



# United States Department of the Interior

OFFICE OF THE ASSISTANT SECRETARY  
POLICY, MANAGEMENT AND BUDGET  
Washington, DC 20240



MAY 03 2006

The Honorable Micah A. Kane  
Chairman, Hawaiian Homes Commission  
State of Hawaii  
P.O. Box 1879  
Honolulu, Hawaii 96805

Dear Mr. Kane:

Thank you for your letter of August 2, 2005, regarding two proposed State amendments enacted in 2005 to the Hawaiian Homes Commission Act (HHCA) of 1920.

As you know, the administration of the Hawaiian Homes Program under the HHCA is a responsibility of the State of Hawaii. But in section 4 of the Hawaii Statehood Admissions Act, 73 Stat. 4, Congress required "the consent of the United States" to certain State enactments amending the HHCA. In section 204 of the Hawaiian Homelands Recovery Act (HHLRA) of November 2, 1995, 109 Stat. 361 Congress formalized the role of the U.S. Department of the Interior (Department) in securing any required Congressional consent to State enactments. The HHLRA provides that the Department is to review State enactments to determine whether Congressional consent is required under section 4 of the Hawaii Statehood Admissions Act. If the Department deems that Congressional consent is not required, it so notifies the State of Hawaii. If the Department deems that Congressional consent is required, the Department is to submit the State legislation to Congress together with a recommendation on whether it should be approved. In general, Congressional consent is required for State enactments that:

- i) amend HHCA sections 202, 213, 219, 220, 222, 224 and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212 and other provisions relating to the powers and duties of officers other than those charged with the administration of the HHCA, without providing an increase in benefits to the lessees of Hawaiian home lands;
- ii) reduce or impair the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund;
- iii) allow for additional encumbrances to be placed on Hawaiian home lands by officers other than those charged with the administration of the HHCA; or
- iv) change the qualifications for lessees.

The Department reviewed the two State enactments you submitted to us, Session Laws 2005, Statutes of Hawaii, Act 16 and Act 53, to determine whether Congressional consent is required. Based upon this review, it is the opinion of the Department that Acts 16 and 53 require the consent of Congress. Both State enactments will be discussed in turn.

The first statute you submitted is Session Laws 2005, Statutes of Hawaii, Act 16. This Act amends section 209(a) of the HHCA by authorizing a homestead lessee to designate a brother or sister who is at least one-quarter native Hawaiian to succeed to the leasehold interest in the tract upon the death of the lessee. Section 4 of the Hawaii Statehood Admissions Act provides that "the qualifications for lessees shall not be changed except with the consent of the United States." Although Congress has authorized certain other changes to the blood quantum requirement, it has not authorized brothers and sisters of lessees of less than 50 percent Hawaiian descent to acquire leases. The State enactment changes "the qualifications for lessees"; therefore, we conclude it requires Congressional consent.

The second statute you submitted is Session Laws 2005, Statutes of Hawaii, Act 53. This Act amends section 208 of the HHCA by authorizing lending institutions to make mortgage loans on Hawaiian home lands that are insured or guaranteed by private mortgage insurance approved by the Hawaiian Homes Commission. As you know, private mortgage insurance is insurance that home buyers are typically required to purchase if the down payment is 20 percent or less of the purchase price of the home and the land. This insurance protects the lender if the borrower does not repay the loan. The failure of a lessee of Hawaiian home lands to meet the repayment obligations incurred by purchasing private mortgage insurance can result in foreclosure on the lease. Section 4 of the Hawaii Statehood Admissions Act provides that "the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of [the HHCA] shall not be increased, except with the consent of the United States." Act 53 allows additional encumbrances on Hawaiian home lands in the form of private mortgage insurance and a new class of conventional loans (loans with private mortgage insurance) available to HHCA beneficiaries. Thus we conclude Congressional consent is required for Act 16.

Because we believe that Congressional consent to Acts 16 and 53 is required, the Department is preparing to begin the Congressional notification process set forth in section 204 of Public Law 104-42. If you have any comments or questions about our analysis, please contact me or Mr. Kaiini Kaloi, Director, Office of Hawaiian Relations, Office of the Secretary, U.S. Department of the Interior, within 30 days after the date of this letter.

Sincerely,

/s/ R. Thomas Weimer  
R. Thomas Weimer  
Assistant Secretary

The Honorable Micah A. Kane

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LINDA LINGLE  
GOVERNOR  
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MICAH A. KANE  
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DEPUTY TO THE CHAIRMAN

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STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879

HONOLULU, HAWAII 96805

August 2, 2005

The Honorable Patricia Lynn Scarlett  
Assistant Secretary for Policy, Management and Budget and  
Secretary's Designated Officer Under the Hawaiian Homes  
Commission Act, 1920, As Amended  
1849 C Street, N.W.  
Washington, D. C. 20240

Dear Assistant Secretary Scarlett:

Subject: Amendments to the Hawaiian Homes Commission Act, 1920, As  
Amended (HHCA)

Section 4 of the Hawaii Admission Act provides that the HHCA shall be adopted as a provision of the Constitution of the State of Hawaii. It further provides that with certain exceptions, the HHCA thereafter shall be amended by the State "only with the consent of the United States" (73 Stat. 5). Section 204 of the Hawaiian Home Lands Recovery Act (P. L. 104-42) outlines the procedure to be followed by the State of Hawaii and the USDOH for the approval of these amendments.

