of Internal Revenue v. Strong Mfg. Co.*, 124 F. 2d 360, 363 (CCA-6, 1941)). And although the term "set aside" is used in its more traditional sense in section 16(b) (wherein the act provides for exclusive Federal jurisdiction over certain lands which "were acquired by cession * * * by the Republic of Hawaii and set aside by act of Congress or by Executive order or proclamation of the President or the Governor"), the Congress is not required to ascribe to particular terms the same meaning, even when those particular terms appear within the same statute (*Atlantic Cleaners & Dyers v. U.S.*, 286 U.S. 427, 433 (1932)).

Quite apart from the definitions it provided, there is clear evidence that the 86th Congress understood the difference between ceded land and land otherwise acquired. The legislative history of the statehood act makes clear that for many years the status of certain lands in Hawaii as ceded lands was recognized by the Congress. For example, in 1953, in its comments to the Senate upon S. 49 of the 83d Congress (a bill which provided only for the conveyance of ceded land to the new State), this Department urged a specific definition of a term "public lands and other public property" in order "to eliminate any possibility of these [land grant] provisions being construed as providing for a grant to the new State of lands or other properties acquired by the United States, subsequent to the annexation of Hawaii, through such means as purchase, condemnation, or donation * * *" (S. Rept. 886, 83d Cong. 2d sess. pp. 24, 30). The Senate committee adopted the amendment, and language similar to it was generally contained in statehood legislation thereafter. In the circumstances, there is no reason to suppose that Congress did not mean precisely what it said in the subsections of the statehood act quoted above: that lands, including but not limited to ceded lands, are subject to reporting by Federal agencies and possible subsequent conveyance to the State.

I will not here undertake to summarize the extensive legislative history of land-grant provisions in Hawaii statehood legislation. This has been done thoroughly by the Bureau of the Budget in a document dated April 18, 1960, entitled "Legislative History of section 5 of the Hawaii Statehood Act." Our own review of the legislative history, and particularly our careful scrutiny of departmental files, reveals nothing of significance not contained in the Bureau of the Budget's study. The Budget study, in turn, provides no comfort to those attempting to construe the present section 5. It is true that legislation prior to the 86th Congress was rather clearly designed to limit the land-grant provisions.

to ceded land only. More particularly, the predecessors of subsection (c) (generally in the form of provisos to subsections (a) and (b)), were limited to ceded lands. But the 86th Congress changed the pattern of the land-grant provisions, and in so doing, it used the phrase "lands and other properties" for the first time. Since the legislative history of earlier statehood bills was directed toward significantly different language, I believe it cannot be given any weight.

In the 86th Congress, the legislative history is silent on the point now before us, save for the following exchange on the House floor:

"Mr. GROSS. On page 5 of the bill there is a provision which says that the President may dispose of land within a 5-year period after Hawaii becomes a State. I am referring to paragraph (e) on page 5. Will the gentleman please tell us the meaning of that provision?"

"Mr. ASPINALL. That provision provides that the areas now held by the United States, for one purpose or another, may be held by the Federal Government for an additional period of not over 5 years for a determination as to how much of that area is to be needed permanently by the Federal Government, is for defense purposes primarily.

"Mr. GROSS. And such land could be disposed of at the discretion of the President of the United States?"

"Mr. ASPINALL. No; the lands automatically go to the new State of Hawaii.

"Mr. GROSS. That is not what the provision says.

"Mr. SAYLOR. Mr. Chairman, will the gentleman yield?"

"Mr. ASPINALL. I yield to the gentleman from Pennsylvania.

"Mr. SAYLOR. I should like to call attention of the Members of the House to the fact that the Federal lands in Hawaii come in two classes; first, those to which the Federal Government has title in fee. Those are not affected at all by this bill. The other lands affected by this bill are those which the U.S. Government holds under license. These lands are owned by the Territory of Hawaii. Upon the admission of Hawaii into the sisterhood of States, if there is no provision in the bill, all of the rights of the Federal Government in those lands will cease at once. The military, which occupy a large portion of these lands, have appeared before our committee and asked that for a period of 5 years the President be given the discretion to determine which of those lands are needed and which are not needed.

"Those which will be needed will be kept by the United States without any payment to the State of Hawaii of any sort or description, and those that are not needed will automatically then go back to the State of Hawaii.

"Mr. GROSS. Mr. Chairman, will the gentleman yield?"

"Mr. ASPINALL. I yield to the gentleman from Iowa.

"Mr. GROSS. Why should they not come to the Congress for the disposal of this land, rather than leaving it to the discretion of a President? That is the way we dispose of other U.S. property, is it not?"

"Mr. ASPINALL. These properties are in reality properties of the Territory of Hawaii.

"Mr. GROSS. Then why does a President have any discretion in the matter at all?"

"Mr. ASPINALL. Because we presently hold possession over these particular areas.

"Mr. GROSS. So that we do control the land?"

"Mr. ASPINALL. Just for certain purposes, that is all.

"Mr. GROSS. I think that under any circumstances the authority should be vested in Congress to dispose of any federally owned or controlled land." (Congressional Record, Mar. 11, 1959, p. 3494, daily ed.)

Inasmuch as the Congressmen contradicted one another respecting the status of the lands affected, the exchange as a practical matter must be disregarded.

I am also aware of the recent comments of the House Interior Committee in reporting H.R. 11602, the Hawaii omnibus bill. Report No. 1564 (86th Cong., 2d sess., pp. 3-4), states:

"* * * The committee takes this opportunity to make clear that subsection (e)'s reference to land or property that is retained by the United States includes, in some cases (namely, those covered by subsec. (c)), all land whether it falls within the definition of public land given in the act or not and, in other cases (namely, those covered by subsec. (d)), only public land as that term is there defined. * * *

Apart from the question whether such subsequent legislative history is entitled to weight, the effect of the foregoing language is largely offset by the comments later made during the Senate Interior Committee's consideration of the Hawaii

omnibus bill, S. 3054. I am informed that several members of the Senate committee indicated their disagreement with the House committee's view, quoted above, and their consequent unwillingness to include in the Senate report a similar paragraph. Thus, I cannot pay much deference to either committee's comments during the session of Congress following enactment of the bill.

It will doubtless be argued that the construction I have urged results, under subsection (f) of the statehood act, in impressing a trust upon lands conveyed to the State under subsection (e) which were formally ceded lands, but does not impress a trust upon lands or other property conveyed to the State under that subsection if they were acquired by the United States by any other means. Inasmuch as the State of Hawaii was widely regarded as having a historical claim to lands ceded to the United States by the Republic, this result initially appears incongruous. However, I conclude below that the term "property" includes personal as well as real property, and thus that personal property too is subject to transfer under section 5(e). Since the holding by the State of personal property in trust would be impracticable in the extreme, I believe that the Congress impressing a trust upon ceded lands alone and not upon all "lands and other properties," is entirely reasonable.

I would observe in passing that the mere fact that my construction of section 5 results in a particularly liberal property grant to the State of Hawaii is not inconsistent with the pattern recently established by Congress in connection with the admission of new States. The Alaska Statehood Act (Public Law 85-508), enacted merely 8 months prior to the Hawaii act, contains land-grant provisions which are unprecedented in their liberality. Similarly, the Alaska Omnibus Act (Public Law 86-70), enacted soon after the Hawaii Statehood Act, contains additional provisions to assist the new State of Alaska, in the form of property grants as well as others. It is not inconsistent, therefore, to suppose that Congress meant to accord to Hawaii comparable generous treatment.

I have heard propounded a variety of ingenious theories to achieve the result of including ceded lands only within the terms of subsections (c) and (e). I think these theories must be rejected, because when definitions have been provided, they cannot be ignored. We must suppose that Congress meant what it said. I am impressed by this ingenuity, but not persuaded by it. "It is generally safe (in construing statutes) to reject an interpretation that does not naturally suggest itself to the mind of a casual reader, but is rather the result of a laborious effort to extract from the statute a meaning which it does not at first seem to convey" (*Shulthis v. McDougal*, 162 F. 331, 341 (Okla., 1901)). The meaning conveyed by sections 5 (c) and (e) to both the casual and the careful reader, can only be that ceded lands and other lands are included within their terms.

(2) Does the term "property" as used in subsection (e), apply to real property only?

I believe that the term "other properties" as used in subsection (c), and thus the term "property" as used in subsection (e), must be construed to include personal property. I find nothing in section 5, or elsewhere in the statehood act or its legislative history, to indicate that these terms mean real property only. There is, on the contrary, evidence that they do not, inasmuch as the reference is to "lands and other properties." Property other than land must mean either interests in real property, or personal property, or both. Since the term "property" is used unadorned, I believe it must be given its usual definition, and thus that it must be read to include personal property.

It is well known that the term "property" is extremely broad. Without limiting adjectives or other qualifications, the term includes property which is real, personal, and mixed, choate and inchoate, corporeal or incorporeal (*Hunt v. Authier*, 169 F. 2d 913, 917 (Calif., 1946)). It includes easements, franchises, and other incorporeal hereditaments, choses in action and everything which has an exchangeable value. (*In re Brown*, 21 F. Supp. 935, 937 (Iowa, 1938)). The foregoing construction is the usual definition of the term. We must presume that Congress intended to ascribe to the term its usual meaning. (*U.S. v. Wurts*, 303 U.S. 414, 417 (1938)). I therefore conclude that the terms "property" and "other properties," as used in subsections (c), (e), and (g), include personal property.

If it is urged that such a broad construction is unsound, inasmuch as the United States could not possibly, for example, wish to convey to the State of Hawaii its choses in action, I would reply that it need not do so. The President has sufficient discretion under section 5(e) to prevent such a result. If it is urged that only real property is intended to be included, because section 5(e)

permits the President to "convey" property only, I would argue that the term "convey" need not be limited to real property. Although the term is properly used in a real property context only, its meaning need not be so restricted. "Popularly, it may apply * * * to personal property, and may be read in the sense of 'assign,' 'sell,' or 'transfer.'" (*Woodbine v. Van Horn*, 103 P. 2d 895, 897 (Calif., 1946)). Such use of the term is permissible, if such a construction is consistent with the "whole scheme" of the document being construed (*Thompson v. Thompson*, 69 N.Y.S. 223, 229 (1901)). Such a construction is in my opinion consistent in this case. One must either conclude that the term "property," unqualified, means real property only, or that the term "convey" is intended to mean "transfer" as well as convey. I find the former far more difficult than the latter, and I consequently conclude that sections 5 (c) and (e) relate to personal as well as real property.

GEORGE W. ABBOTT,
The Solicitor.

By A. M. EDWARDS,
Associate Solicitor, Territories, Wildlife and Parks.

Senator FONG. But on June 12, 1961, Attorney General Robert Kennedy ruled that:

Congress never intended to extend * * * section 5(e) to any property other than * * * to territorial property and to ceded property set aside for the use of the United States.

Subsequently, the State of Hawaii brought suit in the Supreme Court for interpretation of subsection 5 (e) relative to purchased lands. This past spring the Supreme Court declined to consider the case, on the ground that the Federal Government had not given its consent to be sued.

Senator BIBLE. The Senator from Wyoming.

Senator SIMPSON. This suit was brought by the State of Hawaii?

Senator FONG. Yes.

Senator SIMPSON. And the Federal Government refused to give its consent to the suit?

Senator FONG. The Federal Government said we were not in court, because the United States had not consented to be sued, and the sovereign had to give consent.

Senator SIMPSON. What was the State of Hawaii attempting to do? Merely to get an interpretation of this section?

Senator FONG. That is all the State of Hawaii wanted, an interpretation of section 5(e), as to whether Congress intended to give to Hawaii surplus Federal-purchased lands.

Senator SIMPSON. Mr. Chairman, this has nothing to do with this matter, but I have seen this happen on so many occasions. It seems to me when a State sues the Federal Government with respect to the interpretations of a law, the least the Federal Government should do is give consent. And I do not think it was ever intended that these matters should not be brought into court.

Where a State brings suit to interpret a statute, it seems to me the Federal Government in all justification should give them the consent to sue, and get the interpretation made.

That is an aside, Mr. Chairman, but I do want it in the record.

Senator BIBLE. In addition to that, I take it if they found they had jurisdiction, maybe we would not have a bill before us now. Maybe the matter could be settled in the courts, rather than before the Congress.

Senator SIMPSON. I thank the chairman for his observation, which is in line with my thinking.

Senator FONG. Therefore, on April 30, I introduced a bill (S. 1396) waiving the immunity of the Federal Government, and giving Hawaii permission to bring suit in court. Not long ago, on October 29, the Senate Committee on the Judiciary unanimously approved my bill, saying in the committee report:

It is only fair and right that the State of Hawaii should be entitled to its day in court.

Senator BIBLE. What is the status of that bill now? That is just October 29?

Senator FONG. That bill is on the calendar, Mr. Chairman.

Senator BIBLE. Very well.

Senator FONG. Obviously, since the August 21, 1964, date is imminent, additional time will be necessary to effect the transfers of surplus purchased lands, if it is determined that the Federal Government has such authority to transfer these parcels.

S. 2275, which I have cosponsored with my distinguished colleague, the junior Senator from Hawaii, Mr. Inouye, extends the deadline in perpetuity for return to Hawaii of ceded lands when they become surplus to the Federal Government.

It also provides for the return of a tract of filled land on Sand Island regarding which title is in doubt, and a question has been raised as to whether it is ceded land or submerged land.

Senator SIMPSON. Mr. Chairman, does the chairman mind my interruption?

Senator BIBLE. Not at all.

Senator SIMPSON. If you have this bill on Sand Island, you are virtually seeking to quiet title to that. Is that what you are trying to do?

Senator FONG. No; Sand Island is an addition. Sand Island was not included in the statehood bill at all, except that the State of Hawaii has claimed that Sand Island, with all of its accretions, is ceded land, whereas the Federal Government has refused to recognize that it is ceded land. And because of that fact, the consent of Congress is necessary.

Sand Island—we have already received from the Federal Government approximately 327 acres from 500-some-odd acres of Sand Island. A part of Sand Island, 125 acres, was obtained by executive order of the Governor and set aside for the use of the Hawaiian Aeronautics Commission. There was no dispute at that time that it was not ceded land. So by implication, the Federal Government has considered these lands to be ceded lands.

Subsequent to that, we asked again for another 200-some-odd acres, and at that time the Attorney General felt that since lands had been accreted, since lands had been filled, there was a question whether this was ceded land or was not ceded land. So the Attorney General requested that we come to Congress and ask Congress for permission.

Congress in 1958 gave to the President the power to transfer by Executive order this land to the State of Hawaii.

So at the present time, out of 500-some-odd acres, Hawaii has in its possession, and is holding title to, approximately 327 acres.

Senator SIMPSON. The Senator spells out in his statement that there is a private corporation involved. Could the committee be assured

by the Senators from Hawaii that any private interests will not be foreclosed in passing a bill to this effect?

Senator FONG. Yes; under the annexation and resolution, all ports and harbors in such land, and military installations, were ceded to the Federal Government. And I think the statement was made that there were rights to Sand Island.

So suit was brought, and to quiet that suit, the territorial government gave to the Sumner Estate people a land patent to lands which belonged to the territorial government.

Senator SIMPSON. Is that a private ownership, then? To a private owner?

Senator FONG. That is to a private owner, in place of his giving up his rights or his claims to Sand Island.

So that is where the private corporation came in.

So, therefore, we can say that title to Sand Island may have been in dispute. And because of that dispute, the Federal Government was interested. The territorial government gave to these claimants a land patent to other lands in that district, and they released their claim to Sand Island.

Senator SIMPSON. And they are not involved in this?

Senator FONG. They are not involved.

Senator SIMPSON. That is all, Mr. Chairman.

Senator FONG. I am heartily in accord with the section of S. 2275 providing for the return of the last remaining approximate one-third of Sand Island to Hawaii.

I should like to emphasize that this merely continues a practice begun many years ago. Since the history of Sand Island will be set forth in detail by other witnesses, I shall not cover this same ground.

Suffice it to say that, of the 528 acres on Sand Island, Hawaii had already received 327 acres from the Federal Government prior to statehood.

After statehood, Hawaii claimed an additional 155 Federal surplus acres on Sand Island as ceded lands, and asked for their return. Hawaii also asked for approximately 87 acres which are under water. Hawaii does not claim the 46 acres needed by the Coast Guard.

Thus, the current Sand Island bill is the third and last phase in the return of Sand Island lands by the Federal Government. S. 2275 follows the precedent set by legislation enacted in 1958 by the Congress.

I am also fully in accord with the second major feature of S. 2275, which extends in perpetuity the date for transfer of surplus Federal ceded lands.

In this regard, the Director of the Bureau of the Budget stated in a letter accompanying S. 2275:

We believe that Hawaii has a unique claim on the lands and property involved, since they were originally given to the United States by the Republic or the Territory of Hawaii. That claim and the special status of those lands and property have been recognized by the United States for many years. In essence, the proposal would provide for the continuation of a 60-year practice of returning those lands and property when they were no longer needed by the United States.

* * * * *

The bulk of the lands involved, which were ceded at the time of annexation, have always been treated differently than the other public lands of the United States. History clearly indicates that those lands were regarded as having been held in a special trust status by the United States for the benefit of the

Hawaiian people. The resolution of annexation barred the extension of Federal public lands laws to Hawaii and provided that the revenues from the ceded land, except for those used by the United States, were to be used solely for the benefit of the inhabitants of Hawaii.

The Budget Bureau believes that providing a procedure whereby surplus Federal ceded lands may continue to be returned to Hawaii—

is fully justified in keeping with the manner in which the lands and properties were acquired and the history of the special trust status in which they have been held.

I fully agree.

While the lands would generally be returned to the State without monetary consideration, section 1 of the draft does authorize the Administrator to make such conveyances subject to any terms and conditions he may prescribe. It is anticipated that that authority would be used primarily to preserve utility easements and to protect Federal interests in other properties which it retains.

Provision is also made for safeguarding the U.S. interest in buildings, structures, and other improvements made on the lands after they were set aside.

My bill, S. 2297, is identical to S. 2275 in every respect except that my bill also allows the conveyance to the State of Hawaii of surplus Federal purchased lands, if the Attorney General should determine, or the Supreme Court should rule in a legal action instituted within 5 years following the date of enactment of this act, that such lands are authorized to be transferred under subsection 5(e) of the Statehood Act.

In other words, my bill asks for a period of 5 years for Hawaii to institute suit to have this subsection of the Statehood Act interpreted.

In essence, what my bill seeks is time for Hawaii to have its day in court.

Should the Court rule in favor of Hawaii, thereafter surplus Federal purchased lands would be transferred to Hawaii in the same way as surplus Federal ceded lands.

Senator BIBLE. The question I was going to ask you, Senator Fong, was: How does this particular language which you have added, in S. 2297, differ from the bill which you have reported out from the Senate Judiciary Committee? Does that not give you the right to go to court and determine under 5(e)?

