

73d Congress }  
1st Session }

SENATE COMMITTEE PRINT

# TERRITORY OF HAWAII

---

REPORT OF THE JOINT LEGISLATIVE COMMITTEE  
APPOINTED IN ACCORDANCE WITH HOUSE CON-  
CURRENT RESOLUTION No. 11, LEGISLATURE OF  
THE TERRITORY OF HAWAII, IN CONNECTION WITH  
REPORT OF HON. SETH W. RICHARDSON,  
ASSISTANT UNITED STATES  
ATTORNEY GENERAL



53863

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

---

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1932

TERRITORY OF HAWAII

REPORT OF THE JOINT COMMITTEE APPOINTED IN ACCORDANCE WITH THE CURRENT RESOLUTION OF THE TERRITORY OF HAWAII, CONCERNING THE REPORT OF HON. SETH W. BINGHAM, ASSISTANT UNITED STATES

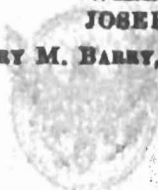
COMMITTEE ON TERRITORIES AND INSULAR AFFAIRS

HIRAM BINGHAM, Connecticut, Chairman

- |                                 |                                |
|---------------------------------|--------------------------------|
| HIRAM W. JOHNSON, California.   | KEY PITTMAN, Nevada.           |
| ARTHUR R. ROBINSON, Indiana.    | EDWIN S. BROUSSARD, Louisiana. |
| GERALD P. NYE, North Dakota.    | CARL HAYDEN, Arizona.          |
| JESSE H. METCALF, Rhode Island. | MILLARD E. TYDINGS, Maryland.  |
| ARTHUR H. VANDENBERG, Michigan. | HARRY B. HAWES, Missouri.      |
| BRONSON CUTTING, New Mexico.    | WILLIAM H. KING, Utah.         |
| CHARLES L. McNARY, Oregon.      | JOSEPH T. ROBINSON, Arkansas.  |

HENRY M. BARRY, Clerk

ii



# TERRITORY OF HAWAII

## REPORT OF JOINT LEGISLATIVE COMMITTEE APPOINTED IN ACCORDANCE WITH HOUSE CONCURRENT RESOLUTION NO. 11, IN CONNECTION WITH REPORT OF HON. SETH W. RICHARDSON, ASSISTANT UNITED STATES ATTORNEY GENERAL

HONOLULU, HAWAII, *June 3, 1932.*

*To the Legislature of the Territory of Hawaii.*

GENTLEMEN: The joint committee of the Senate and House of Representatives of the Territory of Hawaii, second special session of 1932, appointed pursuant to the terms of House Concurrent Resolution No. 11, and acting under the terms of this resolution and also under the terms of House Concurrent Resolution No. 14, reports as follows:

That at its first meeting the committee appointed Hon. Roy A. Vitousek its chairman and Hon. Robert W. Shingle its vice chairman.

That, pursuant to the suggestion of Hon. Victor S. K. Houston, your committee decided to study separately each bill affecting the rights and privileges now enjoyed by the people of this Territory, introduced in the Senate of the United States in accordance with recommendations contained in a report submitted to said Senate by the Attorney General of the United States, which report was made pursuant to a resolution of said Senate. (S. Res. No. 134.)

Your committee ascertained that the following bills had been introduced in accordance with the recommendations contained in said report:

1. Senate bill No. 4309, entitled: "A bill to provide for the appointment by the President of the United States of an attorney general in and for the Territory of Hawaii, and defining the duties of such official."

2. Senate bill No. 4310, entitled: "A bill to provide for the appointment by the President of the United States of America of a high sheriff in and for the Territory of Hawaii and to prescribe his powers and duties."

3. Senate bill No. 4311, entitled: "A bill to consolidate the territorial and federal courts and administration in the Territory of Hawaii."

4. Senate bill No. 4312, entitled: "A bill to permit the removal of officers appointed by the Governor of the Territory of Hawaii, without the advice and consent of the senate of the Territory of Hawaii, and to withdraw from the Governor of the Territory of Hawaii the power to appoint the attorney general and the high sheriff, and for other purposes."

5. Senate bill No. 4313, entitled: "A bill to prevent the successive disagreement of two juries, impaneled to try a criminal case in the Territory of Hawaii, from operating as an acquittal of the accused or from permitting the discharge of the accused from custody."

6. Senate bill No. 4314, entitled: "A bill to authorize judges of the circuit court of the Territory of Hawaii to comment upon the testimony in actions on trial in said courts."

7. Senate bill No. 4315, entitled: "A bill to provide for the reapportionment of the representation in the house of representatives of the Territory of Hawaii."

8. Senate bill No. 4374, entitled: "A bill to empower the superintendent of the Hawaii National Park to perform the functions now performed by the United States commissioner for the said national park, and for other purposes."



9. Senate bill No. 4375, entitled: "A bill to remove residence and citizenship qualifications to appointment to office in the Territory of Hawaii."

Senate bill No. 4374 relates to the national park and consequently affects the rights of the people only incidentally and so we decided not to study it.

Senate bill Nos. 4313 and 4314 were not submitted to the public for the reason that the legislature has already acted thereon. We will hereinafter more fully take up those bills.

The joint committee at an early meeting authorized the chairman to appoint subcommittees, and the chairman appointed a subcommittee consisting of Senators Robert W. Shingle, Joseph L. Sylva, and Ernest A. K. Akina, and Representatives Roy A. Vitousek, Albert K. Akana, and Eugene H. Beebe for the purpose of ascertaining the wishes of the public in regard to the bills.

This subcommittee sent out a questionnaire, together with copies of all bills, except bills 4313, 4314, 4374, and 4375, to a list of representative citizens throughout the Territory. In all, 600 questionnaires were sent out and 160 replies were received. In addition to the questionnaires, a number of representative citizens on the islands of Oahu, Maui, and Hawaii were called before the subcommittee at hearings open to the public; and their statements in regard to the bills were secured. Public hearings were held on the island of Hawaii at which any interested person was given the opportunity to speak in regard to the bills.

