

## Calendar No. 133

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| 113TH CONGRESS }<br>1st Session } | SENATE | {<br>REPORT<br>113-76 |
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### HAWAIIAN HOMES COMMISSION

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JULY 15, 2013.—Ordered to be printed

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Mr. WYDEN, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S.J. Res. 12]

The Committee on Energy and Natural Resources, to which was referred the joint resolution (S.J. Res. 12) 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, reports favorably thereon without amendment and recommends that the joint resolution do pass.

#### PURPOSE

The purpose of S.J. Res. 12 is to consent to certain amendments to the Hawaiian Homes Commission Act, 1920, enacted by the legislature of the State of Hawaii.

#### BACKGROUND AND NEED

In 1921, Congress enacted the Hawaiian Homes Commission Act (HHCA) to provide a homesteading program for native Hawaiians on approximately 200,000 acres of land. The HHCA is administered by the Department of Hawaiian Home Lands (DHHL), an agency of the State of Hawaii, but with certain oversight responsibilities exercised by the U.S. Department of the Interior and the U.S. Congress.

In 1959, the State of Hawaii adopted the HHCA as a provision of the State Constitution pursuant to section 4 of the Hawaii Statehood Admissions Act, Public Law 86-3. Section 4 of the Admission Act allows the State of Hawaii to amend or repeal the HHCA only with the consent of the United States, and provides a process by which the State may propose amendments to the HHCA. In 1995 this process was clarified by the Hawaiian Home Lands Recovery

Act, which requires the State of Hawaii to notify the Secretary of the Interior of any amendment it proposes and requires the Secretary to determine whether Congress must approve the proposed amendment for it to become effective.

On November 11, 2006 and November 3, 2009, Assistant Secretaries of the Interior wrote to the Chairman of the Committee on Energy and Natural Resources with a determination that three amendments to the HHCA enacted by the State of Hawaii require Congressional consent and approval to become effective.

#### LEGISLATIVE HISTORY

S.J. Res. 12 was introduced on March 21, 2013, by Senator Schatz and Senator Hirono, and was referred to the Committee on Energy and Natural Resources. On April 16, 2013 the Subcommittee on Water and Power held a hearing on S.J. Res. 12. On May 16, 2013, the Committee on Energy and Natural Resources ordered S.J. Res. 12 favorably reported without amendment.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on May 16, 2013, by voice vote of a quorum present, recommends that the Senate pass S.J. Res.12 without amendment.

#### SECTION-BY-SECTION ANALYSIS

S.J. Res. 12 gives consent to three amendments to the Hawaiian Homes Commission Act made by the State of Hawaii. The three amendments are:

*Act 107, Session Laws of Hawaii, 2000*, which amends section 215(2) of the HHCA by allowing the Hawaiian Homes Commission to establish by administrative rule, the interest rate on loans from the Hawaiian home-loan fund and the Hawaiian home general loan fund.

*Act 12, Session Laws of Hawaii, 2002*, which amends section 208(5) of the HHCA by authorizing a homestead lessee who is at least one-quarter Native Hawaiian and who has received an interest in the tract through succession or transfer, to transfer his or her leasehold interest to a brother or sister who is at least one-quarter Native Hawaiian.

*Act 16, Session Laws of Hawaii, 2005*, which amends section 209(1)(a) of the HHCA by authorizing a homestead lessee to designate a brother or sister who is at least one-quarter Native Hawaiian to succeed to the leasehold interest upon the death of the lessee.

#### COST AND BUDGETARY CONSIDERATION

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

*S.J. Res. 12—A joint resolution to consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920*

Under the State of Hawaii Admission Act and later clarified under the Hawaiian Home Lands Recovery Act of 1995, the state of Hawaii must notify the Secretary of the Interior of any amend-

ment it proposes to the Hawaiian Homes Commission Act and obtain the consent of the Congress before an amendment becomes effective. S.J. Res. 12 would provide that consent for amendments to expand eligibility and succession authority for a homesteading program to individuals who are at least 25 percent Native Hawaiian and allow the Hawaiian Homes Commission to set interest rates on home loans based on market conditions.

CBO estimates that enacting this joint resolution would have no impact on the federal budget. Enacting S.J. Res. 12 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S.J. Res. 12 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### REGULATORY EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S.J. Res. 12.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals or businesses.

No personal information would be collected by the Federal government. Therefore, there would be no impact on personal privacy.

Little, if any additional paperwork would be required by the Federal government from the enactment of S.J. Res. 12.