Senator FONG. I would be fighting time, Mr. Chairman. We have only until August 15, 1964, for the return of Federal surplus lands to Hawaii. I would be going to court and would be fighting time. The Supreme Court will not be able to rule, and in the meantime, the 5 years would have passed.

Senator BIBLE. In other words, then, what you are saying—if I understand you correctly—the bill which you now have on the Senate calendar, which was reported out on October 29 by the Senate Judiciary Committee, actually would not accomplish what you have in mind, because it would be too late.

Is that what you are saying?

Senator FONG. If it passes the Congress early, and the Supreme Court rules, we may be able to have that interpretation. But we are fighting a 5-year deadline in which after 5 years Hawaii will not even receive its surplus ceded lands.

So in consonance with the theory that these lands belong to the State of Hawaii, that title is in the Federal Government, but the use and the control thereof is in the State of Hawaii, we should receive this land in perpetuity. If the Federal Government at any time in the future should declare these ceded lands surplus, then they should come back to the State of Hawaii.

Senator BIBLE. I understand your position about the ceded lands. I was directing my attention more fundamentally to the question of purchased lands, which seems to be the addition you have made in S. 2297, purchased lands, where the bill jointly introduced included only ceded lands and Sand Island.

But if I understand your position correctly, it is that even if the bill were to pass the Senate and go to the House, and were enacted into law, giving you permission to test the meaning of section 5(e), you feel that still would not give you enough time to meet the deadline of the Organic Act.

Senator FONG. We may be able to meet the deadline, but in all practicality, we may not be able to meet it.

Senator BIBLE. I have your position. Thank you.

Senator FONG. The language added in my bill to provide for transfer to Hawaii of surplus Federal purchased lands is subsection (C) of section 1(a) (1), and the exception clause at the end of section 1(a).

The first part of my amendment provides that purchased lands, that is lands acquired by the United States by purchase, condemnation, donation, exchange, or otherwise, which were owned by the United States on the date Hawaii was admitted into the Union (August 21, 1959), which were retained by the United States pursuant to subsection 5(c) of the Statehood Act relating to set-aside lands, and which are no longer needed by the Federal Government are to be returned to the State of Hawaii.

However, under the second part of my amendment, the exception clause, these lands are not to be transferred to Hawaii unless the Attorney General should determine, or the Supreme Court should rule in a legal action instituted within 5 years following the date of enactment of my bill, that subsection 5(e) of the Hawaii Statehood Act authorized such transfer.

And my bill, S. 2297, differs from the bill which Senator Inouye and I introduced, S. 2275, beginning with page 2, (C), the top line, as amended:

or (C) any lands or property which were (i) acquired by the United States by purchase, condemnation, donation, exchange, or otherwise, (ii) owned by the United States on the date of the admission of Hawaii into the Union, and (iii) retained by the United States pursuant to the provisions of subsection (c) of section 5 of the Act of March 18, 1959 (73 Stat. 4) * * *"

That is the addition. And then we go down to about the last third of the page:

* * * except that no lands or property referred to in clause (C) of this section shall be conveyed pursuant to this section unless it is determined, by the Attorney General or by final adjudication of a court of competent jurisdiction in a legal action instituted by the State of Hawaii within five years following the date of the enactment of this Act, that the land or property authorized to be conveyed under subsection (e) of section 5 of such Act of March 18, 1959, included land or property of the United States acquired by it by purchase, condemnation, donation, exchange, or otherwise.

These are the two conditions.

Senator BIBLE. With the exception of those two additions, it is identical with the other bill that was introduced?

Senator FONG. Yes.

Senator SIMPSON. I can go along with the idea as to acquisition as contained in both of these bills, but by the same token, here is one bill up before the subcommittee and another one coming along the way, and a third one that has to do with the consent to be sued.

Is there objection to these bills on the part of any considerable portion of the people of Hawaii? Do they want it all? Or do they want any part?

Senator FONG. My colleague and I are divided on this issue. I say we should go to court and have the court give us an interpretation, and see what Congress intended to give us, but my colleague does not feel the same way as I do.

Senator SIMPSON. Are you and Senator Inouye certainly in accord with respect to S. 2275?

Senator FONG. Yes.

Senator SIMPSON. And you want that, and that is before this committee now. You want the surplus lands, and want the interpretation by the Government. I can go along with both, but I am a little confused as to our procedure, here.

Senator BIBLE. This hearing is directed to S. 2275. This hearing is not on S. 2297.

Senator FONG. I am bringing in this amendment to S. 2275.

Senator BIBLE. I understand. You are suggesting this by way of an amendment.

Senator FONG. By way of an amendment.

Senator BIBLE. Yes. S. 2275 is the bill we are hearing.

Senator FONG. And my bill comes in as an amendment to S. 2275.

In other words, Mr. Chairman, my bill does not ask Congress to transfer to Hawaii free of charge surplus Federal purchased lands. My bill only asks Congress to allow Hawaii time to obtain a ruling by the Nation's highest court or by the Attorney General that lands authorized to be transferred to Hawaii by the Federal Government include surplus purchased lands.

I want to emphasize that my bill confines surplus purchased lands to those lands held or retained as of Hawaii's statehood—not those acquired after August 21, 1959.

Senator BIBLE. Do you have any idea how much we are talking about?

Senator FONG. 1,600 to 2,000 acres.

Senator BIBLE. Those are the surplus purchased lands?

Senator FONG. Yes, surplus purchased lands.

Senator BIBLE. They were purchased by the U.S. Government at a cost of how much?

Senator FONG. I do not have those figures, Mr. Chairman.

Senator BIBLE. We can ask them later. The record would be available. I thought we might have a rough idea.

You talk about 1,600 acres of surplus purchased land. This was acquired over the years at a cost of x dollars, and I was interested in what the approximate cost was.

Senator FONG. Yes, I do not have it.

Senator BIBLE. We can obtain that.

Senator FONG. I also want to emphasize that the interest of the Federal Government is amply protected in that the Federal Government and only the Federal Government will make the determination as to whether any purchased lands become surplus to it in the future. So that this provision for return of lands rests upon the sole determination of the Federal Government. The State of Hawaii will have no voice in the decision as to what, if any, lands become surplus to the U.S. Government.

I believe the Congress and the people of the United States can rest assured that the Federal Government will protect the national interest in any determination as to what, if any, purchased lands are surplus to all Federal needs.

What I am asking in my bill on behalf of the people of Hawaii is very reasonable indeed.

The administration agrees that the ceded land provisions and the Sand Island provisions represent valid claims by the State of Hawaii.

I believe that my request for a 5-year period in which the sovereign State of Hawaii can institute suit to obtain an interpretation of the Statehood Act is also a valid request. This request for Hawaii to have its day in court is based on equity, justice, and fairplay, and on the longstanding tradition that no one should be denied his day in court, particularly a sovereign State.

The number of surplus Federal purchased acres involved is estimated as approximately 1,600. As against 1,600 acres Hawaii gave free of charge to the Federal Government 410,000 acres. Surely Congress did intend to compensate Hawaii for these free acres. At least, Mr. Chairman, the Supreme Court should rule on whether this is so.

As members of this subcommittee will recall, when Alaska became a State, Congress gave to it free of charge nearly one-third of Alaska's entire land acreage—103,350,000 acres out of a total of 375,296,000 acres. These were all Federal purchased lands, as the whole of Alaska had been purchased by the United States from Russia. This Federal gift of purchased lands to Alaska is 25 times the size of the entire State of Hawaii.

Senator SIMPSON. I would like to observe right there that the chairman, as well as the Senator from Utah, the Senator from Idaho, and the Senator from Wyoming, might add that they also gave to the State of Alaska 90 percent of its own minerals, which the Senators who sit on this subcommittee would like to claim in their own States.

Senator FONG. A very generous gift, then.

This gift of Federal purchased lands to Alaska, Mr. Chairman, is 25 times the size of the entire State of Hawaii.

Furthermore, Congress gave Alaska 25 years in which to select the lands the State desired. Hawaii got only 5 years, and no right to select.

Congress also stipulated that 5 percent of all proceeds of land sold by the United States after statehood shall be paid to Alaska for public school support.

Having been so generous with its gift of land to Alaska, and having been so generous in granting Alaska 25 years to select the land, I believe Congress, in passing the Hawaii Statehood Act only 8 months later, in 1959, intended to be fair on return of lands to Hawaii.

The Interior Department statement, to which I referred earlier, supports my view. It said:

The Alaska Statehood Act, enacted merely 8 months prior to the Hawaii Act, contains land-grant provisions which are unprecedented in their liberality * * *. It is not inconsistent, therefore, to suppose that Congress meant to accord to Hawaii comparable generous treatment.

The House Interior and Insular Affairs Committee report, as I stated earlier, said that in subsection 5(e) of the Statehood Act, in reference to land or property held by the U.S. Government in Hawaii "includes * * * all land * * *."

Senator BIBLE. Right at that point, and I think we want to balance the record out: First, the House of Representatives passed the Omnibus Hawaii Statehood Act first, and put the construction on it to which you have referred in their committee report.

It is also true that the Senate, after it considered the act, made special reference to section 5(e), and I think to balance out the legislative history and the committee background it is well to read into the record at this point the statement of the Senate Interior Committee.

A report was made to the Senate of June 24, 1960, by your then colleague, Senator Long of Hawaii, and on page 4 of the report, the report being Calendar No. 1751, accompanying the Hawaiian omnibus bill, this committee, after having had before it the House omnibus bill and the report to which you referred from the House Interior Committee, said this:

The committee considered possible interpretations of section 5(e) of the Hawaii Statehood Act of 1959. No interpretation is offered at this time. The sense of the committee is that the factors involved are too complex to be considered within the time available, requiring appellate consideration at a later date.

Senator FONG. That is true, Mr. Chairman.

Senator BIBLE. So as to what the Senate said on that subject, and because of the complexities involved in the construction of 5(e), we now have this before us just about 4 years later, in 1963.

Senator FONG. We actually said: "Let's go to court," Mr. Chairman. That is what we actually said: "Let's go to court and have it interpreted."

Senator BIBLE. This says that it is to be considered within the time available, and that it will require independent consideration at a later date.

We are giving that independent consideration now, in these bills that we have before us.

Senator FONG. Mr. Chairman, besides purchasing from Russia in 1867 the Alaskan Territory of 586,400 square miles, the United States purchased from France in 1803 the Louisiana Territory of 1,172,000 square miles. Out of the Louisiana Purchase Territory, almost all of 13 States stretching from the Gulf of Mexico to Canada were created.

By treaty, the United States secured the Oregon country in 1864, from Great Britain, giving up our claim to British Columbia in return. From this territory we created the States of Oregon, Washington, Idaho and parts of Montana and Wyoming.

By the Gadsden Purchase we secured 45,535 square miles from Mexico in now southern Arizona and New Mexico.

By treaty, after the Mexican War, we got the rest of Western and Southwestern United States, except Texas, which was an independent nation.

So we see that more than one-half of the whole of the United States was owned by the Federal Government. These tremendous land areas were obtained through purchase, exchange, or by treaty.

From these lands owned by the Federal Government more than one-half of our 50 States were carved. To the five States admitted into the Union just prior to Hawaii the United States gave the following acreages which the Federal Government owned: Idaho, 590,000; Oklahoma, 3,090,090; New Mexico, 2,350,000; Arizona, 2,350,000; Alaska, 103,350,000. Of most of the lands west of the Mississippi, only those in Texas and Hawaii were not owned by the Federal Government.

By creating these States with vast gifts of land, by homestead laws, and by other gifts, the U.S. Government has throughout our history of lands followed a policy of generosity to new States.

Therefore, it was thoroughly consistent for Congress, in enacting the Hawaii Statehood Act, to authorize the return to Hawaii of surplus purchased lands, estimated to involve some 1,600 acres, especially when the Federal Government received free of charge 410,000 acres from Hawaii.

Mr. Chairman, in asking time for Hawaii's day in court, I am not asking for a favor, nor am I asking for a gift.

I am asking for equity, fair play, and justice.

I am hopeful this subcommittee will recognize Hawaii's unique land situation, accord us fair and equitable treatment, and allow Hawaii time for its day in court.

S. 2275 takes care of only part of the land problem. I urge this subcommittee to go the next mile and approve my bill as a substitute amendment for S. 2275, because it embodies all the provisions of S. 2275, and further provides an opportunity for Hawaii to have its day in court.

Prompt action is essential, for the administration has already announced it plans to call for bids for one parcel of surplus Federal purchased land in Hawaii.

I respectfully urge the approval of my bill as a substitute for S. 2275.

Thank you.

Senator BIBLE. I would only ask one additional question, Senator Fong. That is, do you have any records that would indicate what revenues, if any, are received by the State of Hawaii from the 410,000 ceded acres?

As I understand it, approximately 210,000 of those 410,000 acres are in national parks. Is that correct?

Senator FONG. No. As I understand, about 230,000 out of the 290,000 acres. Now, if these lands were set aside for the Federal Government, the State of Hawaii would not receive any rentals whatsoever.

Senator BIBLE. Well, that applies to park lands. Is this a national park?

Senator FONG. Yes, these are national parks.

Senator BIBLE. Is this operated by the National Park Service?

Senator FONG. Yes.

Senator BIBLE. Of course, this isn't exactly free of charge to the Federal Government, then. If the Federal Government operates a national park there, I would not have any idea what the cost per year is, but we have many park proposals before us year in and year out,

and we find they average \$700,000 for just operation and maintenance. So if it is a Federal park, believe me, I am for it. I think this is a fine governmental function. But nevertheless, this does cost the Federal Government something to maintain this Federal park.

Senator FONG. Very true. It is true, also, that we are going to buy Padre Island for millions and millions of dollars, Cape Cod for millions and millions of dollars, and then we will on top of that have to maintain it.

Senator BIBLE. That is correct.

Senator FONG. But originally these lands were given to the Federal Government free of charge.

Senator BIBLE. The acquisition cost may have been free, but then the cost of development and maintenance always costs the Federal Government some money.

But the point I was making was not in terms of parks. Is there any part of this 410,000 acres of ceded land that is revenue producing? Because if I understand the law correctly, it is that these ceded lands and the revenues from these ceded lands go to the State of Hawaii.

Senator FONG. I would say yes. I believe that the Federal Government has been receiving rentals of some of these lands, which have been set aside. Whether that money has come to the State of Hawaii, I do not know, although the law specifically provides that that money should come to the State of Hawaii.

Senator BIBLE. We can develop that, Senator Fong, from the departmental witnesses, who will certainly be able to give us the exact amount of revenue, if any, that the ceded lands have produced. I think it is very important to the accuracy of the record.

The Senator from Idaho?

Senator JORDAN. Senator Fong, what kind of land is this 1,600 acres of purchased land that you are talking about here, presently used by the Federal Government? For what purposes does the Federal Government use this land now?

Senator FONG. There are approximately 290 acres known as Halawa Housing, Manana Housing, and John Rogers Housing, and that is now used as a low-cost housing area under the discount provisions of the Federal Properties and Administrative Services Act of 1949.

We will not be able to get that back, because we will not be able to use it for parks or recreation areas or public health service.

There are approximately 2,000 acres that we are talking about which have been held to be excess. There are 4 acres now of purchased lands which have been advertised for public sale.

We do not know actually how many acres. We feel it is approximately 1,600, and estimates have gone up as high as 2,200. So it is just within that range of 1,600 to 2,200 acres. We have no way of telling.

Senator JORDAN. You would not expect to get back, then, that part of it that is so highly developed?

Senator FONG. Yes. We are asking for a decision on all the lands that are surplus.

Senator JORDAN. All of it that is surplus?

Senator FONG. Yes. And this will be by determination of the Federal Government. The Federal Government has the last word as to whether lands are surplus or not. All of that is within the province of the President.

Senator JORDAN. Do you think there is any likelihood that the Federal Government will declare surplus lands that are highly developed?

Senator FONG. Yes. Manana Housing and Halawa Housing have been declared surplus.

Senator BIBLE. The Senator from New Mexico?

Senator ANDERSON. I did not quite understand. Do you want conveyed back lands which the U.S. Government has purchased and now finds to be surplus?

Senator FONG. Yes.

Senator ANDERSON. Are they doing that in other States?

Senator FONG. As I stated, you gave to Alaska one-third of the State of Alaska. That was purchased lands. You gave Alaska 25 years to select these lands. This is not new.

Senator ANDERSON. We did that, Senator Fong, for a reason. We did not think that the situation in Alaska was quite as thoroughly in hand as the situation in Hawaii. We gave you credit for a higher degree of government than worked out in Alaska.

But there was no protest over this at the time it was done. You were glad to have statehood, then.

Senator FONG. I am arguing this, Senator Anderson, from this standpoint: All I am asking is for a day in court. I am not asking for this committee to say: "We will give you this surplus land." I am saying, "Give us our day in court."

The statehood statute has already been passed. The provisions are ambiguous. The Interior Department says that we are entitled to these surplus lands. It was the intent of Congress to give us these surplus lands. The House Interior Committee says it was the intent of Congress to give us these lands.

The Attorney General says no. So there is a conflict as to whether it was intended to give Hawaii these surplus lands.

And I have brought forth the argument that we have given to the Federal Government 410,000 acres free of charge, and certainly because of this generous history of our land policy, where we have carved out States from the Louisiana Purchase, 1,140,000 square miles, where we have carved out 13 States and given to these States generous treatment as far as land is concerned, and through the homestead laws we have given lands to the people, it was the intent of Congress in passing the Statehood Act for Hawaii that these surplus lands, if not needed by the Federal Government, should go to the State of Hawaii as a consideration.

I do not want to say as a gift, but as a consideration for the use and the control of 410,000 acres which it has now.

That is my point.

Senator ANDERSON. I do not want to speak for the Senator from Wyoming, because he is very able to speak for himself, but he and I would agree that if the Federal Government would just give to the State of Wyoming and the State of New Mexico the lands within our borders which are surplus to their needs, we would be happier than we now are.

Senator FONG. We are only asking here for the return of 1,600 acres, approximately 2,000 acres.

Senator SIMPSON. Will the Senator yield?

I think the Senator from New Mexico probably knows this, but the astonishing part of this is that the State of Hawaii brought a suit to

get an interpretation of this section of the Statehood Act, the Organic Act, and the Supreme Court refused the sovereign State of Hawaii, or rather the Government refused the sovereign State of Hawaii, the right to the consent to sue, which would probably have resolved all of this before it ever got before the committee.

I cannot understand that feature. That is one thing they are here asking for.

Senator ANDERSON. I think it was pretty well understood what the Congress was doing, or at least the Senate thought it understood it, at the time. I do not believe our understanding is quite the same as the Senator from Hawaii has. It may be.

Senator FONG. The Interior Committee of the House, in its deliberations on the omnibus bill, and this was the same committee that passed the statehood bill for Hawaii, said—

Senator ANDERSON. We cannot be tied by the House committee actions. We do not have the same system on conference reports that the House does.

