



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

[Handwritten signature]
JUL 21 1989

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Ms. Ilima A. Piianaia
Chairwoman
Hawaiian Homes Commission
P.O. Box 1879
Honolulu, Hawaii 96805

Dear Ms. Piianaia:

I am pleased to transmit for your information a copy of the Department's letter transmitting to the Congress the proposed bill "To consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920". Attached to the letter are the proposed bill and the explanation, which we worked out in consultation with you, of the substance of the six amendments to which consent would be given. The same letter was sent to both the Speaker of the House and the President of the Senate. The bill has been introduced in the Senate as S. J. Res. 154. So far as we have been able to establish, it has not yet been introduced in the House, although it has been referred to the House Interior Committee.

The clearance process was a long one, and we are glad that it is finally completed.

Sincerely yours,

Timothy W. Glidden
Secretary's Designated Officer
for the Hawaiian Homes
Commission Act

Attachment

EXHIBIT "C"



United States Department of the Interior

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WASHINGTON, D.C. 20240



MAY 31 1989

Honorable J. Danforth Quayle
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Enclosed herewith is a proposed joint resolution "To consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920."

We recommend that the proposed joint resolution be referred to the appropriate committee for consideration and that it be enacted.

The Hawaiian Homes Commission Act was enacted by the United States Congress in 1921 as a homesteading program, to place native Hawaiians -- defined as those of 50 percent or more Hawaiian blood -- on land in Hawaii designated for that purpose. Approximately 200,000 acres were defined as "available lands" under the Act. Because at that time the Department of the Interior had general responsibility for many of the territories of the United States, including Hawaii, the Secretary was given certain statutory responsibilities in the Act. One of these Secretarial responsibilities, pertaining to land exchanges, remains in the Act today, and for that reason the Department of the Interior has agreed to serve as the Federal agency generally responsible for Federal matters touching the Homes Commission Act.

The Hawaiian Statehood Act (Statehood Act) in 1959 (Public Law 86-3, 73 Stat. 4) conveyed title to the "available lands" to the new State, and it generally placed responsibility for the administration of the Hawaiian Homes Commission Act (Homes Commission Act) in the State. The Statehood Act, however, also contained additional particular provisions concerning the Homes Commission Act, and it is these that give rise to the enclosed proposed joint resolution. Section 4 of the Statehood Act provides that the Homes Commission Act is to be included in the Constitution of the new State as a "compact" with the United States, and that (with certain exceptions) the Homes Commission Act can be amended by the State "only with the consent of the United States." The exceptions are amendments relating to

administration and to the powers and duties of certain State officers. Section 4 contains other restrictions as well: the qualifications of lessees cannot be changed, certain encumbrances on Homes Commission Act land cannot be increased, and the benefits to lessees cannot be diminished without United States consent; and there is an absolute bar to the impairment or reduction of certain named funds and to the use of income from "available lands" for any purpose other than carrying out the Homes Commission Act.

The enclosed proposed joint resolution is intended to provide "the consent of the United States," as section 4 requires, to amendments enacted by the Legislature of the State of Hawaii in 1986 and 1987. Public Law 99-557, approved October 17, 1986, provided the consent of the United States to all but one of the amendments enacted in Hawaii from statehood through June 30, 1985. The 1986-87 amendments are six in number, and an attachment to this letter summarizes the content of each. Only one of the six, Act 75 of 1986, falls indisputably within the section 4 consent requirement (because it permits new encumbrances on leaseholds), but there is a potential for argument as to the need for United States consent with respect to the other five. It is often difficult to be certain, given the language of section 4 of the Statehood Act, whether a particular amendment requires United States consent. Very often, for example, it can be argued that a particular change could result in at least a minor diminution of benefits to some native Hawaiians. In these circumstances, it has been our position that, if there is doubt, it should be overcome by seeking consent. Through that means, litigation on the matter can be avoided.

For your information, Act 112 of 1981, the single Hawaii enactment excluded from the consent granted by Public Law 99-557, has been repealed by Act 36 of 1987. Therefore, any uncertainty that may have existed has now been eliminated. Also, one other amendment to the Homes Commission Act enacted in Hawaii in 1987, Act 283, has not been included in the proposed joint resolution because it contains nothing of substance. Act 283 is a housekeeping bill, containing corrections of typographical and other nonsubstantive errors in many Hawaii laws, and it corrects one internal reference in the Homes Commission Act. We believe it is inarguably exempt from the consent requirement.

The Hawaii Legislature enacted no amendments to the Homes Commission Act in its 1988 regular session.

The six acts cited in the proposed joint resolution were all passed by both houses of the Hawaii Legislature without a dissenting vote. We have examined all of them, together with documents pertinent to their legislative history, and we

believe each to be free of controversy. When the proposed joint resolution is referred to the appropriate committee, we will transmit to the chairman of that committee copies of all six acts of the Hawaii Legislature, together with copies of testimony delivered at State hearings, State legislative committee reports, and other documents pertinent to the history of each bill as it moved through the State Legislature.

We believe it may no longer be appropriate to require the consent of the United States for amendments by the State of Hawaii to the Homes Commission Act. Accordingly, we will submit separate draft legislation to repeal this requirement as soon as possible. Before such a repeal could become effective, it could require the approval of the people of Hawaii.

