

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

February 10, 2012

The Honorable Rhea S. Suh
Assistant Secretary for Policy Management and Budget
U.S. Department of the Interior
1849 C Street, N.W.
Mail Stop 3543
Washington, D.C. 20240

Dear Ms. Suh:

Section 4 of the Hawaii Admission Act provides that the Hawaiian Homes Commission Act (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 Homes Lands Recovery Act (P. L. 104-42) outlines the procedure to be followed by the State of Hawaii and the USDOJ for the approval of these amendments.

In accordance with this procedure, we are transmitting one amendment to the HHCA passed by the 2011 Hawaii State Legislature and approved by the Governor. The amendments are accompanied by the following documents:

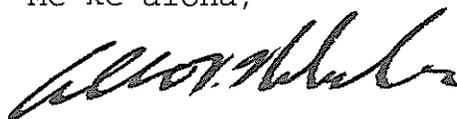
1. An opinion letter from the State of Hawaii Attorney General regarding whether congressional consent is required pursuant to Section 4 of the Hawaii Admission Act; and
2. Copies of relevant testimony presented before the Hawaii State Legislature during deliberations on the amendments.

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 Admissions Act.

Mr. Kaiini Kimo Kaloi
February 10, 2012
Page 2

We appreciate your review and appropriate action on this amendment. Please contact me, or the DHHL Policy & Program Analyst, Ms. Dre Kalili at (808) 620-9486, should you have any questions or need additional documentation on this amendment.

Me ke aloha,

A handwritten signature in black ink, appearing to read "Albert Nahale-a". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Albert "Alapaki" Nahale-a,
Chairman
Hawaiian Homes Commission

NEIL ABERCROMBIE
GOVERNOR



DAVID M. LOUIE
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

December 13, 2011

Mr. Alapaki Nahale-a
Chairman
Hawaiian Homes Commission
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

Dear Chairman Nahale-a:

Re: Congressional Consent to 2011 Amendment to the Hawaiian
Homes Commission Act, 1920, as Amended.

This responds to your letter dated July 29, 2011, requesting our review and opinion as to whether Act 114, 2011 Hawai'i Sessions Laws 293, requires the consent of the United States. Act 114 amends §214(b)(5) of the Hawaiian Homes Commission Act by increasing the ceiling on the department's ability to borrow moneys and guarantee of loans made to lessees from \$50,000,000 to \$100,000,000.

Section 4 of the Hawaii Admission Act requires the consent of the United States for any amendment to the HHCA, unless the amendment complies with several enumerated exceptions. It provides:

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, section 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 any 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) 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 by said Act, shall be used only in carrying out the provisions of said Act. (Emphasis added).

As discussed below, it is our belief that Act 114 does not require the consent of the United States.

First, Act 114 does not reduce or impair the Hawaiian home-loan fund, Hawaiian home-operating fund, and Hawaiian home-development fund, as those funds continue to be restricted in use as set forth, in sections 214 and 209, HHCA.

Further, the increase in guaranteed loans enabled by Act 11 will not impair the Hawaiian home-operating fund or the Hawaiian home-development fund in any way. (The Hawaiian home-operating fund was merged with the Hawaiian home-development fund into one fund known as the Hawaiian home-operating fund. Act 249, 1986 Haw. Sess. Laws 443, 447-448; Congressional consent at Public Law 102-398, October 6, 1992.) In fact, the home-operating fund will benefit from the increase in the interest income to be generated by the increased loans enabled by Act 114, since this interest is required to be paid into the fund.

Secondly, raising the debt ceiling from \$50,000,000 to \$100,000,000 increases the benefits to lessees. Increasing the State's liability on monies borrowed by the department, or loans guaranteed by the department, results in the availability of more resources for homesteading programs. More lessees are able to obtain department guaranteed homestead loans, and more cooperative associations are able to secure department guaranteed loans, as permitted under §214, HHCA.

