

Amendment to the Hawaiian Homes Commission Act, 1920, as amended -Act 175 (2012)
LEGAL AND POLICY ANALYSIS FOR PROPOSED AMENDMENTS TO THE HHCA

Proposed Amendment to the HHCA

[Describe existing provision that is being amended]

Act 187, 2010 Session Laws of Hawai`i, purported to amend the HHCA to require 15% of all lease revenues received as a result of any extension of a commercial or multipurpose lease of Hawaiian home lands be deposited into the native Hawaiian rehabilitation fund under section 213(i) and reporting be provided on expenditures from the native Hawaiian rehabilitation fund that are derived from the amounts deposited from commercial and multipurpose project lease extensions.

[Describe proposed amendment]

The portions of Act 175, 2012 Session Laws of Hawai`i, that propose amendments to the HHCA seek to address the anomaly from Act 187, 2010 Hawaii Session Laws, that required 15% of all lease revenues from extensions granted be deposited into the native Hawaiian rehabilitation fund under section 213(i) in direct violation of section 213(f) of the HHCA, which establishes the Hawaiian home administration account and stipulates that "entire receipts from any leasing or other disposition of the available land pursuant to section [204(a)(2)] ... shall be deposited into this account." Thus, the proposed amendment correctly repeals the requirement that 15% of all lease revenues received as a result of any extension of a commercial or multipurpose lease of Hawaiian home lands be deposited into the native Hawaiian rehabilitation fund, repeals the reporting requirements regarding expenditures from the native Hawaiian rehabilitation fund that are derived from the amounts deposited from commercial and multipurpose project lease extensions, and requires all revenues from commercial or multipurpose leases be deposited into the Hawaiian home administration account. In essence, Act 175, 2012 Session Laws of Hawai`i, returns to the status quo of having entire receipts from commercial or multipurpose project leases deposited into the Hawaiian home administration account.

1. What are the challenges or issues that the proposed amendment addresses?

As explained above, the proposed amendment seeks to address the anomaly from Act 187, 2010 Hawaii Session Laws, resulting in the deposit of all lease revenues from commercial or multipurpose leases into the Hawaiian home administration account in compliance with section 213(f) of the HHCA.

2. Is the proposed amendment limited to administration and powers and duties of officers other than those charged with the administration of the HHCA, as further defined in section 4 of the Admissions Act?

If yes, please provide an analysis.

No.

3. Does the proposed amendment reduce or impair the enumerated funds in section 213 of the HHCA as amended?

If yes, please provide an analysis.

No, the proposed amendment does not reduce or impair the enumerated funds in section 213 of the HHCA. The proposed amendment actually ensures compliance with the HHCA by requiring that all revenues received as a result of any extension of a commercial or multipurpose lease of Hawaiian home lands be deposited in the Hawaiian home administration account, thereby maintaining the status quo.

4. Does the proposed amendment increase the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of the HHCA?

If yes, please provide an analysis.

No.

5. Does the proposed amendment change the requirement that all proceeds and income from the available lands shall be used only in carrying out the provision of the HHCA?

If yes, please provide an analysis.

No.

6. Does the proposed amendment change the qualifications of lessees?

If yes, please provide an analysis.

No.

7. Does the proposed amendment increase the benefits to lessees of Hawaiian home lands?

If yes, please provide an analysis.

Yes, see discussion in paragraphs numbered 8 – 17.

8. How does the proposed amendment advance or otherwise impact current Hawaiian homestead lessees (native Hawaiians and Native Hawaiians) of Hawaiian home lands?

The proposed amendment advances the interests of the nearly 10,000 current Hawaiian homestead lessees by ensuring compliance with the HHCA in requiring that all revenues received as a result of any extension of a commercial or multipurpose lease of Hawaiian home lands be deposited in the Hawaiian home administration account. The HHCA provides that any amount in the Hawaiian home administration account "in excess of the amount approved by the legislature or made available for the fiscal period may be transferred to the Hawaiian home operating fund." Moneys in the Hawaiian home operating fund can be used for "construction and reconstruction of revenue-producing improvements intended to serve principally occupants of Hawaiian home lands, including acquisition or lease therefor of real property and interests therein, such as water rights or other interests" and "the purchase of water or other utilities, goods, commodities, supplies, or equipment needed for services, or to be resold, rented, or furnished on a charge basis to occupants of Hawaiian home lands." Additionally, moneys in the Hawaiian home operating fund with the prior written approval of the Governor can be used for "offsite improvements and development necessary to serve present and future occupants of Hawaiian home lands" and "improvements constructed for the benefit of beneficiaries of this Act and not otherwise permitted in the various loan funds or the administration account." These provisions allow for funds to be used to benefit current Hawaiian homestead lessees.

9. How does the proposed amendment advance or otherwise impact HHCA beneficiaries (native Hawaiians) currently on a waiting list for a Hawaiian homestead lease?

