

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



DEPT. OF HAWAIIAN
HOME LANDS
MAY 18 8 32 AM '99
THOMAS R. KELLER
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
REGULATORY DIVISION
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May 13, 1999

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

Dear Mr. Soon:

Re: Congressional Consent to 1997 and 1998 State Amendments to the Hawaiian Homes Commission Act, 1920, as amended

This responds to letters of August 19, 1997, and October 5, 1998, from the Honorable Kali Watson, former Chairman, Hawaiian Homes Commission, requesting our review and opinion as to whether the amendments¹ made to the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"), by Act 196 and Act 197, 1997 Haw. Sess. Laws 368 and 371, respectively, and Act 27, 1998 Haw. Sess. Laws 99, require the consent of the United States. We are of the opinion that none of the amendments in question requires such consent.

Section 4 of the Hawaii Admission Act ("Section 4")² requires the consent of the United States for any amendment to the HHCA, unless the amendment falls within one of several

¹ Act 143, 1997 Haw. Sess. Laws 280, mentioned in the letter of August 19, 1997, authorizes the Department of Hawaiian Home Lands to issue certain bonds; it does not amend the HHCA.

² 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

enumerated exceptions. One exception to the consent requirement concerns amendments to the HHCA which increase benefits to lessees of Hawaiian home lands. Another exception concerns provisions relating to administration. 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 196, 1997 Haw. Sess. Laws 368, amends the HHCA by adding a new section, entitled "Housing development" and transferring to the new section, from section 207(a), the authority granted to the department by Act 27, 1984 Haw. Sess. Laws 66, to which legislation Congress had consented pursuant to Public Law No. 99-557, dated October 27, 1986. Act 196 also amends section 208 by permitting a homestead lessee to rent to another native Hawaiian "lodging within the lessee's existing home or in a separate residential dwelling unit constructed on the premises." By allowing the opportunity for rental income, which was previously not available, we believe that Act 196 increases benefits to lessees of Hawaiian home lands and does not require the consent of the United States.

Act 197, 1997 Haw. Sess. Laws 371, amends the HHCA by making housecleaning changes, nonsubstantive in nature. For example, the amendments to sections 206 and 211 are to remove the brackets that appear at the beginning and end of the title to each section, while the amendments to sections 204.5 and 213.5 seek to remove the brackets that appear at the beginning and end of the section number itself. Amendments to sections 201, 205, 210, and 217, besides removing brackets either in the section number or title, include gender neutral language and stylistic changes. We do not believe that a fair reading of Section 4 requires nonsubstantive housecleaning amendments to the HHCA to be subject to the lengthy process of obtaining congressional consent.

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 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.

Act 27, 1998 Haw. Sess. Laws 99, amends section 213 of the HHCA by amending subsection (d), changing the designation of the Hawaiian home operating fund, the Hawaiian home receipts fund, the Hawaiian home trust fund, and the native Hawaiian rehabilitation fund from "special" funds to "trust" funds and leaving the Hawaiian homes administration account as the only special fund. Act 27 also amends subsection (i) of section 213, relating to the native Hawaiian rehabilitation fund, by subjecting the fund to administrative conditions. In general, Act 27 expands on the authority of the department in managing the various funds.

Section 4 enumerates three funds, the Hawaiian home loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund, which may not be "reduced or impaired" by amendment, "whether made in the constitution or in the manner required for State legislation." The Hawaiian home-operating fund is the only fund listed in Section 4 that is affected by Act 27 and thus the only fund to which Section 4 may be applicable if the amendment reduces or impairs the fund.

We note that trust funds are specifically excluded from the special fund assessment provisions of sections 36-27 and 36-30, Hawaii Revised Statutes ("HRS").³ Chapters 36 through 42, HRS, together detail the administration of State finances. "Special funds" are defined in chapter 37 as funds which are "dedicated or set aside by law for a specified object or purpose, but excluding revolving funds or trust funds." HRS section 37-62 (emphasis added). In amending the status of the Hawaiian home-operating fund from a "special" fund to a "trust" fund, by legislative definition the fund is not subject to special fund assessment. We believe that Act 27 neither reduces nor impairs the Hawaiian home-operating fund and, therefore, does not require congressional consent.

