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## A BILL FOR AN ACT

RELATING TO THE DISTRIBUTION OF LEASES UNDER THE HAWAIIAN HOMES  
COMMISSION ACT, 1920, AS AMENDED.

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

1           SECTION 1. The legislature finds that the United States  
2 Congress in 1920 created an Act entitled the Hawaiian Homes  
3 Commission Act. The Act was introduced by Prince Jonah Kuhio  
4 Kalanianaʻole to enable native Hawaiians to return to their lands  
5 in order to fully support self-sufficiency, self-determination,  
6 and the preservation of the values, traditions, and culture.  
7 Once it was established at the national level, the  
8 responsibility for implementing the Act was transferred to the  
9 newly created State of Hawaii in 1959 and the department of  
10 Hawaiian home lands.

11           The legislature finds that one hundred years later only  
12 9,959 homesteads have been created on the 203,000 acres of land  
13 managed by the department of Hawaiian homelands. Over 28,000  
14 native Hawaiian people with a blood quantum of fifty per cent or  
15 more are languishing on a waitlist where they are more likely to  
16 die than receive a homestead.



1           The legislature further finds that this delay in returning  
2           Hawaiians to their lands has contributed to an unacceptable  
3           state of affairs including homelessness, incarceration, diabetes  
4           and heart disease, low socio-economic indicators, and lack of  
5           political muscularity at the state and national levels.

6           Options to address deficiencies include, engaging the  
7           services of individuals to review and revise all DHHL leases to  
8           meet compliance with other landowners and State and Federal  
9           lending institutions, and adoption of policies for families  
10          facing evictions that fail to meet the quantum requirements on  
11          succession.

12          The purpose of this Act is to reform the department of  
13          Hawaiian home lands and fulfill the promises contained in the  
14          Act of Congress of 1920 by disbursing all remaining lands to  
15          native Hawaiians within fifteen years, removing financial  
16          consideration in awarding leases, and supporting alternative  
17          forms of housing such as communal or pu'uhonua models.

18          SECTION 2. Section 204.5 of the Hawaiian Homes Commission  
19          Act, 1920, as amended, is amended by amending subsection (a) to  
20          read as follows:"



1           **§204.5. Additional powers.** In addition and supplemental  
2 to the powers granted to the department by law, and  
3 notwithstanding any law to the contrary, the department [~~may~~]  
4 shall:

5           (1) With the approval of the governor, undertake and carry  
6 out the development of [~~any~~] all Hawaiian home lands  
7 available for lease under and pursuant to section 207  
8 of this Act by assembling these lands in residential  
9 developments and providing for the construction,  
10 reconstruction, improvement, alteration, or repair of  
11 public facilities therein, including, without  
12 limitation, streets, storm drainage systems,  
13 pedestrian ways, water facilities and systems,  
14 sidewalks, street lighting, sanitary sewerage  
15 facilities and systems, utility and service corridors,  
16 and utility lines, where applicable, sufficient to  
17 adequately service developable improvements therein,  
18 sites for schools, parks, off-street parking  
19 facilities, and other community facilities[~~+~~] in a  
20 manner that distributes all remaining Hawaiian home  
21 lands to native Hawaiians within fifteen years;



1           (2) With the approval of the governor, undertake and carry  
2           out the development of all available lands for  
3           homestead, pu'uhonua or communal living arrangements,  
4           commercial, and multipurpose projects as provided in  
5           section 220.5 of this Act, as a developer under this  
6           section or in association with a developer agreement  
7           entered into pursuant to this section by providing for  
8           the construction, reconstruction, improvement,  
9           alteration, or repair of public facilities for  
10          development, including, without limitation, streets,  
11          storm drainage systems, pedestrian ways, water  
12          facilities and systems, sidewalks, street lighting,  
13          sanitary sewerage facilities and systems, utility and  
14          service corridors, and utility lines, where  
15          applicable, sufficient to adequately service  
16          developable improvements therein, sites for schools,  
17          parks, off-street parking facilities, and other  
18          community facilities[+] in a manner that distributes  
19          all remaining Hawaiian home lands to native Hawaiians  
20          within fifteen years;