#### PEOPLE FOR HOME RULE

While the opinions of the citizens were fully and freely given and differed in many respects as to what changes should be made in the laws of the Territory, all of the citizens heard from opposed any action by Congress except where action could not legally be taken locally. In other words, of the citizens questioned, by far the greater majority were of the belief that our local law-making bodies should be let alone to work out the problems confronting the people of these islands.

#### STEPS TAKEN BY LEGISLATURE PRIOR TO ACTIVE INTEREST BY CONGRESS IN TERRITORIAL AFFAIRS

During the last few strenuous months, it has frequently been charged that the steps taken by the legislature in the first and second special sessions of 1932, looking toward the improvement of law enforcement agencies, were taken through fear of action by Congress. No doubt some legislators were acting for that reason, but we believe that the majority of the legislators supporting such measures did so because they believed them to be fundamentally sound and for the best interests of the people and steps toward an improved system of government.

But rather than discuss the action taken by the special sessions of 1932, it might be a better answer to the local and mainland critics of our efforts to meet the many problems confronting us, to show what has been done during the last few years.

**Jury system:** In 1921, the legislature changed the law regarding the selection of jurors and from a system of practically professional



jurors, with all the evils attendant thereto, inaugurated a system that Hon. Seth W. Richardson and his Federal investigators found little fault with.

**Education:** Much has been said and written concerning the problem of so educating the youths of this Territory that they will properly fit into our economic scheme of existence. The legislature early saw the difficulties of the situation and realized that in order to meet them there should be cooperation between our main industries and our public schools. In order to bring this about, the legislature, in 1929, provided a holdover committee to study the problem and as a result of the recommendations of this committee and of our citizens working with the governor, in 1931, provided by law for a change in the powers of the board of commissioners of education in order to give them the control and supervision of the public-school system. It was the hope of the legislature that this board, composed as it should be and is, of representative business men, would bring about the desired cooperation between the schools and our industries, whereby the youths would be educated to take a place in our industries and our industries would be made more attractive for our youths. It is far too soon to look for results, but at least our legislature recognized the problem and endeavored to meet it.

**Prisons and prisoners:** In 1930, the Governor of Hawaii appointed a crime commission to study crime problems and make recommendations, which commission, among other things, recommended a complete change in the administration of the Territorial prison and in the method of sentencing those convicted of crime; this the commission proposed be accomplished by the creation of a board of prison directors who should not only be given supervision of the prison but also of the fixing (subject to final approval by the trial judge) of minimum sentences and also of the parole of prisoners. The acts to accomplish the recommended change were passed by the 1931 legislature, and it was this board which reorganized the prison and, prior to the arrival of Mr. Richardson in Hawaii, had removed the "laxness" of which he complained.

During the special sessions of 1932, the powers of the said board were further increased and they were given the right to appoint and remove the warden of the prison.

**Police system in Honolulu:** The same crime commission recommended a bill providing for an appointed police commission to have control of the police department of Honolulu. (It had previously been in charge of an elected sheriff.) The bill was introduced in the 1931 legislature but failed to pass. After the Ala Moana case, a determined effort was made by members of the legislature, by the governor, and others to have the act passed at a special session; and prior to the Kahahawai killing enough votes had been secured to assure its passage.

**Nolle prosequi:** Prior to 1931, the public prosecutors had the absolute right to enter a nolle prosequi at any time, before the jury was impaneled and sworn. This it had been charged had been repeatedly and greatly abused by the public prosecutors of the Territory and provided an additional means whereby political favors could be granted.

The legislature in 1931 passed an act requiring the public prosecutor to state his reasons for entering a nolle prosequi and providing that it could only be entered with the approval of the court and gave the

court authority to appoint a special prosecutor in cases where it felt that the ends of justice required such appointment. This legislation was enacted on the recommendation of the same crime commission.

Probation system: In 1931, the crime commission recommended to the governor and the legislature, and the legislature enacted, a law permitting the judges to place a defendant on probation with or without fine and at the same time requiring him to be carefully supervised by a probation officer appointed by the judge, and providing that at any time during the period of probation the defendant could, on violating the conditions of his probation, be committed to prison. This law was largely modeled on the Federal statute in that regard which apparently has proved very successful.

Appeals: The courts of the Territory have never been far behind in their criminal cases but, in order to further speed up criminal procedure, the legislature, in 1931, cut down the period for suing out writs of error in criminal cases to 90 days instead of six months, as had been previously allowed, and under the laws as they now exist there can be no great delay in the hearing of criminal cases on appeal unless with the consent of court and prosecuting officer.

Criminal procedure: The crime commission previously mentioned at its hearings called before it many mainland visitors of experience to speak upon modern criminal procedure, and in practically every instance it was found there was already in existence upon the statute books the laws recommended by these visitors.

#### RELATIONS WITH THE FEDERAL GOVERNMENT AND ITS INSTRUMENTALITIES

We appreciate fully that our present organic act was passed by Congress and that, naturally, Congress has a very keen interest in the welfare of the Territory. We realize fully the importance of the Hawaiian Islands in the defense of the Pacific coast of the mainland of the United States. We hope that people on the mainland of the United States will realize that this important outpost in their defense was not conquered or purchased but, while a free and independent nation, by its own action, became annexed to the United States.

We appreciate the importance of cordial and friendly relations with the Army and Navy in our midst and have always thought such relations existed. Hardly a civil governmental activity is carried on without having regard for the service units that are here. We build our roads to suit the needs of national defense, at great expense; we provide schools especially to meet the requirements of the Army and Navy. We make special agreements with them in regard to handling those in the service who unfortunately run afoul of our laws. We welcome them into our social life. On the whole, we present a long record of the most friendly relations with the service personnel. We do not feel antagonistic to Congress and appreciate the interest Congress takes in our welfare; and we welcome suggestions made to us for changes in our government.

