

TO CONSENT TO CERTAIN AMENDMENTS ENACTED BY THE
LEGISLATURE OF THE STATE OF HAWAII TO THE HAWAIIAN
HOMES COMMISSION ACT, 1920

MARCH 11, 1997.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

[To accompany H.J. Res. 32]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the joint resolution (H.J. Res. 32), to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission act, 1920 having considered the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

PURPOSE OF THE BILL

The purpose of H.J. Res. 32 is to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920.

BACKGROUND AND NEED FOR LEGISLATION

Congress enacted the Hawaiian Homes Commission Act of 1920 to designate approximately 200,000 acres within the islands of the then Territory of Hawaii for the exclusive use of native Hawaiians. The Act defined native Hawaiians as descendants with at least one-half blood quantum of individuals inhabiting the Hawaiian Islands prior to 1778. The primary purpose of the Act was to provide rural homesteads for native Hawaiians. However, this was expanded in 1923 to include residential lots and the demand for parcels for that purpose has continued to the present.

The role of the Federal Government in the Hawaiian Homes Commission became limited at the time of Hawaii Statehood in

1959. The responsibility for the Hawaiian Homes Commission was largely devolved to the new State in the admissions act of March 18, 1959, "An Act to provide for the admission of the State of Hawaii into the Union." However, Section 4 of the admissions act requires Congressional consent to any changes to the Hawaiian Homes Commission Act. Additionally, the Secretary of the Interior's function became primarily ministerial, involving the approval of land exchanges for private or public lands of equal value, as permitted under the Hawaiian Homes Commission Act.

In 1993 the State of Hawaii passed Act 339 to create a Hawaii hurricane relief fund after the devastation of Hurricane Iniki and included amendments to the Hawaiian Homes Commission Act for native Hawaiians affected on Hawaiian Home Lands. This first amendment will facilitate certain disaster relief insurance and bonds for homeowners on Hawaiian Home lands. In 1994 the State of Hawaii enacted Act 37 to permit grandchildren of a Native Hawaiian leaseholder to assume the remainder of a home lease should that individual die. These proposed changes have not taken effect as Congress has yet to approve these measures.

Following is a summary of Act 339 of 1993 and Act 37 of 1994 which would change certain provisions of the Hawaiian Homes Commission Act of 1920 (the full text of both measures appear in the Appendix):

Act 339 of the Session Laws of Hawaii, 1993: This statute establishes the Hawaiian Hurricane Relief Fund. Section 7 of Act 339 authorizes the Department of Hawaiian Home Lands to issue hurricane insurance coverage for lessees of Hawaiian Home lands and revenue bonds to establish the necessary reserves for payment of claims in excess of reserves. Section 15 provides that consent requirement, if any, that applies to the Hawaiian Home Lands provisions of the act shall not be deemed to affect the validity of the other provision of the act.

Act 37 of the Session Laws of Hawaii, 1994: This statute allows homestead lessees to designate as a successor to the lease a grandchild who is at least 25 percent native Hawaiian. Under the current law, as adopted by Hawaii in 1982, a lessee may designate his or her spouse or children as a successor under the lease if they are 25 percent native Hawaiian; the bill would thus allow a similar designation with respect to grandchildren.

The House of Representatives approved a measure identical to H.J. Res. 32 as part of H.R. 1332 in the 104th Congress, which was not acted on by the Senate prior to adjournment.

COMMITTEE ACTION

H.J. Res. 32 was introduced on January 21, 1997, by Congressman Neil Abercrombie (D-HI) and cosponsored by Congressman Eni F.H. Faleomavaega (D-AS) and Congressman Elton Gallegly (R-CA). The bill was referred to the Committee on Resources for consideration. On March 5, 1997, the Full Resources Committee met to consider H.J. Res. 32. No amendments were offered and the joint resolution was ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8, and Article IV, section 3 of the Constitution of the United States grants Congress the authority to enact H.J. Res. 32.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in H.J. Res. 32. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.J. Res. 32 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.J. Res. 32.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.J. Res. 32 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 7, 1997.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 32, a joint resolution to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria V. Heid.

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

H.J. Res. 32—A joint resolution to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920

H.J. Res. 32 would grant the consent of the United States to a number of amendments to the Hawaiian Homes Commission Act, 1920, already adopted by the state of Hawaii. These amendments generally concern the administration of the Hawaiian home lands.

CBO estimates that enacting this resolution would have no effect on the federal budget. Because the resolution would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.J. Res. 32 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Victoria V. Heid. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

H.J. Res. 32 contains no unfunded mandates.

CHANGES IN EXISTING LAW

If enacted, H.J. Res. 32 would make no changes in existing law.