Finally, Act 114 does not involve any "encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act", nor does it change the qualification of a lessee, all of which would require the consent of the United States. See §4 of the Admission Act.

Since the effect of Act 114 falls within all of the enumerated exceptions of section 4 of the Admission Act in that it provides: 1) for an increase in benefits to lessees of Hawaiian home lands, 2) does not impair the Hawaiian home-loan fund, the Hawaiian home-operating fund, or the Hawaiian home-development fund, and 3) does not

Mr. Alapaki Nahale-a
December 13, 2011
Page 3

encumber Hawaiian home lands or change the qualifications of lessees, it does not require Congressional Consent. This position is consistent with similar previous amendments to § 214(b)(5) increasing the State's liability ceiling for department loans received or guaranteed.

Sincerely yours,



S. Kalani Bush
Deputy Attorney General

APPROVED:



David M. Louie
Attorney General

NEIL ABERCROMBIE
GOVERNOR
STATE OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1379
HONOLULU, HAWAII 96805

ALBERT "ALAPAKI" NAHALE-A
CHAIRMAN
HAWAIIAN HOMES COMMISSION
MICHELLE K. KAUIHANE
DEPUTY TO THE CHAIRMAN
M. WAIALEALE SARSONA
EXECUTIVE ASSISTANT

July 29, 2011

To: David Louie, Attorney General
State of Hawaii

From: Albert "Alapaki" Nahale-a, Chairman
Hawaiian Homes Commission *AL*

Subject: Request to Review Act 114 (2011)

Section 4 of the Admission Act stipulates that certain amendments to the Hawaiian Homes Commission Act, 1920, require the consent of the United States. Pursuant to a procedure established in 1987 between the Governor of Hawaii and the Secretary of Interior, the Chairman of the Hawaiian Homes Commission must transmit to the Secretary's designated representative any laws of the State of Hawaii that amend the Hawaiian Homes Commission Act, 1920, as amended, within 180 days of the legislative session in which the new law was adopted. When transmitted to the Secretary's designated representative, each law must be accompanied by an opinion "from an appropriate legal officer of the State" stating whether the amendment requires the consent of the United States.

We request your review of Act 114 (2011) and an opinion on whether this measure requires the consent of the United States. A copy of this act is enclosed.

Your assistance with this matter is appreciated.

Enc.

Approved by the Governor

on JUN 14 2011

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 114
S.B. NO. 1290
S.D. 1
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

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

1 SECTION 1. Section 214, Hawaiian Homes Commission Act,
2 1920, as amended, is amended by amending subsection (b) to read
3 as follows:

4 "(b) In addition the department may:

5 (1) Use moneys in the Hawaiian home operating fund, with
6 the prior approval of the governor, to match federal,
7 state, or county funds available for the same purposes
8 and to that end, enter into [~~such~~] an undertaking,
9 agree to [~~such~~] conditions, transfer funds therein
10 available for [~~such~~] expenditure, and do and perform
11 [~~such~~] other acts and things, as may be necessary or
12 required, as a condition to securing matching funds
13 for [~~such~~] the department's projects or works;

14 (2) Loan or guarantee the repayment of or otherwise
15 underwrite any authorized loan or portion thereof to
16 lessees in accordance with section 215;

17 (3) Loan or guarantee the repayment of or otherwise
18 underwrite any authorized loan or portion thereof to a



1 cooperative association in accordance with section
2 215;

3 (4) Permit and approve loans made to lessees by government
4 agencies or private lending institutions, where the
5 department assures the payment of [~~such~~] these loans;
6 provided that upon receipt of notice of default in the
7 payment of [~~such~~] the assured loans, the department
8 may, upon failure of the lessee to cure the default
9 within sixty days, cancel the lease and pay the
10 outstanding balance in full or may permit the new
11 lessee to assume the outstanding debt; and provided
12 further that the department shall reserve the
13 following rights: [~~the~~]