Similar to the response above, the proposed amendment advances the interests of over 27,000 HHCA beneficiaries (native Hawaiians) currently on a waiting list for a Hawaiian homestead lease by equally ensuring compliance with the HHCA in requiring that all revenues received as a result of any extension of a commercial or multipurpose lease of Hawaiian home lands be deposited in the Hawaiian home administration account. Again, the HHCA provides that any amount in the Hawaiian home administration account "in excess of the amount approved by the legislature or made available for the fiscal period may be transferred to the Hawaiian home operating fund." Moneys in the Hawaiian home operating fund with the prior written approval of the Governor can be used for "offsite improvements and development necessary to serve present and future occupants of Hawaiian home lands" and "improvements constructed for the benefit of beneficiaries of this Act and not otherwise permitted in the various loan funds or the administration account." These provisions allow for funds to be used to benefit HHCA beneficiaries (native Hawaiians) currently on a waiting list for a Hawaiian homestead lease.

10. How does the proposed amendment advance or otherwise impact HHCA native Hawaiians beneficiaries who have not yet applied for a Hawaiian homestead lease?

Since the proposed amendment repeals the requirement that 15% of all lease revenues received as a result of any extension of a commercial or multipurpose lease of Hawaiian home lands be deposited into the native Hawaiian rehabilitation fund, the ability to serve HHCA native Hawaiian beneficiaries who have not yet applied for a Hawaiian homestead lease is decreased because revenues cannot be used for the rehabilitation of native Hawaiians including the educational, economic, political, social, and cultural processes by which the general welfare and conditions of native Hawaiians are improved and perpetuated. Nevertheless, the other sections of the HHCA remain in place allowing for consultation with HHCA native Hawaiian beneficiaries who have not yet applied for a Hawaiian homestead lease prior to awarding leases for commercial and multipurpose projects. Also, if DHHL is able to generate more revenue as a result of the lease extensions and in turn fund more programs and services for current Hawaiian homestead lessees and place more native Hawaiians currently on a waiting list for a Hawaiian homestead lease in homesteads, the HHCA native Hawaiian beneficiaries who have not yet applied for a Hawaiian homestead lease may be more inclined to apply for a Hawaiian homestead lease.

11. How does the proposed amendment advance or otherwise impact interests other than those of the HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees?

The trust obligation and duty owed to administer the trust solely in the interest of HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees is clear and responses to the previous three questions take priority over the interests of third parties. Still in response to the question above, the proposed amendment advances the interests of other than those of the HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees because moneys in the Hawaiian home operating fund can be used for "payment into the treasury of the State of such amounts as are necessary to meet the interest and principal charges for state bonds issued for such revenue-producing improvements," "operation and maintenance of such improvements constructed from such funds or other funds," and "appraisals, studies, consultants (including architects and engineers), or any other staff services including those in section 202(b) required to plan, implement, develop or operate these projects." Additionally, moneys in the Hawaiian home operating fund with prior approval of the Governor can be used for "improvements, additions, and repairs to all assets owned or leased by the department excluding structures or improvements that the department is obligated to acquire under section 209; for engineering, architectural, and planning services to maintain and develop properties; for such consultant services as may be contracted for under this Act; for purchase or lease of necessary equipment; for acquisition or lease of real property and interest therein." These expenditures for services rendered support businesses, which may be beneficiary owned or employ beneficiaries.

12. How does the proposed amendment balance the interests of HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees?

The proposed amendment balances the interests of HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees by equally ensuring compliance with the HHCA in requiring that all revenues received as a result of any extension of a commercial or multipurpose lease of Hawaiian home lands be deposited in the Hawaiian home administration account. As previously explained, moneys in the Hawaiian home operating fund can be used to benefit both HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees. Even though the proposed amendment repeals the reporting requirement identifying the expenditures that are derived from the amounts deposited from commercial and multipurpose project lease extensions, the reporting requirement on all leases of available lands for commercial and multipurpose projects including the total number of leases, acreage of each lease, and terms of each lease is still in place. This information should identify if projects are more predominant in certain areas and whether there are short- and long-term negative consequences to offset with the revenue generated that would impact either HHCA native Hawaiian beneficiaries or Hawaiian homestead lessees.

13. Does the purpose/benefit to lessees of the proposed amendment outweigh the impact of the change in qualifications of lessees on the existing class of HHCA beneficiaries?

Please provide an analysis.

No, the purpose/benefit of the proposed amendment is to ensure compliance with the HHCA and in effect maintains the status quo.

14. Does the proposed amendment impair or place at risk the corpus of the Trust?

Please provide an analysis.

This proposed amendment does not impair or increase risks to the corpus of the trust.

15. Alternatives Considered and Reasons Rejected (if applicable)

None.

16. Anomalies Created and Explained (if applicable)

None.

17. Additional Considerations and Discussion (optional)

None.

18. Is Congressional approval of the proposed amendment required?

Please provide an analysis.

It is the opinion of the State of Hawaii Attorney General that this amendment does not require the consent of Congress as it falls within one of the enumerated exceptions provided for under Section 4 of the Hawaii Admission Act. See opinion letter attached.