

JAN 24 2018

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that certain native
2 Hawaiians who are eligible for a lease pursuant to the Hawaiian
3 Homes Commission Act, 1920, as amended, have acquired a lease,
4 sold or transferred their interest in the lease, and then placed
5 their name on the waitlist for a second lease of Hawaiian home
6 lands. This has contributed to many otherwise eligible native
7 Hawaiians never receiving a lease offer.

8 The legislature believes that a department of Hawaiian home
9 lands beneficiary should be able to enter the Hawaiian Homes
10 Commission Act program with a reasonable expectation of
11 eventually receiving a lease.

12 The purpose of this Act is to prohibit lessees who sell or
13 transfer their interest in a Hawaiian home lands tract from
14 being placed on the waiting list maintained by the department of
15 Hawaiian home lands for an additional lease.

16 SECTION 2. Section 208 of the Hawaiian Homes Commission
17 Act, 1920, as amended, is amended to read as follows:



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

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

13 (2) The lessee shall pay a rental of \$1 a year for the
14 tract and the lease shall be for a term of ninety-nine
15 years; except that the department may extend the term
16 of any lease; provided that the approval of any
17 extension shall be subject to the condition that the
18 aggregate of the initial ninety-nine year term and any
19 extension granted shall not be for more than one
20 hundred ninety-nine years.



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

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

10 (5) The lessee shall not in any manner transfer to, or
11 otherwise hold for the benefit of, any other person or
12 group of persons or organizations of any kind, except
13 a native Hawaiian or Hawaiians, and then only upon the
14 approval of the department, or agree so to transfer,
15 or otherwise hold, the lessee's interest in the tract;
16 except that the lessee, with the approval of the
17 department, also may transfer the lessee's interest in
18 the tract to the following qualified relatives of the
19 lessee who are at least one-quarter Hawaiian: husband,
20 wife, child, or grandchild. A lessee who is at least
21 one-quarter Hawaiian who has received an interest in



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



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

19 Further, notwithstanding the authorized purposes
20 of loan limitations imposed under section 214 of this
21 Act and the authorized loan amount limitations imposed



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

19 (7) The lessee shall pay all taxes assessed upon the tract
20 and improvements thereon. The department may pay such



1 taxes and have a lien therefor as provided by section
2 216 of this Act.

3 (8) If the lessee sells or transfers the lessee's interest
4 in the lease, even in a manner otherwise authorized by
5 this Act, the lessee shall be ineligible for placement
6 on any subsequent waiting list maintained by the
7 department to receive a lease authorized by section
8 207.

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

15 SECTION 3. Section 209 of the Hawaiian Homes Commission
16 Act, 1920, as amended, is amended to read as follows:

17 "**§209. Successors to lessees.** (a) Upon the death of the
18 lessee, the lessee's interest in the tract or tracts and the
19 improvements thereon, including growing crops and aquacultural
20 stock (either on the tract or in any collective contract or
21 program to which the lessee is a party by virtue of the lessee's



1 interest in the tract or tracts), shall vest in the relatives of
2 the decedent as provided in this paragraph. From the following
3 relatives of the lessee who are (1) at least one thirty-second
4 Hawaiian, spouse, children, grandchildren, brothers, or sisters,
5 or (2) native Hawaiian, father and mother, widows or widowers of
6 the children, widows or widowers of the brothers and sisters, or
7 nieces and nephews,--the lessee shall designate the person or
8 persons to whom the lessee directs the lessee's interest in the
9 tract or tracts to vest upon the lessee's death. The Hawaiian
10 blood requirements shall not apply to the descendants of those
11 who are not native Hawaiians but who were entitled to the leased
12 lands under section 3 of the Act of May 16, 1934 (48 Stat. 777,
13 779), as amended, or under section 3 of the Act of July 9, 1952
14 (66 Stat. 511, 513). In all cases that person or persons need
15 not be eighteen years of age. The designation shall be in
16 writing, may be specified at the time of execution of the lease
17 with a right in the lessee in similar manner to change the
18 beneficiary at any time and shall be filed with the department
19 and approved by the department in order to be effective to vest
20 the interests in the successor or successors so named.



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

5 (1) Spouse; or

6 (2) If there is no spouse, then the children; or

7 (3) If there is no spouse or child, then the
8 grandchildren; or

9 (4) If there is no spouse, child, or grandchild, then
10 brothers or sisters; or

11 (5) If there is no spouse, child, grandchild, brother, or
12 sister, then from the following relatives of the
13 lessee who are native Hawaiian: father and mother,
14 widows or widowers of the children, widows or widowers
15 of the brothers and sisters, or nieces and nephews.

16 The rights to the use and occupancy of the tract or tracts may
17 be made effective as of the date of the death of the lessee.