We also appreciate that we are unique in our problems. We are a people of many races, radically different in ancestral background, but living happily together and mutually working for the amalgamation of all into one body politic. We believe we are successfully solving

our many racial problems. We do not mind investigations, but rather do we welcome them.

PENDING BILLS IN CONGRESS

We have endeavored to give close study to each of the said bills introduced in the Senate, with a view to endorsing what is good and what our citizens desire, and opposing what is not for the welfare of our people, and what is not desired by our citizens. We will take up each bill separately.

[S. 4309, Seventy-second Congress, first session]

A BILL To provide for the appointment by the President of the United States of an attorney general in and for the Territory of Hawaii, and defining the duties of such official

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the attorney general of the Territory of Hawaii shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and shall hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President, and his salary is hereby fixed at \$9,000 per year, to be paid by the United States of America.

Sec. 2. That the said attorney general shall appear for the Territory, personally or by deputy, in all the courts of the Territory, and in all cases or proceedings, civil or criminal, in which the Territory may be a party or be interested; and the said attorney general or his duly appointed deputies shall have complete and exclusive charge of the interests of the said Territory of Hawaii in the said cases or proceedings in the said courts, and no person shall appear in the said cases or proceedings in the Territory, on behalf of the Territory of Hawaii, except with the consent and approval of the said attorney general.

Sec. 3. Said attorney general shall have and possess all of the rights and powers now granted by law to the attorney general of the Territory of Hawaii not inconsistent herewith, together with such further additional rights and powers as may be hereafter granted by the United States or the Territory of Hawaii. The attorney general shall have the authority to appoint such deputies as he shall deem necessary for the proper dispatch of the public business and shall have the authority to dismiss such deputies.

Sec. 4. The Territory of Hawaii is hereby authorized and directed to make and provide the necessary appropriations for carrying out the provisions of this act, and any and all territorial or county or city and county funds on hand or heretofore appropriated for or in connection with the maintenance or prosecution of cases or proceedings in which the Territory is a party or has an interest in the courts of the Territory, or with respect to the existing salaries of the present attorney general or his deputies, and the various county attorneys or public prosecutors within the Territory, shall be available for the purpose of carrying this act into effect.

Sec. 5. No person shall be appointed to the position of attorney general or other offices mentioned herein who is not a citizen of the United States of America.

Sec. 6. No restrictions now imposed by law with respect to citizenship in or place or length of residence within the Territory of Hawaii or persons eligible to appointment to office in the said Territory shall apply to appointments made pursuant to this act.

Sec. 7. This act shall take effect and be in force sixty days after its approval by the President.

Sec. 8. All acts or parts of acts, either Federal or territorial, in conflict herewith are hereby repealed.

Senate bill No. 4309 provides for the appointment by the President of the United States of an attorney general for the Territory of Hawaii. It further provides that the appointee need not be a resident of the Territory nor a citizen thereof.

In this bill the attorney general is given complete and exclusive charge of all cases or proceedings, civil or criminal, in which the



Territory may be a party or be interested. He is also given the power, among others, to appoint such deputies as he may deem necessary. The Territory is directed to make and provide the necessary appropriations for carrying out the provisions of the bill.

The views of many citizens of the Territory were obtained as to the advisability of this proposed legislation, and by far the greater majority of them, including two former governors, were opposed to the enactment of the same. Some of the views expressed in opposition to the bill were that it would result in a divided authority and responsibility; that the attorney general, being the confidential legal advisor of the governor on all matters of law pertaining to the government, of both a criminal and civil nature, should be the personal appointee of the governor; and that the attorney general should be a resident of the Territory well versed in the Hawaiian laws and customs.

Your committee is in accord with these views. It feels that greater concentration of power and responsibility should be placed upon the governor and, in order to assure full cooperation from the subordinate officers of the government, he should be responsible for their appointment to office and for their retention in office.

In this connection, the governor should be given full power to dismiss any such officer without the approval of the Senate of the Territory, and appropriate legislation in this regard is recommended by your committee in another part of this report. In order to assure the appointment of one familiar with the laws and customs peculiar to Hawaii, your committee is of the opinion that no one should be appointed as attorney general unless he shall have been a resident of the Territory for a definite length of time.

Your committee, therefore, recommends that the legislature go on record as being opposed to the passage of this bill.

[S. 4310, Seventy-second Congress, first session]

**A BILL** To provide for the appointment by the President of the United States of America of a high sheriff in and for the Territory of Hawaii and to prescribe his powers and duties

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the high sheriff of the Territory of Hawaii shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and shall hold his office for a term of four years and until his successor shall be appointed and qualified, unless sooner removed by the President, and his salary shall be fixed at \$9,000 per annum, to be paid by the United States of America.

**Sec. 2.** The high sheriff shall be the chief of police in and for the Territory of Hawaii and shall have the exclusive supervision and control of all county sheriffs, city and county sheriffs, deputy sheriffs, and all Territorial, county, and city and county peace officers, employees, clerks, or members of each and every Territorial, county, and city and county police force in the Territory of Hawaii, with the power to appoint and/or dismiss any such persons and fix salaries therefor. The high sheriff in the exercise of his duties under this act, shall have control of and authority over all publicly owned property, equipment, police apparatus, and records now possessed by or under the control of any county sheriff, city and county sheriff, police commission, chief of police, or existing public police force.

**Sec. 3.** The high sheriff shall assume all powers, rights, and duties now or hereafter granted by law to the various county sheriffs of the Territory of Hawaii and the city and county sheriff and police commission and chief of police of the city and county of Honolulu, and the term, office, and incumbency of existing county sheriffs of the Territory and the city and county sheriff and the police commission and chief of police of the city and county of Honolulu shall cease and terminate upon the taking effect of this act. Any and all provisions of law relating to the election of county sheriffs and city and county sheriffs are hereby repealed.

