



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

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The Honorable Jobie Masagatani, Chair
Hawaiian Homes Commission
State of Hawai'i
Department of Hawaiian Home Lands
P.O. Box 1879
Honolulu, Hawai'i 96805

Re: Review of Act 173, Session Laws of Hawai'i 2014

Dear Chair Masagatani:

Thank you for your submission of Act 173, Session Laws of Hawai'i 2014, for review in accordance with Section 204 of the Hawaiian Home Lands Recovery Act, 1995, 109 Stat. 357. We especially appreciate receiving the analysis of Act 173 from the Department of Hawaiian Home Lands (DHHL) and State of Hawai'i Department of the Attorney General. Both documents were extremely helpful in our review of Act 173.

Act 173 proposes to amend section 204 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108) (HHCA) to permit the DHHL to lease by direct negotiation and at fair market rent, and for a term not to exceed five years, any improvements on Hawaiian home lands (Trust lands) that are owned or controlled by the DHHL and not required for leasing under 207(a) of the HHCA (homesteading). The Department's opinion is that Congressional consent and approval is required.

Congressional consent is required because Act 173 is not related to "administration" and does not "relat[e] to the powers and duties of officers other than those charged with the administration of the HHCA," within the meaning of Section 4 of the Admission Act, 73 Stat. 4 (1959). Further, Act 173 conflicts with the requirement in the HHCA that when DHHL manages lands not required for homesteading, it must do so using the same procedures and criteria set forth in Hawai'i Revised Statutes (HRS) chapter 171 applicable to public lands. Please refer to enclosure (1) for details of the Department's analysis.

During conversations with the Department, the State noted that it could amend HRS chapter 171 and accomplish the same result Act 173 would have in amending the HHCA without the need for Congressional approval. We agree generally with the State's conclusion that it can accomplish essentially the same result as Act 173 by amending HRS chapter 171.

Consistent with the limitations in the Admission Act, the HHCA, the HHLRA, and other Federal laws, any state enactment (including amendments to chapter 171 or other chapters it references, such as chapter 102) that meets any of the following criteria, or otherwise impacts the provisions of the HHCA, has no effect on the management of the Trust unless approved by the Secretary or Congress. These criteria are:

- Decreases the benefits to the beneficiaries of the Trust;
- Reduces or impairs the Hawaiian Home Lands Trust Funds;
- Allows for additional encumbrances to be placed on Hawaiian home lands, whether by officers other than those charged with the administration of the HHCA, or by DHHL;

- Changes the qualifications of who may be a lessee;
- Allows the use of proceeds and income from the Hawaiian home lands for purposes other than carrying out the provisions of the HHCA; or
- Amends a section other than sections 202, 213, 219, 220, 222, 224, or 225, or other provisions relating to administration, or paragraph (2) of section 204, sections 206 or 212 or other provisions relating to the powers and duties of officers other than those charged with the administration of the HHCA.¹

Thus, any amendment to HRS chapter 171 by the State that would do any of the above, or which singles out home lands and thus conflicts with the HHCA § 204 language of “the same terms, conditions . . . applicable to . . . public lands,” must be reviewed by the Secretary to determine whether Congressional approval is required.

In applying the criteria to Act 173, if the State were to amend HRS chapter 171 to allow leases of improvements on public lands for up to five years through direct negotiation, thus maintaining the same procedure for public lands as for the Trust lands, it could accomplish the same result without Congressional approval. Such an amendment would apply to DHHL’s leasing of Trust lands under the terms of HHCA section 204 and it would not conflict with either the requirements in the HHCA or the Admission Act. See enclosed analysis. Such an amendment of chapter 171 also avoids the conflict created between Act 173 and HHCA section 204.

Because the State may amend chapter 171 as to its public lands, the Department will not forward Act 173 to Congress for its approval unless you notify us within 45 days that the State desires us to do so. If we do not hear from you within 45 days regarding Act 173, the Department will presume that the State has withdrawn Act 173 from further federal consideration, and we will close our file on Act 173.

Again, thank you for your submission. Please inform us if the State enacts an amendment to chapter 171.

Sincerely,



Scott J. Cameron
Principal Deputy Assistant Secretary for
Policy, Management and Budget
*Exercising the authority of the Assistant Secretary for
Policy, Management and Budget*

Enclosures

¹ The HHCA generally prohibits the sale of any Trust lands, which prohibition cannot be changed in state law. See HHCA sections 204, 205, and 212. It is undisputed that HRS chapter 171 that authorizes the sale of public lands does not apply to, and could not apply to Trust lands, without Congressional approval. Similarly, for example, an amendment to chapter 171 that prohibits a withdrawal clause in a lease would conflict with HHCA sections 204 and 212, and would increase encumbrances on Trust lands – and thus would not be applicable to Trust lands without Congressional approval.