1           (3) With the approval of the governor, designate by  
2           resolution of the commission all or any portion of a  
3           development or multiple developments undertaken  
4           pursuant to this section an "undertaking" under part  
5           III of chapter 39, Hawaii Revised Statutes[+] in a  
6           manner that distributes all remaining Hawaiian home  
7           lands to native Hawaiians within fifteen years; and

8           (4) Exercise the powers granted under section 39-53,  
9           Hawaii Revised Statutes, including the power to issue  
10          revenue bonds from time to time as authorized by the  
11          legislature.

12          (5) With the approval of the governor, conduct an annual  
13          management audit and address structural management  
14          deficiencies.

15          (6) With the approval of the governor, conduct an annual  
16          financial audit of the department.

17          All provisions of part III of chapter 39, Hawaii Revised  
18          Statutes, shall apply to the department and all revenue bonds  
19          issued by the department shall be issued pursuant to the  
20          provisions of that part, except these revenue bonds shall be



1 issued in the name of the department, and not in the name of the  
2 State.

3 As applied to the department, the term "undertaking" as  
4 used in part III of chapter 39 shall include a residential  
5 development or a development of homestead, commercial, or  
6 multipurpose projects under this Act. The term "revenue" as  
7 used in part III of chapter 39, shall include all or any portion  
8 of the rentals derived from the leasing of Hawaiian home lands  
9 or available lands, whether or not the property is a part of the  
10 development being financed."

11 SECTION 3. Section 205 of the Hawaiian Homes Commission  
12 Act, 1920, is amended to read as follows:

13 " §205. ~~[Sale]~~ Transfer or lease, limitations on. Available  
14 lands shall be ~~[sold]~~ transferred or leased ~~[only]~~:

15 (1) In the manner and for the purposes set out in this  
16 title; ~~[or]~~ and

17 (2) In a manner that distributes all remaining Hawaiian  
18 home lands to native Hawaiians within fifteen years;  
19 and



1        [~~(2)~~] (3)     As may be necessary to complete any valid  
2                    [~~agreement of sale~~] transfer or lease in effect at the  
3                    time of the passage of this Act;  
4     except that such limitations shall not apply to the unselected  
5     portions of lands from which the department has made a selection  
6     and given notice thereof, or failed so to select and give notice  
7     within the time limit, as provided in paragraph (3) of section  
8     204 of this title.

9            SECTION 4. Section 207 of the Hawaiian Homes Commission  
10    Act, 1920, as amended, is amended by amending subsection (a) to  
11    read as follows:

12    "        **§207. Leases to Hawaiians, licenses.** (a) The department  
13    is authorized to and shall lease to native Hawaiians the right  
14    to the use and occupancy of a tract or tracts of Hawaiian home  
15    lands within the following acreage limits per each lessee: (1)  
16    not more than forty acres of agriculture lands or lands used for  
17    aquaculture purposes; or (2) not more than one hundred acres of  
18    irrigated pastoral lands and not more than one thousand acres of  
19    other pastoral lands; or (3) not more than one acre of any class  
20    of land to be used as a residence lot; provided that in the case  
21    of any existing lease of a farm lot in the Kalaniana'ole



1 Settlement on Molokai, a residence lot may exceed one acre but  
2 shall not exceed four acres in area, the location of such area  
3 to be selected by the department; provided further that a lease  
4 granted to any lessee may include two detached farm lots or  
5 aquaculture lots, as the case may be, located on the same island  
6 and within a reasonable distance of each other, one of which, to  
7 be designated by the department, shall be occupied by the lessee  
8 as the lessee's home, the gross acreage of both lots not to  
9 exceed the maximum acreage of an agricultural, pastoral, or  
10 aquacultural lot, as the case may be, as provided in this  
11 section.