A P P E N D I X

1. ACT 339 OF THE SESSION LAWS OF HAWAII, 1993

ACT 339.—A Bill For an act relating to laws affecting insurance

Be It Enacted by the Legislature of the State of Hawaii:

Section 1. The legislature finds that new, creative, and flexible mechanisms are necessary to insure against hurricane losses in Hawaii in the aftermath of the devastation caused by Hurricane Iniki and the worldwide insurance crisis. The economic welfare of this State is dependent on the availability of property insurance including coverage for catastrophic losses in the event of another hurricane.

The legislature finds that without property insurance the orderly growth and development of the State would be severely impeded; that adequate insurance upon property is necessary to enable homeowners and commercial owners to obtain financing for the purchase and improvement of their property; and that while the need for such insurance is increasing, the market for such insurance is not adequate and is likely to become less adequate in the future.

The purpose of this Act is to create the Hawaii hurricane relief fund. The Hawaii hurricane relief fund will assess the availability of insurance from all sources and be empowered to take steps to provide coverage should the private market prove unreliable.

The establishment of the Hawaii hurricane relief fund serves a public purpose and is an essential government function.

Section 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER —HAWAII HURRICANE RELIEF FUND

“PART I.—GENERAL PROVISIONS

“§ —1. **Definitions.** As used in this chapter, unless the context otherwise requires:

“‘Board’ means the board of directors of the Hawaii hurricane relief fund.

“‘Commissioner’ means the insurance commissioner as defined in section 431:2–102.

“‘Covered event’ means each hurricane that directly causes wind-storm damage in the State.

“‘Deductible’ or ‘mandatory deductible’ means the amount of loss assumed by the policyholder that is not included in the coverages provided by the fund.

“‘Department’ means the department of commerce and consumer affairs.

“‘Director’ means the director of finance.

“‘Eligible property’ means:

“(1) Real property of one to four units used for residential purposes and which is in insurable condition, and tangible personal property located therein or thereon as provided in the plan of operation or any manual of rules and rates adopted under the plan of operation; and

“(2) Real property used for business, commercial, or industrial purposes which is in insurable condition located therein or thereon as provided in the plan of operation or any manual of rules and rates adopted under the plan of operation.

“‘Fund’ means the Hawaii hurricane relief fund established by this chapter.

“‘Hurricane’ means a storm that has been declared and defined by the Central Pacific Hurricane Center of the National Weather Service to be a hurricane.

“‘Plan of operation’ means the plan for providing hurricane property insurance as adopted by the board of directors of the Hawaii hurricane relief fund, and any amendments thereto, under section -7.

“‘Policy of hurricane property insurance’ means a policy or endorsement of insurance issued by the fund insuring only against damage or loss to eligible property caused by a covered event in excess of the deductible and up to \$750,000 per risk on real property of one to four units used for residential purposes and up to \$500,000 per risk on real property used for business, commercial or industrial purposes, subject to the limits defined by the plan of operation; provided that this policy shall not include coverage for business interruption.

“‘Policy of property insurance’ means a policy providing ‘property insurance’ as defined in section 431:1–206. For purposes of this chapter, it includes ‘basic property insurance’ as provided under article 21 of chapter 431.

“‘Property insurance’ means policies, riders, or endorsements of insurance that provide indemnity, in whole or in part, for the loss, destruction, or damage of eligible property.

“‘Servicing facility’ means any insurer engaged in writing direct property insurance in this State and licensed in this State, and any other party authorized to act in like capacity on behalf of the fund.

“§ -2. Establishment of Hawaii hurricane relief fund. There shall be a Hawaii hurricane relief fund to be placed within the department of commerce and consumer affairs for administrative purposes. The fund shall be a public body and a body corporate and politic.

“§ -3. Board of directors. (a) The board of directors of the fund shall consist of the insurance commissioner as an ex officio voting member and six members appointed by the governor in accordance with section 26–34. The board shall be the policy making body of the fund. As such, the board shall be responsible for establishing policies for the administration and operation of the fund and the performance of other duties and functions assigned to the fund.

“(b) Two members shall, by and with the advice and consent of the senate, be appointed by the governor for a term of four years; provided that of the initial appointees, one shall be appointed for a two-year term. A vacancy on the authority of a seat subject to this subsection shall be filled in accordance with Article V, section 6, of the Constitution of the State of Hawaii.

“(c) Two members shall, by and with the advice and consent of the senate, be appointed by the governor from a list of nominations submitted by the president of the senate. The members appointed from a list of nominations of the president of the senate shall serve for a term of four years; provided that of the initial appointees, one shall be appointed for a two-year term.

“(d) Two members shall, by and with the advice and consent of the senate, be appointed by the governor from a list of nominations submitted by the speaker of the house of representatives. The members appointed from a list of nominations of the speaker of the house of representatives shall serve for a term of four years; provided that of the initial appointees, one shall be appointed for a two-year term.

“(e) The governor shall select a chairperson and vice-chairperson from among the members.

“(f) The board shall meet as often as necessary to formulate and implement strategies and plans of operations in furtherance of this chapter. Upon its appointment, the board shall adopt an interim plan of operation within ninety days.