14 (A) The right of succession to the lessee's interest
15 and assumption of the contract of loan; [~~the~~]

16 (B) The right to require that written notice be given
17 to the department immediately upon default or
18 delinquency of the lessee; and [~~any~~]

19 (C) Any other rights enumerated at the time of
20 assurance necessary to protect the monetary and
21 other interests of the department;

- 1 (5) Secure, pledge, or otherwise guarantee the repayment
2 of moneys borrowed by the department from government
3 agencies or private lending institutions and pay the
4 interim interest or advances required for loans;
5 provided that the State's liability, contingent or
6 otherwise, either on moneys borrowed by the department
7 or on departmental guarantees of loans made to lessees
8 under this paragraph and paragraphs (2), (3), and (4)
9 of this subsection, shall at no time exceed
10 [~~\$50,000,000,~~] \$100,000,000; the department's
11 guarantee of repayment shall be adequate security for
12 a loan under any state law prescribing the nature,
13 amount, or form of security or requiring security upon
14 which loans may be made;
- 15 (6) Use available loan fund moneys or other funds
16 specifically available for ~~[such]~~ guarantee purposes
17 as cash guarantees when required by lending agencies;
- 18 (7) Exercise the functions and reserved rights of a lender
19 of money or mortgagee of residential property in all
20 direct loans made by government agencies or by private
21 lending institutions to lessees the repayment of which
22 is assured by the department. The functions and



1 reserved rights shall include but not be limited to,
2 the purchasing, repurchasing, servicing, selling,
3 foreclosing, buying upon foreclosure, guaranteeing the
4 repayment, or otherwise underwriting, of any loan, the
5 protecting of security interest, and after
6 foreclosures, the repairing, renovating, or
7 modernization and sale of property covered by the loan
8 and mortgage;

- 9 (8) Pledge receivables of loan accounts outstanding as
10 collateral to secure loans made by government agencies
11 or private lending institutions to the department, the
12 proceeds of which shall be used by the department to
13 make new loans to lessees or to finance the
14 development of available lands for purposes permitted
15 by this Act; provided that any loan agreement entered
16 into under this paragraph by the department shall
17 include a provision that the money borrowed by the
18 department is not secured directly or indirectly by
19 the full faith and credit or the general credit of the
20 State or by any revenues or taxes of the State other
21 than the receivables specifically pledged to repay the
22 loan; provided further that in making loans or



1 developing available lands out of money borrowed under
2 this paragraph, the department may establish, revise,
3 charge, and collect fees, premiums, and charges as
4 necessary, reasonable, or convenient, to assure
5 repayment of the funds borrowed, and the fees,
6 premiums, and charges shall be deposited into the
7 Hawaiian home trust fund; and provided further that no
8 moneys of the Hawaiian home loan fund may be pledged
9 as security under this paragraph; and

10 (9) Notwithstanding any other provisions of this Act to
11 the contrary, transfer into the Hawaiian home trust
12 fund any available and unpledged moneys from any loan
13 funds, the Hawaiian loan guarantee fund, or any fund
14 or account succeeding thereto, except the Hawaiian
15 home loan fund, for use as cash guarantees or reserves
16 when required by a federal agency authorized to insure
17 or guarantee loans to lessees."

18 SECTION 2. The provisions of the amendments made by this
19 Act to the Hawaiian Homes Commission Act, 1920, as amended, are
20 declared to be severable, and if any section, sentence, clause,
21 or phrase, or the application thereof to any person or
22 circumstances is held ineffective because there is a requirement



1 of having the consent of the United States to take effect, then
2 that portion only shall take effect upon the granting of consent
3 by the United States and effectiveness of the remainder of these
4 amendments or the application thereof shall not be affected.

5 SECTION 3. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 4. This Act shall take effect on July 1, 2011.

APPROVED this 14 day of JUN, 2011

A handwritten signature in black ink, appearing to read "Neil Abernethy". The signature is written in a cursive style with a large initial "N".