#### CONGRESSIONALLY DIRECTED SPENDING

S.J. Res. 12, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

#### EXECUTIVE COMMUNICATIONS

The letter of Assistant Secretary Thomas Weimer to Chairman Domenici, dated November 22, 2006, relating to Act 16, Session Laws of Hawaii, 2005; the letter of Assistant Secretary Rhea Suh to Chairman Bingaman, dated November 3, 2009, relating to Act 12, Session Laws of Hawaii, 2002, and Act 107, Session Laws of Hawaii, 2000; and a statement for the record provided by the Department of the Interior for the April 16, 2012 hearing before the Subcommittee on Water and Power follow:

U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE AS-  
SISTANT SECRETARY POLICY, MANAGEMENT AND BUDG-  
ET,

*Washington, DC, November 22, 2006.*

Hon. PETE V. DOMENICI,  
*Chairman, Committee on Energy and Natural Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: In 1959, Hawaii became a State in accordance with the Hawaii Admission (or Statehood) Act, 73 Stat. 4. In section 4 of the Act, Congress required “the consent of the United States” to certain State enactments amending the Hawaiian Homes Commission Act (HHCA), 42. Stat. 108. Congress enacted the HHCA in 1921 to provide a homesteading program on approximately 200,000 acres of land, called the “available lands,” for native Hawaiians. In accordance with section 4 of the Hawaii Admission Act, 73 Stat. 4, and section 204 of the Hawaiian Homelands Recovery Act (HHLRA) of November 2, 1995, the Department of the Interior reviews State enactments amending the HHCA to determine whether Congressional consent is required.

By letter of August 2, 2005, (Enclosure 1), the Chairman of the Hawaiian Homes Commission, Micah Kane, forwarded two State enactments, Acts 16 (Enclosure 2) and 53 (Enclosure 3) of the Session Laws of Hawaii, 2005, to the Department for review. By letter of May 3, 2006, Enclosure (4), the Department advised Chairman Kane of the result of its preliminary review of the two State enactments and invited the Hawaiian Homes Commission to comment. Chairman Kane replied in a July 31, 2006, letter (Enclosure 5). Based upon our review of the State enactments and the comments from Chairman Kane, I am forwarding Act 16 for Congressional consent together with a draft joint resolution (Enclosure 6) approving the State enactment.

Session Laws 2005, Statutes of Hawaii, Act 16, amends section 209(a) of the HHCA by authorizing a homestead lessee to designate a brother or sister who is at least one-quarter native Hawaiian to succeed to the leasehold interest in the tract upon the death of the lessee. The State of Hawaii maintains Congressional consent is unnecessary because Act 16 will advance the interest of HHCA beneficiaries by helping to ensure the homestead lease remains in the family of the original lessee. We disagree. Section 4 of the Hawaii Statehood Act provides that “the qualifications for lessees shall not be changed except with the consent of the United States.” The HHCA defined native Hawaiian as “any descendent of not less than one-half part blood of the races inhabiting the Hawaiian Islands previous to 1778,” 42 Stat. 108. Current Federal law does not authorize brothers and sisters of lessees of less than 50 percent Hawaiian descent to acquire leases. Thus, we believe Congressional consent is required for Act 16.

The second statute submitted to the Department by the State of Hawaii is Session Laws 2005, Statues of Hawaii, Act 53. This enactment amends section 208 of the HHCA by authorizing lending institutions to make mortgage loans on Hawaiian home lands that are insured or guaranteed by private mortgage insurance approved by the Hawaiian Homes Commission. The State of Hawaii maintains that Congressional consent is unnecessary because Act 53 will advance the interests of HHCA beneficiaries by expanding the

number of private lenders available to offer mortgage financing for Hawaiian home lands. We agree. Section 4 of the Hawaii Statehood Act provides that “the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of [the HHCA] shall not be increased, except with the consent of the United States.” Chairman Kane’s letter of August 17, 2006, clarified that lenders must assign a defaulted loan secured by Department of Hawaiian Homelands (DHHL) property to DHHL after the lender has exhausted available collection options. Thus, the Department determined that no additional encumbrances on Hawaiian home lands were authorized by Act 53. In accordance with section 4 of the Hawaii Admission Act and section 204 of the HHLRA, Session Laws 2005, Statutes of Hawaii, Act 53 need not be submitted to Congress for review.

The Administration takes no positions on the merits of Act 16 by the State of Hawaii. Should you have any questions, please feel free to contact me.

Sincerely,

R. THOMAS WEIMER,  
*Assistant Secretary.*

Enclosures.

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U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, DC, November 3, 2009.*

Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy and Natural Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: In accordance with the Hawaiian Homes Commission Act (HHCA), 42 Stat. 108, of 1921, and the Hawaiian Home Lands Recovery Act (HHLRA) of November 2, 1995, 109 Stat. 361, the United States Department of the Interior (Department) is submitting for congressional review and consent, Act 12, 2002 Haw. Sess. Laws, and Act 107, 2000 Haw. Sess. Laws. Both Acts require congressional consent before taking on the force of law.