“(g) The appointed directors shall receive no compensation for services, but shall be entitled to reimbursement of necessary expenses, including travel expenses, incurred in the performance of their duties.

“(h) The board may appoint, not subject to chapters 76 and 77, and executive director of the fund whose salary shall be set by the board. The board may employ, not subject to chapters 76 and 77, technical experts and officers, agents and employees, permanent or temporary, as required. The board may also contract with persons, not subject to chapters 76, 77, and 78 when in the determination of the board, the services to be performed are unique and essential to the execution of the functions of the fund; provided that no individual contract shall be for a period longer than two years per term.

“§ **-4. Planning and assessment functions of the fund; discretion to provide insurance.** (a) The fund shall be responsible for monitoring the availability of property insurance, including insurance for covered events, in this State. If at any time the board determines, in its sole discretion, that the private insurance market is not making such insurance reasonably available to consumers in this State, the fund may offer policies of hurricane property insurance for sale in accordance with this chapter.

“(b) Nothing in subsection (a) shall prohibit the board from exercising its powers to develop plans and procedures for the operation and management of the fund without regard to the determination of the board as to the availability of insurance in the private market.

“§ **-5. Powers, duties, and functions.** (a) The Hawaii hurricane relief fund shall have the following general powers:

“(1) To sue and be sued;

“(2) To make and alter policies for its organization and internal administration;

“(3) To adopt rules in accordance with chapter 91 to effectuate the purposes of this chapter;

“(4) To borrow moneys; including but not limited to moneys from state or federal sources and to issue notes or other obligations of the fund for the purposes of providing funds for any of its purposes as authorized by the legislature from time to time;

“(5) To pledge or assign all or any part of the moneys, rents, charges, or other revenue and any proceeds derived by the fund; and

“(6) Enter into contracts as necessary to effectuate the purposes of this chapter.

“(b) In addition to the general powers under subsection (a), the fund shall have the specific power to:

“(1) Adopt and administer a plan of operation in accordance with section -7, and a manual of rules and rates to provide persons having an insurable interest in eligible property with insurance coverage provided by the fund;

“(2) Authorize the provision of hurricane coverage by the fund for tangible personal property located in or on real property used for business, commercial, or industrial purposes and establish limits of liability for specific coverages within the range of authorized coverage;

“(3) Adopt actuarially sound rates based on reasonable assumptions relative to expectations of hurricane frequency and severity for all coverage provided under policies or endorsements issued by the fund. Rates adopted shall be subject to approval by the commissioner pursuant to article 14 of chapter 431. Rates adopted shall provide for classification of risks and shall include past and prospective losses and expense experience in this State;

“(4) Adopt procedures, guidelines, and surcharges applicable to hurricane policies issued in connection with an underlying property policy issued by an unauthorized insurer;

“(5) Adopt any form of insurance policy necessary for providing hurricane property insurance by the fund, with the approval of the commissioner;

“(6) Issue insurance policies and pay claims for coverage over the mandatory deductible;

“(7) Require every licensed insurer transacting direct property insurance business in this State to act as a servicing facility, and by contract with such insurer authorize such insurer to inspect eligible properties, service policies and policyholders of hurricane property insurance, provide claim services, and perform any other duties as authorized by the fund for applicants to the fund and those insured by it;

“(8)(A) Assess annually all licensed property or casualty insurers the amounts which, together with the other assets of the fund, are sufficient to meet all necessary obligations of the fund. The assessment shall be made on the insurer’s gross direct written premiums for property and casualty insurance in

Hawaii for the preceding calendar year. The rate of assessment in a year in which a covered event has not occurred shall be 3.75 percent and shall not include the insurer's gross direct written premiums for motor vehicle insurance in Hawaii; provided that the rate of assessment may be increased to an amount not to exceed five percent and may include the insurer's gross direct written premiums for motor vehicle insurance in Hawaii following a covered event. An insurer authorized to provide comparable coverage under section -10(b) shall be assessed an amount that excluded gross direct written premiums for property insurance in Hawaii.

“(B) In the event of a loss from a covered event the fund, in addition to the annual assessment in paragraph (A), shall assess those insurers which wrote property insurance coverage during the year immediately preceding the year of the covered event in proportion to each insurer's share of the total property premium during that year. However, in no event shall the total assessment exceed \$500,000,000 in the aggregate; provided that a separate assessment shall be made for each covered event. An insurer authorized to provide comparable coverage under section -10(b) shall be exempted from this subparagraph.