GOVERNOR OF THE STATE OF HAWAII



GOV. MSG. NO. 1217

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 14, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 14, 2011, the following bill was signed into law:

SB1290 SD1 HD2 CD1

RELATING TO THE HAWAIIAN HOMES
COMMISSION ACT, 1920, AS AMENDED
Act 114 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUN 14 2011

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 114
S.B. NO. 1290
S.D. 1
H.D. 2
C.D. 1

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6 the prior approval of the governor, to match federal,
7 state, or county funds available for the same purposes
8 and to that end, enter into [such] an undertaking,
9 agree to [such] conditions, transfer funds therein
10 available for [such] expenditure, and do and perform
11 [such] other acts and things, as may be necessary or
12 required, as a condition to securing matching funds
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6 provided that upon receipt of notice of default in the
7 payment of [~~sueh~~] the assured loans, the department
8 may, upon failure of the lessee to cure the default
9 within sixty days, cancel the lease and pay the
10 outstanding balance in full or may permit the new
11 lessee to assume the outstanding debt; and provided
12 further that the department shall reserve the
13 following rights: [~~the~~]

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15 and assumption of the contract of loan; [~~the~~]

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17 to the department immediately upon default or
18 delinquency of the lessee; and [~~any~~]

19 (C) Any other rights enumerated at the time of
20 assurance necessary to protect the monetary and
21 other interests of the department;



- 1 (5) Secure, pledge, or otherwise guarantee the repayment
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6 otherwise, either on moneys borrowed by the department
7 or on departmental guarantees of loans made to lessees
8 under this paragraph and paragraphs (2), (3), and (4)
9 of this subsection, shall at no time exceed
10 ~~[\$50,000,000]~~ \$100,000,000; the department's
11 guarantee of repayment shall be adequate security for
12 a loan under any state law prescribing the nature,
13 amount, or form of security or requiring security upon
14 which loans may be made;
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20 State or by any revenues or taxes of the State other
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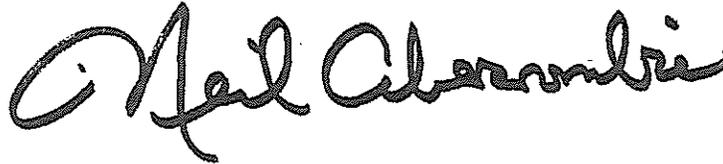


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3 by the United States and effectiveness of the remainder of these
4 amendments or the application thereof shall not be affected.

