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GOVERNOR



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October 31, 2006

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

DEPT. OF HAWAIIAN
HOME LANDS
NOV 1 2 04 PM '06

Dear Mr. Kane:

Re: Congressional Consent to 2006 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 Act 177, 2006 Haw. Sess. Laws 701, require the consent of the United States. We are of the opinion that the amendments do not require such consent.

Section 4 of the Hawaii Admission Act ("Section 4, Admission Act")¹ requires the consent of the United States for any

¹ 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 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

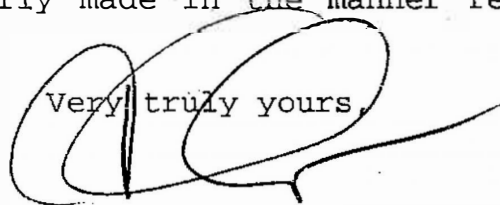
The Honorable Micah Kane
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Page 2

amendment to the HHCA, unless the amendment falls within one of several enumerated exceptions. One exception to the consent requirement concerns amendments to the HHCA relating to administration. 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 177, 2006 Haw. Sess. Laws 701, amends section 213.6 of the HHCA, allowing the Hawaiian Homes Commission to deposit moneys in depositories other than the state treasury and exempting such deposits from the requirements of chapters 36 and 38, Hawaii Revised Statutes. Section 213 of the HHCA is one of the specific "provisions relating to administration" that "may be amended in the constitution, or in the manner required for State legislation." Section 4, Admission Act.

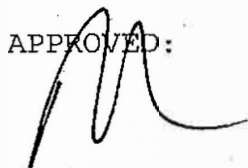
For the foregoing reasons, we are of the opinion that Act 171, 2006 Haw. Sess. Laws 701, falls within the enumerated exceptions to Section 4, Admission Act, and does not require the consent of the United States. The amendments to the HHCA contained in this Act are properly made in the manner required for State legislation.

Very truly yours,



Clayton Lee Crowell
Deputy Attorney General

APPROVED:



Mark J. Bennett
Attorney General

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.

LINDA LINGLE
GOVERNOR
STATE OF HAWAII



MICAH A. KANE
CHAIRMAN
HAWAIIAN HOMES COMMISSION

BEN HENDERSON
DEPUTY TO THE CHAIRMAN

KAULANA H. PARK
EXECUTIVE ASSISTANT

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF MICAH A. KANE, CHAIRMAN
HAWAIIAN HOMES COMMISSION
ON SB 3119 S.D. 2
RELATING HAWAIIAN HOME LANDS

JOINT HOUSE COMMITTEES ON HOUSING AND HAWAIIAN AFFAIRS

March 15, 2006

Chairs Kahikina and Saiki, and Members of the Joint Committees:

Thank you for the opportunity to testify on S.B. 3119, S.D. 2, which would amend the Hawaiian Homes Commission Act, 1920, as amended, to allow the Department of Hawaiian Home Lands (DHHL) to invest monies from the Hawaiian home lands trust fund outside the State treasury. DHHL supports this bill. The ability to earn a higher return on the investment of these monies is a desirable goal of our department.

Since the enactment of Act 14 and the creation of the Hawaiian home lands trust fund in 1995, all monies appropriated by the State Legislature and deposited into the fund have remained in the State treasury and been invested along with other State monies, where they have earned a modest return. The Hawaiian Homes Commission has used the Hawaiian home lands trust fund to support infrastructure and homestead development on Hawaiian home lands. The opportunity to invest the trust fund outside the State treasury with the opportunity to generate increased investment earnings would provide more funding for this purpose.

This measure was amended in the Senate to exempt the Hawaiian home lands trust fund from the requirements of Chapters 36 and 38, Hawaii Revised Statutes. It is our understanding that the Department of Budget and Finance (B&F) has raised concerns regarding this proposed amendment. In the interest of moving this measure forward, we will defer to B&F regarding changes that will allow for the prudent management and investment of this fund. As recommended by B&F, we request that the phrase "in the treasury of the State" be deleted on page 1, line 4 of the bill, and that the sentence beginning on page 2, lines 2-5, also be deleted.

With these changes, we respectfully request your approval of this measure.

A BILL FOR AN ACT

RELATING TO HAWAIIAN HOME LANDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 213.6 of the Hawaiian Homes Commission
2 Act, 1920, as amended, is amended to read as follows:

3 "[+]§213.6.[+] Hawaiian home lands trust fund. There is
4 established [~~in the treasury of the State~~] a trust fund to be
5 known as the Hawaiian home lands trust fund, into which shall be
6 deposited all appropriations by the [~~State~~] state legislature
7 specified to be deposited therein. Moneys of the Hawaiian home
8 lands trust fund shall be expended by the department, as
9 provided by law, upon approval by the commission and shall be
10 used for capital improvements and other purposes undertaken in
11 furtherance of the Act. The department shall have a fiduciary
12 responsibility toward the trust fund[7] and shall provide annual
13 reports therefor to the legislature and to the beneficiaries of
14 the trust.

15 The commission may deposit moneys from the trust fund into
16 depositories other than the state treasury and may manage,
17 invest, and reinvest moneys in the trust fund. The commission
18 may hold, purchase, sell, assign, transfer, or dispose of any



1 securities and investments in which any of the moneys have been
2 invested, as well as the proceeds of the investments. Moneys
3 from the trust fund that are deposited into depositories other
4 than the state treasury shall be exempt from the requirements of
5 chapters 36 and 38. Any interest or other earnings arising out
6 of investments from the trust fund shall be credited to and
7 deposited into the trust fund."

8 SECTION 2. The provisions of the amendments made by this
9 Act to the Hawaiian Homes Commission Act, 1920, as amended, are
10 declared to be severable, and if any section, sentence, clause,
11 or phrase, or the application thereof to any person or
12 circumstances is held ineffective because there is a requirement
13 of having the consent of the United States to take effect, then
14 that portion only shall take effect upon the granting of consent
15 by the United States and effectiveness of the remainder of these
16 amendments or the application thereof shall not be affected.

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon approval.



GOVERNOR OF THE STATE OF HAWAII

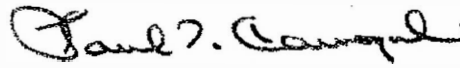
Approved this day: June 7, 2006

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.

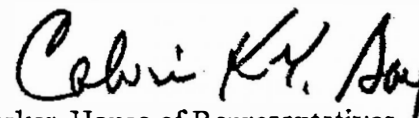

President of the Senate

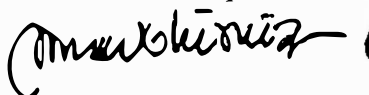

Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES
OF THE STATE OF HAWAII**

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.


Speaker, House of Representatives


Clerk, House of Representatives