“(C) Each insurer shall be notified of any assessment not later than thirty days before it is due. The fund may exempt or differ, in whole or in part, the assessment of any insurer if the assessment would cause the insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by this jurisdiction;

“(9) Develop a program of incentives to encourage insurers to provide policies of hurricane property insurance in the event the commissioner authorizes the provision of comparable insurance pursuant to section -10(b); which may include, but are not limited to, exemption of the insurer's gross direct written premium for property insurance from the annual assessment pursuant to section -5(b)(8)(A);

“(10) Develop a credit against the annual assessment based on the difference between premiums written in 1993 and the premiums written in 1992 by each property insurer;

“(11) Develop procedures regarding policies written by unauthorized insurers comparable to the assessments, and other contributions made by insurers authorized to do business in this State;

“(12) Accumulate reserves or funds, including the investment income thereon, to be used for paying expenses, making loans, and paying valid claims for covered events insured by the fund; and

“(13) Collect and maintain statistical and other data as may be required by the commissioner.

“§ **-6. Advisory committee.** To assist it in implementing this chapter the fund may appoint an advisory committee consisting of:

“(1) Not less than one individual who is employed or trained as a meteorologist and possesses knowledge of the history, trends, and nature of windstorms in the Pacific Ocean;

“(2) Not less than one individual who is a member of the American academy of actuaries; and

“(3) Not less than one individual who is a structural engineer licensed to practice in the State and is knowledgeable about local community building codes.

“The fund may establish additional advisory committees as it may deem necessary in furtherance of this chapter.

“§ **-7. Plan of operation.** (a) The fund shall adopt a plan of operation, and a manual of rules and rates necessary or suitable to ensure both the solvency and the reasonable and equitable administration of the fund.

“(b) If the fund fails to adopt a plan of operation, or the fund fails to adopt amendments to the plan of operation, the commissioner shall adopt a plan of operation or make amendments necessary to carry out the purposes of this chapter. Any plan of operation, or amendment, adopted by rule of the commissioner, shall continue in full force and effect until the rule is superseded by a plan of operation, or amendment, adopted by a majority vote of all members of the fund’s board, and approved by the commissioner.

“(c) The plan of operation shall:

“(1) Establish procedures for performance of all powers and duties of the fund;

“(2) Establish procedures for providing notice to all persons with interests insurable by the fund in the State of the type of insurance available from the fund in the event the fund offers insurance;

“(3) Provide for and adopt all necessary forms, including insurance policies to be used by and on behalf of the fund, for use by the fund and servicing facilities;

“(4) Adopt actuarially sound rates, based on reasonable assumptions relative to expectations of hurricane frequency and severity, to be charged for insurance provided by the fund, in accordance with article 14 of chapter 431;

“(5) Publish manuals of rules, rates, and rating and classification plans, which shall address mandatory deductibles, limits of coverage, and the classification of risks and rate modifications based on the exposure of insureds;

“(6) Establish procedures for receiving and servicing applications to the fund;

“(7) Establish procedures for processing and maintaining records of the fund relating to its financial transactions, its agents, its employees, its operations, and all transactions with any servicing facility;

“(8) Establish procedures for the collection and remittance of the premiums and return of unearned premiums where applicable;

“(9) Establish procedures for the payment of valid claims;

“(10) Establish procedures for prorating available funds pursuant to section -15;

“(11) Establish procedures for obtaining reinsurance;

“(12) Establish procedures to borrow funds; and

“(13) Develop a plan for the investment of moneys held by the fund subject to the limitations in article 6 of chapter 431.

“§ -8. Annual statements. (a) The fund shall submit to the commissioner each year, not later than one hundred twenty days after the end of the fund’s fiscal year, a financial report in a form approved by the commissioner.

(b) The commissioner may require other reports concerning risks insured by the fund as the commissioner deems appropriate.

“§ -9. Powers of the commissioner. (a) For the purpose of ascertaining the fund’s condition or compliance with this chapter, the commissioner shall examine the accounts, records, documents, and transactions of the fund at least once every three years commencing at the time the fund starts issuing policies of hurricane property insurance or more often if the commissioner deems advisable. The fund shall pay all reasonable and actually incurred expenses of the examination in accordance with section 431:2–306(b).

(b) The commissioner may exercise all of the commissioner’s powers provided by law in the supervision and regulation of the fund, any servicing facility, and any other person or entity subject to the jurisdiction of the commissioner.

“§ -10. Coverage available from the fund; deductible. (a) Policies issued by the fund shall provide a maximum aggregate coverage up to of \$750,000 per risk on real property of one to four units used for residential purposes and \$500,000 per risk for real property used for business, commercial, and industrial purposes and shall provide for a mandatory deductible. The deductible amount for residential personal property policies shall be the greater of \$1,000 or one per cent of the insured value or the greater of \$2,000 or two per cent of the insured value; provided that the board may establish higher deductible limits. The deductible amount for commercial property policies shall be the greater of \$5,000 or five per cent of the insured value or an amount equivalent to the all other perils deductible of the underlying policy of property insurance; provided that the board may establish higher deductible limits.

(b) Upon the authorization of the commissioner, insurers may provided standard extended coverage endorsements, including coverage of hurricane risks, subject to the fund’s program for incentives and credits; provided that in the absence of such authorization no other policy of property insurance or endorsement to a policy of property insurance on eligible property located in this State shall be issued to provide insurance for damages or losses caused by a covered event if such coverage is offered by the fund.

