

JOHN WAIHEE
GOVERNOR
STATE OF HAWAII



ILIMA A. PIANAIA
CHAIRMAN
HAWAIIAN HOMES COMMISSION

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
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April 22, 1988

Ms. Emily DeRocco
Assistant to the Secretary and
Director of External Affairs
Office of the Secretary
U.S. Department of the Interior
Washington, D.C. 20240

Dear Ms. DeRocco:

SUBJECT: Congressional Action on State Amendments to
the Hawaiian Homes Commission Act of 1920,
as amended (HHCA)

As the State of Hawaii's designated representative to coordinate activities with your office to obtain timely Congressional action on State amendments to the Hawaiian Homes Commission Act of 1920, as amended (HHCA), I am pleased to transmit a complete set of amendments made to the HHCA by the 1986 and 1987 Hawaii Legislature.

The advice of the Attorney General has been secured on whether the seven (7) amendments passed during the applicable years require the consent of the United States pursuant to Section 4 of the Hawaii Admission Act. Section 4 requires the consent of Congress for any amendment or repeal of the provisions of the HHCA unless the amendment falls within one of the enumerated exceptions. These exceptions concern amendments to the HHCA by the state legislature which relate to administration, duties of non-administrative officials and the increase of benefits to lessees and Native Hawaiians.

The department's approach has been to include provisions in each amendment indicating whether Congressional consent is required. In instances where the measures related to administration, duties of non-administrative officials and the increase of benefits to lessees and Native Hawaiians, the amendments took effect upon the governor's approval. In some instances, a severability clause was inserted even though the amendment fell within the enumerated exceptions to the consent

requirement. This was done as a safeguard in the event of a judicial challenge to the failure to seek Congressional consent.

Of the seven amendments, the Attorney General advised that only one amendment clearly requires the consent of the United States:

Session Laws of Hawaii, 1986

Act 75 Promotes private sector participation in financing of improvements on Hawaiian home lands. It permits Hawaiian home lands to be encumbered by way of a mortgage or security interest, impacting upon the inalienable nature of Hawaiian home lands. The bill further provides for the repeal of the statute five years after Congressional consent is given, or December 31, 1995, whichever occurs first.

The Attorney General advised that the following amendment is clearly exempt from the consent requirement:

Act 283: Corrects Section 214 by properly referring to subsection (b) rather than section (b). This Act, revising many provisions of the Hawaii Revised Statutes, affects the HHCA only to the extent that the word "section" is changed to read "subsection". It is merely a housekeeping measure.

The Attorney General advised that, while the following amendments fell within one of the enumerated exceptions to the consent requirement, Congressional consent was recommended to avoid judicial challenges that might be made if consent was not obtained:

Session Laws of Hawaii, 1986

Act 16: Expands benefits to Native Hawaiians by allowing for participation in the establishment of enterprise zones on Hawaiian home lands which will enhance income generating potential and help distressed areas. Employment opportunities and training will also be made available to economically disadvantaged Native Hawaiians.

- Act 84: Allows the department to be more responsive to opportunities that might arise and promotes private sector participation in developing Hawaiian home lands for homestead or commercial purposes. Native Hawaiians will be provided with leases to lots in completed homestead projects and will also receive any negotiated socio-economic benefits that are agreed upon between the department and the developer. This bill seeks to provide the department with a more timely means to deliver benefits to Native Hawaiians. A severability clause was inserted as a safeguard in the event of a judicial challenge.
- Act 85: Contributes to the implementation of a new mortgage loan program that opens a significant source of home construction financing for lessees on Hawaiian home lands. Without this avenue of funding, lessees would have little choice but to primarily rely on the department's limited loan funds. This bill expands benefits to Native Hawaiians by providing for the implementation of a new financing program for the construction of affordable homes on homestead lands. A severability clause was inserted as a safeguard in the event of a judicial challenge.
- Act 249: This bill facilitates more efficient administration of the department's finances by reducing the number of funds from fifteen (15) to seven (7). A severability clause was inserted as a safeguard in the event of a judicial challenge.

Session Laws of Hawaii, 1987

- Act 36: This bill repeals Act 112, Session Laws of Hawaii, 1981, and revises the manner by which the department handles the payment of net proceeds upon the surrender, cancellation or termination of a homestead lease.

You may recall that Chairman J. Bennett Johnson of the Senate Committee on Energy and Natural Resources earlier

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commented that information relating to the Hawaii Legislature's perspective on the amendments would be helpful in congressional deliberations. Please find enclosed legislative chronologies of each measure along with copies of pertinent committee reports and departmental testimony. Also enclosed is a copy of the Attorney General's advice and copies of the subject legislation.

Your timely examination of the subject amendments and its submission to Congress will be most appreciated. My office is available to provide any assistance and support as may be required.

Please call me at (808) 548-7516 should you have any questions on this matter.

Sincerely,

Ilima A. Piianaia, Chairman
Hawaiian Homes Commission

IAP:JO

cc: The Honorable John Waihee, Governor
Hawaiian Homes Commission

enclosure