Senator FONG. We understand.

Senator ANDERSON. And I participated in a matter known, I believe, as the *Tidelands* case. There was not an inch of tidelands involved in it. It was quite valuable to the States of Louisiana and Texas and California. But the House committee reports do not quite coincide with my remembrance of what we spent days and days arguing, including almost the suggestion of a filibuster.

Senator Taft pointed his finger inside and said, "There is a filibuster going on, and the Senator from New Mexico is the author and director of it."

We were trying to get some things done. The House does not agree with what we did.

I am only trying to find out what your understanding is of what we did.

Senator FONG. I am only saying, Senator, that here is a dispute, a legitimate dispute, as to what the provisions of the Statehood Act mean.

Senator ANDERSON. Well, do I understand, Senator Fong, that you are trying to get the right to sue?

Senator FONG. Yes, that is all I am asking for, my day in court, to interpret what the provisions of the Statehood Act mean.

Senator BIBLE. That is as to purchased lands.

Senator FONG. All I am asking for is my day in court.

Senator BIBLE. Thank you very much, Senator Fong. We very much appreciate your appearance.

Senator INOUE. May I respectfully request a moment to make a short statement in clarification, sir?

Senator BIBLE. Certainly, sir.

STATEMENT OF HON. DANIEL K. INOUE, A U.S. SENATOR FROM THE STATE OF HAWAII—Resumed

Senator INOUE. Mr. Chairman and members, I have just listened to the statement issued by Senator Fong, my senior Senator, requesting that his bill, S. 2297, be made a substitute for the joint bill, S. 2275.

As I noted in my testimony, S. 2275, the bill sponsored by the senior Senator and me, and approved by the administration, relates

only to ceded lands, and Senator Fong's bill relates also to purchased lands.

I should like to point out to the committee that I do not disagree with Senator Fong in principle.

The reason I refused to cosponsor S. 2297 is that it is of major importance at this time that we clarify the section 5(e), this deadline, August 21, 1964.

I have always felt that if we can resolve this problem first, the problem of the suit can come later.

I would hate to confuse the committee at this time with fee and ceded lands, when you consider whether, rightly or wrongly, certain agencies of the Federal Government have indicated to date that they oppose the bill that Senator Fong has submitted and that is now on the calendar.

Therefore, I am hoping that this committee will first consider S. 2275, clear the ceded land problem, and extend the deadline, and thereafter I am certain we can have a full and complete hearing on this complex problem involving suit and involving purchased lands.

Senator BIBLE. Would there be objection to the bringing of a suit in a court to determine whether purchased lands come within section 5(e) or do not come within section 5(e)?

Senator INOUE. Mr. Chairman, I have no objection to that.

Senator BIBLE. Because if I understood your colleague's position on purchased lands, it was not that we determine that the purchased lands should go to the State of Hawaii, but that permission should be given for a court to determine whether purchased lands came within the section, and the meaning of 5(e) of the Statehood Act.

Senator INOUE. My fear, Mr. Chairman, is that we have 9 months to go before the August 21, 1964, deadline expires, and if we are faced, if this committee and the Congress are faced, with a bill that has evoked much controversy, not only among Members of the Congress, but also within the administration, I am afraid that the deadline may pass, and we may have no bill before us as law.

Therefore, I am hoping, and that is why I have indicated to my senior Senator, that although I agree with him wholeheartedly in principle, I think we should resolve the section 5(e) problem, and when we know that this deadline has been extended, then a suit can come very easily, sir.

Senator BIBLE. I would think it would be helpful to this committee if you would likewise find out what the official administration position is on the proposition of permitting a suit to be brought to determine whether lands are or are not within the provisions of section 5(e).

The Senator from New Mexico?

Senator ANDERSON. When we had this matter up, as you may remember, we had quite a discussion of statehood for Alaska, and Hawaii, and the Senator from New Mexico took a little part in this at one time or another.

When the House bill came over with its report in it, stating what it intended to do, as Senator Fong has pointed out, the Senate committee had two options. It could follow what the House did, or decide something on its own.

And the report on the bill came to this question, the Senate report. It said—

The committee considered a possible interpretation of section 5(e) of the Hawaii Statehood Act of 1959. No interpretation is offered at this time. The sense of the committee is that the factors are involved are too complex to be considered within the time available and require independent consideration at a later date.

Is that what you are trying to suggest also?

Senator INOUE. That is correct, sir.

Senator ANDERSON. I only say that if it purely involves the question of your rights under 5(e), you might get a bill through rather quickly. If you go to the other question, the right of Hawaii to sue, you might complicate your bill. And I think probably the committee might be disposed to agree with Senator Fong that you ought to have your day in court, but it seems to me they are separate proposals, and we might do better if we tried to pass a bill that does what is necessary under this 5-year provision and then tried to pass a bill which might give them their day in court.

It is too hard to remember all the details of these things. Somebody asked me something about the Guam statehood bill the other day, and I said, "I haven't the faintest idea."

He said, "Why not? You wrote the bill."

Well, that is not quite the way it came out. I introduced the bill, all right, but it is hard to remember all the details.

But I think Senator Jackson, who is now chairman of the full committee, was chiefly responsible for wanting to postpone this action on ceded lands, and would be unhappy with the House report. If you tried to again put it on him, you might find he would be unhappy again.

I do not know. I am only suggesting that possibility.

Senator INOUE. Mr. Chairman, the people of Hawaii, I am certain, are overwhelmingly in support for desiring a day in court. There is no question about that. But as the distinguished Senator from New Mexico has stated, it may be dangerous to the interests of the people of Hawaii to confuse this present issue at this time.

We have a bill that has been approved by every agency in Government. There is no controversy involved, as far as I can see. Certain members of this committee will question the arguments that we propose. However, the administration has supported it wholeheartedly.

At an appropriate time, you will find that I will be supporting Senator Fong's proposal that we have the right to sue. But I do think that this is not the time to confuse the issue.

Senator SIMPSON. I take it from what the Senator has said that he is not opposed to acquiring any surplus lands, regardless of whether they are purchased or ceded, if Hawaii can get them. Is that right?

Senator INOUE. The Senator is correct.

Senator SIMPSON. And I take note that the Senator said he is certainly in favor of Hawaii having its day in court.

Senator INOUE. Absolutely, sir.

Senator SIMPSON. These bills originated in the Senate, and there is nothing to prevent the subcommittee from bringing out a bill covering all of what was decided to be in the best interests of the State of Hawaii. I am sure that is the thing that now confronts us as a subcommittee, and it is up to us to determine what to do about it.

I think you are all in accord with the general principle of this thing, but it seems you are a little concerned and worried and have some trepidation about a bill coming out that ties in with the consent to sue.

I would not be too disturbed. I think if the committee reports favorably a bill, this one particularly, I do not doubt but what it would have a pretty good chance of passage in the Senate of the United States.

Senator INOUE. I feel it is just a matter of time. That is all.

Senator ANDERSON. I want to comment briefly on that.

We had a bill known as the Barrett bill, by the then Senator from Wyoming, which had to do with water rights. I think almost every western Senator who was involved in water rights disputes favored the passage of the Barrett bill, with one exception. And the only reason that I had an objection to it was that I knew that the Department of Justice would recommend a veto if we tried to put in the thing that he had in it.

Now, we had a long hearing on it, finally, and invited a Mr. Rankin, who was then Solicitor for the Interior Department under President Eisenhower, I believe, to come up and testify, and when he got through, it was so clear that the Department of Justice would never agree to the interpretations of the Barrett bill that there was no point in even reporting the bill out.

I do not know whether we reported it or not.

We finally got a report, but did not try to push it, because we were up against a stone wall.

I agree with the Senator from Wyoming we ought to try to find out if we cannot give you a day in court, and also pass the bill which you have earlier referred to, but I would hate to see the two of them tied together in such a fashion that you could not separate them.

You may remember that Hawaiian statehood almost passed a few years ahead of when it did pass, and one of the Senators tied the Alaska bill to it as a rider, and killed the bill.

You never know exactly what the Congress is going to do. I am only suggesting to you that it might be the part of wisdom to keep these two things separate, and introduce very promptly a bill giving you a day in court, and we might be able to report them both out simultaneously. We would face no danger in that way.

I would not, as I see it now, certainly, object to a bill to give Hawaii its right to sue. I think I would prefer to vote out a bill that did not involve that, and then also report out a bill which gave Hawaii its right to sue. And we could, if we wish, inside the committee, modify Senator Fong's bill, S. 2297, to confine it solely to that question.

Senator FONG. That would be acceptable, Senator Anderson.

Senator ANDERSON. That is a very fine attitude to take, and I want to thank you very much for it.

Senator INOUE. Thank you, sir.

Senator BIBLE. Are there further questions of either of the Senators?

They have made an excellent presentation. I think we understand the problems involved.

Senator BIBLE. Our next witness is Hon. Thomas P. Gill, Congressman from Hawaii.

Congressman Gill.

STATEMENT OF HON. THOMAS P. GILL, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF HAWAII

Mr. GILL. Thank you, Mr. Chairman.

I have a very brief statement, which I believe has been distributed. If it is all right with the chairman, I think I would like to read it. It will not take very long.

Senator BIBLE. Very well. You may proceed in that manner.

Mr. GILL. Mr. Chairman, I appreciate this opportunity to be able to appear today in support of S. 2275. This bill is identical to H.R. 8970 and 8977, presently being considered in the House.

This bill has one main purpose, to assure that the State of Hawaii has the same right to regain the use and control of its ceded land as it had for 60 years as a territory.

In general, there are two types of land in Hawaii under Federal control, fee land, which the Federal Government purchased, and ceded land, which belonged to the Republic of Hawaii and has been set aside, without compensation, for the use of the Federal Government.

This bill has nothing to do with fee land. The existing law in regard to surplus fee land is not affected. This bill is concerned solely with establishing an orderly procedure for the return of set aside ceded land when and if such land becomes surplus to Federal needs.

This bill establishes no precedent, and affects no other land disposal system. Hawaii is the only State with a ceded land problem.

This problem arises out of the fact that Hawaii, as an independent nation prior to annexation, owned its own land. At the time of annexation, this Hawaiian land was turned over to the Federal Government, to be held in trust for the people of Hawaii.

How much land is involved? At the time of statehood, about 410,000 acres were either set aside or in measure under the control of the Federal Government, 230,000 acres were in parks, which, parenthetically, are excluded from this bill expressly; 60,000 acres are in other Federal reservations and installations; and 120,000 acres were being used under license or permit from the territory as maneuver areas.

How much ceded land is directly affected by this legislation? Park land would not be affected. It is specifically exempted in the bill. All that is left are the 60,000 acres in other Federal uses and the 120,000 acres which have not yet been officially set aside, but were under use by the military for maneuver purposes.

Of course, no land would be specifically affected until it became surplus to the Federal needs. Since statehood, under the procedures set up in the Statehood Act, about 425 acres of ceded land have been returned, and another 300 to 400 acres are in the process. The bulk of the ceded land presently being used by the Federal installations will not be returned, because it is needed for the purposes of those installations.

Senator BIBLE. What you are saying: All that is involved in this, as far as ceded lands are involved, is 300 to 400 acres?

Mr. GILL. No, sir. All I am saying is that we have achieved some measure of success under section 5 of the Statehood Act, with something which would total around 800 acres altogether.

But out of the 60,000 acres and the 120,000 acres mentioned above, of course, there will be other lands which will become surplus in the years ahead. We merely want those to be considered in the same way.

I would like to point out, Mr. Chairman, that the procedure set up in the Statehood Act, setting this 5-year period for review, has been a valuable thing to the State, and it has given us an opportunity to review certain needs and uses within the State, and I think we have received very good cooperation from the Bureau of the Budget, which is responsible for overseeing this review.

However, what was perhaps intended to be a spur to Federal action, in other words, giving them 5 years to come up with a decision, has to some extent become a refuge to those agencies which do not desire or cannot at this time foresee their surplus needs in the future.

In fact, back to the statement:

What legal problem is this legislation designed to meet?

Section 5(b) of the Hawaii Statehood Act, Public Law 86-3, granted the State of Hawaii title to most of the ceded land except for land set aside for use by the United States at the time of statehood.

Section 5(e) of the Statehood Act provided for a review of the set-aside ceded lands still held by the United States for a 5-year period, ending August 21, 1964. After that date, next summer, the State of Hawaii will no longer be able to reclaim these set-aside ceded lands used by the Federal Government, even if they become surplus.

In effect, we will have a "reverse land grant," from the State to the Federal Government—a result hardly intended by Congress when it passed the Statehood Act.

This legislation would simply provide a means by which these lands could be returned to the State when they are no longer needed by the United States, and, thus, preserve the same right Hawaii had in them as a territory.

Mr. Chairman, the secondary purpose of this legislation is to allow the conveyance of federally held lands on Sand Island, and the reef lands in connection therewith, when these are determined to be surplus to the needs of the United States.

The exact status of this property—and I would like to make clear that it is the status and not the title which is clouded at this point—the exact status of this property, which consists of fast and submerged and reef lands, is sufficiently clouded to cast doubt on the legality of conveying this property to the State under section 5(e) of the Statehood Act.

The exact extent of this land, particularly the submerged and reef land portions, is not clearly definable at this time. However, we do know that about 288 acres of fast and submerged and reef lands have been involved in previous Federal set-aside actions and would be included in the lands, all or a part of which could be declared surplus to the Federal needs, and, thereafter, returned to the State under the terms of this bill.

Private claims to the Sand Island area at the time of annexation, which were never recognized by the Federal Government or the territory, together with the increase in size of the island by more than 50 times makes it impossible to convey this property to the State without further legislation.

But for this clouded status, most of this land, with the exception of the Coast Guard base, could and probably would have been returned

already. A parcel of 202 acres on Sand Island was previously returned by means of legislation in 1957 (Public Law 85-756).

This presentation has been very brief and general. The detailed explanation of the problem will be supplied by the Bureau of the Budget which has been living with it for several years.

My intention is to make clear to the subcommittee that we are dealing only with ceded land, that we are the only State with a ceded land problem, that this land belonged to Hawaii originally, and has been set aside for the use of the Federal Government free of charge, and when the Federal Government no longer needs some part of it, we would like it back so we can put it to use.

I am sure that members of this subcommittee understand that land in our Island State of Hawaii is far more crucial than in many other parts of this Nation. The island of Oahu, where many of these ceded land parcels lie, and 80 percent of the people live, has a population density of over 960 persons per square mile—a density higher than many of the most populous areas of the world, including the British Isles, Western Europe, and the home islands of Japan. This means that all of our land capable of intensive use must be so used. When the Federal Government has no further use for a parcel of ceded land, that land should not be withheld from the people of Hawaii.

I hope the subcommittee will give favorable consideration to this measure.

Senator BIBLE. Thank you very much, Mr. Congressman.

I do not know whether you would be the proper witness, and possibly the land people would be, to indicate to us exactly what the status of the 180,000 acres is that we are talking about in this bill.

You say 60,000 acres is in other Federal uses, and 120,000 acres has not yet been officially set aside for maneuver purposes.

Mr. GILL. I can certainly give you the generalized breakdown as set forth in the laws that exist today, Mr. Chairman.

You have to realize that ceded land falls into at least two categories in regard to the Statehood Act. Actually, there is a third category, just straight ceded land, which was not set aside, but that is not an issue here.

Ceded land which was set aside is the 410,000 acres. Out of that, we have exempted the 230,000 acres in the national parks.

Senator BIBLE. That leaves you 180,000.

Mr. GILL. This brings us down to our 180,000. Of this, 60,000 has been set aside—"set-aside" being a word of art—that is, by Executive order either of the President or of the Governor of the territory of Hawaii or by some exchange with other set-aside lands, and there probably are some other legal qualifications which I will leave to the people who work on it. But that basically is the reason for calling it set-aside land.

Now, the 120,000 acres—60 plus 120 making the 180—the 120,000 acres is what we are presently calling permit land or licensed land. This is ceded land which the territory prior to statehood had given a use permit to the military, revocable in some cases, sometimes from month to month—the exact terms vary—largely for maneuver purposes.

The biggest tract of permit land—and I do not have the exact acreage—is a maneuver area, Pohakuloa, on the big island. This is the saddle between Maunaloa and Maunakea.

A great many thousands of acres have been given by permit to the U.S. Army for maneuver purposes. This permit is good in some cases for only 9 months out of the year.

There are other areas, and several of them are on the island of Oahu, reserved for military use by permit.

Now, this is a separate category of ceded land, and there is a separate section in the Statehood Act relating to this permit land.

I call your attention to 5(d) of the Statehood Act, which allows the Federal agencies 5 years, again the same 5-year period, to look over the land that they held by permit and license, and if they decide they need it, to get it set aside by Executive order; in other words, make it the same as the other set-aside ceded lands.

All we are asking is that if they do set it aside, and then it later becomes surplus, why can we not have it back? We are including this type of land in this bill, so that there will be no question about it.

I think in general, Mr. Chairman, that describes the differences between the 410,000- the 180,000-, the 60,000-, and the 120,000-acre figures.

Senator BIBLE. The heart of the bill, though, is the 120,000 acres. Am I correct on that? Or is it the 180,000 acres?

Mr. GILL. I am sorry.

Senator BIBLE. This bill, dealing with ceded lands, to which the State of Hawaii is staking out claim, does not apply to the 230,000 acres which are in parks, because you specifically exempt them from the bill.

Mr. GILL. That is correct.

Senator BIBLE. It would apply to the 60,000 acres which are presently being used for Federal uses. It could apply to those?

Mr. GILL. That is right. It would apply to that.

Senator BIBLE. Under the organic act, by August of next year, 1964, the President is bound to make a determination if they are surplus. If he does not make the determination, my understanding is that you feel that if they are declared surplus in the future, the benefits of the surplus statute would redound to the Federal Government, rather than to the State of Hawaii.

Is that a correct statement?

Mr. GILL. In general, sir, that is correct. The 60,000 acres which is federally set-aside land now in the use of the Federal Government is certainly considered in this bill. This is definitely covered. All or part of the 120,000 acres may be covered, depending on the action of the Federal Government prior to August 21, 1964.

Senator BIBLE. I understand. But, now, illustrate what these 60,000 acres are that are in Federal use. What are they being used for today?

Mr. GILL. I can give you some general uses, sir. There are two areas that are on the island of Oahu, which come to mind immediately, fairly large areas. One is part of Schofield Barracks, which is largely at the present time used for maneuver or training purposes. I do not believe there is any particular reason to think that that much of it would be returned; because it is needed by the Army.

There is a large area on the windward side known as Bellows Field, which is set-aside ceded land. There is a great deal of dispute as to whether all of that land is needed by the Air Force for communication purposes, and is presently being surveyed to see whether they do need

it. It just happens to include some of the best beaches on the island of Oahu, and there is considerable criticism as to the use of those beaches by the military.