“§ -11. Underlying policy required; hurricane coverage shall be provided. (a) Any eligible property for which coverage is sought from the fund shall already be insured by an underlying policy of property insurance as defined in section 431:1–206 or article 21 of chapter 431 but excluding the covered event. Every underlying policy of property insurance provided by an unauthorized insurer shall be subject to the procedures, guidelines and surcharges as provided in the plan of operation.

(b) The fund shall not deny any application for hurricane property insurance on any property eligible under subsection (a).

(c) The fund shall renew any policy provided payment of the applicable renewal premium is received by the fund on or before the expiration date stated in the policy. The fund may nonrenew a pol-

icy on the grounds the property is no longer covered by an underlying policy of property insurance. The policy issued by the fund shall not provide coverage in the event that there is no underlying policy of property insurance at the time of loss. In such case, any unearned premiums shall be returned to the policyholder on a pro rata basis.

“§ -12. **Mitigation.** The fund shall develop a comprehensive loss reduction plan for the hurricane peril. The plan shall include standards for new residential and commercial structures and separate standards for existing residential and commercial structures. The plan shall provide a timetable for implementation of mandatory loss mitigation measures for both new and existing structures.

“§ -13. **Appeals.** (a) Any applicant or policyholder adversely affected by a decision of the fund shall have the right to appeal to the fund’s board within thirty days after the decision. The application for an appeal shall specify how the person making the appeal was aggrieved and the grounds upon which relief is demanded. The decision of the board shall be deemed final.

“(b) Any final action, decision, or order of the board under this chapter shall be subject to judicial review by the circuit court.

“§ -14. **Immunity and limitation on liability.** There shall be no liability on the part of, and no cause of action of any nature shall arise against, any servicing facility; the fund or its agents, employees, or its board; the State; the commissioner; or the commissioner’s representatives for any action taken by them in the performance of their powers and duties under this chapter; provided that this section shall not be construed to prohibit any exercise of the commissioner’s power pursuant to this chapter or any other law or rule adopted pursuant to law, chapters 661 and 662, and any other law to the contrary notwithstanding. Nothing in this chapter shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity without regard to whether that person or entity received any benefits under this chapter, against the State, or its officers and employees. The State and its officers and employees shall not be liable for the results of any application, denial of application, claim, loss, or other benefits provided by the fund pursuant to this chapter. Nothing in this chapter shall be construed as authorizing any claim against the State whatsoever, nor shall this chapter be construed as authorizing any claim against the fund in excess of any note, loan, liability, or other obligation incurred by the fund.

“§ -15. **Exemption from property and liability insurance guaranty association; insolvency of fund.** Notwithstanding any other provision of law to the contrary, neither the fund nor its policyholders shall be subject to the provisions of or be eligible for, the benefits provided in sections 431:16–101 to 117 inclusive. If the total amount available at any time to the fund is insufficient to make all necessary payments, the moneys available shall be prorated and the unpaid portion shall be paid as soon thereafter as moneys become available.

“§ -16. **Establishment of hurricane reserve trust fund.** (a) There is created in the treasury of the State the hurricane reserve trust fund to be administered by the Hawaii hurricane relief fund,

into which shall be deposited the special mortgage recording fee established by this chapter. The special mortgage recording fee shall be imposed on each mortgage and each amendment to a mortgage which increases the principal amount of the secured debt which is recorded in the bureau of conveyances of the State under chapter 502 or filed with the assistance registrar of the land court of the State under chapter 501.

“The special fee shall be in an amount equal to one-tenth of one per cent of the stated principal amount of the debt secured by the mortgage or, in the case of an amendment of a mortgage, an amount equal to one-tenth of one per cent of the amount of the increase of the stated principal debt.

“The special fee shall be in addition to any applicable fees under chapter 501 or 502. The special fees shall be collected by escrow depositories licensed under chapter 449, or financial institutions authorized to engage in the escrow business, or persons and companies permitted to engage in limited escrow transactions under section 449–3. The special mortgage recording fees shall be collected prior to recordation of the mortgage with the bureau of conveyances or the assistant registrar of the land court of the State and shall be deposited into the hurricane reserve trust fund. The bureau of conveyances and the assistant registrar of the land court may also collect and transmit any special fees for deposit into the hurricane reserve trust fund.

“(b) The fund shall implement the annual assessment of all licensed property and casualty insurers as authorized by section –5(b)(8)(A) and the proceeds from the assessments shall be deposited into the hurricane reserve fund.

“(c) If the fund offers to issue policies of hurricane property insurance, the premiums for such policies shall be deposited into the hurricane reserve trust fund.

