

BENJAMIN J. CAYETANO
GOVERNOR
STATE OF HAWAII



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CHAIRMAN
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STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
P.O. BOX 1879
HONOLULU, HAWAII 96805

October 30, 2000

The Honorable John Berry
Assistant Secretary for Policy, Management and Budget and
Secretary's Designated Officer Under the Hawaiian Homes
Commission Act, 1920, As Amended
1849 C. Street, N.W.
Washington, D. C. 20240

Dear Assistant Secretary Berry:

Subject: Amendments to the Hawaiian Homes Commission Act, 1920,
As Amended (HHCA)

Section 4 of the Hawaii Admission Act provides that the Hawaiian Homes Commission Act, 1920, as amended, 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).

We are transmitting for your review and appropriate attention copies of amendments to the HHCA approved by the State of Hawaii during the past five years. Each amendment is accompanied by the following documents:

1. An opinion letter from the State 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.

Between 1995 and 2000, the State of Hawaii approved eight (8) amendments to the HHCA. Based on the review of these amendments by the State Attorney General, we believe only one of these amendments requires the consent of Congress. The remaining

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amendments fall within one of the enumerated exceptions under Section 4 of the Hawaii Admission Act. A summary of each amendment follows:

1. **Act 14, Special Session Laws of Hawaii, 1995:** This Act amended the HHCA by adding a new section designated as the "Hawaiian home lands trust fund" into which the State agreed to make twenty annual deposits of \$30 million dollars each or their discounted value equivalent. This section was codified as §13.6. Because Act 14, SpSLH, 1995, provides for an increase of benefits to lessees of Hawaiian home lands, one of the enumerated exceptions under Section 4 of the Hawaii Admission Act, we are of the opinion that it **does not require the consent of the United States.**
2. **Act 232, Session Laws of Hawaii, 1996:** This Act amends section 214(b)5 of the HHCA by increasing the ceiling on the aggregate departmental guarantee of loans made to lessees from \$21,000,000 to \$50,000,000. We are of the opinion that Act 232 falls within one of the enumerated exceptions in that it provides for an increase of benefits to lessees of Hawaiian home lands and therefore **does not require the consent of the United States.**
3. **Act 196, Session Laws of Hawaii, 1997:** This Act amends the HHCA by adding a new section, entitled "Housing development" and transferring to the new section, from section 207(a), the authority granted to the department by Act 27, SLH, 1984, to which legislation Congress had consented pursuant to Public Law No. 99-557, dated October 27, 1986. Act 196 also amends section 208 by permitting a homestead lessee to rent to another native Hawaiian "lodging within the lessee's existing home or in a separate residential dwelling constructed on the premises." By allowing the opportunity for rental income, we believe that Act 196, SLH, 1997, increases benefits to lessees of Hawaiian home lands and **does not require the consent of the United States.**
4. **Act 197, Session Laws of Hawaii, 1997:** This Act amends the HHCA by making housecleaning changes, nonsubstantive in

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nature, such as removing brackets, including gender-neutral language, and making other stylistic changes. We do not believe that Section 4 requires nonsubstantive housecleaning amendments to the HHCA to be subject to the lengthy process of obtaining congressional consent.

5. **Act 27, Session Laws of Hawaii, 1998:** This Act amends section 213 of the HHCA by changing the designation of the Hawaiian home operating fund, the Hawaiian home receipts fund, the Hawaiian home trust fund, and the native Hawaiian rehabilitation fund from "special" funds to "trust" funds and leaving the Hawaiian homes administration account as the only special fund. In general, Act 27, SLH, 1998, expands the authority of the department in managing the various funds. Proviso (1) of Section 4, Hawaii Admission Act, provides that the Hawaiian home operating fund may not be "reduced or impaired" by amendment, "whether made in the constitution or in the manner required for State legislation." In amending the status of the Hawaiian home operating fund from a "special" fund to a "trust" fund, by legislative definition the fund is excluded from the special fund assessment provisions of sections 36-27 and 36-30, Hawaii Revised Statutes. We believe that Act 27, SLH, 1998 neither reduces or impairs the Hawaiian home operating fund and, therefore, **does not require the consent of the United States.**

