

BENJAMIN J. CAYETANO

GOVERNOR
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KALI WATSON

CHAIRMAN
HAWAIIAN HOMES COMMISSION

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

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bcc: B. Henderson
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ASO

March 3, 1995

Mr. Edward B. Cohen
Counselor to the Secretary and
Secretary's Designated Officer Under
the Hawaiian Homes Commission Act
U.S. Department of Interior
1849 C Street, N.W. - Suite 6120
Washington, D.C. 20240

Dear Mr. Cohen:

This is to respond to your letter of February 17, 1995 and our telephone conversation on February 27, 1995 regarding the status of various state amendments to the Hawaiian Homes Commission Act (HHCA). We wish to confirm the legislative acts on which we concur with USDOI's position, and offer comments on those amendments where there is disagreement.

The Department of Hawaiian Home Lands concurs with the position of USDOI on the following legislative acts:

1. Act No. 146, SLH 1993. Congressional consent is not required.
2. Act No. 147, SLH 1993. Congressional consent is not required.
3. Act No. 339, SLH 1993. Submit to Congress for consent.
4. Act No. 75, SLH 1986. Legislation is pending in the Hawaii State Legislature to extend the repeal date. If enacted, this Act will be submitted to Congress for consent.
5. Act No. 37, SLH 1994. Submit to Congress for consent.
6. Act No. 109, SLH 1994. Congressional consent is not required.

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We wish to offer the following comments to clarify DHHL's views on other pending amendments:

1. Act No. 145, SLH 1993. DHHL's position is that this amendment does not require congressional consent. Act 145, SLH 1993 amended section 213 of the HHCA to remove the \$15,000 loan ceiling on expenditures from the Hawaiian home general loan fund. This fund should not be confused with the Hawaiian home loan fund referred to in section 4 of the Hawaii Admission Act. The amendment proposed under Act 145 will not affect the Hawaiian home loan fund or the Hawaiian home operating fund. Congressional consent is therefore not required.
2. Act No. 84, SLH 1986. Act No. 146, SLH 1993 addressed the concern expressed by the Senate Committee On Energy and Natural Resources regarding the term "proportionate value" in section 220.5(d). Concerns that this Act could result in a loss of Commission control over leased lands were further addressed in a report prepared for the Committee in January 1992. It is DHHL's understanding that the information provided had resolved these concerns. It remains our position that Congressional consent to Act 84 is not required.
3. Act No. 283, SLH 1989. This amendment authorizes DHHL to issue revenue bonds to finance capital improvement projects. The Attorney General has advised that Congressional consent is not required.

We responded to the concerns expressed by the Senate Energy and Natural Resources Committee in our January 1992 Report. This report explained that withdrawal clauses are included in all general leases, that all lands used to generate income are offered first to qualified native Hawaiians or native Hawaiian controlled organizations, that income is being maximized by leasing smaller acreages for higher returns from commercial and industrial activities, and that a substantial portion of the acreage now under general lease is being converted to beneficiary use. As stated previously, it is our understanding that this report satisfactorily addressed the Committee's concerns.

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The department issued \$18 million in revenue bonds in 1992. These funds are being used for various infrastructure development projects on Hawaiian home lands. It remains our position that Congressional concerns have been addressed and that consent is not required.

4. Act No. 349, SLH 1990. We are aware of USDOJ's opposition to this provision. The procedure established to obtain consent does not address circumstances under which USDOJ opposes a measure, and on that basis unilaterally decides not to submit it to Congress. We believe such an action undermines the intent of the Hawaii State Legislature in enacting the amendment. Thus, while we recognize USDOJ's right to oppose this amendment, we believe it has an obligation to bring this legislation before the Congress for its deliberation.
5. Act No. 152, SLH 1994. As you are aware, the parties have agreed to binding arbitration to settle this matter. We will advise you of the outcome of this process once it is completed.

I hope this information clarifies our position on the pending amendments. We look forward to working with you to obtain ratification of those legislative acts requiring Congressional consent.

Warmest aloha,



Kali K. Watson, Chairman
Hawaiian Homes Commission

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