For the foregoing reasons, we are of the opinion that Acts 96 and Act 97, 1997 Haw. Sess. Laws 368 and 371, respectively, and Act 27, 1998 Haw. Sess. Laws 99, fall within the enumerated exceptions to Section 4 of the Hawaii Admission Act and do not require the consent

³ Section 36-27, HRS (Supp. 1998), states in pertinent part:

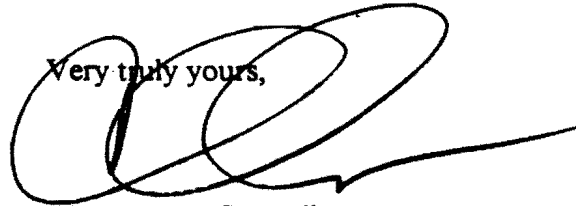
[N]otwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, . . . shall deduct five per cent of all receipts of all . . . special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State.

Similarly, section 36-30, HRS, provides for reimbursements to the general fund from each special fund (except those specifically exempted) for a pro rata share of departmental administrative expenses.

The Honorable Raynard Soon
May 13, 1999
Page 4


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,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Clayton Lee Crowell
Deputy Attorney General

APPROVED:

A handwritten signature in black ink, appearing to read 'Thomas R. Keller' with a long horizontal stroke extending to the right.

Thomas R. Keller
Acting Attorney General

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. The Hawaiian Homes Commission Act, 1920, as
2 amended, is amended by adding a new section to be appropriately
3 designated and to read as follows:

4 "§ . Housing development. The department is authorized
5 to develop and construct single-family and multifamily units for
6 housing native Hawaiians. The method of disposition, including
7 rentals, as well as the terms, conditions, covenants, and
8 restrictions as to the use and occupancy of such single-family
9 and multifamily units shall be prescribed by rules adopted by the
10 department pursuant to chapter 91."

11 SECTION 2. Section 207 of the Hawaiian Homes Commission
12 Act, 1920, as amended, is amended by amending subsections (a) and
13 (b) to read as follows:

14 "(a) The department is authorized to lease to native
15 Hawaiians the right to the use and occupancy of a tract or tracts
16 of Hawaiian home lands within the following acreage limits per
17 each lessee: (1) not more than forty acres of agriculture lands
18 or lands used for aquaculture purposes; or (2) not more than one
19 hundred acres of irrigated pastoral lands and not more than one

1 thousand acres of other pastoral lands; or (3) not more than one
2 acre of any class of land to be used as a residence lot; provided
3 that in the case of any existing lease of a farm lot in the
4 Kalaniana'ole Settlement on Molokai, a residence lot may exceed
5 one acre but shall not exceed four acres in area, the location of
6 such area to be selected by the department; provided further that
7 a lease granted to any lessee may include two detached farm lots
8 or aquaculture lots, as the case may be, located on the same
9 island and within a reasonable distance of each other, one of
10 which, to be designated by the department, shall be occupied by
11 the lessee as the lessee's home, the gross acreage of both lots
12 not to exceed the maximum acreage of an agricultural, pastoral,
13 or [aquaculture] aquacultural lot, as the case may be, as
14 provided in this section. [The department is authorized to
15 develop and construct multifamily units for housing native
16 Hawaiians. The method of disposition, as well as the terms,
17 conditions, covenants, and restrictions as to the use and
18 occupancy of such multifamily units shall be prescribed by rules
19 adopted by the department pursuant to chapter 91.]

20 (b) The title to lands so leased shall remain in the
21 [[State]]. Applications for tracts shall be made to and
22 granted by the department, under such regulations, not in
23 conflict with any provisions of this title, as the department may

1 prescribe. The department shall, whenever tracts are available,
2 enter into such a lease with any applicant who, in the opinion of
3 the department, is qualified to perform the conditions of such
4 lease."

