



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

October 12, 2012

The Honorable Rhea S. Suh
Assistant Secretary for Policy Management and Budget
U.S. Department of the Interior
1849 C Street, N.W.
Mail Stop 3543
Washington, D.C. 20240

Dear Ms. Suh:

Section 4 of the Hawaii Admission Act provides that the Hawaiian Homes Commission Act (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 Homes Lands Recovery Act (P. L. 104-42) outlines the procedure to be followed by the State of Hawaii and the USDOJ for the approval of these amendments.

In accordance with this procedure, we are transmitting two amendments to the HHCA passed by the 2012 Hawaii State Legislature and approved by the Governor. The amendments are accompanied by the following documents:

1. An opinion letter from the State of Hawaii Attorney General regarding whether congressional consent is required pursuant to Section 4 of the Hawaii Admission Act; and
2. Copies of relevant testimony presented before the Hawaii State Legislature during deliberations on the amendments.

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.

Assistant Secretary Suh
October 12, 2012
Page 2 of 2

We appreciate your review and appropriate action on this amendment. Please contact me, or the DHHL Policy & Program Analyst, Ms. Dre Kalili at (808) 620-9486, should you have any questions or need additional documentation on this amendment.

Aloha,

A handwritten signature in black ink, appearing to read "Jobie M. K. Masagatani". The signature is fluid and cursive, with the first name "Jobie" being particularly prominent.

Jobie M. K. Masagatani,
Chairman Designate
Hawaiian Homes Commission

Enc.

NEIL ABERCROMBIE
GOVERNOR



DAVID M. LOUIE
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

September 11, 2012

Jobie M. K. Masagatani
Chairperson Designate
Hawaiian Homes Commission
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

**Confidential and Privileged
Attorney-Client Communication and
Attorney Work-Product**

Re: United States Consent to Act 175, 2012 Hawaii Session Laws

Dear Ms. Masagatani:

This responds to your letter dated August 7, 2012, requesting our review and opinion as to whether Act 175, 2012 Hawaii Sessions Laws, requires the consent of the United States. Act 175 accomplishes the following: (1) extends the repeal date of Act 187, 2010 Haw. Sess. Laws 612, for three years to continue a pilot project that enables the Department of Hawaiian Home Lands ("DHHL") to commence housing and other projects without having the full amount of the costs on hand; (2) repeals the requirement that fifteen percent of revenues received as a result of any extension of a commercial or multipurpose lease of home lands be deposited into the Native Hawaiian Rehabilitation Fund; and (3) requires all revenues from commercial or multipurpose leases to be deposited into the Hawaiian Home Administration Account.

Section 4 of the Admission Act requires the consent of the United States for any amendment to the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"), unless the amendment complies with several enumerated exceptions. It provides:

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, section 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 any such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances 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) 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 by said Act, shall be used only in carrying out the provisions of said Act. (Emphasis added).

As discussed below, it is our opinion that Act 175 does not require the consent of the United States.

First, the pilot program created by Act 187, 2010 Haw. Sess. Laws 608, was itself an amendment to § 37-40, Hawaii Revised Statutes. No portion of the HHCA was amended for the creation of the pilot program. Act 174’s extension of the sunset date for the pilot program is therefore not an amendment to the HHCA and does not require consent of the United States.

Second, Act 175 amends § 213(i) of the HHCA by repealing the requirement that fifteen percent of revenues received as a result of any extension of a commercial or multipurpose lease of home lands be deposited into the Native Hawaiian Rehabilitation Fund. The Admission Act explicitly allows § 213 of the HHCA to be amended without the consent of the United States unless such amendment reduces or impairs the Hawaiian Home Loan Fund, the Hawaiian Home Operating Fund, or the Hawaiian Home Development Fund. Act 175 only amends the manner in which revenues are deposited in the Native Hawaiian Rehabilitation Fund, which is not one of the funds listed in the Admission Act. Accordingly, consent of the United States is not required for this portion of Act 175.

Third, Act 175 amends § 228 of the HHCA by removing a provision requiring that fifteen percent of revenues received as a result of any extension of a commercial or multipurpose lease be deposited into the Native Hawaiian Rehabilitation Fund, and adding a provision that all such lease revenues be deposited into the Hawaiian Home Administration Account. Although § 228 is not one of the sections explicitly exempted from consent of the United States in the Admission Act, the Admission Act allows such amendments if they are made to a provision relating to the “administration” of the HHCA. Act 175 merely returns DHHL’s handling of lease revenues to the status quo as it existed before Act 187. Prior to Act 187, all lease revenues, including lease revenues resulting from extensions of commercial leases, were deposited into the Hawaiian Home Administration Account. Act 175 returns to this status quo and is clearly a matter concerning the administration of the HHCA. Consent of the United States, therefore, is also not required for this section of Act 175.