SEC. 4. The high sheriff is hereby authorized and empowered to appoint one sheriff in each county and city and county of the Territory of Hawaii, and such appointed sheriffs shall be responsible directly to and under the control of and hold office subject to removal by the high sheriff.

SEC. 5. The said appointed sheriffs, subject to the control of the high sheriff, shall have the supervision and control of the police within their respective jurisdictions and the care and control of the county jails and city and county jails and persons committed thereto and the exercise of other duties and powers now or hereafter granted by the Legislature of the Territory of Hawaii to the various county sheriffs or city and county sheriffs of the said Territory which are not inconsistent or in conflict with the provisions of this act.

SEC. 6. The high sheriff shall possess all the rights and powers now granted by law to the high sheriff of the Territory of Hawaii not inconsistent with the powers granted herein and save and except that the said high sheriff or appointed sheriffs shall not have charge, custody, or control of any Territorial jail, house of correction, or penitentiary, or the care and custody of any of the prisoners confined therein. The term and office of the high sheriff as now existing under Territorial law shall terminate upon the taking effect of this act.

SEC. 7. The high sheriff shall have the power and he is hereby authorized to serve and execute any and all civil and criminal process within the Territory of Hawaii.

SEC. 8. The high sheriff shall appoint and fix the salary for a deputy high sheriff who in the absence of the high sheriff shall exercise the duties of the high sheriff. The high sheriff is authorized to appoint and fix the salaries for such other deputy or deputies high sheriff as he may deem necessary to assist him in the proper administration of his duties under this act.

SEC. 9. It shall be the duty of the high sheriff, upon the taking effect of this act, to proceed at once to organize and administer the police and peace officers within the Territory of Hawaii so as properly to police the said Territory. He shall submit annually to the Secretary of the Interior of the United States of America a detailed report concerning law enforcement and police administration in the Territory of Hawaii, and within two years from the date of the approval of this act shall report to the Congress of the United States concerning police administration in the said Territory, and submit recommendations for such legislation as he may deem desirable in the interest of more uniform, efficient, and effective police administration in the Territory of Hawaii.

SEC. 10. The Legislature of the Territory of Hawaii shall appropriate such sums of money as may be necessary to fulfill the intention of this act and provide for adequate police administration and organization in the Territory of Hawaii, and all Territorial, county, or city and county funds now on hand or now appropriated and available for or applicable to the policing of the said Territory, or any part thereof, shall be available for the purpose of carrying this act into effect.

SEC. 11. No person shall be appointed to the position of high sheriff or other offices mentioned herein who is not a citizen of the United States of America.

SEC. 12. No restrictions now imposed by law with respect to citizenship in or place or length of residence within the Territory of Hawaii of persons eligible to appointment to office in the said Territory shall apply to appointments made pursuant to this act.

SEC. 13. Any person employed in the police force of any county, or city and county, of the Territory of Hawaii immediately prior to the taking effect of this act and not continued in employment by the high sheriff, and who would have been entitled to a pension under any Territorial law if dismissed from service immediately prior to the effective date of this act, shall be entitled to receive such pension as he would have been entitled to receive had he been so dismissed.

SEC. 14. This act shall take effect and be in force ninety days after its approval by the President: *Provided*, That the high sheriff may be appointed at any time after the approval of this act by the President: *Provided further*, That the high sheriff may make appointments of deputy high sheriffs, county, and city and county sheriffs, deputy sheriffs, police officers, and employees prior to the effective date of this act, which appointments shall take effect upon that date: *And provided further*, That if no high sheriff has been duly appointed and qualified within ninety days after the approval of this act by the President, this act shall not take effect until thirty days after a high sheriff has been duly appointed and qualified.

SEC. 15. Any and all Federal or Territorial laws or parts thereof inconsistent or in conflict with the provisions hereof are hereby rescinded.



Senate bill No. 4310 provides for the appointment by the President of the United States of a high sheriff for the Territory of Hawaii, and also provides that the appointee need not be a resident of the Territory nor a citizen thereof. In this bill, he is made the chief of police for the Territory and is given exclusive supervision and control of all county sheriffs, city and county sheriffs, deputy sheriffs, and all Territorial, county and city, and county peace officers, employees, clerks, or members of each and every Territorial, county or city, and county police force.

It also provides for the termination of all existing police agencies and for the repeal of all laws relating to the election of county sheriffs and city and county sheriff. In short, under this bill, the entire police administration of the Territory is placed exclusively in the hands of the high sheriff. The Territory is directed to provide the necessary appropriations required for this office.

A large number of the citizens of the Territory were called upon by your committee to express their views as to the necessity and advisability of this proposed legislation, and an overwhelming majority was definitely opposed to the same.

Your committee feels that this proposed legislation is unnecessary. As already pointed out in this report, much legislation has already been enacted by this legislature tending toward the improvement of the administration and enforcement of law and order as a matter of local responsibility and so far nothing definite has been shown whereby the people of the Territory should be relieved of that responsibility.

Your committee accordingly recommends that this legislature go on record as being opposed to the passage of this bill.

[S. 4311, Seventy-second Congress, first session]

A BILL To consolidate the Territorial and Federal courts and administration in the Territory of Hawaii

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is hereby conferred upon the circuit courts of the Territory of Hawaii, each within the Territory as now or hereafter fixed by law, within which it exercises jurisdiction, in addition to the jurisdiction now possessed by the said courts, the jurisdiction now possessed by the District Court of Hawaii.