5 SECTION 3. Section 208 of the Hawaiian Homes Commission
6 Act, 1920, as amended, is amended to read as follows:

7 "§208. Conditions of leases. Each lease made under the
8 authority granted the department by section 207 of this Act, and
9 the tract in respect to which the lease is made, shall be deemed
10 subject to the following conditions, whether or not stipulated in
11 the lease:

- 12 (1) The original lessee shall be a native Hawaiian, not
13 less than eighteen years of age. In case two lessees
14 either original or in succession marry, they shall
15 choose the lease to be retained, and the remaining
16 lease shall be transferred, quitclaimed, or canceled in
17 accordance with the provisions of succeeding sections.
- 18 (2) The lessee shall pay a rental of \$1 a year for the
19 tract and the lease shall be for a term of ninety-nine
20 years; except that the department may extend the term
21 of any lease provided that the approval of any
22 extension shall be subject to the condition that the

1 aggregate of the initial ninety-nine year term and any
2 extension granted shall not be for more than one
3 hundred ninety-nine years.

4 (3) The lessee may be required to occupy and commence to
5 use or cultivate the tract as the person's home or farm
6 or occupy and commence to use the tract for aquaculture
7 purposes, as the case may be, within one year after the
8 commencement of the term of the lease.

9 (4) The lessee shall thereafter, for at least such part of
10 each year as the department shall prescribe by rules,
11 so occupy and use or cultivate the tract on the
12 person's own behalf.

13 (5) The lessee shall not in any manner transfer to, or
14 otherwise hold for the benefit of, any other person or
15 group of persons or organizations of any kind, except a
16 native Hawaiian or Hawaiians, and then only upon the
17 approval of the department, or agree so to transfer, or
18 otherwise hold, the person's interest in the tract.
19 Such interest shall not, except in pursuance of such a
20 transfer to or holding for or agreement with a native
21 Hawaiian or Hawaiians approved of by the department, or
22 for any indebtedness due the department or for taxes,
23 or for any other indebtedness the payment of which has

1 been assured by the department, including loans from
2 other agencies where such loans have been approved by
3 the department, be subject to attachment, levy, or sale
4 upon court process. The lessee shall not sublet the
5 person's interest in the tract or improvements
6 thereon[.]; provided that a lessee may be permitted,
7 with the approval of the department, to rent to a
8 native Hawaiian or Hawaiians lodging either within the
9 lessee's existing home or in a separate residential
10 dwelling unit constructed on the premises.

11 (6) Notwithstanding the provisions of paragraph (5), the
12 lessee, with the consent and approval of the
13 commission, may mortgage or pledge the lessee's
14 interest in the tract or improvements thereon to a
15 recognized lending institution authorized to do
16 business as a lending institution in either the State
17 or elsewhere in the United States; provided the loan
18 secured by a mortgage on the lessee's leasehold
19 interest is insured or guaranteed by the Federal
20 Housing Administration, [Veterans Administration,]
21 Department of Veterans Affairs, or any other federal
22 agency and their respective successors and assigns,
23 which are authorized to insure or guarantee such

1 loans[.], or any acceptable private mortgage insurance
2 as approved by the commission. The mortgagee's
3 interest in any such mortgage shall be freely
4 assignable. Such mortgages, to be effective, must be
5 consented to and approved by the commission and
6 recorded with the department.

7 Further, notwithstanding the authorized purposes
8 of loan limitations imposed under section 214 of this
9 Act and the authorized loan amount limitations imposed
10 under section 215 of this Act, loans made by lending
11 institutions as provided in this paragraph, insured or
12 guaranteed by the Federal Housing Administration,
13 [Veterans Administration,] Department of Veterans
14 Affairs, or any other federal agency and their
15 respective successors and assigns, may be for such
16 purposes and in such amounts, not to exceed the maximum
17 insurable limits, together with such assistance
18 payments and other fees, as established under section
19 421 of the Housing and Urban Rural Recovery Act of 1983
20 which amended Title II of the National Housing Act of
21 1934 by adding section 247, and its implementing
22 regulations, to permit the Secretary of Housing and
23 Urban Development to insure loans secured by a mortgage

1 executed by the homestead lessee covering a homestead
2 lease issued under section 207(a) of this Act and upon
3 which there is located a one to four family single
4 family residence.

5 (7) The lessee shall pay all taxes assessed upon the tract
6 and improvements thereon. The department may pay such
7 taxes and have a lien therefor as provided by section
8 216 of this Act.