“(d) Should the moneys in the hurricane reserve trust fund be insufficient to pay claims arising out of a covered event, the fund is authorize to levy a surcharge not to exceed seven and one-half per cent a year on premiums charged for policies issued by all licensed property and casualty insurers. These moneys may be used for purposes as directed by the board, including but no limited to the payment of debt service and principal on a contract of financial reinsurance. The formula to calculate the amount and period of the surcharge and the procedures and methodology for payment of claims during periods of insufficiency of moneys for such purpose shall be provided in the plan of operation.

“(e) Any proceeds from loans or other moneys from the federal government, any proceeds from bonds issued pursuant to this Act loaned by the director of finance to the Hawaii hurricane relief fund, and such other moneys as the State may make available from time to time shall be deposited into the hurricane reserve trust fund.

“(f) Moneys in the hurricane reserve trust fund shall be expended by the fund and used solely for the purposes of this chapter.

“(g) Upon dissolution of the fund, the net moneys of the hurricane reserve trust fund shall revert to the state general fund.

“§ –17. **Additional notice requirement.** Thirteen months prior to discontinuation of writing property insurance coverage, an

insurer shall file an affidavit with the commissioner stating the reasons for the discontinuation.

“§ **-18. Exemption for Hawaiian home lands.** Nothing in this chapter shall prohibit or limit any person from obtaining insurance for property subject to the Hawaiian Homes Commission Act of 1920, as amended, from any insurer other than the fund if such insurance is deemed sufficient by the commissioner.”.

Section 3. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§ **46- . Homeowners insurance.** (a) Notwithstanding any law to the contrary, a county, either alone or together with any other county or counties, may:

“(1) Form an insurance company, association (nonprofit or otherwise), fund, or trust;

“(2) Acquire an existing insurance company;

“(3) Enter into arrangements with one or more insurance companies; or

“(4) Any combination of the foregoing; upon such terms and conditions and for such periods, as the council of the county shall approve by ordinance or resolution, or both, to provide homeowner insurance, including hurricane coverage, for residents of the county or counties participating in such undertaking. Such undertaking shall be subject to the provision of chapter , including, but not limited to, section -10(b), and chapter 431.

“(b) Any county participating in an undertaking as authorized under subsection (a) may:

“(1) Issue general obligation bonds under chapter 47 to establish necessary reserves to provide for the payment of claims in excess of reserves and for other related purposes;

“(2) Invest funds held in reserve, which are not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control or as the council of the county may authorize pursuant to ordinance or resolution; and

“(3) Issue general obligation bonds under chapter 47 to pay any liability incurred that is self-insured or uninsured by that county, including without limitations, liabilities for damage to property, comprehensive liability, environmental, or other losses.

“(c) If no homeowner insurance is provided pursuant to this section within two years of the effective date of this section, this section shall cease to be in effect; provided that any county participating in any undertaking to provide homeowner insurance under this section within that two year period may continue to do so thereafter.”.

Section 4. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 19 a new section to be appropriately designated and to read as follows:

“§ **431:19- . Personal lines insurance.** (a) Notwithstanding the provisions of section 431:19-102(a), a captive insurance company may be licensed to provide personal lines coverage for unrelated risks if the commissioner deems that extraordinary cir-

cumstances exist which make the provision of this coverage by a captive insurance company appropriate and in the best interest of the public. In determining whether such extraordinary circumstances exist, the commissioner shall consider the following factors:

“(1) The extent to which the particular coverage is available in the voluntary market;

“(2) The existence of a relationship between the parent of the captive insurance company and the proposed policyholders other than that of insurer to insured;

“(3) Whether the captive insurance company has sufficient capitalization to insure the proposed risks; and

“(4) Any other factors which the commissioner deems appropriate.

“(b) Any captive insurance company formed pursuant to this section shall be subject to articles 5, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 12, 15, and 17 of chapter 431 in addition to all other applicable law.”

Section 5. Section 39–51, Hawaii Revised Statutes, is amended to read as follows:

1. By adding a new definition to be appropriately inserted and to read as follows:

“‘System’ means an organized plan or arrangement under which one or more undertakings are operated or implemented as a harmonious whole.”

2. By amending the definition of “undertaking” to read as follows:

“‘Undertaking’ means any public works and properties, improvement, or system, *tangible or intangible*, owned or operated by the State or a department thereof, [and from which the State or department may derive revenues, or with respect to which the State or department may derive user taxes.] *and any public activity, policy, or program undertaken by the State or a department thereof, and from which the State or department may derive revenues, or with respect to which the State or department may derive user taxes.*”

Section 6. Section 431:13–104, Hawaii Revised Statutes, is amended to read as follows:

“§ 431:13–104. Favored agent or insurer; coercion of debtors. (a) No person may require as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any contract of insurance, or renewal thereof, through a particular insurer or group of insurers or agent or broker or group of agents or brokers.