SEC. 2. Any and all jurisdiction now possessed by the Circuit Court of Appeals for the Ninth Circuit over or in connection with the District Court of the Territory of Hawaii and the Supreme Court of the Territory of Hawaii is hereby withdrawn and is conferred upon the Supreme Court of the Territory of Hawaii to be exercised over or in connection with the circuit courts of the Territory of Hawaii; and in all matters arising within the Territory of Hawaii under the Constitution or laws of the United States there is hereby granted the same right of review by the Supreme Court of the Territory of Hawaii of the decisions of the circuit courts of Hawaii as now exists of review by the Ninth Circuit Court of Appeals of the decisions of the District Court of Hawaii.

SEC. 3. The judges of the circuit courts of the Territory of Hawaii shall have and exercise in the Territory of Hawaii all the powers and duties now conferred and imposed by the Constitution or laws of the United States upon judges of the district courts of the United States. The present incumbents of the office of United States district judge in and for the Territory of Hawaii shall, for the unexpired portions of the terms for which they are now appointed, be styled as "judges of the circuit court of the Territory of Hawaii for the first circuit" and shall hereafter act as judges of such first circuit court of the Territory of Hawaii and shall have, in addition to their present jurisdiction as judges of the district court, the same rights, powers, duties, and jurisdiction as now conferred and imposed by law upon the judges of the circuit courts of the Territory of Hawaii.

SEC. 4. Upon the expiration of the term of the district judge whose term shall first hereafter expire, the vacancy so created shall not be filled, but upon the expiration of the term of the remaining district judge such latter vacancy shall be



filled as a circuit court vacancy in the same manner as provided by law for the appointment of the judges of the circuit court of the Territory of Hawaii.

Sec. 5. From and after the expiration of the present terms of office of both of the two present district judges in and for the Territory of Hawaii the salary of each and every judge of the circuit court of the Territory shall be at the rate of \$9,000 per annum and shall be paid by the United States.

Sec. 6. Upon the taking effect of this act the circuit court of the first circuit of the Territory of Hawaii shall consist of the present judges of the circuit court of the first circuit, together with the two present judges of the district court, subject to the provisions of section 4 of this act; and that one of the judges of the said circuit court of the first circuit who is senior in commission shall be, and shall be known and styled as, "presiding judge of the circuit court of the first circuit of the Territory of Hawaii."

Sec. 7. The presiding judge of the circuit court of the first circuit of the Territory of Hawaii shall be, and he is hereby, empowered to make such assignment of cases and court business among the several judges of that court as to him shall seem advisable and proper.

Sec. 8. All offices and tenures of United States commissioners in the Territory of Hawaii and the offices and tenures of the clerk of the district court of the Territory of Hawaii, the United States attorney for the Territory of Hawaii, and the United States marshal for the Territory of Hawaii are hereby terminated and abated. All duties, powers, and authority now conferred or imposed by law upon United States commissioners in the Territory of Hawaii are hereby conferred and imposed upon the district magistrates of the Territory of Hawaii. All duties, powers, and authority now conferred or imposed by law upon the clerk of the district court of Hawaii are hereby conferred and imposed upon the clerks of the circuit courts of the Territory of Hawaii. All duties, powers, and authority now conferred or imposed by law upon the United States attorney for the Territory of Hawaii are hereby conferred and imposed upon the attorney general of the Territory of Hawaii. All duties, powers, and authority now conferred or imposed by law upon the United States marshal for the Territory of Hawaii are hereby conferred and imposed upon the high sheriff of the Territory of Hawaii.

Sec. 9. No restrictions now imposed by law with respect to citizenship in or place or length of residence within the Territory of Hawaii of persons eligible to appointment to office in the said Territory shall apply to appointments made pursuant to this act.

Sec. 10. In the same manner and form as now provided by law, reviews may be had in the Supreme Court of the United States of the decisions of the Supreme Court of Hawaii, in all cases of which the district court of Hawaii now has jurisdiction and in which a review of the decisions of the circuit court of appeals for the ninth circuit may be had in the Supreme Court of the United States, with the right on the part of the Supreme Court of the United States to review all acts and decisions of the Supreme Court of the Territory of Hawaii by writ of certiorari and otherwise, according to law.

Sec. 11. The consolidation of the Federal and Territorial courts, as contemplated by this act, shall be without prejudice to the rights of any and all parties to pending cases, and the said courts and judges hereinbefore provided for may proceed to hear, try, and determine all such pending cases, preserving to such litigants the same rights and privileges as the said litigants are now entitled to under existing law.

Sec. 12. The appropriations under the control of the Department of Justice for expenses of the United States district courts are hereby made available, when authorized and approved by the Attorney General of the United States, for similar expenses incurred in connection with cases arising under the Constitution or laws of the United States in the circuit courts of the Territory of Hawaii; and the appropriations under the control of the Department of Justice for salaries and expenses of United States attorneys and United States marshals are hereby made applicable, when authorized and approved by the Attorney General of the United States, to the offices of the attorney general of the Territory of Hawaii and the high sheriff of the Territory of Hawaii, respectively, with respect to expenses incurred in connection with cases arising under the Constitution or laws of the United States.

Sec. 13. The Secretary of the Treasury is hereby authorized to assign to the Circuit Court of the Territory of Hawaii for the first circuit the quarters, furniture, and equipment in the Federal building in Honolulu now occupied and used by the United States district court, or such part or parts thereof as the said circuit court shall deem necessary.

SEC. 14. All acts and parts of acts in conflict herewith, specifically including section 86 of the act approved April 30, 1900, entitled "An act to provide a government for the Territory of Hawaii," as amended, are hereby repealed.

SEC. 15. This act shall take effect ninety days from and after its approval.

Senate bill No. 4311 is entitled: "A bill to consolidate the Territorial and Federal courts and administration in the Territory of Hawaii."

To accomplish the objects set forth in the title, the bill confers on the circuit courts of the Territory, in addition to their present jurisdiction, the jurisdiction now possessed by the United States district courts for the Territory, confers on the supreme court of the Territory all jurisdiction now possessed by the circuit courts of appeals for the ninth circuit over appeals from our circuit courts and from the United States District Court for the Territory of Hawaii.

