

LINDA LINGLE
GOVERNOR
STATE OF HAWAII



MICAH A. KANE
CHAIRMAN
HAWAIIAN HOMES COMMISSION

BEN HENDERSON
DEPUTY TO THE CHAIRMAN

KAULANA H. PARK
EXECUTIVE ASSISTANT

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879

HONOLULU, HAWAII 96805

August 2, 2005

The Honorable Patricia Lynn Scarlett
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 Scarlett:

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

Section 4 of the Hawaii Admission Act provides that the 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 Home 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 2005 Hawaii State Legislature. It is the opinion of the Hawaii State Attorney General that these amendments do not require the consent of Congress, as they fall within one of the enumerated exceptions provided for under section 4 of the Hawaii Admission Act. Copies of these amendments and other supporting information are enclosed for your review.

We would appreciate your review and appropriate action on all amendments currently pending at USDOH.

Aloha and mahalo,

Micah A. Kane, Chairman
Hawaiian Homes Commission

Enc.

LINDA LINGLE
GOVERNOR



DEPARTMENT OF HAWAIIAN
LANDS

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July 21, 2005

The Honorable Micah Kane
Chairman, Hawaiian Homes Commission
State of Hawaii
P.O. Box 1879
Honolulu, Hawaii 96805

Dear Mr. Kane:

Re: Congressional Consent to 2005 State Amendments to the
Hawaiian Homes Commission Act, 1920, as amended

This responds to your request for our review and opinion as to whether the amendments made to the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"), by Acts 16 and 53, 2005 Haw. Sess. Laws _____ and _____, respectively, require the consent of the United States. We are of the opinion that neither amendment requires such consent.

Section 4 of the Hawaii Admission Act ("Section 4")¹ requires the consent of the United States for any amendment to

¹ Section 4, the Admission Act (Act of March 18, 1959, Pub. L. No. 86-3, 73 Stat. 4), reads as follows:

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, sections 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 such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances

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the HHCA, unless the amendment falls within one of several enumerated exceptions. One exception to the consent requirement concerns amendments to the HHCA which increase benefits to lessees of Hawaiian home lands. Such amendments do not require the consent of the United States and take effect upon approval of the governor, unless otherwise stated in the amending legislation.

Act 12, 2005 Haw. Sess. Laws _____, amends section 209(a) of the HHCA by authorizing a homestead lessee who is at least one-quarter Hawaiian to designate a brother or sister who is at least one-quarter Hawaiian to succeed to the leasehold interest in the tract.

In 2002, section 208(5) of the HHCA was amended to allow a homestead lessee who is at least one-quarter Hawaiian to transfer, during the lessee's lifetime, his or her leasehold interest to brothers and sisters who are at least one-quarter Hawaiian. We previously opined that the 2002 amendment did not require the consent of the United States. Act 12 allows such a lessee to designate brothers and sisters who are at least one-quarter Hawaiian for successorship to the lease on the lessee's death. By helping to ensure that the homestead lease remains in the family of the original lessee, we believe that Act 12 increases benefits to lessees of Hawaiian home lands and does not require the consent of the United States.

Act 53, 2005 Haw. Sess. Laws _____, amends section 208 of the HHCA by authorizing lending institutions to make mortgage loans on Hawaiian home lands that are insured or guaranteed by private mortgage insurance approved by the Hawaiian Homes Commission. By increasing the opportunities of native Hawaiian lessees of Hawaiian home lands to mortgage their leasehold interest, we believe that Act 53 increases benefits to lessees of

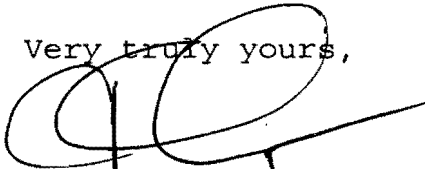
authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, 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 in said Act, shall be used only in carrying out the provisions of said Act.

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Hawaiian home lands and does not require the consent of the United States.

For the foregoing reasons, we are of the opinion that Acts 12 and Act 53, 2005 Haw. Sess. Laws _____ and _____, respectively, fall within the enumerated exceptions to Section 4 of the Hawaii Admission Act and do not require the consent of the United States. The amendments to the HHCA contained in these Acts are properly made in the manner required for State legislation.

Very truly yours,



Clayton Lee Crowell
Deputy Attorney General

APPROVED:



Mark J. Bennett
Attorney General

ACT 016

S.B. NO. 190

JAN 24 2005

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 209 of the Hawaiian Homes Commission
2 Act, 1920, as amended, is amended by amending subsection (a) to
3 read as follows:
4 "(a) Upon the death of the lessee, the lessee's interest
5 in the tract or tracts and the improvements thereon, including
6 growing crops and aquacultural stock (either on the tract or in
7 any collective contract or program to which the lessee is a
8 party by virtue of the lessee's interest in the tract or
9 tracts), shall vest in the relatives of the decedent as provided
10 in this paragraph. From the following relatives of the lessee
11 who are (1) at least one-quarter Hawaiian, husband, wife,
12 children, ~~[e]~~ grandchildren, brothers, or sisters, or (2)
13 native Hawaiian, father and mother, widows or widowers of the
14 children, ~~[brothers and sisters,~~] widows or widowers of the
15 brothers and sisters, or nieces and nephews, -- the lessee shall
16 designate the person or persons to whom the lessee directs the
17 lessee's interest in the tract or tracts to vest upon the
18 lessee's death. The Hawaiian blood requirements shall not apply
to the descendants of those who are not native Hawaiians but who