12 (b) The title to lands so leased shall remain in the  
13 State. Applications for tracts shall be made to and granted by  
14 the department, under such regulations, not in conflict with any  
15 provisions of this title, as the department may prescribe. The  
16 department shall, whenever tracts are available, enter into such  
17 a lease with any applicant who, in the opinion of the  
18 department, is qualified to perform the conditions of such  
19 lease[-], however, financial ability to build a dwelling or  
20 maintain the property or improvements, or qualify for a loan to



1 build a dwelling or maintain the property or improvements, may  
2 not be a consideration by the department.

3 (c) (1) The department is authorized to grant licenses as  
4 easements for railroads, telephone lines, electric  
5 power and light lines, gas mains, and the like. The  
6 department is also authorized to grant licenses for  
7 lots within a district in which lands are leased under  
8 the provisions of this section, for:

9 (A) Churches, hospitals, public schools, post  
10 offices, and other improvements for public  
11 purposes; and

12 (B) Theaters, garages, service stations, markets,  
13 stores, and other mercantile establishments (all  
14 of which shall be owned by native Hawaiians or by  
15 organizations formed and controlled by native  
16 Hawaiians).

17 (2) The department is also authorized to grant licenses to  
18 the United States for reservations, roads, and other  
19 rights-of-way, water storage and distribution  
20 facilities, and practice target ranges.



1           (3) Any license issued under this subsection shall be  
2           subject to such terms, conditions, and restrictions as  
3           the department shall determine and shall not restrict  
4           the areas required by the department in carrying on  
5           its duties, nor interfere in any way with the  
6           department's operation or maintenance activities.

7   (d) The department shall file all leases with the bureau of  
8   conveyances. Leases executed prior to the effective date of this  
9   subsection shall be filed with the bureau of conveyances no  
10   later than January 1, 2026.

11           SECTION 5. Section 214 of the Hawaiian Homes Commission  
12   Act, 1920, as amended, is amended by amending subsection (a) to  
13   read as follows:

14   "    **§214. Purposes of loans; authorized actions.** (a) The  
15   department [~~may~~] shall make loans from revolving funds to any  
16   lessee or native Hawaiian to whom, or any cooperative  
17   association to which, a lease has been issued, or would  
18   otherwise be issued, but for financial reasons, under section  
19   207[~~(a)~~] of this Act or a license has been issued under section  
20   207(c)(1)(B) of this Act. Such loans may be made for the  
21   following purposes:



- 1       (1) The repair or maintenance or purchase or erection of  
2           dwellings on any tract, and the undertaking of other  
3           permanent improvements thereon;
- 4       (2) The purchase of livestock, swine, poultry, fowl,  
5           aquaculture stock, and farm and aquaculture equipment;
- 6       (3) Otherwise assisting in the development of tracts and  
7           of farm, ranch, and aquaculture operations, including:
  - 8           (A) The initial and on-going development,  
9               improvement, operation, and expansion of  
10            homestead farms, ranches, and aquaculture  
11            enterprises;
  - 12           (B) The liquidation of indebtedness incurred for any  
13               of the foregoing purposes relating to farm loans  
14               aged less than five years;
  - 15           (C) The payment of normal and reasonable living  
16               expenses of a full-time farmer;
  - 17           (D) The planning, layout, and installation of soil  
18               and water conservation practices; and
  - 19           (E) Providing relief and rehabilitation to homestead  
20               farmers and ranchers due to damage by rain and  
21               windstorms, droughts, tidal wave, earthquake,



1 volcanic eruption, and other natural  
2 catastrophes, and for livestock disease,  
3 epidemics, crop blights, and serious effects of  
4 prolonged shipping and dock strikes;

5 (4) The cost of breaking up, planting, and cultivating  
6 land and harvesting crops, the cost of excavating or  
7 constructing aquaculture ponds and tanks, the purchase  
8 of seeds, fertilizers, feeds, insecticides, medicines,  
9 and chemicals for disease and pest control for  
10 animals, fish, shellfish, and crops, and the related  
11 supplies required for farm, ranch, and aquaculture  
12 operations, the erection of fences and other permanent  
13 improvements for farm, ranch, and aquaculture purposes  
14 and the expense of marketing; and

15 (5) To assist licensees in the operation or erection of  
16 theaters, garages, service stations, markets, stores,  
17 and other mercantile establishments, all of which  
18 shall be owned by native Hawaiians or by organizations  
19 formed and controlled by native Hawaiians.

