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**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 208 of the Hawaiian Homes Commission  
2 Act, 1920, as amended, is amended to read as follows:

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

8           (1) The original lessee shall be a native Hawaiian, not  
9           less than eighteen years of age. In case two lessees  
10           either original or in succession marry, they shall  
11           choose the lease to be retained, and the remaining  
12           lease shall be transferred, quitclaimed, or canceled  
13           in accordance with the provisions of succeeding  
14           sections.

15           (2) The lessee shall pay a rental of \$1 a year for the  
16           tract and the lease shall be for a term of ninety-nine  
17           years; except that the department may extend the term  
18           of any lease; provided that the approval of any

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

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

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

14 (5) The lessee shall not in any manner transfer to, or  
15 otherwise hold for the benefit of, any other person or  
16 group of persons or organizations of any kind, except  
17 a native Hawaiian or Hawaiians, and then only upon the  
18 approval of the department, or agree so to transfer,  
19 or otherwise hold, the lessee's interest in the tract;  
20 except that the lessee, with the approval of the  
21 department, also may transfer the lessee's interest in  
22 the tract to the following qualified relatives of the

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1 lessee who are at least one-quarter Hawaiian: husband,  
2 wife, child, or grandchild. A lessee who is at least  
3 one-quarter Hawaiian who has received an interest in  
4 the tract through succession or transfer may, with the  
5 approval of the department, transfer the lessee's  
6 leasehold interest to a brother or sister who is at  
7 least one-quarter Hawaiian. Such interest shall not,  
8 except in pursuance of such a transfer to or holding  
9 for or agreement with a native Hawaiian or Hawaiians  
10 or qualified relative who is at least one-quarter  
11 Hawaiian approved of by the department or for any  
12 indebtedness due the department or for taxes assessed  
13 upon the tract and improvements thereon or for any  
14 other indebtedness the payment of which has been  
15 assured by the department, including loans from other  
16 agencies where such loans have been approved by the  
17 department, be subject to attachment, levy, or sale  
18 upon court process. The lessee shall not sublet the  
19 lessee's interest in the tract or improvements  
20 thereon; provided that a lessee may be permitted, with  
21 the approval of the department, to rent to a native  
22 Hawaiian or Hawaiians, lodging either within the

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1 lessee's existing home or in a separate residential  
2 dwelling unit constructed on the premises. The terms,  
3 conditions, and restrictions governing the transfer of  
4 the lessee's leasehold interest in the tract shall be  
5 prescribed by rules adopted by the department pursuant  
6 to chapter 91, Hawaii Revised Statutes.

7 (6) Notwithstanding the provisions of paragraph (5), the  
8 lessee, with the consent and approval of the  
9 commission, may mortgage or pledge the lessee's  
10 interest in the tract or improvements thereon to a  
11 recognized lending institution authorized to do  
12 business as a lending institution in either the State  
13 or elsewhere in the United States; provided the loan  
14 secured by a mortgage on the lessee's leasehold  
15 interest is insured or guaranteed by the Federal  
16 Housing Administration, Department of Veterans  
17 Affairs, or any other federal agency and their  
18 respective successors and assigns, which are  
19 authorized to insure or guarantee such loans, or any  
20 acceptable private mortgage insurance as approved by  
21 the commission. The mortgagee's interest in any such  
22 mortgage shall be freely assignable. Such mortgages,

1 to be effective, must be consented to and approved by  
2 the commission and recorded with the department.

3 Further, notwithstanding the authorized purposes  
4 of loan limitations imposed under section 214 of this  
5 Act and the authorized loan amount limitations imposed  
6 under section 215 of this Act, loans made by lending  
7 institutions as provided in this paragraph, insured or  
8 guaranteed by the Federal Housing Administration,  
9 Department of Veterans Affairs, or any other federal  
10 agency and their respective successors and assigns, or  
11 any acceptable private mortgage insurance, may be for  
12 such purposes and in such amounts, not to exceed the  
13 maximum insurable limits, together with such  
14 assistance payments and other fees, as established  
15 under section 421 of the Housing and Urban Rural  
16 Recovery Act of 1983 which amended Title II of the  
17 National Housing Act of 1934 by adding section 247,  
18 and its implementing regulations, to permit the  
19 Secretary of Housing and Urban Development to insure  
20 loans secured by a mortgage executed by the homestead  
21 lessee covering a homestead lease issued under section  
22 207(a) of this Act and upon which there is located a

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1 one to four family single family residence.  
2 (7) The lessee shall pay all taxes assessed upon the tract  
3 and improvements thereon. The department may pay such  
4 taxes and have a lien therefor as provided by section  
5 216 of this Act.  
6 (8) The lessee shall perform such other conditions, not in  
7 conflict with any provision of this Act, as the  
8 department may stipulate in the lease; provided that  
9 an original lessee shall be exempt from all taxes for  
10 the first seven years after commencement of the term  
11 of the lease."

12 SECTION 2. New statutory material is underscored.

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

14  
15 INTRODUCED BY: Calvin K. Ray  
16 BY REQUEST

JAN 22 2007

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JUSTIFICATION SHEET

DEPARTMENT: Hawaiian Home Lands

TITLE: A BILL FOR AN ACT RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

PURPOSE: To authorize the department to prescribe via administrative rules terms, conditions, and restrictions on the transfer of homestead leases.

MEANS: Amend section 208(5) of the Hawaiian Homes Commission Act, 1920, as amended (HHCA).

JUSTIFICATION: Section 208(5) of the HHCA describes the eligible class of Hawaiians to whom a homestead lessee may transfer his or her interest in the lease. Concerns have been expressed by beneficiaries and others regarding lessees transferring their leases to another eligible beneficiary for money. The proposed amendment would allow the department to establish conditions or restrictions by administrative rule to address this practice. More importantly, through the administrative rulemaking process, beneficiary organizations and individuals will be afforded an opportunity to provide input regarding appropriate conditions or restrictions that should be established.

Impact on the public: This proposal only affects beneficiaries of the Hawaiian home lands program affected by the transfer of a homestead lease. Prescribing conditions or restrictions by administrative rule will afford opportunities for beneficiary input, and is intended to ensure fairness and equity in the lease transfer process.

Impact on the department and other agencies: The proposed amendment will authorize the department to prescribe rules to address the sale of homestead leases. Agencies normally

involved in the review and processing of administrative rules, including the Department of the Attorney General, Legislative Reference Bureau, and of Office of the Governor may be impacted.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: HHL 602, Planning, Development, Management and General Support for Hawaiian Homestead Lands.

OTHER AFFECTED  
AGENCIES: Attorney General, Legislative Reference Bureau, Office of the Governor.

EFFECTIVE DATE: Upon approval.