9 (8) The lessee shall perform such other conditions, not in
10 conflict with any provision of this Act, as the
11 department may stipulate in the lease; provided that an
12 original lessee shall be exempt from all taxes for the
13 first seven years after commencement of the term of the
14 lease."

15 SECTION 4. Statutory material to be repealed is bracketed.
16 New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

APPROVED BY THE
GOVERNOR ON

JUN 16 1997

ACT 196

“~~[[§302A-803]]~~ Powers and duties of the board. In addition to establishing standards for the issuance of licenses and credentials, the board's powers shall also include:

- (1) Setting and administering its own budget;
- (2) Adopting, amending, repealing, or suspending the policies, standards, or rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations;
- (4) Submitting an annual report to the governor and the legislature on the board's operations;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing and credentialing fees in accordance with chapter 91[;], including the collection of fees by means of mandatory payroll deductions, which shall subsequently be deposited into the state treasury and credited to the Hawaii teacher standards board revolving fund; and
- (7) Establishing penalties in accordance with chapter 91.”

SECTION 3. Section 302A-805, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302A-805]]~~ Teachers; license or credential required; renewals. [(a)] Beginning with the 1997-1998 school year, no person shall serve as a teacher in a public school without first having obtained a license or credential from the department under this subpart. All licenses issued by the department shall be renewable every five years, [provided] if the licensee continues to satisfy the board's licensing standards. All credentials issued by the department shall be renewable every year, up to a maximum of three years[; provided],¹ if the credential holder continues to satisfy the board's credentialing standards and actively pursues appropriate licensing.

[(b)] No person shall be issued a license or credential without having first paid the fee established by the board in accordance with chapter 91.]”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 16, 1997.)

Note

1. Comma should be underscored.

ACT 196

H.B. NO. 1712

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:

SECTION 1. The Hawaiian Homes Commission Act, 1920, as amended, is amended by adding a new section to be appropriately designated and to read as follows:

“§ . Housing development. The department is authorized to develop and construct single-family and multifamily units for housing native Hawaiians. The method of disposition, including rentals, as well as the terms, conditions, covenants, and restrictions as to the use and occupancy of such single-family and multifamily units shall be prescribed by rules adopted by the department pursuant to chapter 91.”

SECTION 2. Section 207 of the Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsections (a) and (b) to read as follows:

“(a) The department is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands within the following acreage limits per each lessee: (1) not more than forty acres of agriculture lands or lands used for aquaculture purposes; or (2) not more than one hundred acres of irrigated pastoral lands and not more than one thousand acres of other pastoral lands; or (3) not more than one acre of any class of land to be used as a residence lot; provided that in the case of any existing lease of a farm lot in the Kalanianaʻole Settlement on Molokai, a residence lot may exceed one acre but shall not exceed four acres in area, the location of such area to be selected by the department; provided further that a lease granted to any lessee may include two detached farm lots or aquaculture lots, as the case may be, located on the same island and within a reasonable distance of each other, one of which, to be designated by the department, shall be occupied by the lessee as the lessee’s home, the gross acreage of both lots not to exceed the maximum acreage of an agricultural, pastoral, or [aquaculture] aquacultural lot, as the case may be, as provided in this section. [The department is authorized to develop and construct multifamily units for housing native Hawaiians. The method of disposition, as well as the terms, conditions, covenants, and restrictions as to the use and occupancy of such multifamily units shall be prescribed by rules adopted by the department pursuant to chapter 91.]

(b) The title to lands so leased shall remain in the [[]State[]]. Applications for tracts shall be made to and granted by the department, under such regulations, not in conflict with any provisions of this title, as the department may prescribe. The department shall, whenever tracts are available, enter into such a lease with any applicant who, in the opinion of the department, is qualified to perform the conditions of such lease.”

SECTION 3. Section 208 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“§208. Conditions of leases. Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

- (1)** The original lessee shall be a native Hawaiian, not less than eighteen years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred, quitclaimed, or canceled in accordance with the provisions of succeeding sections.
- (2)** The lessee shall pay a rental of \$1 a year for the tract and the lease shall be for a term of ninety-nine years; except that the department may extend the term of any lease provided that the approval of any extension shall be subject to the condition that the aggregate of the initial ninety-nine year term and any extension granted shall not be for more than one hundred ninety-nine years.