The Office of Management and Budget has advised that there is no objection to the submission of this proposed legislation from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in black ink that reads "Ralph W. Tarr". The signature is written in a cursive style with a large, sweeping initial "R".

Ralph W. Tarr
Solicitor

Enclosure

JOINT RESOLUTION

To consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, as required by section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union," approved March 18, 1959 (73 Stat. 4), the United States hereby consents to the following amendments to the Hawaiian Homes Commission Act, 1920, as amended, adopted by the State of Hawaii in the manner required for State legislation: Act 16, Act 75, Act 84, Act 85, and Act 249 of the Session Laws of Hawaii, 1986; and Act 36 of the Session Laws of Hawaii, 1987.

Amendments to the Hawaiian Homes Commission Act, 1920, Enacted in Hawaii in 1986 and 1987, to which the proposed Joint Resolution would provide the consent of the United States

Act 16 of 1986: Authorizes the Department of Hawaiian Home Lands (the State agency which administers the Hawaiian home lands program) to participate in any Federal or State program that permits the establishment of enterprise zones on Hawaiian home lands. The principal purpose of such enterprise zones would be to encourage the employment of economically disadvantaged Native Hawaiians.

Act 75 of 1986: Provides an alternative means by which Hawaiian home lands may be made available to Native Hawaiians. Under existing law, Native Hawaiians may obtain 99-year leases at \$1 per year, but they cannot pledge their leasehold interest to secure private financing except for loans insured or guaranteed by a Federal agency. Private lenders are thus unable to place a mortgage lien on homestead properties. Act 75 provides an alternative method, termed a Homestead General Lease Program, under which Native Hawaiians may lease Hawaiian home lands for residential, agricultural, pastoral, or aquacultural purposes. The Department of Hawaiian Home Lands (Department) is authorized to subdivide and improve any Hawaiian home lands for the foregoing purposes and can also enter into agreements with developers for the development and construction of improvements. The resulting lots or parcels may be leased for an initial term of not more than fifty-five (55) years at fair market value. Native Hawaiians on the Department's waiting lists would receive priority for such leases, followed by other Native Hawaiians. If lots of parcels are available after all interested and qualified Native Hawaiians have received leases, the remaining lots may be disposed of at fair market rental to the general public. Homestead general lessees may encumber their leasehold interests by mortgage loans from the private sector, and may transfer their interests by subletting, bequests, or otherwise. The Department of Hawaiian Home Lands is further authorized to convert any homestead lease to a homestead general lease in accordance with procedures to be adopted by the Department. Act 75 provides for its repeal, and thus for the termination of the Homestead General Lease Program, either five years after the United States has consented to the Act, or on December 31, 1995, whichever occurs first.

Act 84 of 1986: Authorizes the Department of Hawaiian Home Lands to enter into agreements with private developers for the development of Hawaiian home lands for either homestead purposes or for income generating purposes. The Department of Hawaiian Home Lands is authorized under existing law to

enter into such agreements; it also has authority to enter into general leases in order to derive income for use in meeting the administrative costs of the Department. Act 84 would largely perpetuate existing law, but it would exempt the Department from the requirement that its private development agreements be approved by both the Legislature and the Governor. That requirement is time-consuming. It can lead to uncertainty and it may preclude the timely response to opportunities. Act 84 would also permit the Department of Hawaiian Home Lands to negotiate contract provisions conferring particular benefits upon Native Hawaiians.

Act 85 of 1986: Expands the authority of the Department of Hawaiian Home Lands with respect to the financing of improvements on homestead lands and for infrastructure development. Many lessees have been unable to construct homes on their leaseholds due to the lack of loan financing. The lack of funds has also hampered the Department's ability to construct needed infrastructure in homestead subdivisions. Act 85 is intended to meet this problem in two ways. First, it permits the Department to obtain loans by using its loan accounts receivables (e.g., money owed by its present borrowers), as collateral for loans from financial institutions. The money borrowed would be used by the Department for making loans to homestead lessees for home construction, and for the construction of infrastructure in homestead subdivisions. Second, Act 85 enables the Department to fulfill conditions under which homestead lessees can participate in the United States Department of Housing and Urban Development (HUD) insured loan program. Terms of the agreement developed by the Department and HUD require that a cash reserve be established to cover any potential defaults on the part of the mortgagee, and allows the transfer to that reserve of available funds from certain of the Department's other loan funds.

Act 249 of 1986: Reduces from fifteen to seven the number of fiscal accounts that the Department of Hawaiian Home Lands is required by law to maintain. As a result of amendments enacted following Statehood, the Hawaiian Homes Commission Act required the maintenance of seven separate revolving funds and eight other special funds. Act 249 abolishes some such funds and merges others in order to simplify the funding structure. This action promotes more efficient and economical management.

Act 36 of 1987: Repeals Act 112 of 1981, which was excluded from the consent provide by Public Law 99-557 because it was in conflict with an amendment later enacted in Hawaii. Act 112 had provided a new method of calculating the amount due in the event of surrender or cancellation of a lease, or the death of a lessee who had no qualified heir. The effect of Act 36 is to continue substantially the earlier method of

calculating the amount due, which requires payment by the Department of Hawaiian Home Lands of the appraised value of improvements, including growing crops, on the leasehold. Act 36 also permits payment to be made by the Department from the General Loan Fund if the Home Loan Fund is inadequate for that purpose.