The present jurisdiction given to the circuit court of appeals for the ninth circuit, with reference to appeals from the Supreme Court of the Territory and the United States district court, is withdrawn. The present United States district judges for the unexpired portion of their terms are styled "judges of the circuit court of the Territory of Hawaii for the first circuit" and are given the jurisdiction incident to their new status. Upon the expiration of the term of office of the district judge whose term first expires, the vacancy occurring is not to be filled. After the expiration of the present terms of office of the present district judges, salaries of the circuit judges are set at \$9,000 per annum. The offices of the United States commissioner, clerk of the United States district court, United States attorney, and United States marshal are abolished and their duties conferred upon Territorial officers having similar duties. All citizenship and residential qualifications for the holding of public offices are removed. Federal appropriations for expense of Federal courts, etc., when authorized by the Attorney General of the United States, are made available to the offices and officers of the Territory taking over Federal duties. (Whether the appropriations referred to mean other than present appropriations is doubtful.)

Other incidental changes are provided for, but the foregoing is the substance of the measure.

Hearings have been held to ascertain public opinion on this measure and the steady current of opinion is in opposition to the passage of the bill. Some of the persons interviewed based their opposition on the fact that because of the holdings of the Federal Government in the islands and because of the importance of the islands to the United States, a dual system of courts is more essential here than in most of the States. Others favor the continuation of the present system for the reason that the same has proven efficient and that a change would make for crowded court calendars with its consequent delay and hardship. All favor the continuation of the present right to appeal from our Territorial supreme court to the ninth circuit court of appeals.

It is the recommendation of your committee that the legislature go on record as opposing the passage of this measure.

Your committee believes, however, that in order to make available more men of experience and ability for positions on the circuit court bench, the term should be increased from four years to six years, and that the salaries should be increased from the present amount to \$9,000 per annum.



It is the recommendation of your committee that the legislature go on record as favoring the introduction and passage in Congress of bills to carry out the recommendation last above named.

[S. 4312, Seventy-second Congress, first session].

A BILL To permit the removal of officers appointed by the Governor of the Territory of Hawaii, without the advice and consent of the Senate of the Territory of Hawaii, and to withdraw from the Governor of the Territory of Hawaii the power to appoint the attorney general and the high sheriff, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 80 of the act of April 30, 1900, entitled "An act to provide a government for the Territory of Hawaii," as amended (U. S. C., title 48, secs. 546, 633), be, and it is hereby, amended to read as follows:

"Sec. 80. The President shall nominate and, by and with the advice and consent of the Senate, appoint the chief justice and justices of the supreme court, the judges of the circuit courts, who shall hold their respective offices for the term of four years, unless sooner removed by the President. The governor shall nominate and, by and with the advice and consent of the Senate of the Territory of Hawaii, appoint the treasurer, commissioner of public lands, commissioner of agriculture and forestry, superintendent of public works, superintendent of public instruction, auditor, deputy auditor, surveyor, members of the board of health, commissioners of public instruction, board of prison inspectors, board of registration, and inspectors of election, and any other boards of a public character that may be created by law; and he may make such appointments when the senate is not in session by granting commissions, which shall, unless such appointments are confirmed, expire at the end of the next session of the senate. He may remove from office any of such officers. All such officers shall hold office for four years and until their successors are appointed and qualified, unless sooner removed, except the commissioners of public instruction and the members of said boards whose terms of office shall be as provided by the laws of the Territory of Hawaii.

"The manner of appointment and removal and the tenure of all other officers shall be as provided by law; and the governor may appoint or remove any officer whose appointment or removal is not otherwise provided for.

"The salaries of all officers, other than those appointed by the President, unless otherwise provided by Congress, shall be as provided by the legislature.

"Nothing in this section shall be construed to conflict with the authority and powers conferred by section 56 of the act of April 30, 1900, as amended by the act of March 3, 1905."

Sec. 2. All acts or parts of acts in conflict herewith are hereby repealed.

Senate bill No. 4312, as stated in its title, would have the effect of permitting the Governor of the Territory of Hawaii to remove officers appointed by him without the advice and consent of the senate of the Territory; and withdraws the power from the governor of appointing the attorney general and the high sheriff of the Territory, and removes the requirement now in section 80 of the organic act that all officers appointed by the governor under the provisions of said section shall have resided in the Territory of Hawaii for at least three years next preceding their appointment.

We have already discussed the question of the appointment of the attorney general and the high sheriff in that portion of this report relating to Senate bills 4309 and 4310. For the reasons there stated, it is our opinion that the appointment of these officials should be made by the governor and consequently we do not approve of that portion of Senate bill No. 4312, deleting the requirement that the appointment of the attorney general and high sheriff shall be by the governor.

Hereinafter in this report, in the portion thereof relating to Senate bill No. 4375, we discuss more fully the question of removing residential requirements for officers in the Territory of Hawaii. For the



reasons therein stated, we do not approve of that portion of the bill seeking to remove such requirements.

The only other change in the bill is that which gives the governor the right to remove any officers appointed by him without the necessity of securing the approval of the senate of the Territory. In discussing this matter with various citizens appearing before this committee, we found that the majority favor giving the governor this proposed power. It appears that the President of the United States, under the provisions of the Constitution of the United States, has the right to remove any officer appointed by him without the approval of the Senate. The Governor of the Territory of Hawaii is the direct representative of the President in the Territory and is and should be personally responsible for the due administration of law here and of the affairs of the Territory as a whole. Of course, he must act through officials appointed by him and in order to permit him to have the proper authority over his appointees, he should have the right to remove them forthwith, if, for any reason, he feels that such appointees can no longer properly serve the Territory. The legislature of the Territory of Hawaii convenes every two years. There is no provision made by law for the suspension or removal of any official when the legislature is not in session. Consequently, there is a considerable period of time under the present provisions of the organic act when the governor would not have the right to remove any official.