So these lands are considered as part of the 60,000 acres that have been set aside.

We only want the privilege later on, if they become surplus in whole or in part, to get them back, so that we can use them.

Senator BIBLE. If they were declared surplus between now and August of next year, the few short months ahead, 9 months from now, they would go back to the State of Hawaii?

Mr. GILL. Yes. If they made it by the deadline, they would go back. That is true, sir.

Senator BIBLE. If they did not make it by the deadline, they would go to the Federal Government?

Mr. GILL. They would go to the Federal Government, and I am not sure how the Federal Government could then dispose of them, because I do not think they are then covered under existing statutes.

But here is the problem, which Senator Inouye very clearly laid out. He mentioned the Coast Guard station, on the matter of not being able to make the transfer prior to August 21 of 1964. This area that I mentioned, at Bellows Field, which is presently under survey by the Department of Defense, is mainly for the use of a communication installation at the present time.

Now, it is quite possible that within 5 or 10 years, that mode of communication, which involves long wires and poles and covers a great deal of land, might become obsolete, might not be needed. But this whole vast acreage would then be stuck in limbo, because we did not have the means to get it back.

That type of thing is what we are aiming at curing in this bill.

Senator BIBLE. What you are saying is that at any time in the future, if any of the 180,000 acres were deemed by the Federal Government to be surplus to the Federal Government's needs, you feel that it should come back to the State of Hawaii.

Mr. GILL. Free of charge.

Senator BIBLE. Free of charge.

Mr. GILL. And we are making that distinction, that it is ceded land which was not paid for in the first place. That is why we are keeping our ducks and our geese separate in this bill.

Senator BIBLE. The Senator from New Mexico.

Senator ANDERSON. You mentioned a beach. Fort De Russy?

Mr. GILL. No, Fort De Russy is fee land owned by the Federal Government except for a small 1-acre area around the reef, which is ceded land.

But I am talking about Bellows Air Force Station on the windward side of the island, which includes several thousand acres of land, and the best beach in the State, which is ceded land and agreed to be so.

Senator ANDERSON. You mentioned Sand Island. There is a Sand Island out near Coconut Island. This is not what you are talking about?

Mr. GILL. No, Coconut Island at one time belonged to Mr. Pawley, I believe, and I think it still does.

What we are talking about is Sand Island, which really began as a reef off the port of Honolulu. It started out being a small spit of maybe less than 10 acres at the time of annexation, and by the dredging

of the harbor and various other means it has grown to something over 400 to 500 acres.

It was used during the last war by the Army, the Navy, and the Coast Guard, and I believe various other groups, for staging purposes, for storage purposes, and whatnot.

It has not been used, with certain limited exceptions, in any degree, in the last 15 or 20 years, and it is now surplus to the Federal needs.

Senator ANDERSON. What is the State's procedure for disposing of this land, if it goes back to the State?

Mr. GILL. The State has a very comprehensive land act which has been set up, requiring bidding. It does allow negotiated bids in certain specific types of situations, but it is a correct and very detailed land disposition system.

I think the present plans for Sand Island, if indeed we are able to clear the status of it, will involve at least two things; one, expansion of the port facilities to give us backup area for staging, which is very short on the Honolulu side of the harbor at the present time. Perhaps the development would eventually involve an international trade center, which could very logically go there, and service many parts of the Pacific rim.

Further, there are plans to take portions of it and put it into recreational use for the very crowded city of Honolulu. And actually parts are being used for recreation now. It is extremely underdeveloped. There is nothing but old tin cans and rusty car bodies lying around on most of it at the present time, because nobody knows what to do with it.

Senator ANDERSON. One of the areas that was a matter of constant irritation, if not concern, in previous discussion was Palmyra Island. Is it involved in any way in this?

Mr. GILL. As I recall, Palmyra was removed from the statehood problem by you gentlemen in Congress at that time.

Senator ANDERSON. It surely was.

Mr. GILL. And it is not involved here, I can assure you.

We are trying to eliminate everything where there was controversy, and get down to the guts of our particular problem, which is ceded land.

Now, I could comment to some length on the problems raised by extraneous issues, some of which have been mentioned here by Senator Fong this morning, but I will leave that to the discretion of the committee.

Senator ANDERSON. Well, Palmyra never needed to be left out. It was due to the attitude of one person. And Congress responded in turn. I just want to be reassured that there was nothing in this bill that would reinstate this situation.

Mr. GILL. We are not interested in Palmyra. That is somebody else's problem.

Senator ANDERSON. Will you concede that there is nothing in this bill that affects Palmyra?

Mr. GILL. There is nothing in this bill that affects Palmyra. This bill deals with ceded land and Palmyra would have to be in that status, which Palmyra Island, I understand, is not.

Senator BIBLE. Thank you very much, Congressman Gill.

Our next witness will be Congressman Spark M. Matsunaga.

Congressman, we are very happy to have you.

STATEMENT OF HON. SPARK M. MATSUNAGA, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF HAWAII

Mr. MATSUNAGA. Thank you.

Mr. Chairman and members of the committee, I thank you for this opportunity to appear before you and to support S. 2275.

Realizing that much of my testimony will be cumulative of what has already been said here, I have intentionally made my statement very brief.

The counterpart of this bill was reported out by the House Subcommittee on Interior and Insular Affairs last Friday, November 8, without any objections, and it is expected that its whole committee will act favorably upon it within the next few days without any difficulty.

Likewise, S. 2275 would cause no difficulty before this subcommittee, for all that it does is to revise the procedures established by the Hawaiian Statehood Act, Public Law 86-3, and provide for the conveyance of certain lands which rightfully belong to the State of Hawaii.

The Hawaiian Statehood Act fixed August 21, 1964, as the closing date for the U.S. Government to complete its review of all landholdings in Hawaii to determine which parcels, if any, are surplus to its needs. This closing date is wholly unrealistic, because any parcel of land which once belonged to the Hawaiian government, and which was placed in trust with the Federal Government upon annexation of Hawaii to the United States, ought properly be returned to the Hawaiian government any time it becomes surplus to the needs of the Federal Government.

The proposed legislation, which has the support of the administration, is intended to correct the situation by eliminating this deadline. Otherwise, Hawaii would not gain legal title to lands which are now in effect held in trust by the United States, and which ought rightfully be returned to Hawaii upon becoming excess to Federal use.

To allay any misapprehension, it should be noted that the proposed measure does not in any way amend the provisions of the Federal Property and Administrative Services Act of 1949, as was pointed out by Senator Inouye. It only establishes a unique procedure applicable only to the State of Hawaii for returning surplus ceded lands to the State of Hawaii beyond the expiration date set in the Hawaiian Statehood Act, and provides for the return to Hawaii that part of Sand Island which is now surplus to the needs of the Federal Government.

As it will be explained by the officials of the Bureau of the Budget, without this legislation, conveyances of such lands may be cast under a cloud. Even after this bill is enacted into law, it will still be necessary to follow all of the procedures contained in existing law, just as it has always been with regard to lands previously declared surplus under the Hawaiian Statehood Act.

We are asking for your favorable report on the bill under consideration so that Hawaii's just due may be forthcoming; nothing more.

And in this connection, I thank the gentleman from New Mexico for the suggestion made here that 2297 will be or ought to be perhaps considered separately.

I feel that S. 2275 ought to be considered separately, though, as was pointedly pointed out by the Senator from New Mexico. You may

have two good things, but you tie them together, and you may not be able to get it through, as in the case of Hawaiian statehood and Alaskan statehood, when the two bills were tied together.

So I wish to join with my colleague from Hawaii in asking favorable consideration of S. 2297, but separately from a consideration of S. 2275.

I thank you gentlemen. I know you will not fail the good people of Hawaii, and in the Hawaiian fashion, I say, "aloha and mahalo."

Senator BIBLE. We are very happy to have your statement, and I think we are beginning to understand this problem much better.

You say your House subcommittee has already reported out the exact counterpart of the S. 2275?

Mr. MATSUNAGA. Yes, it has.

Senator BIBLE. And that will be before the full committee on the House side in the reasonably near future?

Mr. MATSUNAGA. It is my understanding, in talking with Congressman Aspinall, that the measure will be considered by the whole committee tomorrow, Wednesday.

Senator SIMPSON. Mr. Matsunaga, what is "mahalo"?

Mr. MATSUNAGA. Mahalo means thank you.

Senator SIMPSON. I know aloha means everything.

Mr. MATSUNAGA. Aloha means everything that is good.

Senator SIMPSON. I take it that you concur with the Senators from Hawaii that you are not opposed to Hawaii having its day in court under the Fong bill, but you do not want that tied in with 2275.

Mr. MATSUNAGA. That is correct.

Senator SIMPSON. In other words, you are all in accord, I take it, that they need their day in court, and you will take any lands that are surplus that you can possibly get for Hawaii.

Mr. MATSUNAGA. For the people of Hawaii, I believe we ought to take that position.

Senator SIMPSON. I concur, and I think you have all made a very good presentation on behalf of your constituents.

Senator BIBLE. Thank you very much, Congressman.

It is now our noon recess time.

I would like to ask the Lieutenant Governor of Hawaii if he would be available tomorrow.

I do not want to hold you over unduly, and yet, I hesitate to have sessions this afternoon, because we have a voting situation on the floor, where we are called back very frequently.

Unless there is some objection, I want to accommodate the deputy attorney general of Hawaii.

Can each of you stay for another day?

Mr. LEWIS. Yes, sir.

Senator BIBLE. Senator Inouye asked that we have this hearing, and you have come a long distance, and we want to accommodate you in that respect. We still have to hear from the Bureau of the Budget, and I am sure that statement will take some little time.

So we will stand in recess until tomorrow morning at 10 o'clock.

(Whereupon, at 12:10 p.m., the subcommittee was recessed, to reconvene at 10 a.m., Wednesday, November 13, 1963.)

HAWAII LANDS

WEDNESDAY, NOVEMBER 13, 1963

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 3110, New Senate Office Building, Senator Alan Bible (chairman of the subcommittee) presiding.

Present: Senators Alan Bible, Nevada; Frank E. Moss, Utah; Gordon Allott, Colorado; Len B. Jordan, Idaho; and Milward L. Simpson, Wyoming.

Also present: Jerry T. Verkler, staff director; Stewart French, chief counsel; and Roy Whitacre, professional staff member.

Senator BIBLE. The subcommittee will come to order.

Our first witness is Mr. Seidman, Acting Assistant Director for Management and Organization, Bureau of the Budget, accompanied by Howard Schnoor.

You of course sat through the hearings yesterday. I would be interested, if you are the correct witnesses, if you would tell us exactly the character and the estimated value of the 410,000 acres that is in question in the ceded lands.

I do not know that you need tell us about the 230,000 acres, because as I understand it, and I guess it is indisputable, this is located in national parks in the State of Hawaii, and the inclusion of this 230,000 acres is completely exempt under this bill that we are considering.

So this would take 230,000 away from 410,000 acres, which would leave 180,000 acres, and as I understand it, 60,000 acres of this is already being used or set aside for Federal use.

I would be interested in knowing what that use is, who occupies it, when it was acquired, what annual rentals are paid, what the estimated value of it is.

I would also be interested in knowing the same general information about the remaining 120,000 acres that I understand is being held in permit or being held by permit or privileges or grants or something of this kind, in either the President of the United States or the Governor of the territory, or the Governor of the State of Hawaii.

So if you would throw some light on that, maybe you might want to refer to the map. I think we have developed the problem pretty well, but I think we are a little weak in that particular area, as to just exactly the nature of this 180,000 acres.

Is it correct that this is really all that is involved in the ceded lands?

STATEMENT OF HAROLD SEIDMAN, ACTING ASSISTANT DIRECTOR
FOR MANAGEMENT AND ORGANIZATION, BUREAU OF THE
BUDGET; ACCOMPANIED BY HOWARD SCHNOOR

Mr. SEIDMAN. That is correct. And, of course, immediately involved are the 60,000 acres, and the other 120,000 acres which are now used for maneuver areas, primarily, by the military, under permit from the State, and which under section 5(d) of the Statehood Act, could be set aside during the period until August of 1964.

Senator BIBLE. You may well cover this in your prepared statement, so maybe my questions were a little premature.

Mr. SEIDMAN. I will go ahead with my prepared statement, Mr. Chairman. I do not have in the prepared statement some of the specific information you requested, but I will try to fill it out in that area.

I might briefly comment, before I get into the prepared statement, that I was very pleased to hear yesterday that the senior Senator from Hawaii had agreed that his bill, S. 2297, would be considered separately. S. 2275, as indicated, is a bill that has been unanimously agreed to by the administration and by the entire congressional delegation, and by the State Governor. I think it would be unwise to inject a new controversial element.

Senator BIBLE. S. 2297 was introduced, as I indicated yesterday, at a very late date, last Friday, November 8, and obviously this does not give adequate time, between November 8 and today, November 13, to get the departmental positions on this. We certainly will do this as a committee before we proceed, whatever action we may take ultimately on S. 2275.

Mr. SEIDMAN. And further to clarify the record, in response to a statement made by Senator Simpson: The executive branch, of course, cannot grant a right to sue the United States. It cannot waive the sovereign immunity of the United States. This must be done by act of Congress.

And in the period up until now, until in October, the State of Hawaii did not choose to present the proposed legislation requesting the right to sue. Rather, the Governor of Hawaii, acting on the advice of his counsel, chose rather to sue the Budget Director in his individual capacity.

So I just want to make it clear that the administration, the Department of Justice, did not reject the suit. Consent to the suit would have taken under any circumstances an act of Congress.

Senator BIBLE. We will solicit the viewpoint of the administration on Senate 2297 before we proceed as a committee.

Mr. SEIDMAN. Mr. Chairman and members, I appreciate the opportunity to appear in support of S. 2275, a bill to revise the procedures established by the Hawaii Statehood Act, Public Law 86-3, for the conveyance of certain lands to the State of Hawaii, and for other purposes.

The bill was drafted by the Bureau of the Budget in collaboration with other interested Federal agencies and the government of the State of Hawaii. The basic purpose of the bill is to maintain the residual interest of the State of Hawaii, long recognized in both Federal law and practice, in lands and property which were ceded to the United States by the Republic of Hawaii at the time of annexation or

were set aside for Federal use from land owned by the territory of Hawaii.

We believe that the State of Hawaii has a unique claim to these lands, which always have been accorded a special status. In essence, the bill provides for continuation of the 60-year practice of returning to the State those lands when they are found to be surplus to Federal needs.

Senator ALLOTT. Could I ask you a question, there, Mr. Seidman?

I hate to interrupt you, but I am in the position of having to go to an Appropriation Committee markup in 15 minutes, and I hope you will excuse this. I do not like to interrupt a witness.

Mr. SEIDMAN. I am delighted to have you interrupt at any time.

Senator ALLOTT. But your last sentence, there: Now, when you say "to the State," you mean to the State of Hawaii?

Mr. SEIDMAN. Correct.

Senator ALLOTT. That sentence is not applicable to other States?

Mr. SEIDMAN. There is no other State that has ceded land.

Senator ALLOTT. Thank you.

Mr. SEIDMAN. Before explaining the provisions of the bill, it might be helpful for me to outline the nature of the Federal Government's landholdings in Hawaii. I think the map you have, Mr. Chairman, might be helpful.

Senator BIBLE. As you move along in your testimony, Mr. Seidman, when you come to the proper place, to point to the character of this land on the map, we would appreciate your referring to it.

Mr. SEIDMAN. Could I have Mr. Schnoor go up and point out to you where those lands are located?

Senator BIBLE. Yes. This would be very helpful.

Mr. SEIDMAN. As in all the other States, the Federal Government has acquired land in Hawaii by purchase and condemnation.

Senator BIBLE. I wonder, Mr. Seidman, if you would bear with us for just a moment. Perhaps Mr. Schnoor can give us the benefit of his intelligence on this map and point out the legends on it, so that we are able to follow it very clearly. We will have this map made a part of the record by reference.

Normally I would put it on the easel, so that everybody could see it, but I am afraid if we did this, we could not see it ourselves, so we would just like to have you point this out, Mr. Schnoor.

Mr. SCHNOOR. The map covers only the island of Oahu, but this is the island on which the largest number of Federal agencies have installations, and also represents the three different kinds of land that we are talking about.

Senator BIBLE. Again, we are talking about 180,000 acres of land?

Mr. SCHNOOR. Not just on the island of Oahu.

Senator BIBLE. How much is on the island of Oahu?

Mr. SCHNOOR. I would say roughly 30,000 or so.

Senator BIBLE. Where is the other 150,000?

Mr. SCHNOOR. There are about 100,000 acres on the island of Hawaii. There are about 5,000 or 6,000 acres on the island of Kauai. The entire island of Kahoolawe, which is 26,000 acres, is also set aside.

Senator BIBLE. Very fine.

Do you have this developed, Mr. Seidman, for the record? I mean the breakdown of where this 180,000 acres is located?

Mr. SEIDMAN. We have not specifically broken it down in my prepared statement, but we would be glad to furnish it for the record.

Senator BIBLE. I think it would be helpful. The question could well be asked by a committee member, and I think it is pertinent.

(The information requested is as follows:)

The enclosed chart on "Federal Lands in Hawaii" contains most of the information requested. In it Federal lands are broken down into four categories. The bill deals with the lands listed in columns 2 and 3—"Ceded Lands" and "Permit Lands, State"—except for those in the national parks. Column 2 covers the lands acquired by cession in 1898 or subsequently acquired in exchange for ceded lands and territorial lands which have been set aside for Federal use. Column 3 covers the State-owned lands which were controlled by the United States by permit or license from the territory of Hawaii on the date Hawaii was admitted to statehood. Under section 5(d) of the Statehood Act, those permit lands may be set aside from Federal use prior to August 21, 1964.

The ceded, set-aside lands and permit lands are broken down by island location and controlling or occupying agency, and the major installations and uses are shown. As noted in my testimony, 230,000 acres (the actual figure shown in the chart is about 227,530 acres) of the ceded, set-aside lands are controlled by the Department of the Interior for national park purposes and are excepted from the provisions of the bill.

The remaining 59,525 acres of ceded, set-aside lands are covered by the bill. Title to the bulk of this land was acquired by the United States under the resolution annexing the Hawaiian Islands in 1898. The second step in the process—the setting aside of the ceded land for Federal use—was accomplished by Presidential and gubernatorial order at various times during the period from 1898 until Hawaii became a State in 1959. We have no complete records regarding the times at which properties were set aside, but the bulk of the lands in the major installations consisting of ceded lands were set aside at the following times:

Bonham Air Force Base.....	1940-41
Kahoolawe Navy target area.....	1953
Bellows Air Force Station.....	1917
Wheeler Air Force Base.....	1918
Fort Shafter.....	1917
Schofield Barracks.....	1917
Lualualei naval ammunition depot.....	1930
Lualualei naval radio station.....	1933
Hawaiian Islands National Wildlife Refuge.....	1909

As the chart indicates almost all of the State land used under permit—referred to as 120,000 acres in my testimony, but which upon further checking is closer to 126,000 acres—is located on the islands of Hawaii and Oahu and is used by the Army for training and maneuvers.