Jobie M.K. Masagatani
September 11, 2012
Page 3

Since all of Act 175 falls within enumerated exceptions in § 4 of the Admission Act, it does not require the consent of the United States.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Matthew S. Dvonch", with a long horizontal flourish extending to the right.

Matthew S. Dvonch
Deputy Attorney General

APPROVED:

A handwritten signature in black ink, appearing to read "David M. Louie", with a circular flourish at the beginning.

David M. Louie
Attorney General



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF ALAPAKI NAHALE-A, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
IN SUPPORT OF

SB 2790, RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS

February 8, 2012

Chair Galuteria, Vice-Chair Ryan and Members of the Committee:

The Department of Hawaiian Home Lands strongly supports SB 2790, which extends the sunset date of the peak-draw provision of Act 187 (2010) from June 30, 2012, to June 30, 2015. This bill is part of the Governor's administrative package by request of our department.

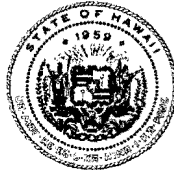
In 2010, the legislature passed this provision because it found existing procurement requirements unnecessarily delayed the delivery of affordable homes to Hawaiian Home Lands applicants. The law enables the department to act more like a private developer/contractor by allowing our staff to encumber construction contracts with the peak value of the proposed development, instead of having full capitalization funding on hand.

In the time since the passage of Act 187, the economic conditions in Hawaii, and the timing of our projects, did not provide the department an opportunity to implement the pilot program. However, the department anticipates needing this pilot program immediately and over the next three years to manage a number of upcoming projects.

Department of Hawaiian Home Lands
SB 2790
February 8, 2012
Page 2

The three-year sunset extension allows this administration to take full advantage of the peak-draw provision to create and deliver homestead opportunities to as many of our 42,000 applicants as possible.

Mahalo for the opportunity to testify in strong support of this important measure.



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF ALAPAKI NAHALE-A, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
IN SUPPORT OF

SB 2790, RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS

February 23, 2012

Chair Ige, Vice-Chair Kidani and Members of the Committee:

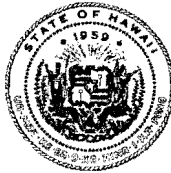
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STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF ALAPAKI NAHALE-A, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON HAWAIIAN AFFAIRS
IN SUPPORT OF

SB 2790 SD 1, RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS

March 14, 2012

Chair Hanohano, Vice-Chair Lee and Members of the Committee:

The Department of Hawaiian Home Lands strongly supports SB 2790 SD 1, which extends the sunset date of the peak-draw provision of Act 187 (2010) from June 30, 2012, to June 30, 2015. This bill is part of the Governor's administrative package by request of our department.

Act 187 (2010) amended §37-40, Hawaii Revised Statutes, to allow us to incur an expenditure from our trust funds in excess of the amount standing to the credit of our trust fund subject to certain conditions approved by the Director of Finance and the Governor. This is a tool that helps our department better manage our cash flow and resources so we can better meet our mission and return native Hawaiians to our trust lands through homestead awards.

Since Act 187 was passed, the economic conditions in Hawaii and the timing of our projects have not provided an opportunity to implement the pilot program. When the legislation for the Act was introduced in 2009, our department had five projects lined up to which we could have applied this exception. These projects include 45 units

in Kona, 139 units in Kapolei, 52 units in Waimanalo, 36 units in Anahola, and the 19 units at our energy-efficient Kaupuni Village in Waianae. The previous administration encumbered contracts for these projects and started construction before the bill was passed and signed into law.

Looking forward, the department anticipates needing this pilot program immediately and over the next three years to manage a number of upcoming projects, including additional units in Kapolei and a potential rental project. The three-year sunset extension allows this administration to take full advantage of the peak-draw provision to create and deliver homestead opportunities to as many of our 42,000 applicants as possible.

There is no cost to the implement this program, as there is no cost to the State to extend the sunset. Again, this exception is a tool for greater efficiency, and the language in the original legislation provides for checks, balances, and other requirements.

Mahalo for the opportunity to testify in strong support of this important measure.



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF ALAPAKI NAHALE-A, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON FINANCE
IN SUPPORT OF

SB 2790 SD 1, RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS

March 28, 2012

Chair Oshiro, Vice-Chair Lee and Members of the Committee:

The Department of Hawaiian Home Lands strongly supports SB 2790 SD 1, which extends the sunset date of the peak-draw provision of Act 187 (2010) from June 30, 2012, to June 30, 2015. This bill is part of the Governor's administrative package by request of our department.

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There is no cost to the implement this program, as there is no cost to the State to extend the sunset. Again, this exception is a tool for greater efficiency, and the language in the original legislation provides for checks, balances, and other requirements.