For the foregoing reasons, your committee recommends that the legislature go on record as being opposed to the proposed changes in section 80 of the organic act to eliminate the appointment of the attorney general and high sheriff by the governor and remove the present residential qualifications for the Territorial officials; but is in favor of the enactment by Congress of the portion of the proposed bill which gives the governor the right to remove his appointees from office without securing the approval of the senate.

[S. 4313, Seventy-second Congress' first session]

A BILL To prevent the successive disagreement of two juries, impaneled to try a criminal case in the Territory of Hawaii, from operating as an acquittal of the accused or from permitting the discharge of the accused from custody

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no disagreement of any jury, regardless of the number of disagreements previously existing, in any criminal case now or hereafter pending in the Territory of Hawaii, shall operate as an acquittal of the accused, or shall empower the court to discharge the accused from custody.

SEC. 2. This act shall take effect upon approval.

SEC. 3. All acts or parts of acts, either Federal or Territorial, in conflict herewith are hereby repealed.

Senate bill No. 4313: The subject-matter of Senate bill No. 4313, entitled: "A bill to prevent the successive disagreement of two juries, impaneled to try a criminal case in the Territory of Hawaii, from operating as an acquittal of the accused or from permitting the discharge of the accused from custody," has already received the consideration of the legislature when it passed act No. 23, which act is as follows:

AN ACT To amend section 4030 of the revised laws of Hawaii 1925, relating to criminal procedure

*Be it enacted by the Legislature of the Territory of Hawaii:*

SECTION 1. Section 4030 of the Revised Laws of Hawaii, 1925, relating to criminal procedure is hereby amended by deleting from the sixth and seventh

lines thereof the phrase "or the successive disagreement of two juries impaneled to try the cause."

SEC. 2. This act shall have no application to any prosecution pending at the time of its enactment.

SEC. 3. This act shall take effect upon its approval.

Senate bill No. 4313, while in substance proposed in effect the same law, goes further than act 23 and makes its provisions retroactive. The legislature was and is extremely doubtful if such a law could be made retroactive and for that reason deliberately passed act 23 applicable by its provisions only to cases arising after its passage.

In view of the fact that the situation complained of to Congress has already been met by local legislation, we recommend that this legislature go on record as opposing the passage of Senate bill No. 4313.

[S. 4314, Seventy-second Congress, first session]

A BILL To authorize judges of the circuit courts of the Territory of Hawaii to comment upon the testimony in actions on trial in said courts

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the judges of the several circuit courts in and for the Territory of Hawaii are hereby empowered and authorized, whenever they may deem proper so to do, and for the purpose of assisting the jury sworn and impaneled to try any cause, civil or criminal, in arriving at a just conclusion, to comment upon the evidence and to express the opinion of the court upon the facts; and the expression of such comment or opinion, where no rule of law is incorrectly stated and all matters of fact are ultimately submitted to the determination of the jury, shall not thereafter be reviewed as error.

SEC. 2. All acts or parts of acts, either Federal or Territorial, in conflict herewith are hereby repealed.

Senate bill No. 4314. Like Senate bill No. 4313, the subject-matter of Senate bill No. 4314, entitled: "A bill to authorize judges of the circuit courts of the Territory of Hawaii to comment upon the testimony in actions on trial in said courts," has already received the consideration of the local legislature when it passed Act No. 24, which act is in full as follows:

AN ACT To amend chapter 142 of the Revised Laws of Hawaii, 1925, by amending section 2426 thereof and adding thereto two new sections to be known as sections 2426A and 2426B, relating to the powers and duties of the court and jury in jury trials

*Be it enacted by the Legislature of the Territory of Hawaii:*

SECTION 1. Section 2426 of chapter 142 of the Revised Laws of Hawaii, 1925, is hereby amended to read as follows:

"SEC. 2426. Functions of court and jury: In jury trials all questions of law shall be decided by the court and all questions of fact by the jury. The court may, however, charge the jury whether there is or is not evidence (indicating the evidence, if any) tending to establish or rebut any specific fact involved in the case; or, if, at the close of the evidence for the Territory in a criminal case or for the plaintiff in a civil case or at the close of all the evidence in the case, the court is of the opinion that the evidence is insufficient to warrant a conviction of the defendant or a verdict for the plaintiff, it may, and on motion of the defendant shall, direct the jury to acquit, or find for, the defendant, as the case may be; or, in any civil case or in any criminal case wherein a verdict of guilty has been rendered, the court may set aside the verdict when it appears to be so manifestly against the weight of the evidence as to indicate bias, prejudice, passion, or misunderstanding of the charge of the court on the part of the jury; or the court may in any civil or criminal case grant a new trial for any legal cause."

SEC. 2. Chapter 142 of the Revised Laws of Hawaii 1925, is hereby amended by adding thereto two new sections to be known as section 2426A and section 2426B, and to read as follows:

"SEC. 2426A. Duty of court: It shall be the duty of the court to control all proceedings during the trial, and to limit the introduction of evidence and the argument of counsel to relevant and material matters, with a view to the expedi-

tious and effective ascertainment of the entire truth regarding the matters involved. The jurors shall apply to the facts the law as given to them by the court.

"Sec. 2426B. Charge of court to jury: The court shall instruct the jury regarding the law applicable to the facts of the case, and may, in a criminal case, make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the case. It shall if requested inform the jury that they are the exclusive judges of all questions of fact and, whether requested or not, the court shall so inform them if it comments on the evidence, the testimony, or the credibility of any witness."

SEC. 3. This act shall take effect upon its approval.

Senate bill No. 4314 permits the judges to comment upon evidence in both civil and criminal cases, while Act No. 24 only permits the judges to comment upon evidence in criminal cases.

