
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. Section 201, Hawaiian Homes Commission Act,
2 1920, as amended, is amended by adding a new definition to be
3 appropriately inserted and to read as follows:

4 "Ad hoc consultation" means the formation of an advisory
5 body to provide input to the department for the preparation and
6 amendment of any plan or implementing action. The chairperson
7 may select the advisory body, subject to consultation and
8 ratification by the commission, for the preparation or amendment
9 of any plans. Such ad hoc consultation for the preparation and
10 amendment of plans shall supplement and not replace
11 comprehensive or targeted consultation. The chairperson may
12 select an ad hoc body for an implementing action.

13 "Beneficiary consultation" means meaningful and timely
14 consultation with beneficiaries that promotes trust,
15 partnership, and civic engagement. The type of consultation
16 (comprehensive, place-based, or ad hoc) shall be appropriate to
17 the potential impact of the decision or action.



1 "Comprehensive consultation" means consultation that occurs
2 on a statewide basis. Notice shall be provided to all existing
3 homesteaders, all waiting lists applicants, and other native
4 Hawaiians who have registered with the department. The notice
5 shall describe the proposed action and the date, time, and place
6 of a public meeting to be held on each island. Comprehensive
7 consultation shall apply to the preparation and amendment of the
8 department of Hawaiian home lands' general plan, preparation and
9 amendment of program plans, and promulgation of administrative
10 rules.

11 "Place-based consultation" means consultation in
12 geographically specific areas. Notice shall be provided to
13 existing homesteaders, waiting lists applicants, and other
14 native Hawaiians who have registered with the department and who
15 are associated with a geographic area impacted by the proposed
16 action. The chairperson shall determine the appropriate scope
17 of the notice. The notice shall describe the proposed action
18 and the date, time, and place of a public meeting to be held
19 within the geographic area. Place-based consultation shall
20 apply to the preparation and amendment of island plans,
21 preparation and amendment of regional plans and area development



1 plans, and proposed projects that require an environmental
2 assessment or environmental impact statement."

3 SECTION 2. Section 202, Hawaiian Homes Commission Act,
4 1920, as amended, is amended to read as follows:

5 "§202. Department officers, staff, commission, members,
6 compensation. (a) There shall be a department of Hawaiian home
7 lands which shall be headed by an executive board to be known as
8 the Hawaiian homes commission. The members of the commission
9 shall be nominated and appointed in accordance with section
10 26-34, Hawaii Revised Statutes. The commission shall be
11 composed of nine members, as follows: three shall be residents
12 of the city and county of Honolulu; two shall be residents of
13 the county of Hawaii one of whom shall be a resident of east
14 Hawaii and the other a resident of west Hawaii; two shall be
15 residents of the county of Maui one of whom shall be a resident
16 from the island of Molokai; one shall be a resident of the
17 county of Kauai; and the ninth member shall be the chairman of
18 the Hawaiian homes commission. All members shall have been
19 residents of the State at least three years prior to their
20 appointment and at least [~~four~~] five of the members shall be
21 descendants of not less than one-fourth part of the blood of the



1 races inhabiting the Hawaiian Islands previous to 1778 and
2 beneficiaries of the trust; provided that the beneficiary
3 members shall be on the waitlist for Hawaiian home lands at the
4 time of their appointment. The members of the commission shall
5 serve without pay, but shall receive actual expenses incurred by
6 them in the discharge of their duties as [~~such~~] members. The
7 governor shall appoint the [~~chairman~~] chairperson of the
8 commission from among the commission members [~~thereof~~].

9 The commission may delegate to the [~~chairman~~ ~~such~~]
10 chairperson duties, powers, and authority or so much thereof, as
11 may be lawful or proper for the performance of the functions
12 vested in the commission. The [~~chairman~~] chairperson of the
13 commission shall serve in a full-time capacity. [~~He~~] The
14 chairperson shall, in such capacity, perform [~~such~~] duties, and
15 exercise [~~such~~] powers and authority, or so much thereof, as may
16 be delegated to [~~him~~] the chairperson by the commission as
17 herein provided above.