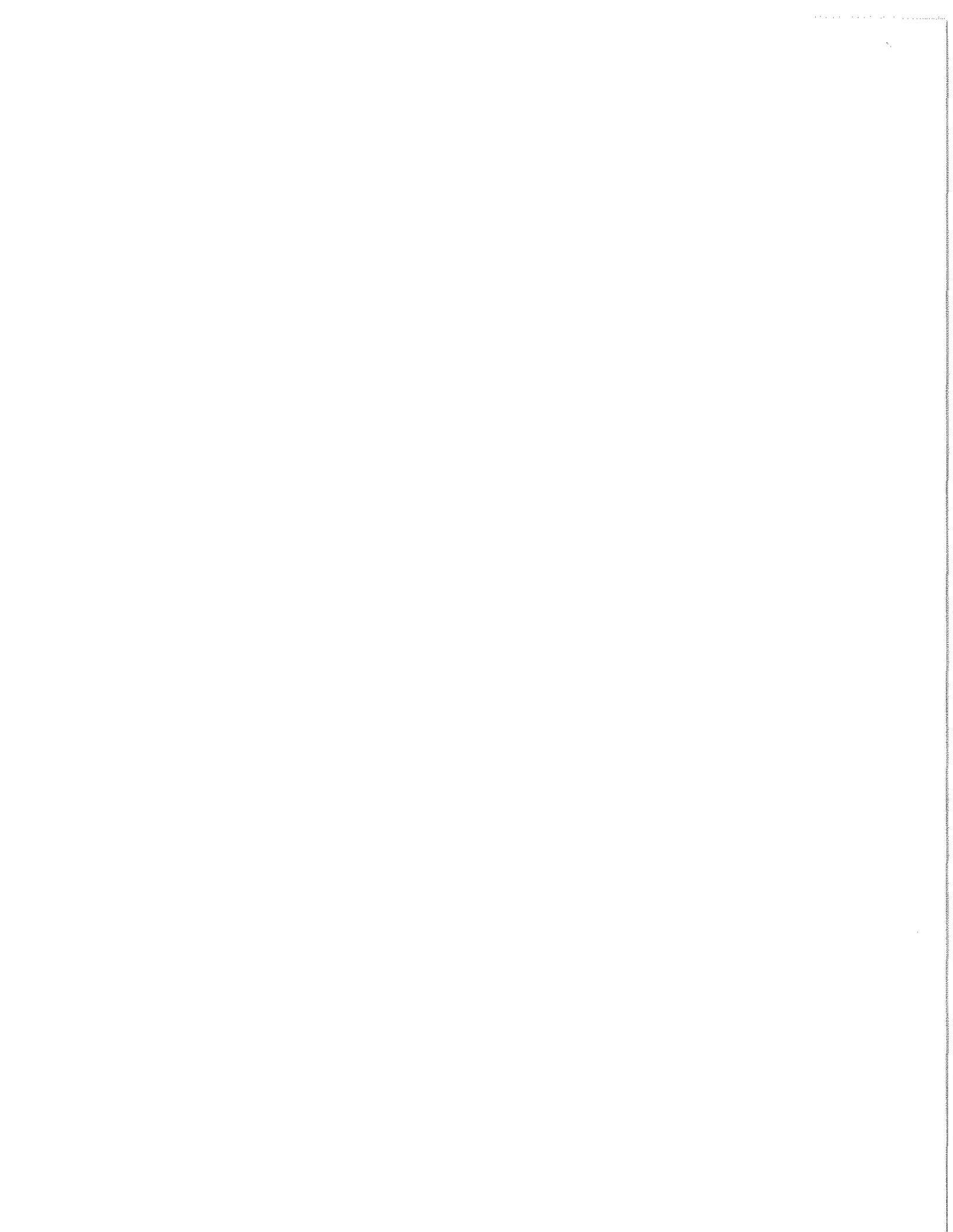
5 SECTION 3. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 4. This Act shall take effect on July 1, 2011.

APPROVED this 14 day of JUN, 2011



GOVERNOR OF THE STATE OF HAWAII



Honolulu, Hawaii

APR 29 2011 , 2011

RE: S.B. No. 1290
S.D. 1
H.D. 2
C.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sirs:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1290, S.D. 1, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to amend from \$50,000,000 to an unspecified amount the limit on the amount the Department of Hawaiian Home Lands is currently authorized to borrow or guarantee on loans ("borrow or guarantee limit") in order to cover the Department's repayment guarantee requirements for its housing program.

Your Committee on Conference notes that, as initially introduced, this measure would raise the borrow or guarantee limit from \$50,000,000 to \$100,000,000, and enhance the Department's ability to deliver homesteads and home ownership opportunities to



beneficiaries. Current loan guarantees are approximately \$30,000,000, with an additional \$16,800,000 in loans to be closed over the next six months, bringing the total very close to the current \$50,000,000 ceiling.

Your Committee on Conference has amended this measure accordingly, by:

- (1) Inserting a borrow or guarantee limit of \$100,000,000; and
- (2) Changing the effective date to July 1, 2011.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1290, S.D. 1, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1290, S.D. 1, H.D. 2, C.D. 1.