Mahalo for the opportunity to testify in strong support of this important measure.



GOV. MSG. NO. 1278

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 28, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

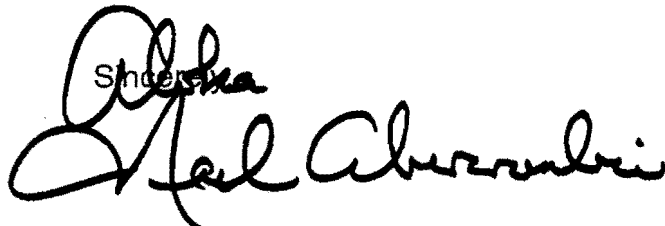
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 28, 2012, the following bill was signed into law:

SB2790 SD1 HD1

RELATING TO THE DEPARTMENT OF
HAWAIIAN HOME LANDS.
Act 175 (12)


Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor
on JUN 28 2012

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 175
S.B. NO. 2790
S.D. 1
H.D. 1

A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. Act 187, Session Laws of Hawaii 2010, is
3 amended by amending section 12 to read as follows:

4 "SECTION 12. This Act shall take effect on July 1, 2010;
5 provided that on June 30, [~~2012~~] 2015, part I of this Act shall
6 be repealed and sections 37-40 and 103D-309(a), Hawaii Revised
7 Statutes, shall be reenacted in the form in which they read on
8 the day prior to the effective date of this Act."

9 SECTION 2. The department of Hawaiian home lands shall
10 report to the legislature no later than twenty days prior to the
11 convening of the regular sessions of 2013, 2014, and 2015 on the
12 status of the pilot project established under part I of Act 187,
13 Session Laws of Hawaii 2010.

14 PART II

15 SECTION 3. Section 213, Hawaiian Homes Commission Act,
16 1920, as amended, is amended by amending subsection (i) to read
17 as follows:



1 "(i) Native Hawaiian rehabilitation fund. Pursuant to
2 Article XII, Section 1, of the Hawaii Constitution, thirty per
3 cent of the state receipts, derived from lands previously
4 cultivated as sugarcane lands under any other provision of law
5 and from water licenses, [~~and fifteen per cent of all revenues~~
6 ~~from lease agreements granted lease extensions pursuant to~~
7 ~~section 228,~~] shall be deposited into this fund. The department
8 shall use this money for the rehabilitation of native Hawaiians,
9 native Hawaiian families, and Hawaiian homestead communities,
10 which shall include the educational, economic, political,
11 social, and cultural processes by which the general welfare and
12 conditions of native Hawaiians are thereby improved and
13 perpetuated.

14 The native Hawaiian rehabilitation fund shall be subject to
15 the following conditions:

- 16 (1) All moneys received by the fund shall be deposited
17 into the state treasury and kept separate and apart
18 from all other moneys in the state treasury;
- 19 (2) The director of finance shall serve as a custodian of
20 the fund. All payments from the fund shall be made by
21 the director of finance only upon vouchers approved by
22 the commission;



- 1 (3) The commission shall develop guidelines for the
2 investment of moneys in the fund;
- 3 (4) The commission may invest and reinvest in investments
4 authorized by chapter 88, Hawaii Revised Statutes.
5 The commission may hold, purchase, sell, assign,
6 transfer, or dispose of any securities and investments
7 in which any of the moneys shall have been invested,
8 as well as the proceeds of such investments; and
- 9 (5) The commission may pay out of any of the moneys held
10 for investment, a reasonable amount to any person for
11 supplying investment advisory or consultive services;
12 and to meet such other costs incident to the prudent
13 investment of moneys as the commission may approve.

14 Any payment of principal, interest, or other earnings
15 arising out of the loan or investment of money from this fund
16 shall be credited to and deposited into this fund.

17 Sections 214, 215, 216, and 217 shall not apply to
18 administration of this fund. The department is authorized to
19 adopt rules under chapter 91, Hawaii Revised Statutes, necessary
20 to administer and carry out the purposes of this fund.

21 ~~The department shall submit an annual report to the~~
22 ~~legislature and the United States Department of the Interior, no~~



1 ~~later than twenty days prior to the convening of each regular~~
 2 ~~session of the legislature, beginning with the regular session~~
 3 ~~of 2011, on expenditures from this fund that are derived from~~
 4 ~~the amounts deposited from commercial and multipurpose project~~
 5 ~~lease extensions pursuant to section 228(e), including the~~
 6 ~~amount expended, the recipient of the moneys expended, and the~~
 7 ~~purpose of the expenditure.] "~~

8 SECTION 4. Section 228, Hawaiian Homes Commission Act,
 9 1920, as amended, is amended to read as follows:

10 " ~~[+]§228.[+]~~ **Commercial and multipurpose project leases;**
 11 **extension of term.** (a) Notwithstanding any law to the
 12 contrary, the procedures under this section shall apply to
 13 commercial and multipurpose projects under section 204 or 220.5,
 14 and shall be in addition to any other procedures required by
 15 law.