18 (b) The provisions of section 76-16, Hawaii Revised
19 Statutes, shall apply to the positions of first deputy and
20 private secretary to the [~~chairman~~] chairperson of the
21 commission. The department may hire temporary staff on a



1 contractual basis not subject to chapters 76 and 78, Hawaii
2 Revised Statutes, when the services to be performed will assist
3 in carrying out the purposes of the Act. These positions may be
4 funded through appropriations for capital improvement program
5 projects and by the administration account, operating fund, or
6 native Hawaiian rehabilitation fund. No contract shall be for a
7 period longer than two years, but individuals hired under
8 contract may be employed for a maximum of six years; provided
9 that the six-year limitation shall not apply if the department,
10 with the approval of the governor, determines that ~~such~~ these
11 contract individuals are needed to provide critical services for
12 the efficient functioning of the department. All other
13 positions in the department shall be subject to chapter 76,
14 Hawaii Revised Statutes.

15 All vacant and new civil service positions covered by
16 chapter 76, Hawaii Revised Statutes, shall be filled in
17 accordance with section 76-22.5, Hawaii Revised Statutes;
18 provided that the provisions of these sections shall be
19 applicable first to qualified persons of Hawaiian extraction.

20 (c) The department shall distribute by email or its
21 website a quarterly report to the beneficiaries, registered



1 homestead associations, and the legislature that identifies each
2 land disposition and lease cancellation including:

- 3 (1) The land instrument used;
- 4 (2) The amount of land, under which section of the Act the
5 disposition or cancellation is authorized; and
- 6 (3) Whether the disposition or cancellation was made on
7 behalf of a beneficiary or non-beneficiary.

8 The quarterly report shall also identify all trust fund receipts
9 and expenditures.

10 (d) The governor may establish an inter-agency council to
11 address the purposes of the Hawaiian Homes Commission Act. The
12 inter-agency council, if established, shall meet at least three
13 times per year."

14 SECTION 3. Section 213.6, Hawaiian Homes Commission Act,
15 1920, as amended, is amended to read as follows:

16 "**§213.6. Hawaiian home lands trust fund.** There is
17 established a trust fund to be known as the Hawaiian home lands
18 trust fund, into which shall be deposited all appropriations by
19 the state legislature specified to be deposited therein. Moneys
20 of the Hawaiian home lands trust fund shall be expended by the
21 department, as provided by law, upon approval by the commission



1 and shall be used for capital improvements and other purposes
2 undertaken in furtherance of the Act. The department shall have
3 a fiduciary responsibility toward the trust fund and shall
4 provide annual reports therefor to the legislature and to the
5 beneficiaries of the trust. The annual reports shall include a
6 full accounting of all Act 14, Special Session Laws of Hawaii
7 1995, funding receipts and expenditures.

8 The commission may deposit moneys from the trust fund into
9 depositories other than the state treasury and may manage,
10 invest, and reinvest moneys in the trust fund. The commission
11 may hold, purchase, sell, assign, transfer, or dispose of any
12 securities and investments in which any of the moneys have been
13 invested, as well as the proceeds of the investments. Moneys
14 from the trust fund that are deposited into depositories other
15 than the state treasury shall be exempt from the requirements of
16 chapters 36 and 38. Any interest or other earnings arising out
17 of investments from the trust fund shall be credited to and
18 deposited into the trust fund."

19 SECTION 4. Section 216, Hawaiian Homes Commission Act,
20 1920, as amended, is amended to read as follows:



1 "§216. Insurance by borrowers; acceleration of loans; lien
2 and enforcement thereof[-]; loan servicing manual; requirements.

3 (a) The department may require the borrower to insure, in such
4 amount as the department may prescribe, any livestock,
5 aquaculture stock, swine, poultry, fowl, machinery, equipment,
6 dwellings, and permanent improvements purchased or constructed
7 out of any moneys loaned or assured by the department; or, in
8 lieu thereof, the department may directly take out such
9 insurance and add the cost thereof to the amount of principal
10 payable under the loan.

11 (b) Whenever the department has reason to believe that the
12 borrower has violated any condition enumerated in paragraph (2),
13 (4), (5), or (6) of section 215 of this Act, the department
14 shall give due notice and afford opportunity for a hearing to
15 the borrower or the successor or successors to his interest, as
16 the case demands. If upon such hearing the department finds
17 that the borrower has violated the condition, the department may
18 declare all principal and interest of the loan immediately due
19 and payable notwithstanding any provision in the contract of
20 loan to the contrary[-], subject to the policies and procedures



1 provided in the loan servicing manual developed pursuant to
2 subsection (e).