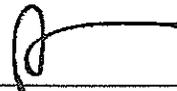
Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE

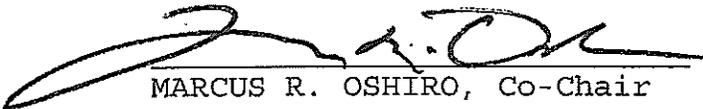
ON THE PART OF THE SENATE



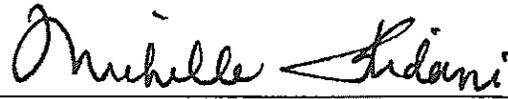
FAYE RANOAHANO, Co-Chair



BRICKWOOD GALUTERIA, Chair



MARCUS R. OSHIRO, Co-Chair



MICHELLE KIDANI, Co-Chair



GILBERT KAHELE, Co-Chair



Hawaii State Legislature
Record of Votes of a
Conference Committee

Bill / Concurrent Resolution No.: SB 1290, SD 1, HD 2	Date/Time: 4-29-11 11:00 am.
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The recommendation of the House and Senate managers is to pass with amendments (CD).

The Committee is reconsidering its previous decision.

<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure	<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.
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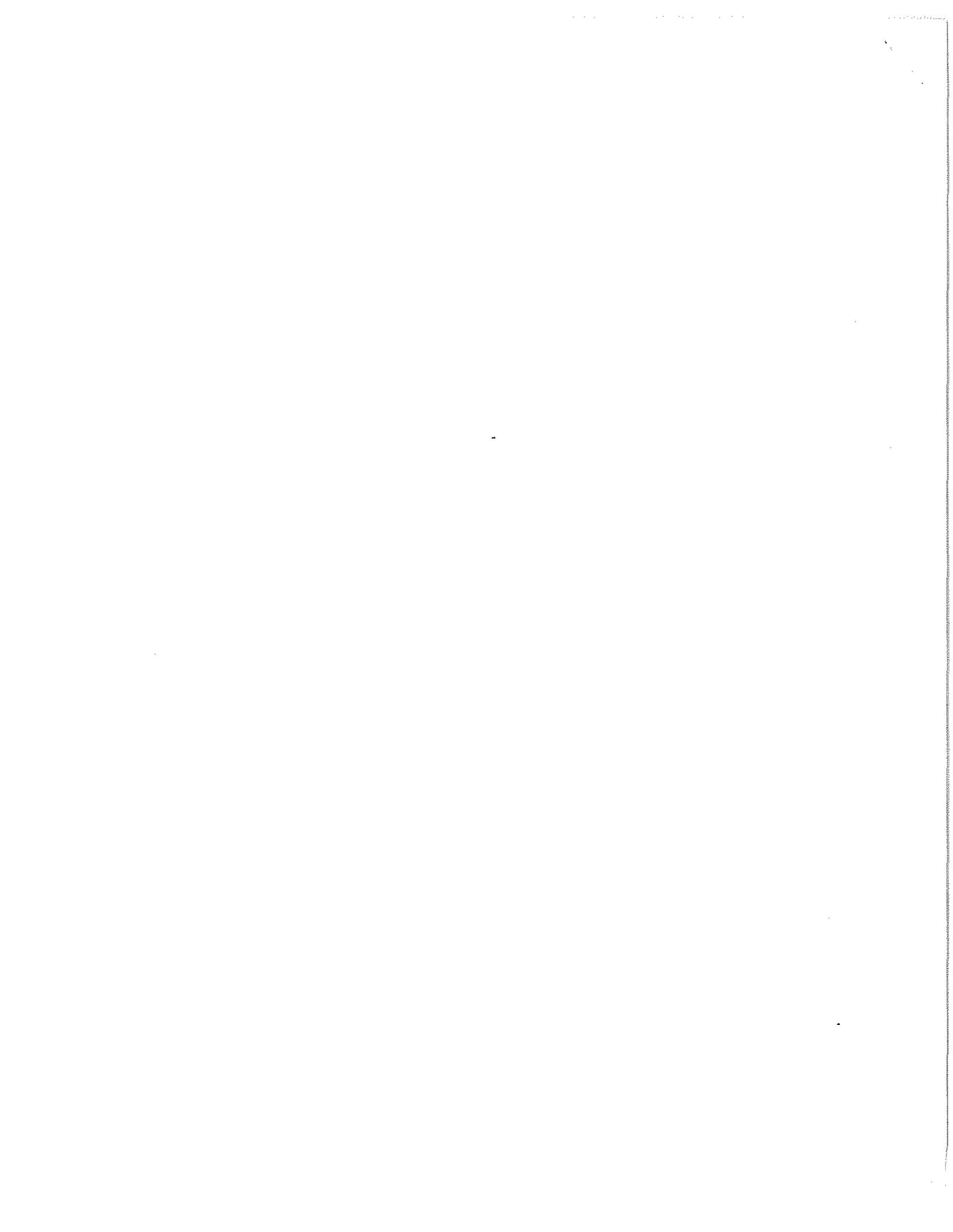
Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
GALUTERIA, Brickwood, Chr.	✓				HANOHANO, Faye P., Co-Chr.	✓			
KIDANI, Michelle, Co-Chr.	✓				OSHIRO, Marcus R., Co-Chr.	✓			
KAHELE, Gilbert, Co-Chr.	✓				LEE, Chris	✓			
SLOM, Sam				✓	MIZUNO, John M.				✓
					WARD, Gene				✓
TOTAL	3			1	TOTAL	3			2