No useful or realistic figures are available on the value of the lands covered by the bill, particularly since the United States has not paid for those lands either at the time of their acquisition or subsequently. The General Services Administration, in its "1962 Inventory Report on Real Property Owned by the United States Throughout the World," estimated the 233,035 acres of Federal land in Hawaii covered in its inventory at that time to have a cost of about \$21.7 million. That would average out to about \$93 per acre. The GSA report states the cost of properties—such as the ceded lands—acquired through donation is estimated for purposes of its inventory at amounts the Government would have had to pay for the properties at the date of acquisition.

Of course, the Federal lands on the island of Oahu are worth a great deal more today than when they were ceded or set aside. It is very difficult now to find any usable land on the island worth less than \$1 per square foot. Good land anywhere in the urban or suburban area on Oahu probably now averages at least \$100,000 per acre, and choice lands in downtown Honolulu or at Waikiki are worth much more. However, lands on the other islands are worth less, and the major ceded tract on Kahoolawe Island is probably of very little value because it has been heavily contaminated as a target area.

It must be stressed that the bill does not automatically convey any of the above lands to the State. They would be conveyed only upon a finding that

they are surplus to the United States. The Federal need for the bulk of the lands is expected to continue for the foreseeable future.

Mention was also made during the hearing of rental payments on Federal lands in Hawaii. It should be made clear that the United States has never paid any rental to the State or the Territory of Hawaii for the ceded and other lands which have been set aside for Federal use. However, on occasion it has leased or rented out to private parties lands which were set aside for Federal use. In those cases, under section 91 of the Hawaii Organic Act (46 Stat. 789), the proceeds were covered into the territorial treasury. Rentals from private parties—which now amount to about \$100,000 a year—will continue to be turned over to the State until August 21, 1964, pursuant to section 42 of the Hawaii Omnibus Act (Public Law 86-624).

FEDERAL LANDS IN HAWAII

The table indicates the acres of land owned or controlled by the Federal Government on each of the major islands in the State of Hawaii. Column 1 shows the major controlling agencies and installations. Column 2, headed "Ceded Lands," shows the acreage acquired through the setting aside of lands ceded by the Republic of Hawaii, lands exchanged for ceded lands, and lands of the Territory of Hawaii. (Sand Island lands appear in col. 2 even though there is doubt as to their ceded status.) Column 3, headed "Permit Lands, State," shows the acreage of State and locally owned lands which are controlled or used by the Federal Government under permit, licensee, lease, or easement. Column 4, headed "Permit Lands, Private," shows the acreage of privately owned lands which are similarly controlled or used by the Federal Government. (Data on such lands are not complete.) Column 5, "Fee-owned Lands," shows the acreage acquired by the United States by purchase or condemnation.

Data are based on reports furnished to the Bureau of the Budget under its Circular A-52. In some cases figures are approximations, and in a few cases, because of incomplete data, lands have been arbitrarily assigned to a category even though some questions exist about their status. The table does not include the 435 acres of land already conveyed to Hawaii under section 5(e). It does include lands which have been found excess or no longer needed but which have not yet been disposed of.

Lands owned or controlled by the Federal Government in the State of Hawaii

Agencies and installations (1)	Ceded lands (2)	Permit lands, State (3)	Permit lands, private (4)	Fee-owned lands (5)
HAWAII				
Interior: National Park.....	210,400			
Federal Aviation Agency.....	55			
Army:				
Pohakuloa training area.....	758	114,589		
Other.....	38	3		
Navy:				
Kauna Point target area.....			2,198	
Other.....	4			
Coast Guard: Lighthouses.....	20			
General Services Administration.....	2			
Subtotal, Hawaii.....	211,277	114,592	2,198	
MAUI				
Interior: National Park.....	17,130			
Other agencies.....	7			20
Subtotal, Maui.....	17,137			20
KAUAI				
Air Force: Bonham Air Force Base.....	1,830	200		
Other agencies.....	240			
Subtotal, Kauai.....	2,070	200		

Lands owned or controlled by the Federal Government in the State of Hawaii—
Continued

Agencies and installations (1)	Ceded lands (2)	Permit lands, State (3)	Permit lands, private (4)	Fee-owned lands (5)
KAHOOLAWE				
Navy: Target area.....	28,800			
Coast Guard: Lighthouse.....	23			
Subtotal, Kahoolawe.....	28,823			
OAHU				
Air Force:				
Bellows Air Force Station.....	1,534			36
Dillingham Air Force Base.....	110			631
Hickam Air Force Base.....	153			2,231
Wheeler Air Force Base.....	1,404			
Other.....	68	118	34	90
Army:				
Fort De Russy.....	2			70
Fort Shafter.....	1,388			47
Sand Island Military Reservation.....	261			
Tripler Hospital.....				368
Fort Kamehameha.....				629
Makua training area.....		4,815	2,134	170
Kahuku training area.....		1,225	10,751	
Kawailoa training area.....		4,390	18,450	
Schofield Barracks.....	13,512	427		254
Other.....	544	262	34	1,819
Navy:				
Kaneohe Marine Corps Air Station.....	669			2,280
Lualualei Ammunition Depot.....	3,861			4,338
West Loch Ammunition Depot.....	1			1,749
Waikale Ammunition Depot.....				520
Lualualei radio station.....	1,748			
Haiku radio station.....	29	498		165
Wahiawa radio station.....				695
Barbers Point Air Station.....				3,679
Ford Island Air Station.....				444
Waipio Peninsula.....				1,583
Waikane-Kapaa Marine training areas.....			1,819	
Other (mainly in Pearl Harbor complex).....	185			8,897
Coast Guard:				
Sand Island Base.....	27			
Other.....	18			
Other agencies.....	20	6		279
Subtotal, Oahu.....	25,539	11,741	33,222	30,975
OTHER ISLANDS				
Interior: Wildlife refuge.....	1,765			
Coast Guard: Lighthouses.....	430			556
Navy: Homestead Field, Molokai.....	14			
Subtotal, other islands.....	2,209			556
Grand total.....	287,055	126,533	35,420	31,551

Mr. SCHNOOR. The map indicates the three types of land that are involved here.

First of all, the solid colored areas are those which were acquired by purchase and condemnation. And as you can see, most of the Navy area around Pearl Harbor was acquired by purchase, and the Army areas in Kipapa Gulch, and portions of Schofield Barracks were acquired by purchase.

Senator BIBLE. The lands acquired by purchase are not before us in 2275.

Mr. SCHNOOR. That is correct.

Senator ALLOTT. So that is the solid red, the solid blue, the solid green, which the Army, Navy, and Air Force, respectively, have as lands owned by the Government by purchase or condemnation?

Mr. SCHNOOR. That is right.

What is involved in the bill is the land acquired by cession, and which was set aside for Federal use, and in addition some territorial land that was set aside for Federal use.

The major installations on Oahu, that are indicative of this kind of land, are Schofield Barracks, the east range and the west range, a large part of the Lualualei radio station, and naval ammunition depot, Fort Shafter, Bellows Air Force Station, and smaller areas such as the National Memorial Cemetery of the Pacific.

Senator BIBLE. At that point, each of the cross-hatched sections that you are referring to now that are ceded lands—are these actually being used by the Army, the Navy, and the Air Force?

Mr. SCHNOOR. Yes, sir.

Senator BIBLE. They are under active use. Now, this is by virtue of what type of document?

Mr. SCHNOOR. They have been set aside either by an Executive order of the President, or by an executive order of the Governor of Hawaii.

Senator BIBLE. Then in that respect they are within this 30,000 acres that is referred to in the statement?

Mr. SCHNOOR. The 60,000.

Senator BIBLE. As distinguished from the 120,000?

Mr. SCHNOOR. Yes, sir.

Senator ALLOTT. Now, do I get it straight that these lands were not acquired, the cross-hatched areas were not acquired, by condemnation or purchase?

Mr. SEIDMAN. Senator Allott, these were acquired by cession from the Republic of Hawaii at the time of annexation, or under 73(q) of the Hawaii Organic Act were set aside from lands owned by the territory.

Mr. SCHNOOR. There were actually two steps involved. The Republic of Hawaii ceded all of its public lands to the United States, and then subsequently portions of that ceded land were set aside for Federal use for one or another kind of a Federal program.

Senator BIBLE. Now, at that point: Does the Federal Government pay any consideration for the ceded lands?

Mr. SCHNOOR. It did not.

Mr. SEIDMAN. In response to your earlier question, Mr. Chairman, the Federal Government pays no rental fees for these lands to the State, and there is no consideration paid by the Federal Government to the State for the use of the ceded lands.

The only rentals which have been obtained were those where the Federal Government had set aside lands, did not use them, and leased or rented them to private persons. In that case, the rentals were paid into the treasury of the territory, and now to the treasury of the State. This amounts to about \$100,000 per year.

Mr. SCHNOOR. For example, at Bellows Air Force Station and some of these other communications centers, it is possible for the Federal Government to lease out a grazing right in the middle of the communications station, and the revenues from that sort of a

grazing permit go to the State. It formerly went to the territory of Hawaii.

Senator ALLOTT. Even though the land is ceded to the Federal Government, the grazing permits go where?

Mr. SCHNOOR. The grazing revenues went to the State, and they went to the territory.

Senator BIBLE. I will say to the Senator from Colorado that that is pursuant to an act we yesterday introduced into the record, an act of 1898.

Mr. FRENCH. Yes, sir. This is the Organic Act.

Senator BIBLE. And it makes specific provision for the remittance of any revenues that are received by virtue of the ownership of these lands to first the territory of Hawaii, and then to the State of Hawaii.

Mr. SCHNOOR. The 120,000 acres we have been talking about are the maneuver areas up in the northern part of the island of Oahu. These training areas are controlled by the United States either pursuant to a lease or a permit from the former territory of Hawaii.

The larger one of these areas is on the big island of Hawaii. It is called Pohakula. And I think there are something in the neighborhood of 100,000 acres over there that are controlled under 9-month-of-the-year maneuver permit.

Senator BIBLE. It that on a yearly basis? Is that permit a renewable permit for the use of this land as a maneuver area?

Mr. SCHNOOR. I do not know what the term of the permit is. Perhaps the State people would know.

Mr. Lewis, do you happen to know what the term is at Pohakula?

Senator BIBLE. Do you have Mr. Lewis properly identified?

Mr. Lewis is the deputy attorney general of the State of Hawaii, and is now answering the question which has just been asked.

Mr. LEWIS. They entered into a permit arrangement which is in effect in perpetuity, but with a provision for extinguishing the permit with 3 months' notice by either party at will.

Senator BIBLE. The Senator from Utah?

Senator MOSS. How did the territory of Hawaii acquire the fee title in order to be able to grant the lease or permit, if all of the lands went to the Federal Government when Hawaii was annexed as a territory?

Mr. SEIDMAN. Senator Moss, this was, of course, under the provisions of the Statehood Act. All of the unreserved ceded lands were returned to the State at the time of statehood, which included these areas.

Now, title to the areas which were controlled by the United States pursuant to permit is now in the State. However, under section 5(d) of the Statehood Act, these could be set aside for Federal use in the period until August 21, 1964.

Senator MOSS. There are some ceded lands, then, that have gone back to the State?

Mr. SEIDMAN. Yes. All of the unreserved ceded lands were under the Statehood Act returned to the State.

Mr. SCHNOOR. Just one further point on that particular question: During the territorial days, the territory had use and control over the ceded lands which were not set aside. The United States only

retained naked title. And under the then organic law, the United States, on a few occasions, did not set property aside for its own use, but merely controlled it under a permit from the territory.

Mr. SEIDMAN. Before explaining the provisions of the bill, Mr. Chairman, it might be helpful for me to outline the nature of the Federal Government's land holdings in Hawaii.

As with all the other States, the Federal Government has acquired land in Hawaii by purchase and condemnation. For example, the lands on which Hickam Air Force Base and Tripler Army Hospital are located and the Navy property around Pearl Harbor were mainly acquired in this manner.

In total, the United States owns about 35,000 acres of so-called fee-owned land in the State of Hawaii. There is nothing unique about the fee-owned land, and the bill does not, either directly or indirectly, affect any lands acquired by the United States through purchase or condemnation.

The bill is limited to a second type of land in the State, which was acquired by cession or donation from the republic or the territory of Hawaii. Title to the bulk of that type of land, ordinarily referred to as "ceded" lands, was acquired in 1898, when the United States annexed the republic of Hawaii. Under the joint resolution of annexation, approved on July 7, 1898 (30 Stat. 750), the United States accepted the cession by the Republic of—

* * * the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands * * *.

The resolution provided that the ceded properties might—

be used or occupied for the civil, military, or naval purposes of the United States * * *.

Section 91 of the Hawaii Organic Act of April 30, 1900 (31 Stat. 159), confirmed that those properties could—

be taken for the uses and purposes of the United States by direction of the President or the Governor of Hawaii.

Section 91 remained in effect until Hawaii became a State, and, under it, the President and the Governor set aside tracts of ceded land for a large variety of military, Coast Guard, and Federal civilian agency installations. Lands which were exchanged for ceded lands also took on the character of ceded lands, and were similarly set aside.

When Hawaii became a State, there were some 125 Federal installations in Hawaii wholly or partly occupying ceded lands. In all, about 290,000 acres of ceded land have been set aside for those installations.

By way of example, Bellows Air Force Station, Fort Shafter Military Reservation, Schofield Barracks, and the Naval target island of Kahoolawe are located almost entirely on set-aside ceded land.

Another 120,000 acres of ceded land were used largely for maneuvers and training by the Armed Forces under various permits and licenses from the Territory, but were not actually set aside. Thus, about 410,000 acres of ceded land were controlled to some extent by the United States.

In addition to the ceded lands, the Territory of Hawaii, over the years, acquired lands of its own by purchase, condemnation, and

other means. Section 73 of the Organic Act, which provided for the management of Territorial lands, was amended in 1910 (36 Stat. 447) to give the Governor the authority to set such lands aside "for forest or other public purposes."

In 1941, section 73(q) was further amended (55 Stat. 658) to provide expressly that—

the provisions of this section may also be applied where the "public purposes" are the uses and purposes of the United States * * *.

We have no figures on the exact amount of Territorial land set aside for Federal purposes by the Governor under that authority, but it is small and probably does not exceed several hundred acres.

The bill is concerned with the lands I have just described—the ceded lands, lands acquired in exchange for ceded lands, and lands of the Territory of Hawaii which have been set aside for Federal use.

The special character of the ceded lands has been recognized by the Congress since the annexation of Hawaii. The joint resolution of annexation provided that:

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

As stated in an opinion of the Attorney General of the United States, September 9, 1899 (22 Ops. 574), the effect of the terms of the cession made by the Republic of Hawaii was:

* * * to subject the public lands of Hawaii to a special trust.

In section 91 of the Organic Act of 1900, it was further provided:

That the public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of annexation * * * shall be and remain in the possession, use, and control of the government of the Territory of Hawaii, and shall be maintained, managed, and cared for by it, at its own expenses, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the Governor of Hawaii.

In 1910, there was added to that section an amendment (36 Stat. 447) authorizing the President to return set-aside ceded lands to their previous unreserved status, and authorizing him to transfer title to the ceded lands to the Territory in those cases where the lands were used for the public purposes of the Territory.

The 1910 statute also authorized the Governor to set aside ceded lands which were managed by the Territory for the public purposes of the Territory.

In 1930, section 91 was further amended by adding a proviso:

That when any such public property so taken for the uses and purposes of the United States, if, instead of being used for public purposes, is thereafter by the United States leased, rented, or granted upon revocable permits to private parties, the rentals or consideration shall be covered into the treasury of the Territory of Hawaii for the use and benefit of the purposes named in this section (46 Stat. 789).

Thus, in summary, at the time Hawaii became a State, it maintained and managed all of the ceded lands, and its own lands which

were not set aside for Federal purposes. The United States merely retained naked title to the unreserved ceded lands.

In some cases—particularly with respect to military training areas—the United States did not go so far as to set ceded lands aside, even when it used them, but merely used them under a permit from the Territory.

Ceded lands not set aside for Federal purposes, or used by the Federal Government under permit, could be taken by the Territory for its own public purposes.

The Congress had also taken steps to preserve the territory's residual interest in lands which were set aside by providing for their return to territorial management and use when they were no longer needed by the United States, and by providing for the payment to the territory of any proceeds from set-aside lands which were leased or rented.

The State's interest in the lands which were set aside was again recognized by the Congress in the Hawaii Statehood Act (73 Stat. 4). Section 5(b) of the Statehood Act granted to the State the United States' title to all of the ceded lands and lands exchanged for ceded lands which were not set aside.

In addition, section 5(e) of the Statehood Act provided for a 5-year review of all the Federal lands and property in Hawaii which were set aside for Federal use from the ceded lands, lands exchanged for ceded lands, and lands of the territory of Hawaii. Any of those set-aside lands found to be no longer needed by the United States during the 5-year review, which ends on August 21, 1964, are to be conveyed to the State.

In effect, 5(e) was a continuation of section 91 of the Organic Act.

Senator BIBLE. Are you convinced, Mr. Seidman, that it would be impossible for the U.S. Government to make the determination called for by section 5(e) on or before August 21, 1964?

Mr. SEIDMAN. Mr. Chairman, we are prepared to and will make those determinations before that time. All of the agencies have submitted their reports to the Bureau of the Budget pursuant to our request. As you know, this authority has been delegated to the Budget Bureau.

The difficulty, as we see it, is not with the 5-year review period, which has had the very salutary effect of bringing pressure on the Federal agencies and requiring them to review their properties, but from the fact that, through what appears to us to be an inadvertence, the 5-year review is coupled with a termination of the trust. And the difficulty comes from the termination of the trust after the 5-year period.

Senator BIBLE. Oh. Well, I am glad to have that clarified, then. Then what you are saying is that if you classify this 180,000 acres, which is in question, as ceded lands, and you were to make a determination as the requests of various Federal agencies come before you, the military and the civilian agencies of the Federal Government, if you were to make a determination on or before August 21, 1964, that all of these acres, this 180,000 acres, was needed for the Federal Government's use, you say you could make that determination by August 21, 1964, but you might possibly, then, run into a situation after August 21, 1964, where 10,000 acres, which was set aside for a maneuver area, was no longer needed by the Air Force.

Then the problem would be: Well, does it come back to the Federal Government for disposition under the General Services Act, or does it go to the State of Hawaii?

Mr. SEIDMAN. That is correct. That is exactly correct.

Senator BIBLE. That is the dilemma with which you are faced?