3 (c) The department shall have a first lien upon the
4 borrower's or lessee's interest in any lease, growing crops,
5 aquacultural stock, either on his tract or share in any
6 collective contract or program, livestock, swine, poultry, fowl,
7 aquaculture stock, machinery, and equipment purchased with
8 moneys loaned by the department, and in any dwellings or other
9 permanent improvements on any leasehold tract, to the amount of
10 all principal and interest due and unpaid and of all taxes and
11 insurance and improvements paid by the department, and any other
12 indebtedness of the borrower, the payment of which has been
13 assured by the department. Such lien shall have priority over
14 any other obligation for which the property subject to the lien
15 may be security.

16 (d) The department may, subject to this Act and procedures
17 established by rule, enforce any lien by declaring the
18 borrower's interest in the property subject to the lien to be
19 forfeited, any lease held by the borrower canceled, and shall
20 thereupon order such leasehold premises vacated and the property
21 subject to the lien surrendered within a reasonable time. The



1 right to the use and occupancy of the Hawaiian home lands
2 contained in such lease shall thereupon revert in the
3 department, and the department may take possession of the
4 premises covered therein and the improvements and growing crops
5 or improvements and aquaculture stock thereon; provided that the
6 department shall pay to the borrower any difference which may be
7 due him after the appraisal provided for in section 209 has been
8 made.

9 (e) The department shall develop and implement a loan
10 servicing manual, subject to approval by the commission, that
11 adopts loan mitigation policies, procedure, and methods,
12 including financial counseling, loan loss mitigation analysis,
13 loan modification, sale or transfer, and other options to ensure
14 lessees and borrowers, or their successors, avoid default, cure
15 delinquencies, and avoid cancellation or foreclosure; provided
16 that the loan servicing manual shall incorporate all appropriate
17 federal rules and regulations, including those that protect
18 active military service members; provided further that the
19 department shall document all loan loss mitigation activities
20 between the borrower and the department pursuant to the loan
21 servicing manual."



1 SECTION 5. Section 222, Hawaiian Homes Commission Act,
2 1920, as amended, is amended by amending subsection (a) to read
3 as follows:

4 "(a) The department may make [~~such~~] expenditures and shall
5 adopt rules in accordance with chapter 91, Hawaii Revised
6 Statutes, as are necessary for the efficient execution of the
7 functions vested in the department by this Act. All
8 expenditures of the department and all moneys necessary for
9 loans made by the department, in accordance with [~~the provisions~~
10 ~~of~~] this Act, shall be allowed and paid upon the presentation of
11 itemized vouchers approved by the [~~chairman~~] chairperson of the
12 commission or the [~~chairman's~~] chairperson's designated
13 representative. The department shall make an annual report to
14 the legislature of the State upon the first day of each regular
15 session and [~~such~~] any special reports as the legislature may
16 from time to time require. The [~~chairman~~] chairperson and
17 members of the commission shall give bond as required by law.
18 The sureties upon the bond and the conditions thereof shall be
19 approved annually by the governor."

20 SECTION 6. Section 28-8.3, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By amending subsection (a) to read:

2 "(a) No department of the State other than the attorney
3 general may employ or retain any attorney, by contract or
4 otherwise, for the purpose of representing the State or the
5 department in any litigation, rendering legal counsel to the
6 department, or drafting legal documents for the department;
7 provided that the foregoing provision shall not apply to the
8 employment or retention of attorneys:

9 (1) By the public utilities commission, the labor and
10 industrial relations appeals board, and the Hawaii
11 labor relations board;

12 (2) By any court or judicial or legislative office of the
13 State; provided that if the attorney general is
14 requested to provide representation to a court or
15 judicial office by the chief justice or the chief
16 justice's designee, or to a legislative office by the
17 speaker of the house of representatives and the
18 president of the senate jointly, and the attorney
19 general declines to provide such representation on the
20 grounds of conflict of interest, the attorney general
21 shall retain an attorney for the court, judicial, or



- 1 legislative office, subject to approval by the court,
2 judicial, or legislative office;
- 3 (3) By the legislative reference bureau;
- 4 (4) By any compilation commission that may be constituted
5 from time to time;
- 6 (5) By the real estate commission for any action involving
7 the real estate recovery fund;
- 8 (6) By the contractors license board for any action
9 involving the contractors recovery fund;
- 10 (7) By the office of Hawaiian affairs;
- 11 (8) By the department of commerce and consumer affairs for
12 the enforcement of violations of chapters 480 and
13 485A;
- 14 (9) As grand jury counsel;
- 15 (10) By the Hawaii health systems corporation, or its
16 regional system boards, or any of their facilities;
- 17 (11) By the auditor;
- 18 (12) By the office of ombudsman;
- 19 (13) By the insurance division;
- 20 (14) By the University of Hawaii;
- 21 (15) By the Kahoolawe island reserve commission;



