CHAPTER 2
STATE AND COUNTY AGENCIES AND THEIR RESPECTIVE STATUTORY RESPONSIBILITIES

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INTRODUCTION

As discussed in the first chapter of this book, governmental agencies are a part of the Executive branch of our State government. As such, they are empowered to implement and enforce the laws enacted by the Legislature. Our lives are affected by the activities of State agencies in many ways. Being familiar with their responsibilities, authority, and the manner in which they operate can help us identify opportunities to influence how these agencies conduct business. This chapter will describe a few of the agencies you may have dealings with.

Department of Health

The executive officer of the Department of Health (DOH) is the Director of Health. The Director receives advice on health matters from the Board of Health. The Board of Health consists of eleven voting members appointed by the Governor plus the Director of Social Services as a non-voting member. The appointed members of the board must consist of at least one resident of each of the four major counties and one delegate from the county of Kalawao located on the island of Moloka'i.

The DOH is required to administer all programs intended to protect, preserve, care for, and improve the physical and mental health of all persons of the State of Hawai'i. These "programs" include the administration and enforcement of all matters and laws of public health of the State, such as the program for Waimano
home, the program for the State hospital and the program for dental health treatment within the department of public instruction. The DOH is also responsible for implementing and administering the state's environmental pollution programs. However, the "programs" within their kuleana do not include matters pertaining to the assistance and care of the poor or those who do not have the financial ability to provide for their medical needs. These matters are the responsibility of the State's Department of Human Services.

**Department of Land and Natural Resources**

The Department of Land and Natural Resources (DLNR) is directed by an executive board known as the Board of Land and Natural Resources (Board). The Board consists of six members, with at least one resident of each of the four major counties represented.

The Chairperson of the Board, appointed by the governor from among the current members of the board, serves full-time. The Board may delegate duties, powers, and authority to the chairperson.

The DLNR is required to manage and administer the public lands of the State and all water resources and minerals found within the public lands of the State. This includes the management of soil conservation, management of forests and forest reserves, management of aquatic life and wildlife resources, management of aquaculture programs and management of State parks, including historic sites. The DLNR also oversees the Commission on Water Resource Management.

**Department of Agriculture**

The Department of Agriculture (DOA) is governed by an executive board known as the Board of Agriculture (Board of Ag.). The Board of Ag. consists of eight members. The appointed members of the board must consist of at least one resident of the county of Hawai‘i, the county of Maui and the county of Kaua‘i. One member of the Board must be the chairperson of the DLNR. In addition, a majority of the members are required to be members of either the agricultural community or the agricultural support sector.

The chairperson, who is appointed by the governor from the current board members, serves full-time. The Board may delegate duties, powers, and authority as are lawful and proper for the performance of the DOA to the chairperson. State law also requires the chairperson or a representative of the chairperson to hold at least one publicly announced
hearing per year on each of the islands of O'ahu, Hawai'i, Maui, Kaua'i, and Moloka'i for the purpose of hearing complaints and suggestions from all persons concerning the duties, authority and actions of the DOA.

The DOA is responsible for promoting the conservation, development and utilization of agricultural resources in the State of Hawai'i. It is required to assist the farmers of the State and any others engaged in agriculture in improving the state of agriculture and in increasing the management and use of all land within the State. The DOA is also responsible for the administration of State programs relating to (1) the raising of animals, (2) entomology, (3) farm credit, (4) development and promotion of agricultural products and markets, and (5) the establishment and enforcement of the rules on grading and labeling of agricultural products.

**Commission on Water Resource Management**

The Commission on Water Resource Management (Commission) consists of six members. One member of the Commission must be the chairperson of the BLNR who also serves as the chairperson of the Commission. One member of the Commission must be the Director of Health. The other four members, appointed by the governor, must have substantial experience in the area of water resource management and are subject to confirmation by the State Senate.

The Governor must select the members of the Commission from a list submitted by a nominating committee. The nominating committee must be composed of four individuals: two persons appointed by the Governor, one person appointed by the president of the State Senate and one person appointed by the speaker of the State House of Representatives. The committee must solicit applications and send to the governor the names of at least three individuals for each open position.

The Commission is also required to have a first deputy to the chairperson. The deputy must be experienced in the area of water resource management and must be appointed by the chairperson with approval of a majority of the commission. The deputy's duties include the administration and implementation, under the direction of the Commission, of the State Water Code and all rules created by the Commission.

The Commission administers and regulates the State Water Code. It may adopt and enforce rules as required to administer the Water Code. All proceedings before the
Commission must be conducted in accordance with Chapter 91 of the Hawai'i Revised Statutes. All hearings regarding particular water resources must be conducted on the island where those water resources are located.

The Commission also has jurisdiction over disputes regarding water resource protection, water permits, or constitutionally protected water interests. In cases where the water resources in an area are insufficient to meet legitimate water needs, the Commission has the authority to determine whether the area involved should be designated a water management area under the Water Code. The chairperson also has the authority to appoint hearings officers to hear and reach preliminary decisions on any matter concerning the implementation or administration of the Water Code.

The Commission must designate water management areas when, after research and investigation, consultation with the appropriate county council and county water agency, and after public hearings and published notice, it finds that the water resources of the area are being threatened by existing or proposed withdrawals of water.

The Commission is also responsible for establishing an instream use protection program designed to protect, enhance and reestablish, where practicable, beneficial instream uses of water as defined by the Water Code. It also has the authority to contract and work with agencies of the federal government and with State and local administrative and governmental agencies or private persons in pursuit of its responsibilities.