20 (b) In addition the department may:



- 1           (1) Use moneys in the Hawaiian home operating fund, with  
2           the prior approval of the governor, to match federal,  
3           state, or county funds available for the same purposes  
4           and to that end, enter into an undertaking, agree to  
5           conditions, transfer funds therein available for  
6           expenditure, and do and perform other acts and things,  
7           as may be necessary or required, as a condition to  
8           securing matching funds for the department's projects  
9           or works;
- 10          (2) Loan or guarantee the repayment of or otherwise  
11          underwrite any authorized loan or portion thereof to  
12          lessees in accordance with section 215;
- 13          (3) Loan or guarantee the repayment of or otherwise  
14          underwrite any authorized loan or portion thereof to a  
15          cooperative association in accordance with section  
16          215;
- 17          (4) Permit and approve loans made to lessees by government  
18          agencies or private lending institutions, where the  
19          department assures the payment of these loans;  
20          provided that upon receipt of notice of default in the  
21          payment of the assured loans, the department may, upon



1 failure of the lessee to cure the default within sixty  
2 days, cancel the lease and pay the outstanding balance  
3 in full or may permit the new lessee to assume the  
4 outstanding debt; and provided further that the  
5 department shall reserve the following rights:  
6 (A) The right of succession to the lessee's interest  
7 and assumption of the contract of loan;  
8 (B) The right to require that written notice be given  
9 to the department immediately upon default or  
10 delinquency of the lessee; and  
11 (C) Any other rights enumerated at the time of  
12 assurance necessary to protect the monetary and  
13 other interests of the department;  
14 (5) Secure, pledge, or otherwise guarantee the repayment  
15 of moneys borrowed by the department from government  
16 agencies or private lending institutions and pay the  
17 interim interest or advances required for loans;  
18 provided that the State's liability, contingent or  
19 otherwise, either on moneys borrowed by the department  
20 or on departmental guarantees of loans made to lessees  
21 under this paragraph and paragraphs (2), (3), and (4)



1 of this subsection, shall at no time exceed  
2 \$100,000,000; the department's guarantee of repayment  
3 shall be adequate security for a loan under any state  
4 law prescribing the nature, amount, or form of  
5 security or requiring security upon which loans may be  
6 made;

7 (6) Use available loan fund moneys or other funds  
8 specifically available for guarantee purposes as cash  
9 guarantees when required by lending agencies;

10 (7) Exercise the functions and reserved rights of a lender  
11 of money or mortgagee of residential property in all  
12 direct loans made by government agencies or by private  
13 lending institutions to lessees the repayment of which  
14 is assured by the department. The functions and  
15 reserved rights shall include but not be limited to,  
16 the purchasing, repurchasing, servicing, selling,  
17 foreclosing, buying upon foreclosure, guaranteeing the  
18 repayment, or otherwise underwriting, of any loan, the  
19 protecting of security interest, and after  
20 foreclosures, the repairing, renovating, or



1 modernization and sale of property covered by the loan  
2 and mortgage;

- 3 (8) Pledge receivables of loan accounts outstanding as  
4 collateral to secure loans made by government agencies  
5 or private lending institutions to the department, the  
6 proceeds of which shall be used by the department to  
7 make new loans to lessees or to finance the  
8 development of available lands for purposes permitted  
9 by this Act; provided that any loan agreement entered  
10 into under this paragraph by the department shall  
11 include a provision that the money borrowed by the  
12 department is not secured directly or indirectly by  
13 the full faith and credit or the general credit of the  
14 State or by any revenues or taxes of the State other  
15 than the receivables specifically pledged to repay the  
16 loan; provided further that in making loans or  
17 developing available lands out of money borrowed under  
18 this paragraph, the department may establish, revise,  
19 charge, and collect fees, premiums, and charges as  
20 necessary, reasonable, or convenient, to assure  
21 repayment of the funds borrowed, and the fees,