“(b) No person who lends money or extends credit may:

“(1) Solicit insurance for the protection of real property, after a person indicates interest in securing a first mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension;

“(2) Unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness

and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the credit transaction;

“(3) Require that any borrower, mortgagor, purchaser, insurer, broker or agent pay a separate charge, in connection with the handling of any contract of insurance required as a security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This paragraph does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;

“(4) Use or disclose, without the prior written consent of the borrower, mortgagor or purchaser taken at a time other than the making of the loan or extension of credit, information relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing the insurance;

“(5) Require any procedures or conditions of duly licensed agents, brokers or insurers not customarily required of those agents, brokers or insurers affiliated or in any way connected with the person who lends money or extends credit.

“(c) Every person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (b) must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or agent of the borrower’s choice, subject only to the lender’s right to reject a given insurer or agent as provided in subsection (b)(2). Compliance with disclosures as to insurance required by Truth-In-Lending laws or comparable state laws shall be in compliance with this paragraph.

“This requirement for a commitment shall not apply in cases where the premium for the required insurance is to be financed as part of the loan or extension of credit involving personal property transactions.

“(d) The commissioner shall have the power to examine and investigate those insurance related activities of any person whom the commissioner believes may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

“(e) Nothing in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

“(f) Nothing contained in this section shall apply to credit life or credit disability insurance.

“(g) *Nothing in this section shall prevent a person who lends money or extends credit from assisting a mortgagor, borrower or purchaser in obtaining homeowners insurance where the borrower requests such assistance in writing. Nothing in this section shall prevent a person who lends money or extends credit from referring a mortgagor, borrower, or purchaser to the Hawaii hurricane relief fund.*”.

Section 7. Section 219.1 of the Hawaii Homes Commission Act of 1920, as amended, is amended to read as follows:

“§ 219.1 General assistance. (a) The department is authorized to carry on any activities it deems necessary to assist the lessees in obtaining maximum utilization of the leased lands, including taking any steps necessary to develop these lands for their highest and best use commensurate with the purposes for which the land is being leased as provided for in section 207, and assisting the lessees in all phases of farming, ranching, and aquaculture operations and the marketing of their agriculture of aquacultural produce and livestock.

“(b) Notwithstanding any law to the contrary, the department either alone or together with any other governmental agency, may:

“(1) Form an insurance company, association (nonprofit or otherwise), pool, or trust;

“(2) Acquire an existing insurance company;

“(3) Enter into arrangements with one or more insurance companies; or

“(4) Undertake any combination of the foregoing; upon such terms and conditions and for such periods, as the commission shall approve, to provide homeowner protection, including hurricane coverage, for lessees participating in such undertaking. Such undertaking shall be subject to the provisions of chapter , including but not limited to section -10(b), and chapter 431.

“(c) The department, if experiencing any of the power as authorized under subsection (b) may:

“(1) Issue revenue bonds under and pursuant to part III of chapter 39, Hawaii Revised Statutes, to establish necessary reserves to provide for the payment of claims in excess of reserves and for other related purposes; or to pay any liability incurred that is self-insured or uninsured by the commission including without limitations, liabilities for damage to property, comprehensive liability, environmental, or other losses; and

“(2) Invest funds held in reserve, which are not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control or as the commission may authorize by resolution.”.

Section 8. Article 17 of chapter 431, Hawaii Revised Statutes, is repealed.

Section 9. Chapter 479, Hawaii Revised Statutes, is repealed.

Section 10. (a) The director may establish a loan program to assist the Hawaii hurricane relief fund in carrying out the plan of operation, and may make loans to the Hawaii hurricane relief fund. There is hereby created in the treasury of the State a separate and special fund to be designated as the hurricane bond loan fund of this Act.

(b) The department of budget and finance, with the approval of the governor, is authorized to issue in the name of the department revenue bonds at such times and in such amount or amounts not to exceed \$200,000,000 in aggregate principal as may be requested and deemed necessary by the commissioner for the purposes of the Hawaii hurricane relief fund. All such bonds shall be issued pursuant to part III of chapter 39, except as provided in this section.

(c) The resolution or certificate providing for the issuance of the bonds may provide that all or part of the proceeds may be held and invested in the hurricane bond loan fund until needed for the purposes of the Hawaii hurricane relief fund. For purposes of providing a source of revenue or security for these bonds, the director may pledge funds deposited or to be deposited in the hurricane bond loan fund to the payment or security of the bonds, and the pledge shall constitute a lien and security interest on the moneys in the hurricane bond loan fund to the extent and with the priority set forth in the document establishing the pledge, without the necessity for physical delivery, recording, or other further act. No revenue bonds may be issued pursuant to this section unless the director of finance shall first make a determination based on information provided by the commissioner that there are sufficient revenues and other assets to pay debt service on the revenue bonds.

(d) The director of finance is authorized to issue reimbursable general obligation bonds in the principal amount of \$200,000,000, or so much thereof as may be requested and deemed necessary by the commissioner for the purposes of the Hawaii hurricane relief fund, and the same sum is appropriated for fiscal year 1993–1994 for deposit into the hurricane reserve trust fund. The commissioner, upon the commissioner's determination that it is advisable to transfer funds from the hurricane reserve trust fund, shall reimburse the state general fund for payment of debt service on general obligation bonds authorized and issued under this section.