Mr. SEIDMAN. And the dilemma is more or less dramatized by the situation which confronts us. And I can cite some specific examples.

Senator BIBLE. I think that point somewhat escaped me yesterday, and I am glad to have it cleared up.

Mr. SEIDMAN. The Coast Guard, in response to our request for report on the need for property, submitted a report in which they said that pier 4, which is very important for the future port development of the State, would not be needed by the Coast Guard when the Federal office building is constructed in Honolulu. The building is now in the planning stage.

For a number of reasons which I do not think we need to go into here, but mainly in clearing the title, there was considerable delay in construction of the Federal office building. That building will now not be completed before 1967 or 1968, at the earliest.

So here we have a situation where we have the Coast Guard saying, "We will not need this property, contingent upon construction of the Federal office building," yet through the mere passage of time, and the termination of trust, after this period, the State will lose it.

Or in the case of the 120,000 acres which is now used by the United States under permit, we do have pending for consideration Executive orders from the Department of Defense to set some of that aside. We would then be taking the title away from the State, which is now vested in the State.

So our point is that we do not find fault with the 5-year review period. We think that has been beneficial. I do not think you would otherwise have had this concentrated attention given to the land problems in Hawaii.

But the difficulty that comes is that there is a termination of the trust status after the review period.

Senator BIBLE. I think I understand the point. I think you have cleared it up for me. Thank you.

Mr. SEIDMAN. Under the authority contained in section 5(e) of the Statehood Act—and that authority has been delegated to the Director of the Bureau of the Budget—about 400 acres of Federal land have been returned to the State. Additional lands which are no longer needed will be returned before the expiration of the 5-year review.

However, after the end of the review, under current law, Hawaii will lose its longstanding residual interest in the lands which it donated to the United States.

In effect, the Statehood Act will have provided for a "reverse" land grant by extinguishing the State's traditional interest in the set-aside lands.

We find no evidence that the Congress intended such a result when it enacted the Statehood Act. The primary purpose of the bill is to correct this inequity, and to preserve the right of the State of Hawaii to have returned those set-aside lands which are determined to be surplus to Federal needs.

Senator BIBLE. Yes. I asked my question too quickly. You have answered it.

Thank you.

Mr. SEIDMAN. Section 1 of the bill provides that, after the end of the review period, on August 21, 1964, any of the ceded lands or lands exchanged for ceded lands (which are defined as "public lands" in section 5(g) of the Statehood Act) or any of the lands of the territory or its subdivisions which have been set aside for Federal use (and therefore became the property of the United States under section 5(c) of the Statehood Act) may be conveyed to the State of Hawaii by the Administrator of General Services when he determines they are surplus property.

The only lands excluded from the conveyance authority would be the lands in the Hawaii National Park, which is administered under the act of August 25, 1916. We believe that exclusion is merited because park lands were excluded from the 5-year review under the Statehood Act and because Congress has traditionally disposed of such lands outside of the regular procedures for the disposal of Federal property.

Senator SIMPSON. There is no controversy here?

Mr. SEIDMAN. Absolutely not.

Senator SIMPSON. No controversy with respect to park lands?

Mr. SEIDMAN. There is complete agreement on this bill. There is no controversy about any of the provisions of the bill now before the committee.

Section 5(d) of the Statehood Act provides for the further setting aside during the 5-year review period of any ceded lands or lands exchanged for ceded lands which were controlled by the United States when Hawaii became a State but which were not actually set aside.

These are the training areas to which I referred earlier, which were controlled by permit or license from the territory. None have been set aside thus far. A few may be, and the bill would include such tracts in the procedure for conveying lands to Hawaii after the end of the review period.

Finally, section 1 of the bill would include in the scope of the conveyance authority the lands of the United States on Sand Island, including the reef lands in connection therewith, in Honolulu Harbor. The State's claim to those lands is based on the contention that they were acquired as part of the cession of Hawaiian lands in 1898.

Sand Island consists of about 550 acres of fast land, the large bulk of which was created by natural and artificial accretion since the annexation of Hawaii.

Senator BIBLE. What is fast land?

Mr. SEIDMAN. Land above the water.

Senator BIBLE. Fast land is land above the water?

Mr. SEIDMAN. Yes.

About 125 of those acres have never been claimed by the United States, and are now controlled by the Hawaiian Aeronautics Commission pursuant to an Executive order of the Governor. Another 202 acres were transferred to the then Territory of Hawaii by the President in Executive Order No. 10833 of August 20, 1959.

We have a photograph of Sand Island.

Senator BIBLE. I think it would be helpful to have that received as exhibit 2, following the map, and we will make this part of the record by reference.

This is a picture of Sand Island, and it lies just off of the port of Honolulu.

Do I understand this correctly?

Mr. SEIDMAN. That is correct, sir.

Senator BIBLE. And it has approximately 550 acres.

Mr. SEIDMAN. That conveyance was authorized by the act of August 25, 1958 (72 Stat. 850), which provided that the transfer be without monetary consideration, and that the proceeds from the use or disposal of the land be used for the support of the University of Hawaii.

I might add, here, that when the 1958 act was passed, Senator Morse inserted a statement in the Congressional Record of August 14, 1958, in which he said that the Morse formula did not apply to Sand Island for the reasons we have cited in our testimony.

Senator BIBLE. This will be helpful, as we move along in our consideration.

Mr. SEIDMAN. I think for the very same reasons the Morse formula would not be applicable to the other ceded lands, as well.

The United States continues to control the remainder of Sand Island, and certain adjacent submerged lands. About 261 acres, of which about one-third are submerged, are controlled by the Department of the Army, and constitute the Sand Island Military Reservation. It is those submerged lands set aside by Presidential Executive Order No. 3358 to which the term "reef lands" used in the bill principally refers. The remaining 27 acres under Federal control constitute the Sand Island Coast Guard Base.

The Coast Guard has a continuing requirement for its base, and an additional requirement for about 19 acres of land currently controlled by the Department of the Army. The remaining 242 acres of the Army reservation are excess to Army needs, and no other Federal need has developed for this area to date.

An Attorney General's opinion of July 18, 1940 (30 Op. Atty. Gen. 460), relative to Sand Island, states that it appears probable that Executive Order No. 3358 of November 24, 1920, setting aside lands on Sand Island and Quarantine Island for military purposes:

* * * was issued under the theory that the lands set aside by it were a part of the public lands which belonged to the Hawaiian Government and which passed to the United States under the joint resolution of annexation * * *.

While no authority for action was cited in the 1920 Executive order, the Attorney General stated that it is probable that section 91 of the Hawaiian Organic Act was the basis for action.

If it were certain that Sand Island does consist of ceded land set aside for Federal use, it would be possible now to convey to the State that portion of the land which is no longer needed by the United States.

Senator BIBLE. You have made a finding that would permit you to do this? You would think this was in excess of Federal uses? Your problem is whether or not it is ceded land?

Mr. SEIDMAN. That is correct. We have been advised by the Attorney General that they cannot make a ruling that this is definitely ceded land.

Senator BIBLE. Very well.

Mr. SEIDMAN. The conveyance could be effected under section 5(e) of the Hawaii Statehood Act.

Two factors, however, have cast doubt on the possibility of conveying any land on Sand Island to Hawaii under the authority of section 5(e) of the Statehood Act. First, two private corporations claimed title to the Sand Island area at the time of annexation as successors to the interests therein of the William Sumner estate.

The private claims to the area were never recognized by the United States or the Territory of Hawaii, but were settled in a compromise agreement in 1902, wherein the corporations quit-claimed their interests in the area to the United States in return for receipt of a land patent from the Territorial Governor confirming their title to the remainder of the Sumner estate.

Senator BIBLE. Is that the Sumner estate located on Sand Island?

Mr. SEIDMAN. The Sumner estate, which was granted I think by King Kamehameha III, was for a farm, in the area which is near Honolulu and adjacent fishing grounds, which included the area which then would be Sand Island, which was I think a very small number of acres.

The U.S. Government took over the island, which was used as a quarantine station by the Republic of Hawaii, and stationed their own official on the island. The successors of the Sumner estate then sued the Quarantine officer of the United States, and this resulted in this exchange, really, of quit-claim deeds. No other consideration was involved.

Senator BIBLE. That is not the controversy at the present time, because that was settled?

Mr. SEIDMAN. That was settled early in the 1900's, and there was an exchange of quit-claim deeds.

There is no question of any private claim to the area. It just raises the question of whether this was acquired in a manner other than by cession.

Senator BIBLE. Very well.

Thank you.

Mr. SEIDMAN. Second, by means of dredging and filling, as well as natural accretions, the fast land in the area has increased from less than 10 acres at the time of annexation to the present size of about 550 acres.

The private claim to the area casts some doubt on the fact that the Sand Island was acquired as part of the cession from the Republic of Hawaii. Further, section 5(i) of the Statehood Act, which applies the Submerged Lands Act of 1953 (67 Stat. 29) to the State of Hawaii, casts doubt on the authority to convey filled lands to Hawaii under section 5(e) of the Statehood Act.

Because of those factors, the Department of Justice has concluded that the remaining filled land on Sand Island is not susceptible to conveyance to Hawaii as ceded land under section 5(e) of the Statehood Act. This same doubt resulted in the 1958 act to clarify the authority to convey another part of Sand Island.

We believe that the doubt as to Sand Island's status should be resolved in favor of the State of Hawaii.

Section 1 of the bill would then cover roughly 60,000 acres of set-aside ceded lands, lands exchanged for ceded lands, and territorial

lands, and the lands on Sand Island and connected reef lands, to which we believe Hawaii has a just and equitable claim which has traditionally been recognized.

The remaining 230,000 of the 290,000 acres of set-aside lands are in the national park. The total land involved will not increase, unless some of the 120,000 now controlled under permit or license are actually set aside for Federal use in the next few months.

One other minor point ought to be explained. The bill refers to public lands and other public property. We have included the reference to "other public property" to be consistent with the terminology used in the Statehood Act and prior statutes.

Actually, the current 5-year review has not disclosed any setting aside of property other than land. If there is such "other property," it probably consists of antique furnishings or military equipment acquired at the time of the cession in 1898.

Section 1(b) of the bill would authorize the Administrator of General Services to determine when the lands and properties involved are surplus, thus terminating, at the close of the 5-year period specified in the Hawaii Statehood Act, the special Presidential review, and providing for the processing of the lands involved in the same manner as other Federal lands are processed for disposal.

The Administrator would be able to transfer such lands among other Federal agencies when they become excess to the needs of the controlling agencies, and otherwise treat them in the same manner as other Federal lands until he determines them to be surplus.

While the lands would generally be returned to the State without monetary consideration, section 1(b) of the bill does authorize the Administrator to make such conveyances subject to any terms and conditions he may prescribe.

It is anticipated that that authority would be used primarily to preserve utility easements, and to protect Federal interests in other properties which it retains. It is not contemplated that the State would otherwise be restricted in its use of conveyed lands for its own public purposes.

Provision is also made for safeguarding the U.S. interests in buildings, structures, and other improvements made on the lands after they were set aside.

In the event that the surplus lands contains such improvements which have an estimable fair market value, under section 1 of the bill, the Administrator must require the State to pay such fair market value before the lands and improvements are conveyed.

In the event the State does not agree to the payment, the Administrator may remove the improvements and dispose of them under other applicable laws, or, if they cannot be removed without substantial damage, he may dispose of both the improvements and the lands involved under other applicable laws.

In the latter case, in keeping with Hawaii's claim to the land, the Administrator would be required to pay over to the State that portion of any proceeds equal to the value of the land involved.

Finally, section 1(b) would enable the State to forgo its authority to receive lands under the bill. This flexibility is believed desirable in the event that the State may wish a tract to be conveyed directly to some local government, or if there might be some reason for it to acquire the property under other normally applicable laws.

As you know, Mr. Chairman, there are laws which authorize States and local governments to acquire surplus Federal land for public health and educational purposes, for national monuments, or airports, and the State may choose to acquire the land under one of the other methods, rather than under this act, and it is given this option.

Section 2 of the bill provides that any conveyances to the State of Hawaii under section 1 shall be considered part of, and subject to the terms and conditions of the public trust established by section 5(f) of the Hawaii Statehood Act.

That trust, which already applies to all the ceded lands returned to Hawaii under provisions of the Statehood Act, requires that the lands involved and the proceeds therefrom shall be held by the State for the support of public schools, betterment of the conditions of native Hawaiians, making of public improvements, and other limited public purposes. The necessary trust fund has already been established by the State (sec. 18, Act 32, 1962 session, Laws of Hawaii).

I think a question was raised yesterday, Mr. Chairman, about what would happen to proceeds of the ceded land which was turned back to the State, and I think this is the answer, that it is required that it go into the trust fund, to be used for the purposes stated by law for that trust.

The Bureau of the Budget urges early and favorable consideration of S. 2275.

Senator BIBLE. Thank you very much, Mr. Seidman.

I would like to get my own mind clear on Sand Island. As I understand it, the fast land was originally 10 acres, at the time of annexation, and now, by filling, it has increased in size from 10 to 550 acres.

Mr. SEIDMAN. Approximately. It may change from day to day, in the nature of the area.

Senator BIBLE. From the mere fact that it has been increased in size from 10 to 550 acres, how does the State of Hawaii stake out a claim based on that? Are they entitled to the 540 acres that has been dug up from the harbor and made into the island?

Mr. SEIDMAN. The cession, Mr. Chairman, included not only the lands above the water, but the lands under the water. The cession from the Republic of Hawaii to the Federal Government explicitly included the ports and harbor areas, so the lands included the submerged lands as well as the fast land.

Senator BIBLE. If that is true, why do we need this bill?

Mr. SEIDMAN. The question arises because of the fact of the alleged private ownership of land and the exchange of quitclaim deeds for the area, plus the specific language in the Submerged Lands Act, which was extended to the State of Hawaii by the Statehood Act, which says that the Federal Government shall retain title to lands acquired by filling.

Senator BIBLE. And this is to clear up those two areas of difference?

Mr. SEIDMAN. That is correct; but I think the record should be clear that the cession from the Republic to the Federal Government included lands under the water as well as lands above the water.

Senator BIBLE. Within the harbor area?

Mr. SEIDMAN. Within the harbor area.

Senator BIBLE. I am glad to have that clarification.

I think you have given us a very fine statement, Mr. Seidman, and I am certainly very much clearer on the character of the land that is involved.

Senator Moss?

Senator Moss. I do not think I have any questions, Mr. Chairman. I think that it is quite clear, now, as to the purposes of the bill, and it seems to be one of equity.

Senator BIBLE. The Senator from Idaho?

Senator JORDAN. No questions.

Senator BIBLE. Thank you very much, Mr. Seidman, and Mr. Schnoor. We certainly appreciate your appearance here this morning.

Senator BIBLE. Our next witness is Mr. William Richardson, Lieutenant Governor of Hawaii.

Very happy to have you with us, Governor.

You are accompanied by Hon. Peter Lewis, deputy attorney general of Hawaii.

STATEMENT OF HON. WILLIAM S. RICHARDSON, LIEUTENANT GOVERNOR, STATE OF HAWAII

Governor RICHARDSON. Yes, sir.

Mr. Chairman and members of the committee, I am here before you representing Governor Burns and the people of the State of Hawaii. My mission is to convey to you their wholehearted support of S. 2275, a bill "To revise the procedures established by the Hawaii Statehood Act, Public Law 86-3, for the conveyance of certain lands to the State of Hawaii, and for other purposes," cosponsored by the two distinguished Senators from the State of Hawaii, Senators Daniel K. Inouye and Hiram L. Fong.

If ever there was before you a case where equity dictated a certain result, the one concerning the future status of ceded and certain other types of lands in Hawaii is a case in point.

Sixty-five years ago, the Republic of Hawaii was annexed to the United States. The people or Government of Hawaii at that time ceded to the United States approximately 1,772,640 acres of their public lands.

The majority of the lands affected by S. 2275 fall within the definition of ceded lands. Other lands involved are those which were exchanged for ceded lands, and those which were acquired by the Territory and subsequently set aside to the United States for specified purposes. All three categories of lands were at one time the public property of the people of Hawaii, both from a standpoint of law and equity.

History shows that the ceded lands have always been held in a special trust status by the United States for the people of Hawaii. This viewpoint has been shared by both the United States and the citizens of Hawaii.

It has been said that although the legal title subsequently vested in the United States, the equitable title remained in the Territory of Hawaii. Federal public land laws were held not applicable to Hawaii. Revenues from ceded lands inured to the benefit of the people of Hawaii.

The Hawaiian Organic Act provided in effect that the 1,772,640 acres of ceded land not specifically under Federal control were to

remain in the "possession, use, and control of the government of the Territory of Hawaii." This same act provided for the return to Hawaii of ceded lands taken for U.S. use and no longer needed. It further provided that title to these lands could be conveyed to the Territory under certain circumstances.

The unique character of these lands need not be over emphasized. This factor plus the fact that the equitable title law in the citizens of Hawaii has already been recognized by the Congress in considering prior legislation for Hawaii.

It is an uncontroverted fact that the United States has had the use of many of these lands for 65 years, without charge, and will continue to use approximately 410,000 acres of these lands after August 21, 1964, also without charge.

Some people might argue that this in itself is subject to question. The State has not undertaken this position.

Under section 5(b) of the statehood act, all ceded lands not under Federal control were transferred to the State of Hawaii. It has already been admitted by the Congress that the equitable title to these lands belonged to the people of Hawaii, and it was on this basis that a large number of ceded lands were automatically transferred under section 5(b) when the statehood act became law in 1959.

There would seem to be no adequate explanation why this status should suddenly change after 65 years. It would only seem fair, therefore, that these ceded lands not presently in a surplus category be conveyed as were lands in this same category which were surplus at the time of statehood and up to August 1964, when they became surplus, and only then, to the State of Hawaii, without monetary remuneration.

The people of Hawaii deserve to get these lands back, if they become excess to Federal needs. There is no logical reason to treat them differently after 1964.

Furthermore, there is nothing to justify that these lands, treated in the past as being unique and in a category by themselves, should have to be purchased back by the beneficiaries of a trust which has been in existence for 65 years. It would be most difficult to explain the logic and equity behind such a result.

The State also recognizes that it would place a heavy burden on the many Federal agencies presently using this property to cause them to make a final decision on future needs prior to August 21, 1964.

The State's right to receive its heritage, and the Federal agencies being able to use the property without having to make the difficult decision of future need at this time—both matters deserving careful consideration—dictate the removal of the August 21, 1964, date deadline.

In addition, it hardly need be mentioned that it is the State's desire and intent to cooperate with, and help, all Federal agencies in the State, and in particular to help the military agencies fulfill their missions. Hawaii is proud and honored to be the bastion of defense for the Nation.

The removal of the 1964 deadline would not only serve to recognize the equitable rights of the people of Hawaii, but would inure to the benefit of the Federal agencies, as well.