ACT 196

- (3) The lessee may be required to occupy and commence to use or cultivate the tract as the person's home or farm or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the commencement of the term of the lease.
- (4) The lessee shall thereafter, for at least such part of each year as the department shall prescribe by rules, so occupy and use or cultivate the tract on the person's own behalf.
- (5) The lessee shall not in any manner transfer to, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, or otherwise hold, the person's interest in the tract. Such interest shall not, except in pursuance of such a transfer to or holding for or agreement with a native Hawaiian or Hawaiians approved of by the department, or for any indebtedness due the department or for taxes, or for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet the person's interest in the tract or improvements thereon[.]; provided that a lessee may be permitted, with the approval of the department, to rent to a native Hawaiian or Hawaiians lodging either within the lessee's existing home or in a separate residential dwelling unit constructed on the premises.
- (6) Notwithstanding the provisions of paragraph (5), the lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration, [Veterans Administration,] Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans[.], or any acceptable private mortgage insurance as approved by the commission. The mortgagee's interest in any such mortgage shall be freely assignable. Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

Further, notwithstanding the authorized purposes of loan limitations imposed under section 214 of this Act and the authorized loan amount limitations imposed under section 215 of this Act, loans made by lending institutions as provided in this paragraph, insured or guaranteed by the Federal Housing Administration, [Veterans Administration,] Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, may be for such purposes and in such amounts, not to exceed the maximum insurable limits, together with such assistance payments and other fees, as established under section 421 of the Housing and Urban Rural Recovery Act of 1983 which amended Title II of the National Housing Act of 1934 by adding section 247, and its implementing regulations, to permit the Secretary of Housing and Urban Development to insure loans secured by a mortgage executed by the homestead lessee covering a homestead lease issued under section 207(a) of this Act and upon which there is located a one to four family single family residence.

- (7) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may pay such taxes and have a lien therefor as provided by section 216 of this Act.
- (8) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years after commencement of the term of the lease."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 16, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 197

H.B. NO. 1713

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:

SECTION 1. Section 201 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§201. []Definitions.[] (a) [That when] When used in this title:
 [(1) The term "commission"] "Commission" means the Hawaiian [Homes Commission;] homes commission.
 [(2) The term "public land"] "Public land" has the same meaning as defined in paragraph (3) of subdivision (a) of section 73 of the Hawaiian Organic Act[;].
 [(3) The term "fund"] "Fund" means the Hawaiian home loan fund[;].
 [(4) The term] "State" means the State of Hawaii[;].
 [(5) The term] "Hawaiian home lands" means all lands given the status of Hawaiian home lands under the provisions of section 204 of this title[;].
 [(6) The term "tract"] "Tract" means any tract of Hawaiian home lands leased, as authorized by section 207 of this title, or any portion of [such] the tract[;].
 [(7) The term] "Native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778[;].
 [(8) The term "irrigated pastoral land"] "Irrigated pastoral land" means land not in the description of the agricultural land but which, through irrigation, is capable of carrying more livestock the year through than first-class pastoral land.
 (b) Any term defined or described in section 347 or 351 of the Revised Laws of Hawaii of 1915, except a term defined in [subdivision] subsection (a) of this section, shall, whenever used in this title, have the same meaning as given by such definition or description."

SECTION 2. Section 204.5 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

2619A.3

BENJAMIN J. CAYETANO
GOVERNOR
STATE OF HAWAII



KALI WATSON
CHAIRMAN
HAWAIIAN HOMES COMMISSION

JOBIE M. K. M. YAMAGUCHI
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879

HONOLULU, HAWAII 96805

February 6, 1997

TO: The Honorable Ed Case, Chair
House Committee On Hawaiian Affairs

FROM: Kali Watson, Chairman *Kali Watson*
Hawaiian Homes Commission

SUBJECT: Testimony On House Bill 1712 Relating to the Hawaiian
Homes Commission Act, 1920 As Amended

Chair Case and members of the House Committee On Hawaiian Affairs. We appreciate the opportunity to provide testimony on H.B. 1712 relating to the Hawaiian Homes Commission Act, 1920, as amended (HHCA). This Administration bill proposes two new initiatives.