Congress enacted the HHCA in 1921 to provide a homesteading program on approximately 200,000 acres of land, called the “available lands” for native Hawaiians. In section 4 of the Hawaii Statehood Admissions Act, 73 Stat. 4, Congress required “the consent of the United States” to certain State of Hawaii enactments amending the HHCA. In section 204 of the HHLRA, Congress formalized the role of the Department in securing any required congressional consent to State enactments. The HHLRA provides that the Department is to review State enactments to determine whether congressional consent is required under section 4 of the Hawaii Statehood Admissions Act. If the Department deems that congressional consent is not required, it so notifies the State of Hawaii and Congress. If the Department deems that congressional consent is required, the Department is to submit a draft joint resolution approving the amendment to Congress together with a recommendation on whether it should be approved. In general, congressional consent is required for State enactments that:

(i) amend HHCA sections 202, 213, 219, 220, 222, 224 and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212 and other provisions relating to the powers and duties of officers other than those charged with the administration of the HHCA, without providing an increase in benefits to the lessees of Hawaiian home lands;

(ii) reduce or impair the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund;

(iii) allow for additional encumbrances to be placed on Hawaiian home lands by officers other than those charged with the administration of the HHCA; or

(iv) change the qualifications for lessees.

The Department also must determine if the proposed amendments to the HHCA increase the benefits to current and future lessees of Hawaiian Home Lands. To assist us in making this determination when we reviewed the enclosed State of Hawaii enactments, we obtained input from participants during a Beneficiary Forum with the Department's Office of Hawaiian Relations. The forum was held on May 22, 2008, in Honolulu, Hawaii, to discuss with leaders of the Native Hawaiian Beneficiaries Community, State enactments proposing to amend the Hawaiian Homes Commission Act. The consultation comment period for this forum ended July 30, 2008. However, due to public request, an electronic consultation with the Native Hawaiian community remained open until December 31, 2008. The final meeting report (enclosure 1) is enclosed with this letter.

The Department reviewed the 13 State enactments submitted to us to determine whether congressional consent is required. Based upon our review and the criteria listed in Section 4 of the State of Hawaii Admissions Act of 1959, it is the opinion of the Department that Act 177, 2006 Haw. Sess. Laws; Act 117, 2002 Haw. Sess. Laws; Act 110, 2001 Haw. Sess. Laws; Act 122, 2001 Haw. Sess. Laws; Act 119, 2000 Haw. Sess. Laws; Act 27, 1998 Haw. Sess. Laws; Act 196, 1997 Haw. Sess. Laws; Act 197, 1997 Haw. Sess. Laws; Act 232, 1996 Haw. Sess. Laws; and Act 14, 1995 Haw. Sess. Laws, do not require the consent of Congress and as of August 7, 2009, have the full effect of law. Please refer to enclosure (2) to see the Department's individual reviews of each of these state enactments.

Based upon the Department's review and the criteria listed in section 4 of the State of Hawaii Admissions Act of 1959, it is the opinion of the Department that Act 12, 2002 Haw. Sess. Laws, and Act 107, 2000 Haw. Sess. Laws, require congressional consent before either proposed amendment takes on the force of law. In accordance with Section 204(c) of the HHLRA, enclosed are two draft joint resolutions approving each of the respective proposed amendments.

The first proposed amendment requiring review by Congress, Act 12, 2002 Haw. Sess. Laws, seeks to change section 208 of the HHCA by authorizing a homestead lessee to designate a brother or sister who is at least one-quarter native Hawaiian to succeed to the leasehold interest in the tract upon the death of the lessee. Section 4 of the Hawaii Statehood Admissions Act provides that "the qualifications for lessees shall not be changed except with the consent of the United States." Although Congress has authorized certain

other changes to the blood quantum requirement, it has not authorized brothers and sisters of lessees of less than 50 percent Hawaiian descent to acquire leases. The State of Hawaii enactment changes “the qualifications for lessees”; therefore, we conclude it requires congressional consent. However, the Department remains neutral on the advisability of passing Act 12.

The second proposed amendment, Act 107, 2000 Haw. Sess. Laws, seeks to modify the HHCA by allowing the Hawaiian Homes Commission to establish by administrative rule, the interest rate on loans from the Hawaiian home-loan fund and the Hawaiian home general loan fund. The intent of this amendment being to provide the Hawaiian Homes Commission with the flexibility to adjust the interest rate on loans from the Hawaiian home-loan fund based on current market conditions or the financial needs of the successor lessee. Section 4 of the Hawaii Statehood Admissions Act provides that “the Hawaiian home-loan fund . . . shall not be reduced or impaired by any such amendment, whether made in the constitution or in manner required for state legislation . . . , except with the consent of the United States.” Act 107, by allowing the Hawaiian Homes Commission to set the interest rate below 2.5 percent, may provide a benefit to a limited number of successor lessees of surrendered or cancelled leases, but only until the fund’s resources are depleted. This ability to deplete the fund clearly qualifies as a reduction or impairment of the Hawaiian home-loan fund and thus requires congressional consent. However, the Department supports passage of Act 107 because it also provides the Hawaiian Homes Commission the ability to adjust the rates above 2.5 percent and manage the fund in a way that protects its solvency.