18 In the case of the death of a lessee leaving no designated
19 successor or successors, spouse, children, grandchildren, or
20 relative qualified to be a lessee of Hawaiian home lands, the
21 land subject to the lease shall resume its status as unleased



1 Hawaiian home lands and the department is authorized to lease
2 the land to a native Hawaiian as provided in this Act.

3 Upon the death of a lessee who has not designated a
4 successor and who leaves a spouse not qualified to succeed to
5 the lease or children not qualified to succeed to the lease, or
6 upon the death of a lessee leaving no relative qualified to be a
7 lessee of Hawaiian home lands, or the cancellation of a lease by
8 the department, or the surrender of a lease by the lessee, the
9 department shall appraise the value of all the improvements and
10 growing crops or improvements and aquacultural stock, as the
11 case may be, and shall pay to the nonqualified spouse or the
12 nonqualified children as the lessee shall have designated prior
13 to the lessee's death, or to the legal representative of the
14 deceased lessee, or to the previous lessee, as the case may be,
15 the value thereof, less any indebtedness to the department, or
16 for taxes, or for any other indebtedness the payment of which
17 has been assured by the department, owed by the deceased lessee
18 or the previous lessee. These payments shall be made out of the
19 Hawaiian home loan fund and shall be considered an advance
20 therefrom and shall be repaid by the successor or successors to
21 the tract involved. If available cash in the Hawaiian home loan



1 fund is insufficient to make these payments, payments may be
2 advanced from the Hawaiian home general loan fund and shall be
3 repaid by the successor or successors to the tract involved;
4 provided that any repayment for advances made from the Hawaiian
5 home general loan fund shall be at the interest rate established
6 by the department for loans made from the Hawaiian home general
7 loan fund. The successor or successors may be required by the
8 commission to obtain private financing in accordance with
9 section 208(6) to pay off the amount advanced from the Hawaiian
10 home loan fund or Hawaiian home general loan fund.

11 (b) The appraisal of improvements and growing crops, or
12 stock, if any, shall be made by any one of the following
13 methods:

14 (1) By a disinterested appraiser hired by the department;
15 provided that the previous lessee or deceased lessee's
16 legal representative shall not be charged for the cost
17 of the appraisal; or

18 (2) By one disinterested appraiser mutually agreeable to
19 both the department and the previous lessee or the
20 deceased lessee's legal representative, with the cost
21 of appraisal borne equally by the two parties; or



(3) By not more than three disinterested appraisers of which the first shall be contracted for and paid by the department. If the previous lessee or the deceased lessee's legal representative does not agree with the appraised value, the previous lessee or the deceased lessee's legal representative shall contract with and pay for the services of a second appraiser whose appraisal report shall be submitted to the department not later than ninety days from the date of the first appraisal report; provided that the first appraisal shall be used if the second appraiser is not hired within thirty days from the date the department transmits the first appraisal report to the previous lessee or the deceased lessee's representative. If the appraisal values are different and a compromise value between the two appraisals is not reached, a third appraisal shall be made by an appraiser appointed by the first two appraisers not later than ninety days from the date of the second appraisal report and the third appraiser shall determine the final value. The cost of the third appraisal shall be



1 borne equally by the department and the previous
2 lessee or the deceased lessee's legal representative.

3 The department may adopt rules not in conflict with this
4 section to establish appraisal procedures, including the time
5 period by which the department and the previous lessee or the
6 deceased lessee's legal representative shall act on appraisal
7 matters.

8 (c) If a previous lessee has abandoned the tract or tracts
9 or cannot be located after at least two attempts to contact the
10 previous lessee by certified mail, the department by public
11 notice published at least once in each of four successive weeks
12 in a newspaper of general circulation in the State shall give
13 notice to the previous lessee that the lease will be canceled in
14 accordance with sections 210 and 216 of this title and the
15 department will appraise the value of the improvements and
16 growing crops and stock, if any, if the previous lessee does not
17 present himself or herself within one hundred and twenty days
18 from the first day of publication of the notice. Following
19 cancellation of the lease and appraisal of the improvements and
20 growing crops and stock, if any, the department shall make the
21 payout as provided in subsection (a).



1 (d) After the cancellation of a lease by the department in
2 accordance with sections 210 and 216 of this title, or the
3 surrender of a lease by a lessee, the department may transfer
4 the lease or issue a new lease to any qualified native Hawaiian
5 regardless of whether or not that person is related in any way
6 by blood or marriage to the previous lessee.

7 (e) If any successor or successors to a tract is a minor
8 or minors, the department may appoint a guardian therefor,
9 subject to the approval of the court of proper jurisdiction.
10 The guardian shall be authorized to represent the successor or
11 successors in all matters pertaining to the leasehold; provided
12 that the guardian, in so representing the successor or
13 successors, shall comply with this title and the stipulations
14 and provisions contained in the lease, except that the guardian
15 need not be a native Hawaiian as defined in section 201 of this
16 title.

17 (f) If the successor sells or transfers the successor's
18 interest in the lease, even in a manner otherwise authorized by
19 this Act, the successor shall be ineligible for placement on any
20 subsequent waiting list maintained by the department to receive
21 a lease authorized by section 207."



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. The provisions of the amendments made by this
5 Act to the Hawaiian Homes Commission Act, 1920, as amended, are
6 declared to be severable, and if any section, sentence, clause,
7 or phrase, or the application thereof to any person or
8 circumstances is held ineffective because there is a requirement
9 of having the consent of the United States to take effect, then
10 that portion only shall take effect upon the granting of consent
11 by the United States and effectiveness of the remainder of these
12 amendments or the application thereof shall not be affected.

13 SECTION 6. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect upon its approval by
16 the governor of the State of Hawaii with the consent of the
17 United States Congress.

18
INTRODUCED BY:

[Handwritten signatures: Daniel J. Hironaka, Mike Gifford, George L. Brown, Clarence K. Vasilopoulos]



S.B. NO. 2984

~~DC~~ DC

Plum Tree

James Mendoza Kim

Rosely & Baker

JM



S.B. NO. 2984

Report Title:

DHHL; Lessees; Waitlists

Description:

Excludes from any waiting list maintained by the Department of Hawaiian Home Lands any lessee or successor who sells or transfers their lease on a tract of Hawaiian home lands.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

