



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

October 12, 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 USDOH for the approval of these amendments.

In accordance with this procedure, we are transmitting two amendments to the HHCA passed by the 2012 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 Admission Act.

Assistant Secretary Suh
October 12, 2012
Page 2 of 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.

Aloha,

A handwritten signature in black ink, appearing to read "Jobie M. K. Masagatani". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jobie M. K. Masagatani,
Chairman Designate
Hawaiian Homes Commission

Enc.

NEIL ABERCROMBIE
GOVERNOR



DAVID M. LOUIE
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 588-1500

September 11, 2012

Jobie M. K. Masagatani
Chairperson Designate
Hawaiian Homes Commission
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

**Confidential and Privileged
Attorney-Client Communication and
Attorney Work-Product**

Re: United States Consent to Act 174, 2012 Hawaii Session Laws

Dear Ms. Masagatani:

This responds to your letter dated August 7, 2012, requesting our review and opinion as to whether Act 174, 2012 Hawaii Sessions Laws 611, requires the consent of the United States. Act 174 amends § 213(d) of the Hawaiian Homes Commission Act ("HHCA") by exempting Department of Hawaiian Home Lands ("DHHL") expenditures of less than \$100,000 from the Hawaii Public Procurement Code, Chapter 103D of the Hawaii Revised Statutes ("HRS"). The exemption applies to expenditures out of the Hawaiian Home Operating Fund, the Hawaiian Home Receipts Fund, the Hawaiian Home Trust Fund, the Native Hawaiian Rehabilitation Fund, and the Hawaiian Home Administration Account. Act 174 also requires DHHL to submit an annual report to the Legislature detailing all solicitations and procurements of goods and services.

Section 4 of the 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 opinion that Act 174 does not require the consent of the United States.

First, the Admission Act explicitly allows § 213, HHCA to be amended without the consent of the United States, unless such amendments reduce or impair the Hawaiian Home Loan Fund, the Hawaiian Home Operating Fund, or the Hawaiian Home Development Fund. Consent of the United States is also required if the amendment increases the encumbrances authorized to be placed on home lands by officers other than those charged with administration of the HHCA, or if the amendment changes the qualifications of lessees.

Act 174 implicates only one of the funds listed in the Admission Act, the Hawaiian Home Operating Fund.¹ Act 174 merely exempts expenditures from that fund, along with expenditures from the Hawaiian Homes Receipts Fund, the Hawaiian Home Trust Fund, and the Native Hawaiian Rehabilitation Fund, from the provisions of Chapter 103D, HRS governing public procurement. Act 174 does not reduce or impair the Hawaiian Home Operating Fund in any way.

Second, Act 174 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 qualifications of lessees, both of which would require the consent of the United States. See § 4 of the Admission Act.

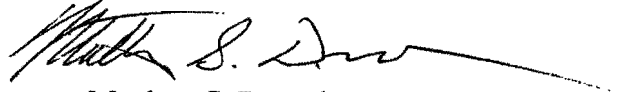
Since Act 174 falls within an enumerated exception in § 4 of the Admission Act in that it amends § 213 of the HHCA without reducing or impairing the Hawaiian Home Loan Fund, the

¹ The Hawaiian Home Development Fund was merged into the Hawaiian Home Operating Fund in 1986. See Act 249, 1986 Haw. Sess. Laws 443, 447-48. Consent of the United States was given through Act of October 6, 1992, Public Law 102-398.

Jobie M.K. Masagatani
September 11, 2012
Page 3

Hawaiian Home Operating Fund, or the Hawaiian Home Development Fund, it does not require the consent of the United States.

Sincerely yours,

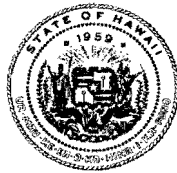


Matthew S. Dvonch
Deputy Attorney General

APPROVED:



David M. Louie
Attorney General



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 HAWAIIAN AFFAIRS
IN SUPPORT OF

HB 2529, RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS

February 1, 2012

Chair Hanohano, Vice-Chair Lee and Members of the Committee:

The Department of Hawaiian Home Lands strongly supports HB 2529, which allows the department to create its own procurement requirements for any expenditure of trust funds less than \$250,000. This bill is part of the Governor's administrative package by request of our department.

The department currently operates without the support of general funds, and depends wholly on its trust fund resources. Procurement flexibility on small purchases allows the department to expend trust funds more efficiently to better respond to and address the needs of trust beneficiaries. This flexibility would maintain fairness and transparency, while reducing barriers for Hawaiian homestead associations and organizations to compete as vendors and service providers. Further, streamlined procurement processes for small purchases expedite contract awards which potentially create jobs.

Mahalo for the opportunity to testify in strong support of this important measure.



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
IN SUPPORT OF

HB 2529, RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS

February 27, 2012

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

The Department of Hawaiian Home Lands strongly supports HB 2529, which allows the department to create its own procurement requirements for any expenditure of trust funds less than \$250,000. This bill is part of the Governor's administrative package by request of our department.