1 premiums, and charges shall be deposited into the  
2 Hawaiian home trust fund; and provided further that no  
3 moneys of the Hawaiian home loan fund may be pledged  
4 as security under this paragraph; and

5 (9) Notwithstanding any other provisions of this Act to  
6 the contrary, transfer into the Hawaiian home trust  
7 fund any available and unpledged moneys from any loan  
8 funds, the Hawaiian loan guarantee fund, or any fund  
9 or account succeeding thereto, except the Hawaiian  
10 home loan fund, for use as cash guarantees or reserves  
11 when required by a federal agency authorized to insure  
12 or guarantee loans to lessees.

13 SECTION 6. Section 219.1 of the Hawaiian Homes Commission  
14 Act, 1920, as amended, is amended by amending subsection (a) to  
15 read as follows:

16 " **§219.1. General assistance.** (a) The department is  
17 authorized to and shall carry on any activities it deems  
18 necessary to assist the lessees in obtaining maximum utilization  
19 of the leased lands, including taking any steps necessary to  
20 develop these lands for their highest and best use commensurate  
21 with the purposes for which the land is being leased as provided



1 for in section 207, and assisting the lessees in all phases of  
2 farming, ranching, and aquaculture operations and the marketing  
3 of their agricultural [or] aquacultural produce and livestock.

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

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

9 (2) Acquire an existing insurance company;

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

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

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



- 1           (1) Issue revenue bonds under and pursuant to part III of  
2                   chapter 39, Hawaii Revised Statutes, to establish  
3                   necessary reserves to provide for the payment of  
4                   claims in excess of reserves and for other related  
5                   purposes; or to pay any liability incurred that is  
6                   self-insured or uninsured by the commission including  
7                   without limitations, liabilities for damage to  
8                   property, comprehensive liability, environmental, or  
9                   other losses; and
- 10           (2) Invest funds held in reserve, which are not required  
11                   for immediate disbursement, in property or securities  
12                   in which savings banks may legally invest funds  
13                   subject to their control or as the commission may  
14                   authorize by resolution. "

15           SECTION 7. The department shall conduct an actuarial study  
16           on the size of the current and projected future populations of  
17           Native Hawaiians, as defined by §201(a) of the Hawaiian Homes  
18           Commission Act, 1920, as amended, eligible to lease Hawaiian  
19           home lands. The department shall further prepare a report that  
20           includes the actuarial study's findings and recommendations and



1 submit the report to the Legislature no later than twenty days  
2 prior to the convening of the Regular Session of 2023.

3 SECTION 8. There is appropriated out of the general  
4 revenues of the State \$200,000 or so much thereof as may be  
5 necessary for fiscal year 2021-2022 for the department of  
6 Hawaiian home lands to perform an actuarial study on the size of  
7 the current and projected future populations of Native  
8 Hawaiians, as defined by §201(a) of the Hawaiian Homes  
9 Commission Act, 1920, as amended, eligible to lease Hawaiian  
10 home lands.

11 SECTION 9. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 10. This Act shall take effect upon the approval  
14 of the Governor of the State of Hawaii and with the consent of  
15 the United States.

16

INTRODUCED BY:



JAN 27 2021



# H.B. NO. 1397

**Report Title:**

Hawaiian Home Lands; Lease Distribution

**Description:**

Requires Hawaiian Homes Commission to distribute leases to all beneficiaries within 10 years. Removes financial consideration in obtaining a lease. Requires the construction of pu'uhonuas or communal living arrangements by the department. Requires an actuarial study. Appropriates funds for the study.

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