Section 11. The state supreme court shall have exclusive and original jurisdiction over any controversy or dispute regarding the financing of the Hawaii hurricane relief fund and the hurricane reserve trust fund through the issuance of revenue bonds or general obligation bonds, and the security provisions thereof and the imposition and collection of any rates and charges to repay or provide security for the bonds; provided that the jurisdiction be limited to the applicability of Article VII of the Constitution of the State of Hawaii to these matters.

Section 12. All Acts passed by the legislature during this Regular Session of 1993, whether enacted before or after the effective date of this Act, shall be amended to conform to this act unless such acts specifically provide that this Act is being amended.

Section 13. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision of application, and to this end the provisions of this Act are severable.

Section 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1993–1994, to carry out the purposes of this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the director of commerce and consumer affairs.

Section 15. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act of 1920, as amended, are declared to be severable and if any section, clause, or phrase, or the application thereof to any person or circumstance is held to be invalid or ineffective because there is a requirement of having the

consent of the United States to take effect, then that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of these amendments or the application thereof shall not be affected.

Section 16. Statutory material to be repealed is bracketed. New statutory material is underscored.

Section 17. This Act shall take effect upon its approval; provided that section 16(a) of chapter 1, Hawaii Revised Statutes, and sections 10 and 14 of this act shall take effect on July 1, 1993.

(Approved June 30, 1993.)

37. ACT OF THE SESSION LAWS OF HAWAII, 1994

ACT 37.—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 209, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

“(a) Upon the death of the lessee, the lessee’s interest in the tract or tracts and the improvements thereon, including growing crops and aquacultural stock (either on the tract or in any collective contract or program to which the lessee is a party by virtue of the lessee’s interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this paragraph. From the following relatives of the lessee who are (1) at least one-quarter Hawaiian, husband, wife, [or] children, *or grandchildren*, or (2) native Hawaiian, father and mother, widows or widows of the children, [grandchildren,] brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews,—the lessee shall designate the person or persons to whom the lessee directs the lessee’s interest in the tract or tracts to vest upon the lessee’s death. The Hawaiian blood requirements shall not apply to the descendants of those who are not native Hawaiians but who were entitled to the leased lands or under section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended, or under section 3 of the Act of July 9, 1952 (66 Stat. 511, 513). In all cases that person or persons need not be eighteen years of age. The designation shall be in writing, may be specified at the time of execution of the lease with a right in the lessee in manner to change the beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest the interests in the successor or successors so named.

“In case of the death of any lessee, except as hereinabove provided, who has failed to specify a successor or successors as approved by the department, the department may select from only the following qualified relatives of the decedent:

“(1) Husband or wife; or

“(2) If there is no husband and wife, then the children; or

“(3) *If there is no husband, wife, or child, then the grandchildren; or*

“[(3)] (4) If there is no husband, wife, [or] child, *or grandchild*, then from the following relatives of the lessee who are native Hawaiian: father and mother, widows or widowers of

the children, [grandchildren,] brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews. The rights to the use and occupancy of the tract or tracts may be made effective as of the date of the death of the lessee.

“In the case of the death of a lessee leaving no designated successor or successors, husband, wife, children, *grandchildren*, or relative qualified to be a lessee of Hawaiian home lands, the land subject to the lease shall resume its status as unleased Hawaiian home lands and the department if authorized to lease the land to a native Hawaiian as provided in this Act.

“Upon the death of a lessee who has not designated a successor and who leaves a spouse not qualified to succeed to the lease or children of qualified to the lease, or upon the death of a lessee leaving no relative qualified to be a lessee of Hawaii home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall appraise the value of all the improvements and growing crops or improvements and aquacultural stock, as the cases may be, and shall pay to the non-qualified spouse or the nonqualified children as the lessee shall have designated prior to the lessee’s death, or to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, the value thereof, less any indebtedness to the department, or for taxes, or for any other indebtedness to the department, or for taxes, or for any other indebtedness the payment of which has been assured by the department, owed by the deceased lessee or the previous lessee. These payments shall be made out of the Hawaiian home loan fund and shall be considered and advance therefrom and shall be repaid by the successor or successors to the tract involved. If available cash in the Hawaiian home loan fund is insufficient to make these payments, payments may be advanced from the Hawaiian home general loan fund and shall be repaid by the successor or successors to the tract involved; provided that any repayment for advances made from the Hawaiian home general loan fund shall be at the interest rate established by the department for loans made from the Hawaiian home general loan fund.

“The appraisal shall be made by three appraisers, one of whom shall be named by the department, one by the previous lessee or the legal representative of the deceased lessee, as the case may be, and the third shall be selected by the two appraisers aforementioned.”.

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

Section 3. This Act shall take effect upon approval by the governor of the State of Hawaii with the consent of the United States Congress.

(Approved April 28, 1994.)