The department currently operates without the support of general funds, and depends wholly on its trust fund resources. Procurement flexibility on small purchases allows the department to expend trust funds more efficiently to better respond to and address the needs of trust beneficiaries. This flexibility would maintain fairness and transparency, while reducing barriers for Hawaiian homestead associations and organizations to compete as vendors and service providers. Further, streamlined procurement processes for small purchases expedite contract awards which potentially create jobs.

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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 SENATE COMMITTEES ON HAWAIIAN AFFAIRS &
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS
IN SUPPORT OF

HB 2529 HD 1, RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS

March 14, 2012

Chair Galuteria, Chair Espero, and Members of the Committee:

The Department of Hawaiian Home Lands strongly supports HB 2529 HD 1, which allows the department to create its own procurement requirements for any expenditure of trust funds less than \$250,000. This bill is part of the Governor's administrative package by request of our department.

The department currently operates without the support of general funds, and depends wholly on its trust fund resources. Procurement flexibility on small purchases allows the department to expend trust funds more efficiently to better respond to and address the needs of trust beneficiaries. This flexibility would maintain fairness and transparency, while reducing barriers for Hawaiian homestead associations and organizations to compete as vendors and service providers. Further, streamlined procurement processes for small purchases expedite contract awards which potentially create jobs.

Mahalo for the opportunity to testify in strong support of this important measure.



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 SENATE COMMITTEE ON WAYS AND MEANS
IN SUPPORT OF

HB 2529 HD 1 SD 1, RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS

March 29, 2012

Chair Ige, Vice-Chair Kidani, and Members of the Committee:

The Department of Hawaiian Home Lands strongly supports HB 2529 HD 1 SD 1, which allows the department to create its own procurement requirements for any expenditure of trust funds less than \$100,000. This bill is part of the Governor's administrative package by request of our department.

The department currently operates without the support of general funds, and depends wholly on its trust fund resources. Procurement flexibility on small purchases allows the department to expend trust funds more efficiently to better respond to and address the needs of trust beneficiaries. This flexibility would maintain fairness and transparency, while reducing barriers for Hawaiian homestead associations and organizations to compete as vendors and service providers.

We support the amendment in the Senate Draft 1 to limit this flexibility to purchases up to \$100,000. Since the beginning of Fiscal Year 2010, our department has procured 81 contracts under this

Department of Hawaiian Home Lands

March 29, 2012

HB 2529 HD 1 SD 1

Page 2

threshold from one of our trust funds, accounting for about \$1.6 million per fiscal year.

Mahalo for the opportunity to testify in strong support of this important measure.



GOV. MSG. NO. 1277

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 28, 2012

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 28, 2012, the following bill was signed into law:

HB2529 HD1 SD1

RELATING TO THE DEPARTMENT OF
HAWAIIAN HOME LANDS.
Act 174 (12)

Aloha
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor
on JUN 28 2012

ORIGINAL

ACT 174

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

H.B. NO. 2529
H.D. 1
S.D. 1

A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS.

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

1 SECTION 1. Section 213, Hawaiian Homes Commission Act,
2 1920, as amended, is amended by amending subsection (d) to read
3 as follows:
4 "(d) There are established in the treasury of the State
5 four trust funds, to be known respectively as the Hawaiian home
6 operating fund, the Hawaiian home receipts fund, the Hawaiian
7 home trust fund, and the native Hawaiian rehabilitation fund,
8 and one special fund to be known as the Hawaiian home
9 administration account. Expenditures and procurements less than
10 \$100,000 made from these trust funds and accounts shall be
11 exempt from chapter 103D, Hawaii Revised Statutes; provided that
12 the department shall develop internal policies and procedures
13 for the procurement of goods, services, and construction that
14 are consistent with the goals of public accountability and
15 public procurement practices for expenditures from these funds.
16 The department is encouraged to use the provisions of chapter
17 103D, Hawaii Revised Statutes, where possible; provided that the
18 use of one or more provisions of chapter 103D, Hawaii Revised



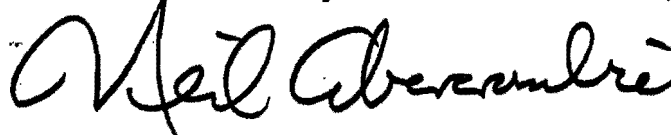
1 Statutes, shall not constitute a waiver of the exemption from
2 that chapter and shall not subject the department to any other
3 provision of chapter 103D, Hawaii Revised Statutes.

4 The department shall submit an annual report to the
5 legislature no later than twenty days before the convening of
6 each regular session. The report shall include, but not be
7 limited to, solicitations of goods, services, and construction,
8 types of procurements, and awardees."

9 SECTION 2. New statutory material is underscored.

10 SECTION 3. This Act shall take effect on July 1, 2012;
11 provided that on June 30, 2015, this Act shall be repealed and
12 section 213, Hawaiian Homes Commission Act, 1920, as amended,
13 shall be reenacted in the form in which it read on June 30,
14 2012.

APPROVED this 28 day of JUN, 2012



GOVERNOR OF THE STATE OF HAWAII