1 were entitled to the leased lands under section 3 of the Act of
2 May 16, 1934 (48 Stat. 777, 779), as amended, or under section 3
3 of the Act of July 9, 1952 (66 Stat. 511, 513). In all cases
4 that person or persons need not be eighteen years of age. The
5 designation shall be in writing, may be specified at the time of
6 execution of the lease with a right in the lessee in similar
7 manner to change the beneficiary at any time and shall be filed
8 with the department and approved by the department in order to
9 be effective to vest the interests in the successor or
10 successors so named.

11 In case of the death of any lessee, except as hereinabove
12 provided, who has failed to specify a successor or successors as
13 approved by the department, the department may select from only
14 the following qualified relatives of the decedent:

- 15 (1) Husband or wife; or
- 16 (2) If there is no husband or wife, then the children; or
- 17 (3) If there is no husband, wife, or child, then the
18 grandchildren; or
- 19 (4) If there is no husband, wife, child, or grandchild,
20 then brothers or sisters; or
- 21 (5) If there is no husband, wife, child, grandchild,
22 brother, or sister, then from the following relatives of the
23 lessee who are native Hawaiian: father and mother, widows or

1 widowers of the children, [~~brothers and sisters,~~] widows or
2 widowers of the brothers and sisters, or nieces and nephews.
3 The rights to the use and occupancy of the tract or tracts may
4 be made effective as of the date of the death of the lessee.

5 In the case of the death of a lessee leaving no designated
6 successor or successors, husband, wife, children, grandchildren,
7 or relative qualified to be a lessee of Hawaiian home lands, the
8 land subject to the lease shall resume its status as unleased
9 Hawaiian home lands and the department is authorized to lease
10 the land to a native Hawaiian as provided in this Act.

11 Upon the death of a lessee who has not designated a
12 successor and who leaves a spouse not qualified to succeed to
13 the lease or children not qualified to succeed to the lease, or
14 upon the death of a lessee leaving no relative qualified to be a
15 lessee of Hawaiian home lands, or the cancellation of a lease by
16 the department, or the surrender of a lease by the lessee, the
17 department shall appraise the value of all the improvements and
18 growing crops or improvements and aquacultural stock, as the
19 case may be, and shall pay to the nonqualified spouse or the
20 nonqualified children as the lessee shall have designated prior
21 to the lessee's death, or to the legal representative of the
22 deceased lessee, or to the previous lessee, as the case may be,
23 the value thereof, less any indebtedness to the department, or
for taxes, or for any other indebtedness the payment of which

S.B. NO. 780

1 has been assured by the department, owed by the deceased lessee
2 or the previous lessee. These payments shall be made out of the
3 Hawaiian home loan fund and shall be considered an advance
4 therefrom and shall be repaid by the successor or successors to
5 the tract involved. If available cash in the Hawaiian home loan
6 fund is insufficient to make these payments, payments may be
7 advanced from the Hawaiian home general loan fund and shall be
8 repaid by the successor or successors to the tract involved;
9 provided that any repayment for advances made from the Hawaiian
10 home general loan fund shall be at the interest rate established
11 by the department for loans made from the Hawaiian home general
12 loan fund. The successor or successors may be required by the
13 commission to obtain private financing in accordance with
14 section 208(6) to pay off the amount advanced from the Hawaiian
15 home loan fund or Hawaiian home general loan fund."

16 SECTION 2. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 3. This Act shall take effect upon its approval.

19
20 INTRODUCED BY:  _____

21 BY REQUEST

APPROVED BY THE
GOVERNOR OF

APR 20 2005

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HONOLULU, HAWAII 96805

TESTIMONY OF MICAH KANE
CHAIRMAN, HAWAIIAN HOMES COMMISSION

ON S.B. NO. 780

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

BEFORE THE JOINT HOUSE COMMITTEES ON HAWAIIAN AFFAIRS AND HOUSING

March 23, 2005

Chairs Saiki and Kahikina, and Members of the Joint Committees:

Thank you for the opportunity to testify on S.B. 780. This is the companion bill to H.B. 671 that was heard previously by your committees and also crossed over unamended to the Senate.

The purpose of this Administration bill is to authorize a homestead lessee who is at least one-quarter Hawaiian to designate a brother or sister who is at least one-quarter Hawaiian to succeed to the leasehold interest in the tract.

Act 12, Session Laws of Hawaii 2002, amended section 208(5) of the HHCA to extend the transfer rights of a lessee who is at least one-quarter Hawaiian to also include a brother or sister in addition to a spouse, child or grandchild who is at least one-quarter Hawaiian. However, authority to designate a brother or sister who is at least one-quarter Hawaiian as a successor to the leasehold interest was not included in the amendment. This proposal would correct that oversight.

We urge your favorable approval of this Administration bill. Thank you for the opportunity to testify on this measure.