- 1 (16) By the division of consumer advocacy;
- 2 (17) By the office of elections;
- 3 (18) By the campaign spending commission;
- 4 (19) By the Hawaii tourism authority, as provided in
- 5 section 201B-2.5;
- 6 (20) By the division of financial institutions;
- 7 (21) By the office of information practices; [~~ex~~]
- 8 (22) By the department of Hawaiian home lands; provided
- 9 that:
- 10 (A) The department of Hawaiian home lands may use the
- 11 services of the attorney general from time to
- 12 time when the interests of the State and the
- 13 department of Hawaiian home lands are aligned;
- 14 and
- 15 (B) Legal fees owed to independent counsel shall be
- 16 paid by the State; or
- 17 [~~+22~~] (23) By a department, if the attorney general, for
- 18 reasons deemed by the attorney general to be good and
- 19 sufficient, declines to employ or retain an attorney
- 20 for a department; provided that the governor waives
- 21 the provision of this section."



1 2. By amending subsection (c) to read:

2 "(c) Every attorney employed by any department on a full-
3 time basis, except an attorney employed by the public utilities
4 commission, the labor and industrial relations appeals board,
5 the Hawaii labor relations board, the office of Hawaiian
6 affairs, the Hawaii health systems corporation or its regional
7 system boards, the department of commerce and consumer affairs
8 in prosecution of consumer complaints, insurance division, the
9 division of consumer advocacy, the University of Hawaii, the
10 Hawaii tourism authority as provided in section 201B-2.5, the
11 office of information practices, or the department of Hawaiian
12 home lands, or as grand jury counsel, shall be a deputy attorney
13 general."

14 SECTION 7. (a) The legislative reference bureau shall
15 conduct a study on the implications of creating a position for
16 the director of the department of Hawaiian home lands that is
17 separate from the chairperson of the Hawaiian homes commission.
18 The study should contain the following provisions:

19 (1) The governor shall appoint the chairperson of the
20 Hawaiian homes commission under Section 26-17, Hawaii
21 Revised Statutes;



- 1 (2) The director of the department of Hawaiian home lands
2 shall constitute one member of the Hawaiian homes
3 commission;
- 4 (3) The director of the department of Hawaiian home lands
5 shall not be eligible to be considered as the Hawaiian
6 homes commission;
- 7 (4) The members of the Hawaiian homes commission shall
8 choose the chairperson amongst their own members;
- 9 (5) The director of the department of Hawaiian home lands
10 may veto major policy and budgetary decisions of the
11 Hawaiian homes commission with written justification
12 on its decisions; and
- 13 (6) The study shall consider the effectiveness, cost, and
14 potential conflicts of interests (e.g., contested case
15 hearings), and with other issues that may arise from
16 this change in the governance structure of the
17 department of Hawaiian home lands.
- 18 (b) The legislative reference bureau shall submit a report
19 of its findings and recommendations, including any proposed
20 legislation, to the legislature no later than twenty days prior
21 to the convening of the regular session of 2022.



1 SECTION 8. Any sitting Hawaiian homes commission member
2 whose term of office has not expired on the effective date of
3 this Act and who does not qualify to be a member of the Hawaiian
4 homes commission under the amendments made by this Act may
5 continue to serve on the commission until that member's term
6 expires.

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

16 SECTION 10. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 11. This Act shall take effect upon its approval.



Report Title:

Hawaiian Homes Commission Act; Beneficiaries; Department of Hawaiian Home Lands; Inter-agency Council; Legal Counsel

Description:

Provides for a definition of beneficiary consultation. Requires that a majority of the members of the Hawaiian homes commission be beneficiaries and on the waitlist. Requires quarterly reporting to the legislature and beneficiaries on land dispositions made during the quarter. Authorizes the governor to establish an inter-agency council. Requires a full accounting of Act 14, Special Session Laws of Hawaii 1995, expenditures within one year. Requires the department to develop and implement a loan servicing manual. Allows the Hawaiian homes commission to retain separate counsel from the attorney general to provide service to the commission and beneficiaries. Requires the legislative reference bureau to conduct a study on the implications of creating a position for the director of the department of Hawaiian home lands that is separate from the chairperson of the Hawaiian homes commission. (SD1)

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