

JAN 24 2018

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# 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



1           (3) By not more than three disinterested appraisers of  
2           which the first shall be contracted for and paid by  
3           the department. If the previous lessee or the  
4           deceased lessee's legal representative does not agree  
5           with the appraised value, the previous lessee or the  
6           deceased lessee's legal representative shall contract  
7           with and pay for the services of a second appraiser  
8           whose appraisal report shall be submitted to the  
9           department not later than ninety days from the date of  
10          the first appraisal report; provided that the first  
11          appraisal shall be used if the second appraiser is not  
12          hired within thirty days from the date the department  
13          transmits the first appraisal report to the previous  
14          lessee or the deceased lessee's representative. If  
15          the appraisal values are different and a compromise  
16          value between the two appraisals is not reached, a  
17          third appraisal shall be made by an appraiser  
18          appointed by the first two appraisers not later than  
19          ninety days from the date of the second appraisal  
20          report and the third appraiser shall determine the  
21          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.

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INTRODUCED BY:

*[Handwritten signatures: Daniel J. Ho, Mike Goffard, Clarence K. Iiichikawa, and others]*



~~AC~~ AC

Alvin T. ...

James ...

Proby & 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.*