The last statute the Department reviewed, Act 302, 2001 Haw. Sess. Laws, proposes to amend the HHCA by calling for federal reaffirmation and community governance. Based strictly upon the requirements of section 4, congressional consent is not required. However, the Act is not self-executing. The State Legislature recognized the State’s lack of authority to bind the Federal Government and required congressional consent before the State enactment could take on the force of law. As such, the Department is forwarding Act 302 to your Committee without position or comment. In keeping with the spirit of the HHLRA, legislative drafting services will be made available should they be requested.

Thank you for your time and effort in reviewing Acts 12, 107 and 302. If you have any comments or questions, please do not hesitate to contact me or Mr. Kaiini Kaloi, at 202-208-7462.

Sincerely,

RHEA SUH,

*Assistant Secretary, Policy, Management and Budget.*

Enclosures.

STATEMENT FOR THE RECORD OF THE DEPARTMENT OF THE  
INTERIOR

Thank you for providing the Department of the Interior the opportunity to provide its views on Senate Joint Resolution 12 which proposes to consent to and approve three amendments, Act 107, 2000 Hawai‘i Session Laws, Act 12, 2002 Haw. Sess. Laws, and Act 16, 2005 Haw. Sess. Laws.,

proposed by the legislature of the State of Hawai'i to the Hawaiian Homes Commission Act (HHCA), 1920, as amended. Specifically, S.J. Res. 12 seeks to amend the HHCA to allow the interest rate on loans from the Hawaiian home-loan fund and the Hawaiian home general loan fund to be set by the Hawaiian Homes Commission through an administrative rule, rather than by law. S.J. Res. 12 also changes the qualifications of homestead lessees by authorizing a Hawaiian Homes Commission Act homestead lessee to transfer, or designate a successor to, their leasehold interest to a brother or sister who is at least one-quarter Native Hawaiian.

By way of background, Congress enacted the HHCA in 1921 to provide a homesteading program on approximately 200,000 acres of land, called the "available lands," for native Hawaiians. In section 4 of the Hawai'i Admission Act, 73 Stat. 4, Congress required "the consent of the United States" to certain State of Hawai'i enactments amending the HHCA. In section 204 of the Hawaiian Home Lands Recovery Act (HHLRA) of November 2, 1995, 109 Stat. 361, Congress formalized the role of the Department in securing any required congressional consent and approval to State enactments.

The HHLRA provides that the Department is to review proposed state amendments to the HHCA to determine whether congressional approval is needed to effectuate the United States' consent required under Section 4 of the Hawai'i Admission Act. If the Department deems that congressional approval is not required, it so notifies the State of Hawai'i and Congress. If the Department deems that congressional approval is required, as the Department has for the three proposed amendments that are the subject of S.J. Res. 12, the Department is to submit a draft joint resolution approving the amendments to Congress, together with a recommendation on whether they should be approved. Here, we wish to acknowledge that the introduced bill was a product of close collaboration among the Committee on Energy and Natural Resources, the Department, and the Hawai'i Senate delegation.

In carrying out the Department's statutory trust responsibilities to the beneficiaries of the HHCA, the Department obtained input from participants during a Beneficiary Forum with the Department's Office of Native Hawaiian Relations. The forum was held in May 2008 in Hawai'i to discuss with leaders of the Native Hawaiian beneficiary community the State enactments proposed to amend the HHCA. Due to public request, the Department extended the comment period and conducted an electronic consultation with the Native Hawaiian community.

Based upon the Department's review and the criteria listed in section 4 of the Hawai'i Admission Act, the Department determined that Act 107, 2000 Haw. Sess. Laws, Act 12, 2002 Haw. Sess. Laws, and Act 16, 2005 Haw. Sess. Laws, require congressional consent before such proposed amendments take on the force of law. The Depart-

ment supports the United States consenting to and approving of Act 107 and remains neutral on the consenting to and approving of Acts 12 and 16.

This concludes the Department's prepared testimony on S.J. Res. 12, and the Department would be happy to answer any questions the Subcommittee may have.

#### CHANGES IN EXISTING LAW

S.J. Res. 12 would not make any changes to existing Federal law.