16 (b) Prior to the disposition of available land through a
 17 request for proposals for an initial lease for a commercial or
 18 multipurpose project, the department shall consult with
 19 beneficiaries of the trust in the master planning of the
 20 available lands. The process of beneficiary consultation shall
 21 be as established by the department and shall:



- 1 (1) Engage beneficiaries and beneficiary-serving
2 organizations;
- 3 (2) Provide for the timely dissemination of information
4 about the proposed project and the gathering of input;
5 and
- 6 (3) Allow for a reasonable time and reasonable access to
7 relevant information for evaluation and consideration.
- 8 (c) Notwithstanding section 220.5(d)(1), the department
9 may extend the term of a lease of Hawaiian home lands for
10 commercial or multipurpose projects and with the approval by the
11 department of a written agreement proposed by the lessee, or the
12 lessee and developer, to:
- 13 (1) Make improvements to the leased property; or
14 (2) Obtain financing for the improvement of the leased
15 lands.
- 16 The extension of the lease pursuant to this section shall be
17 based upon the improvements made or to be made, shall be no
18 longer than twenty years, and shall be granted only once.
- 19 (d) Before the written agreement is approved, the lessee,
20 or the lessee and developer, shall submit to the department the
21 plans and specifications for the proposed development. The



1 department shall review the plans, specifications, and the
2 written agreement and determine:

3 (1) Whether the development is of sufficient value and
4 meets the priorities of the commission to justify an
5 extension of the lease;

6 (2) The estimated time needed to complete the improvements
7 and expected date of completion of the improvements;
8 and

9 (3) The minimum revised annual rent based on the fair
10 market value of the lands to be developed, as
11 determined by an appraiser for the department, and
12 percentage rent where gross receipts exceed a
13 specified amount.

14 The commission shall adopt and publish a policy pursuant to
15 chapter 91, Hawaii Revised Statutes, which shall be used to
16 evaluate any request for a lease extension, including the terms
17 of the lease, prospective payments, and renegotiation, and shall
18 be used by the commission for any final determination on a lease
19 extension request.

20 ~~[(c) Upon the extension of a lease term pursuant to~~
21 ~~subsection (c), the department shall deposit fifteen per cent of~~
22 ~~all revenues generated from the lease from the time the lease~~



1 ~~extension is granted, into the native Hawaiian rehabilitation~~
2 ~~fund under section 213(i).~~

3 ~~(f)]~~ (e) The department shall submit an annual report to
4 the legislature and the United States Department of the
5 Interior, no later than twenty days prior to the convening of
6 each regular session, beginning with the regular session of
7 2011, of all leases of available lands for commercial and
8 multipurpose projects, including the following:

- 9 (1) The total number of leases;
10 (2) Acreage of each lease;
11 (3) Terms of each lease;
12 (4) Whether the lessee is a beneficiary or beneficiary
13 controlled organization; and
14 (5) Whether the lease was for retained available lands not
15 required for leasing under section 207(a), and was
16 negotiated with a native Hawaiian, or organization or
17 association owned or controlled by native Hawaiians,
18 under section 204(a)(2).

19 (f) All lease revenues from commercial and multipurpose
20 project leases collected by the department to which this section
21 applies shall be deposited into the Hawaiian home administration
22 account established under section 213(f).



1 (g) As used in this section, "improvements" means any
2 renovation, rehabilitation, reconstruction, or construction of
3 the property, including minimum requirements for off-site and
4 on-site improvements."

5 SECTION 5. Act 187, Session Laws of Hawaii 2010, is
6 amended by repealing section 9:

7 [~~"SECTION 9. All lease revenues from commercial and
8 multipurpose project leases collected by the department of
9 Hawaiian home lands to which section , Hawaiian Homes
10 Commission Act, 1920, as amended, applies shall be deposited
11 into the Hawaiian home lands trust fund established under
12 section 213.6, Hawaiian Homes Commission Act, 1920, as amended,
13 provided that the department of Hawaiian home lands shall
14 deposit fifteen per cent of those revenues that are derived from
15 the amounts deposited from commercial and multipurpose project
16 lease extensions pursuant to section (c), Hawaiian Homes
17 Commission Act, 1920, as amended, into the native Hawaiian
18 rehabilitation fund established under section 213(i), Hawaiian
19 Homes Commission Act, 1920, as amended."]~~


20 PART III

21 SECTION 6. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect on July 1, 2012;
2 provided that part I shall take effect on June 29, 2012.

APPROVED this 28 day of JUN, 2012



GOVERNOR OF THE STATE OF HAWAII