The attorneys of the Territory are divided in their opinions upon the question of whether or not our local judges should be permitted to comment upon evidence in any jury case. The crime commission recommended that the judges be given that power and the legislature thought that the courts could be given that authority in criminal cases. In view of the fact that the difficulty complained of to Congress has been met by the local legislature, we recommend that this legislature go on record as opposing the passage of Senate bill No. 4314.

Senate bill No. 4315: This committee is filing a supplementary report on this bill.

[S. 4375, Seventy-second Congress, first session]

A BILL To remove residence and citizenship qualifications to appointment to office in the Territory of Hawaii

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That neither residence nor citizenship in the Territory of Hawaii shall be a required qualification to appointment to office, Federal or Territorial, in the said Territory, and all Federal and Territorial statutes to the contrary are hereby repealed.

Senate bill No. 4375: Senate bill No. 4375, entitled "A bill to remove residence and citizenship qualifications to appointment to office in the Territory of Hawaii," has met with the very general and strong opposition of the citizens of Hawaii. The strong belief in local self-government, together with the knowledge that here in Hawaii we have fair, honest, and competent men fully qualified to hold Territorial positions, leads us to feel that we are fully justified in asking Congress not to pass this bill.

With the passage of the organic act by Congress following annexation, and the amendment to this section passed in 1921, we feel that Congress fully believed in the ability of Hawaii to govern itself. We firmly believe that the confidence expressed in Hawaii, through the passage of the organic act and its amendments, has been very jealously guarded by those appointed to office in Hawaii and that this is, and has been, solely due to the requirement that residents of Hawaii should be its officeholders. We feel very strongly that residence in Hawaii has led to the knowledge of local conditions and to the required sympathy toward local conditions. We further believe that Congress believed then, as it must now, in the dangers of carpet-bagger appointments, and that the decision to allow Hawaii its own self-government was made because of these dangers.

We feel justified in making the claim that Hawaii has very capably shown its ability at self-government, and that in every respect the



Government of Hawaii has always faithfully met the requirements of the Congress, whenever they have found it necessary to call upon us on any matter.

Your committee, therefore, recommends that the legislature go on record as being opposed to the passage of this bill.

**APPROVAL OF GOVERNOR'S REPORT RELATIVE TO SAID BILLS INTRODUCED IN SENATE OF THE UNITED STATES**

Your committee recommends that the legislature go on record as indorsing and approving the report of Hon. Lawrence M. Judd, Governor of Hawaii, to Hon. Ray Lyman Wilbur, Secretary of the Interior, Washington, D. C., under date of April 26, 1932, relative to said Senate bills 4309-4315, inclusive, and Senate bills 4374 and 4375.

**INVESTIGATION OF HAWAII BY COMMITTEE OF CONGRESS**

It is the recommendation of your committee that the legislature go on record as requesting the Congress of the United States to appoint and send to the Territory of Hawaii a committee to make a complete investigation of government of this Territory, of the administration of civil affairs and criminal law in the Territory, and of any other matters for the purpose of ascertaining conditions existing herein, and the advisability or inadvisability of making any changes in the Hawaiian organic act.

**COPIES OF REPORT TO OFFICIALS**

Your committee further recommends that duly authenticated copies of this report be sent to the President of the United States of America, the Secretary of the Interior, the President of the Senate, the Speaker of the House of Representatives of the United States, the Governor of Hawaii, and the Delegate to Congress from Hawaii, and that all of the data gathered by the committee be sent to said delegate.

Respectfully submitted.

ROY A. VITOUSEK,  
*Chairman.*

E. H. BEEBE.

A. A. AKINA.

ALBERT K. AKANA.

A. Q. MARCALLINO.

J. WALTER CAMERON.

EVAN DA SILVA.

*House Members of Joint Legislative Committee.*

ROBERT W. SHINGLE,  
*Vice Chairman.*

JOSEPH L. SYLVA.

A. P. LOW.

CHAS. A. RICE.

WM. H. HEEN.

E. A. K. AKINA.

*Senate Members of Joint Legislative Committee.*

**HOUSE OF REPRESENTATIVES OF THE TERRITORY OF HAWAII,**  
*Honolulu, June 3, 1932.*

We hereby certify that the foregoing report was adopted in the House of Representatives of the Territory of Hawaii on June 3, 1932, by the adoption of House Concurrent Resolution No. 17.

**ROY A. VITOUSEK,**  
*Speaker House of Representatives.*  
**HENRY VAN GIESON,**  
*Assistant Clerk, House of Representatives.*

**SENATE OF THE TERRITORY OF HAWAII,**  
*Honolulu, June 3, 1932.*

We hereby certify that the foregoing report was adopted in the Senate of the Territory of Hawaii on June 3, 1932, by the adoption of House Concurrent Resolution No. 17.

**ROBERT W. SHINGLE,**  
*President of the Senate.*  
**ELLEN D. SMYTHE,**  
*Clerk of the Senate.*

[House Concurrent Resolution 17]

Concurrent resolution

Whereas the joint committee of the Legislature of the Territory of Hawaii, appointed in accordance with House Concurrent Resolution No. 11, has submitted its report to said legislature, which report is numbered in the senate of said legislature as special committee report No. 91, and in the house of representatives as special committee report No. 8; now, therefore be it

*Resolved* by the house of representatives of said legislature, the senate concurring, that said report be, and the same is hereby, adopted.

House Members of Joint Legislative Committee:  
ROBERT W. SHINGLE,  
JOHN L. SILVER,  
A. P. LOW,  
CHAS. A. RICE,  
WM. H. HEEN,  
E. A. H. AKINA.  
Senate Members of Joint Legislative Committee:  
ROBERT W. SHINGLE,  
JOHN L. SILVER,  
A. P. LOW,  
CHAS. A. RICE,  
WM. H. HEEN,  
E. A. H. AKINA.