In accordance with this procedure, we are transmitting two amendments to the HHCA passed by the 2005 Hawaii State Legislature. It is the opinion of the Hawaii State Attorney General that these amendments do not require the consent of Congress, as they fall within one of the enumerated exceptions provided for under section 4 of the Hawaii Admission Act. Copies of these amendments and other supporting information are enclosed for your review.

We would appreciate your review and appropriate action on all amendments currently pending at USDOH.

Aloha and mahalo,

Micah A. Kane, Chairman  
Hawaiian Homes Commission

Enc.

*Send e-mail*

LINDA LINGLE  
GOVERNOR



DEPARTMENT OF HAWAIIAN  
LANDS

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July 21, 2005

The Honorable Micah Kane  
Chairman, Hawaiian Homes Commission  
State of Hawaii  
P.O. Box 1879  
Honolulu, Hawaii 96805

Dear Mr. Kane:

Re: Congressional Consent to 2005 State Amendments to the  
Hawaiian Homes Commission Act, 1920, as amended

This responds to your request for our review and opinion as to whether the amendments made to the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"), by Acts 16 and 53, 2005 Haw. Sess. Laws \_\_\_\_\_ and \_\_\_\_\_, respectively, require the consent of the United States. We are of the opinion that neither amendment requires such consent.

Section 4 of the Hawaii Admission Act ("Section 4")<sup>1</sup> requires the consent of the United States for any amendment to

<sup>1</sup> Section 4, the Admission Act (Act of March 18, 1959, Pub. L. No. 86-3, 73 Stat. 4), reads as follows:

As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, as provided in section 7, subsection (b) of this Act, subject to amendment or repeal only with the consent of the United States, and in no other manner: Provided, That (1) sections 202, 213, 219, 220, 222, 224, and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund shall not be reduced or impaired by such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances

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the HHCA, unless the amendment falls within one of several enumerated exceptions. One exception to the consent requirement concerns amendments to the HHCA which increase benefits to lessees of Hawaiian home lands. Such amendments do not require the consent of the United States and take effect upon approval of the governor, unless otherwise stated in the amending legislation.

Act 12, 2005 Haw. Sess. Laws \_\_\_\_\_, amends section 209(a) of the HHCA by authorizing a homestead lessee who is at least one-quarter Hawaiian to designate a brother or sister who is at least one-quarter Hawaiian to succeed to the leasehold interest in the tract.

In 2002, section 208(5) of the HHCA was amended to allow a homestead lessee who is at least one-quarter Hawaiian to transfer, during the lessee's lifetime, his or her leasehold interest to brothers and sisters who are at least one-quarter Hawaiian. We previously opined that the 2002 amendment did not require the consent of the United States. Act 12 allows such a lessee to designate brothers and sisters who are at least one-quarter Hawaiian for successorship to the lease on the lessee's death. By helping to ensure that the homestead lease remains in the family of the original lessee, we believe that Act 12 increases benefits to lessees of Hawaiian home lands and does not require the consent of the United States.

Act 53, 2005 Haw. Sess. Laws \_\_\_\_\_, amends section 208 of the HHCA by authorizing lending institutions to make mortgage loans on Hawaiian home lands that are insured or guaranteed by private mortgage insurance approved by the Hawaiian Homes Commission. By increasing the opportunities of native Hawaiian lessees of Hawaiian home lands to mortgage their leasehold interest, we believe that Act 53 increases benefits to lessees of

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authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the "available lands", as defined in said Act, shall be used only in carrying out the provisions of said Act.

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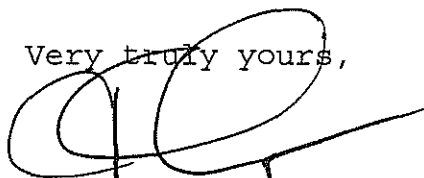
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Hawaiian home lands and does not require the consent of the United States.

For the foregoing reasons, we are of the opinion that Acts 12 and Act 53, 2005 Haw. Sess. Laws \_\_\_\_\_ and \_\_\_\_\_, respectively, fall within the enumerated exceptions to Section 4 of the Hawaii Admission Act and do not require the consent of the United States. The amendments to the HHCA contained in these Acts are properly made in the manner required for State legislation.

Very truly yours,



Clayton Lee Crowell  
Deputy Attorney General

APPROVED:



Mark J. Bennett  
Attorney General