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November 21, 1996

The Honorable Kali Watson
Chairman, Hawaiian Homes Commission
Department of Hawaiian Home Lands
State of Hawaii
335 Merchant Street, Room 307
Honolulu, Hawaii 96813

Dear Mr. Watson:

Re: Congressional Consent to 1996 Amendment to the
Hawaiian Homes Commission Act, 1920, as Amended.

This responds to your letter of July 15, 1996, requesting our review and opinion as to whether the amendment made to the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"), by Act 232, 1996 Haw. Sess. Laws 531, requires the consent of the United States.

Section 4 of the Hawaii Admission Act^{1/} requires the consent of the United States for any amendment to the HHCA,

^{1/} Section 4, the Admission Act, (Act of March 18, 1959, Pub. L. 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 section 204, sections 206 and 212, and other

unless the amendment falls within one of several enumerated exceptions. One exception to the consent requirement concerns amendments to the HHCA which increase benefits to lessees of Hawaiian home lands. 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 232, 1996 Haw. Sess. Laws 531, amends section 214(b)(5) of the HHCA by increasing the ceiling on the aggregate departmental guarantee of loans made to lessees from

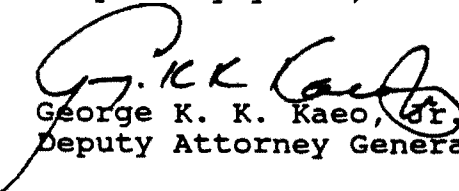
cont'd. 1/ provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development 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) 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 by said Act, shall be used only in carrying out the provisions of said Act.

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\$21,000,000 to \$50,000,000^{2/} and, by its terms, took effect upon approval of the governor on June 18, 1996.

We are of the opinion that Act 232 falls within one of the enumerated exceptions in that it provides for an increase of benefits to lessees of Hawaiian home lands and therefore does not require the consent of the United States.

Very truly yours,


George K. K. Kaeo, Jr.
Deputy Attorney General

APPROVED:


Margery S. Bronster
Attorney General

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^{2/} The original aggregate ceiling on guarantees was \$500,000 established in 1967. (Act 146, 1967 Haw. Sess. Laws 136-137). In the 1970's, this ceiling was increased four times, from \$2,000,000 (Act 66, 1973 Haw. Sess. Laws 78, 79-80), to \$8,000,000 (Act 175, 1974 Haw. Sess. Laws 367, 368), to \$18,000,000 (Act 229, 1978 Haw. Sess. Laws 470, 475-476), and finally to \$21,000,000 (Act 209, 1979 Haw. Sess. Laws 435, 436). Though not necessary, Congress consented to these legislative amendments. Public Law 99-557, 100 Stat. 3143 (October 27, 1986).

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. Section 214, Hawaiian Homes Commission Act,
2 1920, as amended, is amended by amending subsection (b) to read
3 as follows:

4 "(b) In addition the department may:

- 5 (1) Use moneys in the Hawaiian home operating fund, with
6 the prior approval of the governor, to match federal,
7 state, or county funds available for the same
8 purposes and to that end, enter into such
9 undertaking, agree to such conditions, transfer funds
10 therein available for such expenditure, and do and
11 perform such other acts and things, as may be
12 necessary or required, as a condition to securing
13 matching funds for such projects or works;
- 14 (2) Loan or guarantee the repayment of or otherwise
15 underwrite any authorized loan or portion thereof to
16 lessees in accordance with section 215;
- 17 (3) Loan or guarantee the repayment of or otherwise
underwrite any authorized loan or portion thereof to

1 a cooperative association in accordance with section
2 215;

3 (4) Permit and approve loans made to lessees by
4 government agencies or private lending institutions,
5 where the department assures the payment of such
6 loans; provided that upon receipt of notice of
7 default in the payment of such assured loans, the
8 department may, upon failure of the lessee to cure
9 the default within sixty days, cancel the lease and
10 pay the outstanding balance in full or may permit the
11 new lessee to assume the outstanding debt; and
12 provided further that the department shall reserve
13 the following rights: the right of succession to the
14 lessee's interest and assumption of the contract of
15 loan; the right to require that written notice be
16 given to the department immediately upon default or
17 delinquency of the lessee; and any other rights
18 enumerated at the time of assurance necessary to
19 protect the monetary and other interests of the
20 department;

21 (5) Secure, pledge, or otherwise guarantee the repayment
22 of moneys borrowed by the department from government
23 agencies or private lending institutions and pay the
24 interim interest or advances required for loans;
5 provided that the State's liability, contingent or

1 otherwise, either on moneys borrowed by the
2 department or on departmental guarantees of loans
3 made to lessees under this paragraph and paragraphs
4 (2), (3), and (4) of this subsection, shall at no
5 time exceed [\$21,000,000] \$50,000,000; the
6 department's guarantee of repayment shall be adequate
7 security for a loan under any state law prescribing
8 the nature, amount, or form of security or requiring
9 security upon which loans may be made;

- 10 (6) Use available loan fund moneys or other funds
11 specifically available for such purposes as cash
12 guarantees when required by lending agencies;
- 13 (7) Exercise the functions and reserved rights of a
14 lender of money or mortgagee of residential property
15 in all direct loans made by government agencies or by
16 private lending institutions to lessees the repayment
17 of which is assured by the department. The functions
18 and reserved rights shall include but not be limited
19 to, the purchasing, repurchasing, servicing, selling,
20 foreclosing, buying upon foreclosure, guaranteeing
21 the repayment, or otherwise underwriting, of any
22 loan, the protecting of security interest, and after
23 foreclosures, the repairing, renovating, or
24 modernization and sale of property covered by the
loan and mortgage;