6. **Act 17, Session Laws of Hawaii, 1999:** This Act makes several amendments to section 208 of the HHCA. The primary change is to allow the *inter vivos* transfer of a homestead lease to a qualified relative who is at least one-quarter Hawaiian. Specifically, section 208(5) is amended to authorize the lessee, with the approval of the department, to transfer his or her interest in the homestead lease "to the following qualified relatives of the lessee who are at least one-quarter Hawaiian: husband, wife, child, or grandchild." Proviso (2) of Section 4, Hawaii Admission Act, relating to changing the qualifications of lessees, provides that "the qualifications of lessees shall not be changed except with the consent of the United States." Previous amendments have been made to the HHCA and consented to by congress which permit the spouse, child, or

grandchild of a homestead lessee, who are at least one-quarter Hawaiian, to **succeed** to the homestead. Act 17, SLH, 1999, permits a homesteader to **transfer** his or her leasehold interest to his or her spouse, child, or grandchild who is at least one-quarter Hawaiian. Since the law already allows the homesteader's spouse, child, or grandchild who is at least one-quarter Hawaiian to be a successor lessee, this legislation does not change the qualification of the lessee. Rather, it permits the transfer to be made effective while the lessee is still alive. We are therefore of the opinion that Act 17, SLH 1999, **does not require the consent of the United States.**

7. **Act 107, Session Laws of Hawaii, 2000:** This Act amends section 215 of the HHCA to allow the Hawaiian Homes Commission to establish by administrative rule, the interest rate on loans from the Hawaiian home loan fund and the Hawaiian home general loan fund. The intent of this amendment is to provide the Hawaiian Homes Commission with the flexibility to adjust the interest rate on loans from the Hawaiian home loan fund based on current market conditions or the financial needs of the successor lessee. Proviso (1) of Section 4, the Hawaii Admission Act, provides that the Hawaiian home loan fund may not be "reduced or impaired" by amendment, "whether made in the constitution or in the manner required for State legislation...except with the consent of the United States." We therefore believe that **congressional consent is required.**

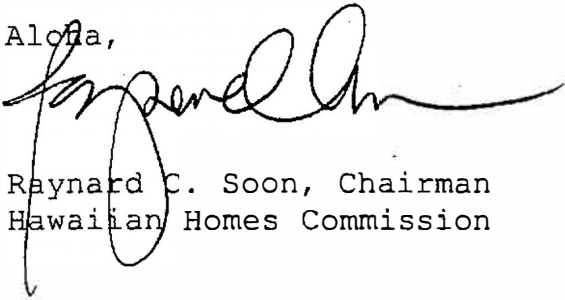
8. **Act 119, Session Laws of Hawaii, 2000:** This Act amends section 204 of the HHCA to authorize the department to general lease improvements on Hawaiian home lands, and to broaden the requirements for disposing of Hawaiian home lands to a native Hawaiian, or organization or association owned or controlled by native Hawaiians, for commercial, industrial, or other business purposes. Specifically, the department is able use either an open-bid or a closed-bid process when general leasing Hawaiian home lands to a native Hawaiian or native Hawaiian controlled business. We are of the opinion that these amendments increase benefits

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to lessees of Hawaiian home lands and **do not require the consent of the United States.**

Please do not hesitate to contact either myself or my Executive Assistant, Ben Henderson, at (808) 586-3801 should you have any questions or need additional clarification regarding the amendments and materials we have provided.

Aloha,



Raynard C. Soon, Chairman
Hawaiian Homes Commission

Enc.

c: Ms. Karen Specher-Keating, Solicitor, U.S. Department of
Interior, Division of General Law