As to the second matter, it is unfortunate that the issue of Sand Island must once again be brought before Congress. Under the act of August 25, 1958 (72 Stat. 850), it was the apparent intention of everybody concerned that all of Sand Island under Federal control, with the exception of the Coast Guard base, be conveyed to the then Territory of Hawaii.

A misunderstanding occurred in the communications between the department of public works in Hawaii and the Delegate to Congress. The department of public works led the Delegate to believe that the survey of Sand Island included that which is the subject of your present consideration, as well as the 202-acre portion conveyed in 1959. This bill is intended to correct that error.

Aside from the above, Sand Island has been treated since the time of annexation, almost without exception, as constituting lands which were ceded to the United States in 1898, as part of the annexation of the Republic of Hawaii.

Up until August 21, 1964, all ceded lands declared excess to Federal needs shall be conveyed to the State of Hawaii, under section 5(e) of the Hawaii Statehood Act, Public Law 86-3. Sand Island, with the exception of approximately 46 acres under Coast Guard control, has already been declared excess to all known Federal requirements.

Sand Island has been included in the subject bill to correct the error of omission created by the 1958 draft of the conveyance act, and to remove any cloud on the title which the State may receive due to the remote chance that the subject land is other than ceded.

As noted previously, a similar disposition was employed in 1959, when the 202-acre portion of the island was transferred to the State. The subject portion of Sand Island being considered by the people of Hawaii as constituting ceded land, their claim to this land is based on the same rationale and trust relationship theory that encompasses other ceded lands.

Your favorable consideration of S. 2275 is most respectfully urged. The people of Hawaii feel that there is more than ample justification for returning to them those subject lands and property no longer needed by the United States. This result would constitute a recognition of the heritage of the citizens of Hawaii.

I thank the committee for its attention. On behalf of Hawaii, I extend sincere appreciation for the fair and impartial consideration you will give this measure.

Senator BIBLE. Governor Richardson, we are very delighted to have you in the Nation's Capital to make this very able presentation. It is a fine statement. It is very clear and to the point. And I have no questions.

The Senator from Utah?

Senator Moss. I really have no questions.

I, too, am glad to see the Governor here in Washington. I had a very pleasant visit with him out in Hawaii last fall. And I think he has stated the position very succinctly, here, for the bill that is before us.

Senator BIBLE. The Senator from Idaho?

Senator JORDAN. Governor, just one question, possibly for clarification: You state that you believe that any lands found to be surplus should be returned to the State of Hawaii without monetary remunera-

tion. Would you concur with the statement made by the preceding witness?

Governor RICHARDSON. Yes, sir. I do not believe that the people of the State of Hawaii should buy back the property that it ceded to the United States.

Senator JORDAN. With respect to improvements that have been erected on the property by the Federal Government, would you concur with the preceding witness that fair value should be arrived at as the basis for consideration?

Governor RICHARDSON. Yes, Senator Jordan, I do. I believe the formula that is stated in the bill is proper, and would inure to the benefit of the United States.

Senator JORDAN. There is no conflict between your position there and that of the Bureau of the Budget in that respect?

Governor RICHARDSON. No, Senator.

Senator SIMPSON. Your statement was very clear and succinct.

On page 5, at the middle of the page, you say:

Sand Island has been included in the subject bill to correct the error of omission created by the 1958 shaft of the conveyance act, and to remove any cloud on the title which the State may receive to the remote chance that the subject land is other than ceded.

Governor RICHARDSON. I am referring, sir, to the quit-claim deeds that were brought up by Mr. Seidman, that were exchanged, signed by the Territory of Hawaii, and by the other claimants.

Senator SIMPSON. Like in the Sumner estate, for instance?

Governor RICHARDSON. In the Sumner estate, as I understand it, they had a claim on fishing rights and a farm that was not necessarily part of Sand Island, but because of certain suits against the Territory of Hawaii, the quit-claim deeds were executed. And with that in mind, there might be thought that this was other than ceded land. But in reality, it was ceded.

Senator SIMPSON. The question occurs whether you can quiet title in that way against a private corporation. I suppose they have already quit-claimed any interest they might have.

Governor RICHARDSON. Altogether. As I understand it, there were three quit-claim deeds involved. And, as a matter of fact, the quit-claim deeds were signed by the Territory of Hawaii, not the United States. The United States gave nothing, anyway.

Senator BIBLE. Thank you very much, Governor Richardson.

Senator BIBLE. And now, the deputy attorney general of the State of Hawaii, Hon. Peter Lewis.

We are very happy to hear from you, Mr. Lewis, and if you care to make any response, prompted by the questions of Senator Simpson, or amplifying what Governor Richardson has said, we would be very happy to have you do so.

STATEMENT OF HON. PETER C. LEWIS, DEPUTY ATTORNEY GENERAL, STATE OF HAWAII

Mr. LEWIS. Yes, sir.

I will address myself first to Mr. Simpson's question.

I think the problem that he is raising is raised by the statement as to the cloud on title. Actually, the quit-claim deeds removed any

cloud on title, and the term might more properly be a cloud on the status of Sand Island, whether it is ceded or not.

Senator BIBLE. You may proceed, Mr. Lewis.

Mr. LEWIS. Mr. Chairman and members of the committee, I have a short prepared statement by way of summary. But before I address myself to the subject at hand, I would like to express the thanks, in behalf of the State of Hawaii, for the gracious and fair understanding which Mr. Harold Seidman and Mr. Howard Schnoor of the Bureau of the Budget have shown to Hawaii's land problems.

These two gentlemen have spent countless hours helping to prepare and testify in behalf of the Hawaii Statehood Act, the Hawaii Omnibus Act, and now S. 2275, the bill presently before you.

Their approach to the issues has always been equitable and fair. For the above reasons, the State of Hawaii is most grateful, and it has requested that the record so indicate.

Senator BIBLE. The record will so indicate.

Mr. LEWIS. As to my prepared statement: I appear before this committee representing the attorney general of the State of Hawaii, Bert T. Kobayashi, in support of S. 2275, a bill to revise the procedures established by the Hawaii Statehood Act, Public Law 86-3, for the conveyance of certain lands to the State of Hawaii, and for other purposes.

The views of the attorney general are similar to those of Governor Burns, and have already been most ably expressed by Lieutenant Governor Richardson.

To summarize the case before you, we are dealing only with ceded lands, and those other lands in a similar category, and not purchased or fee lands. The subject lands of this bill have been held in a continual trust status for 65 years, the beneficiaries of this trust being the people of Hawaii. It is, therefore, only fair and just that this trust status continue, and your favorable consideration of this measure will help to achieve this result.

Sand Island, considered by many to constitute ceded land, has been included in this bill for the purpose of eliminating any possible cloud as to its status. Your favorable consideration of this measure will enable the State of Hawaii to procure the return of any surplus portions of the island, and the reef lands connected therewith, to which the United States has any proprietary interest.

I hope this subcommittee will give favorable consideration to this bill.

Senator BIBLE. Thank you very much, Mr. Lewis.

I do not think I have any questions.

The Senator from Idaho?

Senator JORDAN. No questions.

Senator BIBLE. The Senator from Wyoming?

Senator SIMPSON. It may not be germane to this bill, but since you brought it up, I would like to have an answer to this.

I think it was in Senator Fong's statement that your government brought action against the Federal Government, and they refused to give consent to being sued.

Was that prepared in your office?

Mr. LEWIS. The original suit filed against the Bureau of the Budget was prepared by the prior administration.

of Senator SIMPSON. So you were not connected with that?

Mr. LEWIS. No, sir. We inherited it.

Senator SIMPSON. And are you still in court on that, awaiting some consent from the Government to be sued? Is it still pending?

Mr. LEWIS. The court in April rendered a decision based on jurisdiction, stating that it was a suit against the United States, rather than an individual, the Director of the Bureau of the Budget.

Senator SIMPSON. Thank you very much.

That is all I have.

Senator BIBLE. And I might say to my friend from Wyoming that prior to his coming here this morning, Mr. Seidman, speaking for the Director of the Bureau of the Budget, pointed out that the law is that the United States cannot voluntarily give consent to be sued. This is something that must be conferred by a statute. And I guess that is the law, now that I stop to think about it.

Senator SIMPSON. I have sued the U.S. Government and had to get consent. I had to get consent from the agency sued.

Senator BIBLE. Mr. Seidman, would you like to clarify that?

Mr. SEIDMAN. Yes, Mr. Chairman.

Senator Simpson, the Congress has granted the right to sue, for example, under the Tort Claims Act. That is already authorized in law.

A number of statutes creating Government corporations have provisions providing that the corporation may sue, or be sued, in its own name. I think there is one under contracts, the Tucker Act.

They are all provided by acts of Congress. The executive branch has no authority, absent an action by the Congress, to grant consent to sue.

Senator SIMPSON. We agree.

Senator BIBLE. I simply wanted to have the record clarified on that point, because the administration could not consent to be sued, even if it wanted to, in the absence of a statute.

Thank you very much, gentlemen. We certainly appreciate your appearance here this morning.

Do we have further witnesses on this particular legislation, S. 2275?

If not, the hearing will be closed, and it is my intention, as chairman of the Public Lands Subcommittee, to have a meeting of the subcommittee early next week. We have a number of matters that we hope to clear up, and I am hoping that we will be able to give this particular bill consideration at that time.

Senator SIMPSON. Mr. Chairman?

Will the chairman yield?

I wanted to assure the people of Hawaii and the two U.S. Senators that when the chairman says he will hold a meeting on this next week, he is that kind of a guy.

Senator BIBLE. I am very proud of this committee. We think that at least we have worked pretty hard this year, and we have turned out the legislation that has come to us, and we will continue to do that.

We will meet on Monday.

At this point in the record we will include a copy of the bill, S. 2275, and a copy of the letter from the Bureau of the Budget proposing this legislation.

Also we will include a copy of section 5 of Public Law 86-3, the Hawaii Statehood Act.

I believe it would be of value to the committee to include also the Judiciary Committee's report on Senator Fong's bill granting consent to suit against the United States, which also contains the report of the Department of Justice and the per curiam opinion of the Supreme Court dismissing the action.

(The material referred to is as follows:)

[S. 2275, 88th Cong., 1st sess.]

A BILL To revise the procedures established by the Hawaii Statehood Act, Public Law 86-3, for the conveyance of certain lands to the State of Hawaii, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) (i) whenever after August 21, 1964, any of the public lands and other public property as defined in section 5(g) of Public Law 86-3 (73 Stat. 4, 6), or any lands acquired by the Territory of Hawaii and its subdivisions, which are the property of the United States pursuant to section 5(c) or become the property of the United States pursuant to section 5(d) of Public Law 86-3, except the lands administered pursuant to the Act of August 25, 1916 (39 Stat. 535), as amended, and (ii) whenever any of the lands of the United States on Sand Island, including the reef lands in connection therewith, in the city and county of Honolulu, are determined to be surplus property by the Administrator of General Services (hereinafter referred to as the "Administrator") with the concurrence of the head of the department or agency exercising administration or control over such lands and property, they shall be conveyed to the State of Hawaii by the Administrator subject to the provisions of this Act.

(b) Such lands and property shall be conveyed without monetary consideration, but subject to such other terms and conditions as the Administrator may prescribe: *Provided*, That, as a condition precedent to the conveyance of such lands, the Administrator shall require payment by the State of Hawaii of the estimated fair market value, as determined by the Administrator, of any buildings, structures, and other improvements erected and made on such lands after they were set aside. In the event that the State of Hawaii does not agree to any payment prescribed by the Administrator, he may remove, relocate, and otherwise dispose of any such buildings, structures, and other improvements under other applicable laws, or if the Administrator determines that they cannot be removed without substantial damage to them or the lands containing them, he may dispose of them and the lands involved under other applicable laws, but, in such cases he shall pay to the State of Hawaii that portion of any proceeds from such disposal which he estimates to be equal to the value of the lands involved. Nothing in this section shall prevent the disposal by the Administrator under other applicable laws of the lands subject to conveyance to the State of Hawaii under this section if the State of Hawaii so chooses.

SEC. 2. Any lands, property, improvements, and proceeds conveyed or paid to the State of Hawaii under section 1 of this Act shall be considered a part of public trust established by section 5(f) of Public Law 86-3, and shall be subject to the terms and conditions of that trust.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., October 26, 1963.

HON. LYNDON B. JOHNSON,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is forwarded herewith a draft of legislation to revise the procedures established by the Hawaii Statehood Act, Public Law 86-3, for the conveyance of certain lands to the State of Hawaii, and for other purposes. The proposal would provide an equitable means for eventually returning to the State of Hawaii certain surplus Federal lands which it would otherwise be unable to receive because of the provisions of the Hawaii Statehood Act (Public Law 86-3; 73 Stat. 4).

We believe that Hawaii has a unique claim on the lands and property involved since they were originally given to the United States by the Republic or the Territory of Hawaii. That claim and the special status of those lands and property

have been recognized by the United States for many years. In essence, the proposal would provide for the continuation of a 60-year practice of returning those lands and property when they were no longer needed by the United States.

CEDED LANDS

Section 1 of the draft mainly concerns three types of land and property controlled by the Federal Government in the State of Hawaii: (1) The public lands and public property ceded to the United States by the Republic of Hawaii under the joint resolution of annexation of July 7, 1898 (30 Stat. 750); (2) lands and properties acquired in exchange for such ceded lands and properties; and (3) lands of the Territory of Hawaii and its subdivisions. Those lands and properties were all at one time the public property of the people of Hawaii or were exchanged for such lands and properties.

The bulk of the lands involved, which were ceded at the time of annexation, have always been treated differently than the other public lands of the United States. History clearly indicates that those lands were regarded as having been held in a special trust status by the United States for the benefit of the Hawaiian people. The resolution of annexation barred the extension of Federal public land laws to Hawaii and provided that the revenues from the ceded land, except for those used by the United States, were to be used solely for the benefit of the inhabitants of Hawaii.

Subsequently, the Congress provided, in section 91 of the Hawaiian Organic Act of April 30, 1900 (31 Stat. 141, 159), that the ceded lands were to remain in the "possession, use, and control of the government of the Territory of Hawaii, and shall be maintained, managed, and cared for by it, at its own expense, until otherwise provided for by the Congress, or taken for the uses and purposes of the United States by direction of the President or of the Governor of Hawaii." Provision was made in the same section for the return to Hawaii of ceded lands taken for U.S. use and for the actual transfer of title to the Territory in certain cases. The special trust status of those lands was further made clear in that there was no provision for their sale by the United States and in that any revenues secured by the United States from the rental of those lands taken for Federal use had to be returned to the Territory. On the other hand, sale of ceded lands by the Territory was authorized.

During the almost 60 years that Hawaii remained a territory of the United States, the President and the Governor frequently set ceded lands aside for the use of the United States. Lands were taken for military bases, the national park, lighthouses, and a variety of other purposes by Executive orders and proclamations. Provision was also made, in section 73(q) of the organic act, for the Governor to set aside for U.S. use other lands belonging to the Territory of Hawaii.

The Hawaii Statehood Act (Public Law 86-3; 73 Stat. 4) again recognized Hawaii's special claim to the ceded land and, in section 5(b), provided for the granting to Hawaii of the U.S. title to all such lands and lands acquired in exchange for ceded lands except insofar as they were set aside for U.S. use on the date Hawaii became a State. Section 5(e) of the statehood act provides for a review of those lands which were set aside, as well as any lands of the Territory and its subdivisions which were set aside, during the 5 years ending on August 21, 1964. Section 5(e) authorizes the President to determine whether the set-aside lands are no longer needed by the United States and to convey to the State those which are not needed.

However, after the conclusion of the current 5-year review, it appears that Hawaii will no longer be entitled to the return of the lands it originally gave to the United States. Thus, absent new legislation, the State of Hawaii will be denied those lands to which the Territory was entitled during its 60 years of existence, and there will be a significant departure from the heretofore accepted concept of the special trust status of those lands.

Section 1 of the draft legislation is intended to correct this inequity and, in effect, to provide a procedure whereby the ceded and other lands and properties which are set aside may continue to be returned to the State of Hawaii whenever they become surplus to Federal needs. We believe such action is fully justified in keeping with the manner in which the lands and properties were acquired and the history of the special trust status in which they have been held.

Section 1 of the draft would authorize the Administrator of General Services to determine when the lands and properties involved are surplus, thus terminat-

ing, at the close of the 5-year period specified in the Hawaii Statehood Act, the special Presidential review and providing for the processing of the lands involved in much the same manner as other Federal lands are processed for disposal. The Administrator would be able to transfer such lands among other Federal agencies when they become excess to the needs of the controlling agencies and otherwise treat them in the same manner as other Federal lands until he determines them to be surplus.

While the lands would generally be returned to the State without monetary consideration, section 1 of the draft does authorize the Administrator to make such conveyance subject to any terms and conditions he may prescribe. It is anticipated that that authority would be used primarily to preserve utility easements and to protect Federal interests in other properties which it retains. Provision is also made for safeguarding the U.S. interests in buildings, structures, and other improvements made on the lands after they were set aside. In the event that the surplus lands contain such improvements which have an estimable fair market value, under section 1 of the draft, the Administrator must require the State to pay such fair market value before the lands and improvements are conveyed. In the event the State does not agree to the payment, the Administrator may remove the improvements and dispose of them under other applicable laws or, if they cannot be removed without substantial damage, he may dispose of both the improvements and the lands involved under other applicable laws. In the latter case, in keeping with Hawaii's claim to the land, the Administrator would be required to pay over to the State that portion of any proceeds equal to the value of the land involved.

There would be one exception from the lands otherwise subject to conveyance to Hawaii under the terms of the draft legislation. No ceded or other lands administered pursuant to the act of August 25, 1916, providing for national parks, could be conveyed under the proposal. That exception would be in keeping with the special status accorded national park lands by the Congress in excluding them from the current 5-year review of Federal lands in Hawaii and in keeping with the Congress long-established practice of disposing of park lands by special congressional action.

At present, about 410,000 acres under Federal control in Hawaii consist of setaside, ceded, and territorial lands. About 230,000 acres of that total are located in the national parks and most of the remainder in various military installations. As noted above, these lands, except for the national park lands, could only be returned to the State in the event they become surplus.

SAND ISLAND

Section 1 of the draft bill would also authorize the Administrator of General Services to convey to the State of Hawaii without reimbursement any Federal lands on Sand Island and the reef lands connected therewith in the vicinity on Honolulu Harbor which he determines to be surplus. Any conveyances of those lands would be subject to the same procedures applicable to surplus ceded lands.

The State's claim to the land on Sand Island, including the reef lands connected therewith, is based on the contention that the United States acquired title to all of the area through the joint resolution of July 7, 1898, providing for the annexation of the Republic of Hawaii. That resolution, among other things, ceded and transferred to the United States all the public lands, buildings, ports, and other property belonging to the Government of Hawaii. Honolulu Harbor and the adjacent reef lands in which Sand Island is located were generally considered to have been part of that cession.

