



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

AUG 13 2013

The Honorable Jobie Masagatani  
Director, Department of Hawaiian Home Lands  
State of Hawaii  
P.O. Box 1879  
Honolulu, Hawaii 96805

Dear Director Masagatani:

*Jobie:*

Thank you for your letter forwarding to the Department of the Interior (Department) Act 174, 2012 Hawaii Sessions Laws 611. Act 174 seeks to amend the Hawaiian Homes Commission Act (HHCA) of 1920, by exempting Department of Hawaiian Home Lands (DHHL) expenditures of less than \$100,000 from the Hawaii Public Procurement Code. We also appreciate the inclusion of the legal opinion of the Department of the Attorney General on Act 174 and the testimony presented to the State Legislature by former DHHL Director Alapaki Nahale-a. All were helpful in assisting the Department in analyzing Act 174.

As you know, 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, however, 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 the process of securing any required Congressional consent to, and approval of, state enactments. The HHLRA provides that the Department is to review state enactments to determine whether Congressional consent and approval is required under section 4 of the Hawaii Statehood Admissions Act. If the Department deems that Congressional consent and approval is not required, it so notifies the State of Hawaii and Congress. If the Department deems that Congressional consent and approval 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 and approval is required for State of Hawaii enactments that:

- i) reduce or impair the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund;
- ii) allow for additional encumbrances to be placed on Hawaiian home lands by officers other than those charged with the administration of the HHCA;
- iii) change the qualifications for lessees; or
- iv) provide for the use of proceeds or income from the "available lands" other than only in carrying out the provisions of the HHCA.

Amendments to 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 do not need approval if they are not detrimental to the trust.

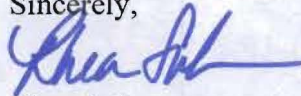
As part of the decision making process, the Department also must determine if the proposed amendments to the HHCA increase the benefits to current and future lessees of Hawaiian home lands. To assist us in making this determination, we sought input from the Native Hawaiian community. The comment period for this consultation ended on March 25, 2013. For the most part the beneficiaries expressed the need for more, not less, oversight of DHHL and the State of Hawai'i by the Department and transparency and accountability from DHHL regarding how the Hawaiian home lands trust funds and revenue from Hawaiian home lands are being managed and expended. For your convenience, I have enclosed a copy of the complete consultation report with this letter.

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 174, 2012 Haw. Sess. Laws, does not require the consent and approval of Congress. While Act 174 seeks to amend section 213, it also directly affects the Hawaiian Home Operating Fund. It does not, however, reduce or impair the fund and is not detrimental to the trust. Act 174 merely exempts certain expenditures of less than \$100,000 from the Hawai'i Public Procurement code while at the same time requiring a new procurement process be developed specifically for the DHHL to cover these exempted expenditures. Thus, it is the Department's opinion that Act 174 currently has the full effect of law.

The primary goal of government procurement codes is often to obtain maximum value for the money spent on property and services, but procurement codes also ensure that governments are dealing in good faith with all parties and stakeholders in the procurement process. To accomplish these goals, procurement codes at any level of government must create openness and transparency in spending and create mechanisms for managers to easily implement the policy. As you move forward with developing a procurement code specific to the DHHL, we would be happy to work with your staff in its creation in order to achieve these goals.

Thank you again for your submission of Act 174 and the accompanying documentation. If you have any comments or questions please feel free to contact me or Ka'i'ini Kaloi, Director for the Office of Native Hawaiian Relations.

Sincerely,



Rhea Suh  
Assistant Secretary for Policy,  
Management and Budget

Enclosure

**Summary of Comments Received in Response to an Electronic Consultation  
Regarding Act 174, Session Laws of Hawai'i 2012  
Proposing an Amendment to the  
Hawaiian Homes Commission Act, 1920, as amended**

Overview

On February 22, 2013, the Office of Native Hawaiian Relations (ONHR) initiated an electronic consultation through the Department of the Interior's (DOI) Native Hawaiian Organization Notification List (List) on Act 174, Session Laws of Hawai'i 2012. Act 174 proposes to amend section 213(d) of the Hawaiian Homes Commission Act, 1920, as amended (HHCA), which established four trust funds, the Hawaiian home operating fund, the Hawaiian home receipts fund, the Hawaiian home trust fund, and the native Hawaiian rehabilitation fund, and a special fund, the Hawaiian home administration account. Act 174 proposes to exempt Department of Hawaiian Home Lands (DHHL) expenditures and procurements of less than \$100,000 from these funds and accounts from the Hawai'i Public Procurement Code, provided that DHHL develop internal policies and procedures consistent with the goals of public accountability and procurement practices for the procurement of goods, services and construction. Act 174 also proposes requiring DHHL to submit an annual report to the Hawai'i State legislature detailing all solicitations and procurements of goods and services. Act 174 has a sunset date of June 30, 2015, after which the previous language of section 213(d) shall be reenacted.