The Commission is required to cooperate with federal agencies, other State agencies, county or other local governmental organizations, and all other public and private agencies created for the purpose of utilizing and conserving the waters of the State. It must assist these organizations and agencies in coordinating the use of their facilities and participating in the exchange of ideas, knowledge, and data. The Commission must also provide support to carry out any plan or project of the federal government where waters of the State are concerned. In addition, the Commission is responsible for administering programs for the development, conservation, protection, control and regulation of water resources. These activities must be based upon the best available information and conducted in cooperation with other federal agencies, other state agencies, county or other local government organizations and other public and private agencies created for the utilization and conservation of water. The Commission has the ability to approve or disapprove federal plans or projects on behalf of the State and must maintain an advisory staff of experts to
comply with the above purpose.

The Commission is also required to create, publish and issue printed pamphlets and bulletins necessary for the spread of information to the public concerning its work. Finally, the Commission must catalog and maintain an inventory of all water uses and water resources.

**Land Use Commission**

The State Land Use Commission (LUC) consists of nine members, with representation from each of the four major counties in the State. The nine members, appointed by the Governor with the approval of the State Senate, may not hold any other public office.

The LUC resides within the Department of Business, Economic Development and Tourism. The staff of the LUC, headed by an executive officer appointed by the LUC, assists the LUC in carrying out its responsibilities.

The LUC and county governments share the responsibility of determining whether land use boundary changes should be granted. Landowners, or State and county agencies, may request such boundary changes. The LUC hears requests for all reclassification of land designated as conservation and for all other land use reclassifications of 15 acres of land or more. Six members of the LUC must vote for the requested change to be approved. The respective county has jurisdiction over land use reclassifications of fewer than 15 acres. The LUC must also approve any special use permits involving 15 acres of land of more granted at the county level. At least five members must vote in favor of the permit. Specific criteria are set out in the State land use law and regulations regarding these matters.

**Department of Hawaiian Home Lands**

The Department of Hawaiian Home Lands (DHHL) is controlled by the board known as the Hawaiian Homes Commission (HHC). The HHC consists of eight members, three of whom are residents of the City and County of Honolulu. One member is a resident of the county of Hawai‘i, and two are residents of the county of Maui, one of which must be a resident of Moloka‘i. One member must be a resident of the county of Kaua‘i. All members must be residents of the State of Hawai‘i for at least the three years prior to their appointment and at least four of the members must be one-quarter Hawaiian.
The Governor appoints the chairperson of the HHC from its members. The chairperson serves full-time. The HHC members delegate to the chairperson such duties, powers, and authority as are lawful or proper for the performance of the HHC.

The DHHL is required to adopt rules and regulations governing its operation. It may make expenditures necessary to perform its duties. All expenditures from the Hawaiian home administration account, the Hawaiian home development fund, or the Hawaiian home operating fund, or all money necessary for loans made from the Hawaiian home loan fund, must be paid by the State of Hawai’i upon the presentation of vouchers to the State legislature.

The DHHL grants leases to native Hawaiians for the right to use and occupy available Hawaiian home lands in accordance with specific use and acreage guidelines. Applications for homesteads are submitted to the HHC.

The DHHL is also authorized to grant leases for various types of easements and may grant leases for the building of churches, hospitals, public schools, post offices, and other improvements for public purposes and theaters, garages, service stations, markets, stores, and other mercantile establishments which are owned or controlled by native Hawaiians or by organizations owned or controlled by native Hawaiians. The DHHL is also authorized to grant leases to the United States for reservations, roads, and other rights of way, water storage and distribution facilities and practice target ranges. Title to lands leased by the HHC is said to remain with the State.

**Office of Hawaiian Affairs**

The Office of Hawaiian Affairs (OHA) is a governmental body established under the authority of the State of Hawai‘i. It is governed by a Board of Trustees (Trustees) who are elected by persons of Hawaiian ancestry. At its first meeting after election, the Trustees elect a chairperson and a vice-chairperson. The selection must be certified by the lieutenant governor.

The Trustees, by a majority vote, appoint an administrator to serve for a term determined by the Trustees. The administrator may be removed for cause by two-thirds vote of the Trustees.

The Trustees have the power to manage and invest the proceeds from the sale or lease of ceded lands as long as it benefits native Hawaiians. They may also exercise control
over property conferred to OHA. The Trustees may spend any money conferred to OHA, formulate policy relating to the affairs of native Hawaiians, act as a trustee as provided by the laws of the State, delegate to its employees appropriate powers and duties, provide grants to public or private agencies for pilot projects, demonstrations or both, and provide technical or financial assistance to native Hawaiians.

The general duties of the Trustees include developing and implementing a master plan for the betterment of the conditions of native Hawaiians, including a compilation of basic demographic data on native Hawaiians, identification of the physical, sociological, psychological, and economic needs of native Hawaiians, establishment of immediate and long range goals of programs and services for native Hawaiians, and the establishment of priorities for programs.

CONCLUSION

As you can see, the above agencies have a great deal of authority over the programs and resources of Hawai‘i. Their ability to allocate or dispose of such resources directly affects the ability of Kanaka Maoli to move toward any significant form of self-determination. As such, their actions and decisions deserve careful scrutiny. The following chapter discusses a law intended to provide you with opportunities to exercise your right as a resident of this State to participate in the decision-making processes of these and other administrative agencies.

1 When used within the context of the Hawaiian Homes Commission Act and OHA, the term “native Hawaiian” means any descendent of not less than one-half part of the blood of races inhabiting the Hawaiian Islands previous to 1778. Hawaiian Homes Commission Act, 1920 (Act of July 21, 1921, Chapter 42, 42 Stat. 108).