1. Language relating to housing development is set out in a new section with a proposed amendment authorizing the department to develop rental housing. In an effort to expand the housing options available to the beneficiaries on Hawaiian home lands, the department is planning a rental housing program to assist those applicants on the waiting list who cannot qualify for homeownership. The rental program will include a rent-to-own component that will allow native Hawaiian families to transition from being a renter to a homeowner.
2. Amendments to section 208(5) of the Act are proposed which will allow homesteaders, with department approval, to provide a rental unit for other native Hawaiians on existing homestead lots. The purpose of this proposal is to help meet the critical need for housing among native Hawaiians, and to provide homesteaders with an opportunity to earn additional income.

The proposed initiatives will enable the department to address a housing need which is not currently being met by the Hawaiian home lands program.

We urge your passage of H.B. 1712.



LATE FEBRUARY 1997

EXECUTIVE CHAMBERS

HONOLULU

BENJAMIN J. CAYETANO
GOVERNOR

TO: The Honorable Ed Case, Chair
House Committee on Hawaiian Affairs

FROM: Ron Lim, Special Assistant for Housing
Office of the Governor

SUBJECT: H.B. 1712 RELATING TO THE HAWAIIAN HOMES COMMISSION

Hearing: Thursday, February 6, 1997, 8:30 a.m.
Conference Room 309
State Capitol

The purpose of this bill is to authorize the Department of Hawaiian Home Lands to undertake rental housing projects.

We strongly support this administration bill as there is an extreme shortage of rental housing not only for Hawaiians but for all our State residents.

The development of multi-family rental housing is the most cost effective and efficient means of providing housing. Large quantities of housing can be built quicker and cheaper. Particularly, with the rapidly growing population of the elderly, multi-family communities of elderly residents provides the ideal supportive environment that can be developed quickly and at lower cost.

With the significant reduction in federal, state and county funds available for affordable rental housing coupled with the growing need for affordable rental housing, the participation of the Department of Hawaiian Home Lands is essential to increasing the supply of affordable rental housing.

Thank you for accepting my testimony.

LATE TESTIMONY

State Council of Hawaiian Homestead Associations

P.O. Box #131, Waiānāe, Hawaii 96792
Tel: 808-831-8821

February 6, 1997

TO: Rep. Ed Case, Chairman
Committee on Hawaiian Affairs

FROM: Tony Sang, Sr, President JS
Ahupua'a o Oahu
State Council of Hawaiian Homestead Associations (SCHHA)

RE: TESTIMONY ON HOUSE BILLS PRESENTED TO COMMITTEE ON HAWAIIAN AFFAIRS

HB 614 - RELATING HAWAIIAN HOMES COMMISSION
It authorizes the election of the Hawaiian Homes Commission by Hawaiian Voters.

As the elected President of the Ahupua'a o O'ahu representing the seven Hawaiian Homestead Associations on the island of Oahu, I would like to testify in support of HB 614 which allows the election of the members of the Hawaiian Homes Commissioners. We have met and discussed with the elected leadership of the Oahu Associations the election of the Hawaiian Homes Commissioners and after carefully reviewing the House Bill, we support and feel that this re-submission of House Draft 3 of HB 3919, and we accept the recommendations of both the House and Senate language that went to conference in the Legislative Session of 1996.

We would appreciate your support of HB 614.

HB 1712 - HOUSING DEVELOPMENT
It authorizes the development and construction of single-family and multifamily units with the ability to allow rental to qualified native Hawaiians by lessees.

Representing the Ahupua'a o O'ahu for island of O'ahu, we are in support of HB 1712 which will allow for the construction and development of single-family and multifamily units and provided that lessees may be permitted, with the approval of the department, to rent to a native Hawaiian or Hawaiians lodging either within the lessees' existing home or in a separate residential dwelling unit on the premises.

We appreciate your support of HB 1712.

HB 305 - TRANSFER OF UNCOMPLETED HOUSING PROJECTS & FEE'S
Simple title to related public lands located at Kealahou and Lahaina to DHHL

Relating to HB 305 of the transfer of the public lands situated at Kealahou and Lahaina to the Department of Hawaiian Home Lands (DHHL). The direct benefits received from the transfer of these lands to DHHL for the native Hawaiians as beneficiaries of the Hawaiian Homes Commission Act.