The electronic consultation was also forwarded to the Sovereign Councils of the Hawaiian Homelands Assembly (SCHHA) and DHHL who both posted it to their respective websites. The 30-day comment period closed on March 25, 2013.

Exempting DHHL Expenditures and Procurements of Less Than \$100,000 and Requiring Annual Report of Solicitations and Procurements from DHHL

Greater oversight, transparency and accountability needed

*HHCA beneficiaries generally expressed the need for more, not less, oversight of DHHL and the State of Hawai'i by DOI and transparency and accountability from DHHL regarding how the Hawaiian home lands trust funds and revenue from Hawaiian home lands are being managed and expended.*

*A few commenters observed that DHHL's problems often stem from internal ad hoc policies and procedures without transparency to the HHCA beneficiaries. Also, Act 174 only requires that DHHL develop internal policies and procedures and does not require DHHL to either comply with them or subject the procurements of less than \$100,000 to them.*

*Two commenters expressed concern that DHHL may make expenditures that decrease benefits to beneficiaries and lessees of Hawaiian home lands and therefor opposed Act 174.*

*One commenter suggested that Act 174 is a part of the State of Hawai'i's and DHHL's efforts to divert public and trust resources and redirect them towards any one of the State's money making schemes because the State is running out of money to operate its various*

*departments. Another commenter noted that the State of Hawai'i has rarely provided general funds for the administration and operation of DHHL, a State agency.*

Greater DHHL efficiencies and savings outweigh risks of mistakes or abuse

*One commenter shared that greater efficiency in DHHL's administration would make this small department with a massive mission more effective in accomplishing its goals. This commenter further shared that a large majority of DHHL's procurements are within the \$100,000 threshold, thus suggested that DHHL would immediately realize efficiencies and savings. Commenter does not believe that the risk of DHHL abuse with the \$100,000 threshold is greater than with the current small purchase procurement threshold of \$15,000.*

Exempt Hawai'i's government agencies whose focus is serving Hawaiians from the requirements of the State of Hawai'i's procurement laws.

*One commenter does not object to such exemptions.*

#### Amendments to Section 213, In General

*One commenter was curious as to why DOI sought the opinions of the HHCA beneficiaries and Native Hawaiian community on this particular amendment to HHCA §213, especially in light of so many amendments having been made in the past and approved by Congress and DOI without any input from the HHCA beneficiaries. This commenter also suggested that it should be plainly clear to DOI that the State of Hawai'i and DHHL have acted, and are acting, only in their own self-interest.*

#### Other Comments

State of Hawai'i Legislative Process

*One commenter suggested that the HHCA beneficiaries need to be better informed about the State of Hawai'i's legislative process by which the State and DHHL propose amendments to the HHCA so that beneficiaries may better understand and participate in the process to protect and advocate for the interests of the HHCA beneficiaries.*

More Information Needed

*A few commenters wanted more information about how the proposed amendment would impact the HHCA beneficiaries and the trust and questioned whether it would benefit only a few.*

Promote Self-Governance

*One commenter expressed that Act 174 came from the State of Hawai'i and DHHL rather than from Native Hawaiians, suggesting that the State and DHHL could promote greater self-governance by working with HHCA beneficiaries to identify needed amendments to the HHCA to promote better administration and delivery on its mission.*

Summary

Comments and support and opposition were mixed. HHCA beneficiaries generally would like more, not less, oversight, transparency and accountability with respect to the State of Hawai'i's and DHHL's administration of the HHCA. A couple of commenters with backgrounds in administering Native Hawaiian programs recognize that Act 174 may reduce the administrative burden on DHHL and allow it to be more efficient and successful.

HHCA beneficiaries want to be better informed and involved as such proposed amendments are developed, and they want to see their concerns addressed and their solutions implemented through legislation as well.