

**Amendment to the Hawaiian Homes Commission Act, 1920, as amended -Act 173 (2014)
LEGAL AND POLICY ANALYSIS FOR PROPOSED AMENDMENTS TO THE HHCA**

Proposed Amendment to the HHCA

[Describe existing provision that is being amended]

The HHCA authorizes general leasing of Hawaiian home lands under section 204 in order to generate revenue to provide homesteads, and ultimately serve native Hawaiian beneficiaries.

[Describe proposed amendment]

Act 173, 2014 Session Laws of Hawai'i, proposes to permit DHHL to lease by direct negotiation and at fair market rent any department-owned or department-controlled improvements, or space within an improvement, on Hawaiian home lands in order to provide DHHL greater flexibility to generate revenue on its lands. Lease term is not to exceed five years.

1. What are the challenges or issues that the proposed amendment addresses?

DHHL currently owns buildings and warehouses on its lands and as certain general leases expire, DHHL will become the owner of more of these improvements. In some cases, the lands and improvements thereon are returned to the DHHL's inventory unexpectedly. This type of situation presents a challenge because DHHL does not currently have a means to dispose of these improvements, or space within an improvement, promptly and on a short-term basis. The consequence of which is that not only does DHHL lose the income generated by an active lease but it also becomes liable for the maintenance of the improvement while it sits vacant. This amendment addresses that type of challenge, therefore, by providing a "gap-fill" whereby DHHL would have the ability to gainfully dispose of these improvements, or space therein, through direct negotiations for a term less than five years, and thus generate revenue in the short term while a long-term tenant is secured.

2. Is the proposed amendment limited to administration and powers and duties of officers other than those charged with the administration of the HHCA, as further defined in section 4 of the Admissions Act?

If yes, please provide an analysis.

No.

3. Does the proposed amendment reduce or impair the enumerated funds in section 213 of the HHCA as amended?

If yes, please provide an analysis.

No.

4. Does the proposed amendment increase the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of the HHCA?

If yes, please provide an analysis.

No.

5. Does the proposed amendment change the requirement that all proceeds and income from the available lands shall be used only in carrying out the provision of the HHCA?

If yes, please provide an analysis.

No.

6. Does the proposed amendment change the qualifications of lessees?

If yes, please provide an analysis.

No.

7. Does the proposed amendment increase the benefits to lessees of Hawaiian home lands?

If yes, please provide an analysis.

Yes, see discussion in paragraphs numbered 8 – 17.

8. How does the proposed amendment advance or otherwise impact current Hawaiian homestead lessees (native Hawaiians and Native Hawaiians) of Hawaiian home lands?

The proposed amendment advances the interests of the nearly 10,000 current Hawaiian homestead lessees because all revenues received as a result of the disposition of improvements must be deposited in the Hawaiian home administration account. The HHCA section 213 provides that any amount in the Hawaiian home administration account "in excess of the amount approved by the legislature or made available for the fiscal period may be transferred to the Hawaiian home operating fund." Moneys in the Hawaiian home operating fund can be used for "construction and reconstruction of revenue-producing improvements intended to serve principally occupants of Hawaiian home lands, including acquisition or lease therefor of real property and interests therein, such as water rights or

other interests" and "the purchase of water or other utilities, goods, commodities, supplies, or equipment needed for services, or to be resold, rented, or furnished on a charge basis to occupants of Hawaiian home lands." Additionally, moneys in the Hawaiian home operating fund with the prior written approval of the Governor can be used for "offsite improvements and development necessary to serve present and future occupants of Hawaiian home lands" and "improvements constructed for the benefit of beneficiaries of this Act and not otherwise permitted in the various loan funds or the administration account." As a result, the "gap-fill" lease income generated under Act 173 ultimately results in a benefit for current Hawaiian homestead lessees.

9. How does the proposed amendment advance or otherwise impact HHCA beneficiaries (native Hawaiians) currently on a waiting list for a Hawaiian homestead lease?

Similar to the response above, the proposed amendment advances the interests of over 27,000 HHCA beneficiaries (native Hawaiians) currently on a waiting list for a Hawaiian homestead lease by equally requiring that all revenues received as a result of the disposition of improvements be deposited in the Hawaiian home administration account. Again, the HHCA provides that any amount in the Hawaiian home administration account "in excess of the amount approved by the legislature or made available for the fiscal period may be transferred to the Hawaiian home operating fund." Moneys in the Hawaiian home operating fund with the prior written approval of the Governor can be used for "offsite improvements and development necessary to serve present and future occupants of Hawaiian home lands" and "improvements constructed for the benefit of beneficiaries of this Act and not otherwise permitted in the various loan funds or the administration account." These provisions allow for funds to be used to benefit HHCA beneficiaries (native Hawaiians) currently on a waiting list for a Hawaiian homestead lease.

10. How does the proposed amendment advance or otherwise impact HHCA native Hawaiians beneficiaries who have not yet applied for a Hawaiian homestead lease?

HHCA native Hawaiian beneficiaries who have not yet applied for a Hawaiian homestead lease would not realize an immediate benefit from the proposed amendment. However, if DHHL is able to generate more revenue as a result of the disposition of improvements and in turn fund more programs and services for Hawaiian homestead lessees and place more native Hawaiians currently on a waiting list for a Hawaiian homestead lease in homesteads, the HHCA native Hawaiian beneficiaries who have not yet applied for a Hawaiian homestead lease may be more inclined to apply for a Hawaiian homestead lease.

11. How does the proposed amendment advance or otherwise impact interests other than those of the HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees?

The trust obligation and duty owed to administer the trust solely in the interest of HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees is clear and responses to the previous three questions take priority over the interests of third parties. Still in response to the question above, the proposed amendment advances the interests of DHHL and its ability to manage these improvements and generate revenue during an interim period until long-term planning can be completed. The proposed amendment may also impact the interests of organizations who may need temporary facilities and space for operations, which may be beneficiary owned or employ beneficiaries.¹

12. How does the proposed amendment balance the interests of HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees?

The proposed amendment balances the interests of HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees by equally ensuring that all revenues received as a result of disposition of improvements be deposited in the Hawaiian home administration account. As previously explained, moneys in the Hawaiian home operating fund can be used to benefit both HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees.

13. Does the purpose/benefit to lessees of the proposed amendment outweigh the impact of the change in qualifications of lessees on the existing class of HHCA beneficiaries?

Please provide an analysis.

No, the purpose/benefit of the proposed amendment allows for the additional revenue generated for the disposition of improvements to be used for lessees and HHCA beneficiaries (native Hawaiians) currently on a waiting list for a Hawaiian homestead lease.

14. Does the proposed amendment impair or place at risk the corpus of the Trust?

Please provide an analysis.

This proposed amendment does not impair or increase risks to the corpus of the trust.

15. Alternatives Considered and Reasons Rejected (if applicable)

None.

16. Anomalies Created and Explained (if applicable)

None.

17. Additional Considerations and Discussion (optional)

¹ Section 204 of the HHCA allows DHHL to negotiate with beneficiary owned entities before negotiating with the general public.

None.

18. Is Congressional approval of the proposed amendment required?

Please provide an analysis.

It is the opinion of the State of Hawaii Attorney General that this amendment does not require the consent of Congress as it falls within one of the enumerated exceptions provided for under Section 4 of the Hawaii Admission Act. See opinion letter attached.