TESTIMONY OF HOUSE BILLS PRESENTED TO COMMITTEE ON HAWAIIAN AFFAIRS

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HB 1711 - AMENDS SECT. 204.5 OF THE HAWAIIAN HOMES COMMISSION ACT (HHCA)

To authorize DHHL to undertake projects without regard to Chapt. 103D, when bids submitted exceed the amount of funds available for the project.

We strongly support HB 1711 which will be a greater benefit to the native Hawaiians and applicants on the waiting list and to ensure that projects under DHHL is completed and within the scope of the project under its agreement.

We ask for your support of HB 1711.

HB 1713 - TECHNICAL & NON-SUBSTANTIVE AMENDMENTS TO THE HHCA.

Housekeeping measure which makes various amendments to HHCA.

We request for a clarification of the bill language on page 14, line 12.

We support HB 1713 for the technical and non-substantive amendments to the HHCA and ask for your support.

HB 1794 - TO CLARIFY THE BASIS FOR ESTABLISHING A FINAL FAIR MARKET VALUE FOR PUBLIC TRUST LANDS.

Trust lands already conveyed or to be conveyed to HFDC for housing development at Lahaina & Kealahou.

We oppose the HB 1794 for establishing a final fair market value for the public trust lands which do not provide a benefit to the native Hawaiians or those applicants of the HHCA.

HB 1795 - TO CLARIFY THE BASIS FOR ESTABLISHING A FINAL FAIR MARKET VALUE FOR PUBLIC TRUST LANDS.

Trust lands already conveyed or to be conveyed to HFDC for housing development at Lahaina & Kealahou.

We oppose the HB 1795 for establishing a final fair market value for the public trust lands which do not provide a benefit to the native Hawaiians or those applicants of the HHCA. We ask that you do not support this bill.

HB 1474 - PROHIBITS THE SALES OF A LESSEES' INTEREST IN AWARDED LANDS

Relates to awarded lands to Hawaiian who may or may not be on the wait list.

We do not support HB 1474 as this does not provide a benefit to the native Hawaiian people as beneficiaries of the Hawaiian Homes Commission Act.



**House Committee on Hawaiian Affairs
House Bill 1712**

Testimony of Paul Lucas, Native Hawaiian Legal Corporation
Feb. 6, 1997

Aloha. I'm testifying on behalf of my client Martin Kahae, a Hawaiian homesteader on the island of Molokai. This testimony is presented in support of sections one, two, four and five of H.B. No. 1712, which amends the Hawaiian Homes Commission Act to create a new section, §207.5, which allows the Department to construct single family and multi-family rental units in order to meet the housing needs of native Hawaiian applicants on the waiting list.

However, we strongly oppose section three of this bill, which amends §208(5) to allow native Hawaiian lessees to sublease their lots to other native Hawaiians. First of all, the proposed amendment directly conflicts with the preceding language that "[t]he lessee shall not sublet the person's interest in the tract or improvements thereon." Second, this amendment is contrary to the purpose and spirit of the act because it allows native Hawaiians to sublease their lots at a profit at the expense of other native Hawaiians. While many lessees believe that they are free to do as they please with their leaseholds, the fact is that they are subject to certain limitations imposed on them as participants in a homestead leasing program. The intent of the Hawaiian Homes Commission Act was not to make Hawaiians "landlords" charging rent for their leaseholds. This type of program is fraught with abuses and can only lead to further problems/headaches for the Department of Hawaiian Home Lands. The Department has only one enforcement officer for all of its lands and can barely monitor compliance with its general leases, let alone its homestead leasing program.

If elderly lessees cannot afford the maintenance and upkeep of their leasehold, then the Department is required to provide alternative housing to accommodate their needs, which is consistent with §207.5. I understand that the Department is looking at constructing kupuna rental housing on some of its parcels. We wholeheartedly support kupuna rental housing. If you choose to approve H.B. 1712, please delete the amendment to §208(5) in section three of the bill because it does not conform to the purpose and spirit of the Act. Mahalo.