



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

AUG - 7 2009

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

Dear Mr. Kane:

Thank you for providing the United States Department of the Interior with a list of proposed State amendments enacted from 1995 - 2006 to the Hawaiian Homes Commission Act (HHCA) of 1920. I apologize for the delay in responding.

The administration of the Hawaiian Homes Program under the HHCA is a responsibility of the State of Hawaii. In section 4 of the Hawaii Statehood Admissions Act, 73 Stat. 4, Congress required "the consent of the United States" to certain State enactments amending the HHCA. In section 204 of the Hawaiian Homelands Recovery Act (HHLRA) of November 2, 1995, 109 Stat. 361, Congress formalized the role of the Department in securing any required congressional consent to State enactments. The HHLRA provides that the Department is to review State enactments to determine whether congressional consent is required under section 4 of the Hawaii Statehood Admissions Act. The Department deems that congressional consent is not required, it so notifies the State of Hawaii and Congress. The Department deems that congressional consent is required, the Department is to submit a draft joint resolution approving the amendment to Congress together with a recommendation on whether it should be approved. In general, congressional consent is required for State enactments that:

- i) amend HHCA 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 the HHCA, without providing an increase in benefits to the lessees of Hawaiian home lands;
- ii) reduce or impair the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund;
- iii) allow for additional encumbrances to be placed on Hawaiian home lands by officers other than those charged with the administration of the HHCA; or
- iv) change the qualifications for lessees.

The Department also must determine if the proposed amendments to the HHCA increase the benefits to current and future lessees of Hawaiian Home Lands. To assist us in making this determination, we obtained input from participants during a Beneficiary Forum with the Department of the Interior's Office of Hawaiian Relations. The forum was held on May 22, 2008, in Honolulu, Hawaii, to discuss with leaders of the Native Hawaiian Beneficiaries Community. State enactments proposing to amend the Hawaiian Homes Commission Act. The consultation comment period for this forum ended July 30, 2008. However, due to public request, an electronic consultation with the Native Hawaiian community remained open until December 31, 2008. The final meeting report (enclosure 1) is enclosed with this letter.

The Department reviewed the 13 State enactments you submitted to us to determine whether congressional consent is required. Based upon our review and the criteria listed in section 4 of the State of Hawaii Admissions Act of 1959, it is the opinion of the Department that Act 177, 2006 Haw. Sess. Laws; Act 117, 2002 Haw. Sess. Laws; Act 110, 2001 Haw. Sess. Laws; Act 122, 2001 Haw. Sess. Laws; Act 119, 2000 Haw. Sess. Laws; Act 27, 1998 Haw. Sess. Laws; Act 196, 1997 Haw. Sess. Laws; Act 197, 1997 Haw. Sess. Laws; Act 232, 1996 Haw. Sess. Laws; and Act 14, 1995 Haw. Sess. Laws, do not require the consent of Congress and as of the date of this letter have the full effect of law. Please refer to enclosure (2) to see the Department's individual reviews of each of these state enactments.

Based upon the Department's review and the criteria listed in section 4 of the State of Hawaii Admissions Act of 1959, it is the opinion of the Department that Act 12, 2002 Haw. Sess. Laws, and Act 107, 2000 Haw. Sess. Laws, requires congressional consent before either proposed amendment takes on the force of law. In regards to Act 12, this proposed amendment seeks to change section 208 of the HHCA by authorizing a homestead lessee to designate a brother or sister who is at least one-quarter native Hawaiian to succeed to the leasehold interest in the tract upon the death of the lessee. Section 4 of the Hawaii Statehood Admissions Act provides that "the qualifications for lessees shall not be changed except with the consent of the United States." Although Congress has authorized certain other changes to the blood quantum requirement, it has not authorized brothers and sisters of lessees of less than 50 percent Hawaiian descent to acquire leases. The State enactment changes "the qualifications for lessees"; therefore, we conclude it requires congressional consent.

The second proposed amendment, Act 107, seeks to modify the HHCA by allowing 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 being 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. Section 4 of the Hawaii Statehood Admissions Act provides that "the Hawaiian home-loan fund . . . shall not be reduced or impaired by any such amendment, whether made in the constitution or in manner required for state legislation . . ., except with the consent of the United States." Act 107, by allowing the Hawaiian Homes Commission to set the interest rate below 2.5 percent, may provide a benefit to a limited number of successor lessees of surrendered or cancelled leases, but only until the fund's resources are depleted. This ability to deplete the fund clearly qualifies as a reduction or impairment of the Hawaiian home-loan fund and thus requires congressional consent. However, the Department

should support passage of Act 107 because it also provides the Hawaiian Homes Commission the ability to adjust the rates above 2.5 percent and manage the fund in a way that protects its solvency. Without Act 107 and the Hawaiian home loan fund, future distressed borrowers unable to secure any other loans might not be able to keep a lease in their family.

The last statute the Department reviewed, Act 302, 2001 Haw. Sess. Laws, proposes to amend the HHCA by calling for Federal reaffirmation and community governance. Based strictly upon the requirements of section 4, congressional consent is not required. However, the act is not self-executing. The State Legislature recognized the State's lack of authority to bind the Federal Government and required congressional consent before the state enactment could take on the force of law. As such, the Department will forward Act 302 to the U.S. Congress without position or comment. In keeping with the spirit of the HHLRA, legislative drafting services will be made available should they be requested.

Because we believe that congressional consent to Acts 12, 107 and 302 is required, the Department is preparing to begin the congressional notification process set forth in section 204 of Public Law 104-42. If you have any comments or questions about our analysis, please contact me within 30 days after the date of this letter.

Sincerely,



Rhea Suh
Assistant Secretary
Policy, Management and Budget

Enclosures