1 (8) Pledge receivables of loan accounts outstanding as
2 collateral to secure loans made by government
3 agencies or private lending institutions to the
4 department, the proceeds of which shall be used by
5 the department to make new loans to lessees or to
6 finance the development of available lands for
7 purposes permitted by this Act; provided that any
8 loan agreement entered into under this paragraph by
9 the department shall include a provision that the
10 money borrowed by the department is not secured
11 directly or indirectly by the full faith and credit
12 or the general credit of the State or by any revenues
13 or taxes of the State other than the receivables
14 specifically pledged to repay the loan; provided
15 further that in making loans or developing available
16 lands out of money borrowed under this paragraph, the
17 department may establish, revise, charge, and collect
18 fees, premiums, and charges as necessary, reasonable,
19 or convenient, to assure repayment of the funds
20 borrowed, and the fees, premiums, and charges shall
21 be deposited into the Hawaiian home trust fund; and
22 provided further that no moneys of the Hawaiian home
23 loan fund may be pledged as security under this
24 paragraph; and

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(9) Notwithstanding any other provisions of this Act to the contrary, transfer into the Hawaiian home trust fund any available and unpledged moneys from any loan funds, the Hawaiian loan guarantee fund, or any fund or account succeeding thereto, except the Hawaiian home loan fund, for use as cash guarantees or reserves when required by a federal agency authorized to insure or guarantee loans to lessees."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

APPROVED BY THE
GOVERNOR ON
JUN 18 1996

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 10, 1996

TO: The Honorable Dennis A. Arakaki, Chair
House Committee On Hawaiian Affairs and Housing

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

SUBJECT: Testimony On H.B. 3453 Relating To The Hawaiian Homes
Commission Act, 1920, as Amended

Mr. Chairman and Members of the House Committee On Hawaiian Affairs and Housing, we appreciate the opportunity to testify on H.B. 3453 relating to the Hawaiian Homes Commission Act, 1920, as amended.

The purpose of this Administration bill is to increase the amount the department is presently authorized to borrow or guarantee on loans from \$21,000,000 to \$50,000,000 to cover the department's projected guarantee requirements for its housing program.

Financial institutions in the past have been reluctant to make mortgage loans to Hawaiian home lands beneficiaries because of the inalienability of Trust lands as stipulated in the Hawaiian Homes Commission Act of 1920. As part of DHHL's housing strategy, the department has been involved with innovative loan programs in order to help lenders better underwrite mortgages made on Trust lands. Approximately \$14.8 million or 15% of the department's mortgage loan portfolio is comprised of guaranteed loans which allows financing through external sources. Such programs include the U.S. Department of Agriculture's Rural Economic and Community Development Program, a three-way loan agreement program between the department, the Office of Hawaiian Affairs and First Hawaiian Bank, and various loan guarantee programs with federal credit unions and financial institutions. These programs provide DHHL the advantage of 1) leveraging the department's limited loan fund resources to allow expansion in other development areas and 2) reducing departmental administrative expenses.

The Honorable Dennis A. Arakaki, Chair
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While the DHHL Land Claims Settlement Act (Act 14, Special Session 1995) provides a significant revenue source for the financing of DHHL's capital program requirements, it is clear that loan capitalization through external sources is a necessary and efficient way to satisfy the massive demand for home financing.

This amendment would increase DHHL's access to external sources of loan financing for home construction. Addressing the infrastructure and housing needs of unimproved and awarded lots is a major objective of the department's near-term capital program. The longer term program is focused on planning, designing and developing planned communities that will, at capacity, provide housing for several thousand beneficiary families.

We urge your approval of this bill and would be pleased to respond to any questions the Committee may have.

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**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813**

**TESTIMONY SUPPORTING THE PASSAGE OF HB 3453
RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED**

February 10, 1996

Aloha kakahiaka, Chairman Arakaki and members of the House Committee on Hawaiian Affairs and Housing. My name is Stephen K. Morse and I am the Housing Officer for the Office of Hawaiian Affairs (OHA). I speak this afternoon in support of the passage of HB 3453, which would increase the amount the Department of Hawaiian Home Lands is presently authorized to guarantee on loans from \$21 million to \$50 million, to cover the department's projected guarantee requirements for its housing program.

OHA supports the intent of this measure. Under our Hawaiian Homesteader Loan Program which is serviced by First Hawaiian Bank, we are making home improvement and down payment assistance loans to Hawaiian homesteaders that are guaranteed by DHHL. If DHHL should be unable to guarantee loans at some point in the future because it has reached its debt ceiling of \$21 million, it would have a serious negative impact on our ability to continue loaning money to Hawaiian homesteaders.

This would be unfortunate as we are now entering a period when many Hawaiian Home Lands housing projects, which have been stalled for years because of the lack of development funds, are now moving into the development phase. Projects like those in Nanakuli, Waimanalo, Waimea, Kawaihae, Waiohuli, Ho'olehua, Kalamaula, and Anahola, which will come on line within the next two years, will provide hundreds of improved lots ready to build on.

However, without an adequate mortgage financing structure in place, such as the DHHL and OHA loans, homestead lessees will be unable to build.

In view of the above, Mr. Chairman, OHA strongly urges the passage of HB 3453.

Mahalo e nui loa for the opportunity to testify on this important measure. I will be happy to answer any questions you may have.