As noted above, we believe there is full justification for the return to Hawaii of surplus ceded lands.

Sand Island consists of about 550 acres of fast land, the large bulk of which was created by natural and artificial accretion since the annexation of Hawaii. About 125 of those acres have never been claimed by the United States and are now controlled by the Hawaiian Aeronautics Commission pursuant to an executive order of the Governor. Another 202 acres were transferred to the then Territory of Hawaii by the President in Executive Order No. 10833 of August 20, 1959. That conveyance was authorized by the act of August 25, 1958 (72 Stat. 850), which provided that the transfer be without monetary consideration and that the proceeds from the use or disposal of the land be used for the support of the University of Hawaii.

The United States continues to control the remainder of Sand Island and certain adjacent submerged lands. About 261 acres, of which about one-third are submerged, are controlled by the Department of the Army and constitute the Sand Island Military Reservation. The remaining 27 acres under Federal control constitute the Sand Island Coast Guard Base. The Coast Guard has a continuing requirement for its base and an additional requirement for about 19 acres of land currently controlled by the Department of the Army. The remaining 242 acres of the Army reservation are excess to Army needs, and no other Federal need has developed for this area to date.

An Attorney General's opinion of July 18, 1940 (30 Op. Atty. Gen. 460), relative to Sand Island states that it appears probable that Executive Order No. 3358 of November 24, 1920, setting aside lands on Sand Island and Quarantine Island for military purposes, "was issued under the theory that the lands set aside by it were a part of the public lands which belong to the Hawaiian government and which passed to the United States under the joint resolution of annexation. While no authority for action was cited in the 1920 Executive order, the Attorney General stated that it is probable that section 91 of the Hawaiian Organic Act was the basis for action.

If it were certain that Sand Island does consist of ceded land set aside for Federal use, it would be possible now to convey to the State that portion of the land which is no longer needed by the United States. That conveyance could be effected under section 5(e) of the Hawaii Statehood Act which authorizes the return to the State without reimbursement, until August 21, 1964, of ceded lands under Federal control which are determined to be no longer needed by the United States.

Two factors, however, have cast doubt on the possibility of conveying any land on Sand Island to Hawaii under the authority of section 5(e) of the Statehood Act. First, two private corporations claimed title to the Sand Island area at the time of annexation as successors to the interests therein of the William Sumner estate. The private claims to the area were never recognized by the United States or the Territory of Hawaii but were settled in a compromise agreement in 1902 wherein the corporations quitclaimed their interests in the area to the United States in return for receipt of a land patent from the territorial governor confirming their title to the remainder of the Sumner estate. The United States was named grantee in the quitclaim deed because an assistant U.S. attorney general had taken the position that in an exchange of ceded land with private parties in Hawaii, for other than street or road widening or other local purposes, the conveyance should run to the United States rather than the Territory of Hawaii though equitable title to ceded land was in the territory. Second, by means of dredging and filling as well as natural accretions, the fast land in the area has increased from less than 10 acres at the time of annexation to the present size of about 550 acres.

The private claim to the area casts some doubt on the fact that the Sand Island was acquired as part of the cession from the Republic of Hawaii. Further, section 5(i) of the Statehood Act, which applies the Submerged Lands Act of 1953 (67 Stat. 29) to the State of Hawaii, casts doubt on the authority to convey filled lands to Hawaii under section 5(e) of the Statehood Act. Because of those factors, the Department of Justice has concluded that the remaining filled land on Sand Island is not susceptible to conveyance to Hawaii as ceded land under section 5(e) of the Statehood Act. This same doubt resulted in the 1958 act to clarify the authority to convey another part of Sand Island.

We believe that the doubt as to Sand Island's status should be resolved in favor of the State of Hawaii.

PUBLIC TRUST

Section 2 of the draft legislation provides that any conveyances to the State of Hawaii under section 1 shall be considered part of, and subject to the terms and conditions of, the public trust established by section 5(f) of the Hawaii Statehood Act. That trust, which already applies to all the ceded lands returned to Hawaii under provisions of the Statehood Act, requires that the lands involved and the proceeds therefrom shall be held by the State for the support of public schools, betterment of the conditions of native Hawaiians, making of public improvements, and other limited public purposes.

The Bureau of the Budget urges early and favorable consideration of the proposed legislation.

Sincerely,

KERMIT GORDON, *Director.*

[Enclosure]

A BILL To revise the procedures established by the Hawaii Statehood Act, Public Law 86-3, for the conveyance of certain lands to the State of Hawaii, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) (i) whenever after August 21, 1964, any of the public lands and other public property as defined in section 5(g) of Public Law 86-3 (73 Stat. 4, 6), or any lands acquired by the Territory of Hawaii and its subdivisions, which are the property of the United States pursuant to section 5(c) or become the property of the United States pursuant to section 5(d) of Public Law 86-3, except the lands administered pursuant to the Act of August 25, 1916 (39 Stat. 535), as amended, and (ii) whenever any of the lands of the United States on Sand Island, including the reef lands in connection therewith, in the city and county of Honolulu, are determined to be surplus property by the Administrator of General Services (hereinafter referred to as the "Administrator") with the concurrence of the head of the department or agency exercising administration or control over such lands and property, they shall be conveyed to the State of Hawaii by the Administrator subject to the provisions of this Act.

(b) Such lands and property shall be conveyed without monetary consideration, but subject to such other terms and conditions as the Administrator may prescribe: *Provided*, That, as a condition precedent to the conveyance of such lands, the Administrator shall require payment by the State of Hawaii of the estimated fair market value, as determined by the Administrator, of any buildings, structures, and other improvements erected and made on such lands after they were set aside. In the event that the State of Hawaii does not agree to any payment prescribed by the Administrator, he may remove, relocate, and otherwise dispose of any such buildings, structures, and other improvements under other applicable laws, or if the Administrator determines that they cannot be removed without substantial damage to them or the lands containing them, he may dispose of them and the lands involved under other applicable laws, but, in such cases, he shall pay to the State of Hawaii that portion of any proceeds from such disposal which he estimates to be equal to the value of the lands involved. Nothing in this section shall prevent the disposal by the Administrator under other applicable laws of the lands subject to conveyance to the State of Hawaii under this section if the State of Hawaii so chooses.

SEC. 2. Any lands, property, improvements, and proceeds conveyed or paid to the State of Hawaii under section 1 of this Act shall be considered a part of public trust established by section 5(f) of Public Law 86-3, and shall be subject to the terms and conditions of that trust.

SECTION 5, PUBLIC LAW 86-3—MARCH 18, 1959

SEC. 5. (a) Except as provided in subsection (c) of this section, the State of Hawaii and its political subdivisions, as the case may be, shall succeed to the title of the Territory of Hawaii and its subdivisions in those lands and other properties in which the Territory and its subdivisions now hold title.

(b) Except as provided in subsection (c) and (d) of this section, the United States grants to the State of Hawaii, effective upon its admission into the Union, the United States' title to all the public lands and other public property within the boundaries of the State of Hawaii, title to which is held by the United States immediately prior to its admission into the Union. The grant hereby made shall be in lieu of any and all grants provided for new States by provisions of law other than this Act, and such grants shall not extend to the State of Hawaii.

(c) Any lands and other properties that, on the date Hawaii is admitted into the Union, are set aside pursuant to law for the use of the United States under any (1) Act of Congress, (2) Executive order, (3) proclamation of the President, or (4) proclamation of the Governor of Hawaii shall remain the property of the United States subject only to the limitations, if any, imposed under (1), (2), (3), or (4), as the case may be.

(d) Any public lands or other public property that is conveyed to the State of Hawaii by subsection (b) of this section but that, immediately prior to the admission of said State into the Union, is controlled by the United States pur-

suant to permit, license, or permission, written or verbal, from the Territory of Hawaii or any department thereof may, at any time during the five years following the admission of Hawaii into the Union, be set aside by Act of Congress or by Executive order of the President, made pursuant to law, for the use of the United States, and the lands or property so set aside shall, subject only to valid rights then existing, be the property of the United States.

(e) Within five years from the date Hawaii is admitted into the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to subsections (c) and (d) of this section shall report to the President the facts regarding its continued need for such land or property, and if the President determines that the land or property is no longer needed by the United States it shall be conveyed to the State of Hawaii.

(f) The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States. The schools and other educational institutions supported, in whole or in part, out of such public trust shall forever remain under the exclusive control of said State; and no part of the proceeds or income from the lands granted under this Act shall be used for the support of any sectarian or denominational school, college, or university.

(g) As used in this Act, the term "lands and other properties" includes public lands and other public property, and the term "public lands and other public property" means, and is limited to, the lands and properties that were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation approved July 7, 1898 (30 Stat. 750), or that have been acquired in exchange for lands or properties so ceded.

(h) All laws of the United States reserving to the United States the free use or enjoyment of property which vests in or is conveyed to the State of Hawaii or its political subdivisions pursuant to subsection (a), (b), or (e) of this section or reserving the right to alter, amend, or repeal laws relating thereto shall cease to be effective upon the admission of the State of Hawaii into the Union.

(i) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) and the Outer Continental Shelf Lands Act of 1953 (Public Law 212, Eighty-third Congress, first session, 67 Stat. 462) shall be applicable to the State of Hawaii, and the said State shall have the same rights as do existing States thereunder.

[S. Rept. No. 594, 88th Cong., 1st sess.]

The Committee on the Judiciary, to which was referred the bill (S. 1396) to consent to the institution of an original action in the Supreme Court for the adjudication of the claim of the State of Hawaii to certain land and property situated within that State, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this proposed legislation is to consent to the institution of an original action in the Supreme Court for the adjudication of the claim of the State of Hawaii to certain land and property situated within that State.

STATEMENT

Section 5 of the Hawaiian Statehood Act (73 Stat. 4), contains various and sundry provisions in regard to the title of property; land grants; reservation of lands; public school support, and submerged lands. Section 5(e) provides that within 5 years from the date Hawaii is admitted to the Union, Federal agencies

having control over land or property retained under paragraphs 5 (c) and (d) of the act shall report to the President as to the "continued need for such land or property, and if the President determines that the land or property is no longer needed by the United States, it shall be conveyed to the State of Hawaii." The President designated the Director of the Bureau of the Budget to perform his function thereunder. A controversy arose between the State of Hawaii and the Director of the Budget in regard to a certain 203 acres of land in Hawaii acquired by the United States through condemnation. The Director, relying on an opinion of the Attorney General (42 Op. Atty. Gen. No. 4) concluded, and so advised Federal agencies, that the lands referred to in paragraph 5(e) did not include lands obtained by the United States through purchase, condemnation, or gift, but are limited to lands which at one time belonged to Hawaii and were ceded to the United States or acquired in exchange therefor. Hawaii claimed that the lands referred to in paragraph 5(e) were of a nature that required the Federal agencies to advise the President as to whether or not the land was no longer needed by the United States and that on the basis of this determination it would be required by the statute that the land or property be conveyed to the State of Hawaii.

Differences of opinion existed between various executive departments as to the proper interpretation and the congressional intent involved in the language of section 5(e). Prior to the issuance of the Attorney General's opinion previously referred to, opinions of the Department of Defense and the General Services Administration supported the position adopted by the Attorney General and relied upon by the Director of the Budget. The opinion of the Associate Solicitor of the Department of the Interior for Territories, Wildlife, and Parks, and a memorandum from the attorney general of Hawaii supported the view that section 5(e) of the Statehood Act extended to "any" land or property.

The State of Hawaii, in an attempt to resolve the dispute, filed an original action in the Supreme Court of the United States against Kermit Gordon, the Director of the Bureau of the Budget. The Supreme Court, in a per curiam opinion rendered on April 29, 1963 (373 U.S. 57), dismissed the complaint on the ground that, in the absence of its consent, this is a suit against the United States and cannot be maintained by the State. It adhered to the general rule that relief sought nominally against an officer is, in fact, against the sovereign if the decree would operate against the latter. This bill would give the required consent and permit the State of Hawaii to entertain this suit in the Supreme Court and have a final judicial determination as to the proper application of section 5(e) of the Hawaiian Statehood Act. The committee is of the opinion that it is only fair and right that the State of Hawaii should be entitled to its day in court. Since honest differences of opinion did exist within executive branches of the Government, it is only fair and proper that they should be subjected to a judicial determination. It is, therefore, recommended that S. 1396 be favorably considered.

Attached hereto and made a part hereof is a communication from the Department of Justice dated August 20, 1963, opposing the enactment of the bill. Also attached hereto and made a part hereof is the per curiam decision of the U.S. Supreme Court in the case of *State of Hawaii, Plaintiff, v. Kermit Gordon*.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 20, 1963.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on the bill (S. 1396) to consent to the institution of an original action in the Supreme Court for the adjudication of the claim of the State of Hawaii to certain land and property situated within that State.

The bill would grant consent "to the institution and maintenance by the State of Hawaii of an original action in the Supreme Court" for the adjudication of claims advanced by that State with respect to the interpretation of section 5 of the Hawaii Statehood Act. The bill contains a provision that it shall not be construed as "an admission of any obligation on the part of the United States or any department or agency thereof to convey to the State of Hawaii any land or property."

This bill is apparently a response to the recent decision of the Supreme Court of the United States in *State of Hawaii v. Gordon* (373 U.S. 57), which dis-

missed for lack of jurisdiction a complaint filed by the State of Hawaii to determine its interest in certain surplus property owned by the United States in Hawaii. The litigation arose over differences as to the appropriate interpretation of section 5(e) of the Hawaii Statehood Act (73 Stat. 4).

Section 5(e) of the act provides that within 5 years after the admission of Hawaii into the Union, Federal agencies having control over certain types of Federal land or property shall report to the President whether this land or property is still needed by the Government, and that, if the President determines that the land or property is no longer needed, it shall be conveyed to the State of Hawaii.

The President delegated his duties under this section to the Director of the Bureau of the Budget. A dispute arose between the United States and the State of Hawaii as to whether section 5(e) covered only land or property which originally had belonged to the Republic of Hawaii and been transferred to the United States at the time of its annexation, or whether it included after-acquired land or property; i.e., land or property subsequently acquired by the United States by way of purchase, condemnation, or gift. On the basis of an opinion of the Attorney General dated June 12, 1961 (No. 4, 42 Op. Atty. Gen.), the Director of the Bureau of the Budget ruled that the after-acquired land or property of the United States was not covered by section 5(e) and instructed the agencies affected not to submit any reports regarding such land or property.

The State of Hawaii thereupon instituted an original action in the Supreme Court of the United States against the Director of the Bureau of the Budget, seeking an order directing him to withdraw his advice, to determine whether certain after-acquired land or property was still needed by the United States and to convey it to the State of Hawaii if he determined it was not needed. The Supreme Court, as indicated above, held that the action, although nominally directed against the Director of the Bureau of the Budget, actually was a suit against the United States, to which the latter had not consented, and therefore dismissed the proceedings for lack of jurisdiction.

The language and the legislative history of the Hawaii Statehood Act do not support the claim of the State of Hawaii and it is our view that if this legislation is enacted the State of Hawaii could not prevail in the courts. Accordingly, since it would appear that no useful purpose would be served by providing a judicial forum for the disposition of the dispute, the Department of Justice is opposed to the enactment of the bill.

However, it is suggested that if the Congress feels that as an equitable matter Hawaii should be given some of the excess after-acquired land or property, then it would seem the appropriate course would be to enact substantive legislation so providing, rather than to enact legislation authorizing the Supreme Court to determine whether it has done so. This is particularly so in the light of the equivocal legislative history of the Hawaii Omnibus Act (74 Stat. 411). In the report of the House Committee on Interior and Insular Affairs (H. Rept. 1564, 86th Cong., 2d sess., pp. 3-4) the following statement appears relative to section 5(e) of the Hawaii Statehood Act: "The committee takes this opportunity to make clear that subsection (e)'s reference to 'land or property that is retained by the United States' includes, in some cases (namely, those covered by subsec. (c)), all land whether it falls within the definition of public land given in the act or not and, in other cases (namely, those covered by subsec. (d)), only public land as that term is there defined." This statement is counterbalanced by the following statement appearing in the report of the Senate Committee on Interior and Insular Affairs on this legislation (S. Rept. 1681, 86th Cong., 2d sess., p. 4): "The committee considered possible interpretations of section 5(e) of the Hawaii Statehood Act of 1959. No interpretation is offered at this time. The sense of the committee is that the factors involved are too complex to be considered within the time available and require independent consideration at a later date."

It is suggested that consideration of legislation waiving immunity from suit, in order to be effective, also would require an amendment of section 5(e) of the Hawaii Statehood Act since the reporting process is time consuming and the time within which agencies must submit their reports thereunder expires August 20, 1964.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

SUPREME COURT OF THE UNITED STATES

No. 12 ORIGINAL.—OCTOBER TERM, 1962.

ON BILL OF COMPLAINT

State of Hawaii, Plaintiff, v. Kermit Gordon.

[April 29, 1963.]

PER CURIAM.

Section 5(e) of the Hawaii Statehood Act, 73 Stat. 4, 48 U.S.C. (Supp. II, 1960), pp. 1257-1261, provides that within five years from the date Hawaii is admitted to the Union federal agencies having control over land or properties retained by the United States under § 5 (c) and (d) of the Act shall report to the President as to the "continued need for such land or property and if the President determines that the land or property is no longer needed by the United States it shall be conveyed to the State of Hawaii." The President designated the Director of the Bureau of the Budget to perform his functions thereunder. The Director thereafter, pursuant to an opinion of the Attorney General, 42 Op. Atty. Gen. (No. 4), concluded, and so advised federal agencies, that the lands referred to in § 5(e) do not include lands obtained by the United States through purchase, condemnation or gift but are limited to lands which at one time belonged to Hawaii and were ceded to the United States or acquired in exchange therefor.

Hawaii filed this original action against the Director, under Art. III, § 2, of the Constitution of the United States, seeking to obtain an order requiring him to withdraw this advice to the federal agencies, determine whether a certain 203 acres of land in Hawaii acquired by the United States through condemnation was land or properties "needed by the United States" and, if not needed, to convey this land to Hawaii. We have concluded that this is a suit against the United States and, absent its consent, cannot be maintained by the State. The general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter. *E.g., Dugan v. Rank*, 372 U.S. 609 (1963); *Malone v. Bowdoin*, 369 U.S. 643 (1962); *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682 (1949). Here the order requested would require the Director's official affirmative action, affect the public administration of government agencies and cause as well the disposition of property admittedly belonging to the United States. The complaint is therefore dismissed. *Oregon v. Hitchcock*, 202 U.S. 60 (1906).

Dismissed.

MR. JUSTICE WHITE took no part in the consideration or decision of this case.

Senator BIBLE. We will stand in adjournment.

(Whereupon, at 11:15 a.m., the subcommittee was adjourned.)