A = Aye WR = Aye with Reservations N = Nay E = Excused

Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted
---	--

Senate Lead Chair's or Designee's Signature: 	House Lead Chair's or Designee's Signature:
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Distribution: Original Yellow Pink Goldenrod
File with Conference Committee Report *House Clerk's Office* *Senate Clerk's Office* *Drafting Agency*



NEIL ABERCROMBIE
GOVERNOR
STATE OF HAWAII



ALBERT "ALAPAKI" NAHALE-A
CHAIRMAN
HAWAIIAN HOMES COMMISSION

ROBERT J. HALL
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF ALAPAKI NAHALE-A, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON FINANCE ON

SB 1290 SD 1 HD 1, RELATING TO THE HAWAIIAN HOMES COMMISSION ACT,
1920, AS AMENDED

April 4, 2011

Aloha Chair Oshiro, Vice-Chair Lee and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) strongly supports SB 1290 SD 1 HD 1, as our ability to deliver homesteads and home ownership opportunities to beneficiaries is directly tied to our ability to guarantee mortgage loans.

As DHHL lands are inalienable, we are required to guarantee mortgage loans made for homes on Hawaiian Home Lands when lenders do not have a loan assurance program. The DHHL's current loan guarantees are approximately \$30 million of the current \$50 million ceiling, and we have approximately \$16.8 million in loans to be closed over the next six months.

As part of its housing strategy, the DHHL has partnered with local lenders on loan programs with complementing mortgage insurance to minimize the Department's guarantee obligations. However, there still exist loan programs that serve specific income level families, such as Habitat for Humanity, U.S. Department of Agriculture (USDA) Rural Development and county programs here in Hawaii. The exponential

growth of both house construction and mortgage amounts of these programs will still require this ceiling adjustment. The increase in this ceiling will allow the Department to increase construction of affordable units and home ownership, thereby creating jobs, and infuse millions of dollars in Hawaii's local economy. This benefits the entire state.

We ask that your committee consider amending this measure, specifically Page 3, lines 7-8 to read "shall at no time exceed \$100,000,000"

We appreciate your consideration and respectfully urge to you adopt this measure and raise this ceiling from \$50 million to \$100 million so we may continue to work to fulfill our mission. Thank you for the opportunity to testify.