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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 Hawaiian Homes Commission Act, 1920, as  
2 amended, is amended by adding a new section to title 2 to be  
3 appropriately designated and to read as follows:

4           "§ . Beneficiary consultations; applications; standards.

5           (a) A beneficiary consultation conducted pursuant to this  
6 section shall be a meaningful and timely consultation with  
7 beneficiaries and shall promote trust, partnership, and civic  
8 engagement. The type of consultation conducted, whether  
9 comprehensive, place-based, or ad hoc, shall be appropriate to  
10 the potential impact of the relevant decision or action  
11 described in this section.

12           (b) A comprehensive consultation shall be conducted with  
13 respect to:

14           (1) The preparation and amendment of the department's  
15 general plan, which shall establish statewide policies  
16 that guide land management and programs;



- 1       (2) The preparation and amendment of any program plan,  
2       which shall inform or carry out general plan statewide  
3       policies for specific functional areas, including  
4       affordable housing, native Hawaiian development,  
5       energy, disaster preparedness, community resiliency,  
6       agriculture, and water resources; and  
7       (3) The adoption of rules.

8       A comprehensive consultation shall occur on a statewide  
9       basis. Notice shall be provided to all existing homesteaders,  
10      all native Hawaiians who have applied for leases of homestead  
11      lands and are waiting to be awarded leases, and other native  
12      Hawaiians who have registered with the department. The notice  
13      shall describe the proposed action and the date, time, and place  
14      of a public meeting to be held on each island.

15      (c) A place-based consultation shall be conducted with  
16      respect to:

- 17      (1) The preparation and amendment of any island plan,  
18      which shall be prepared for each island in which there  
19      are more than one hundred acres of Hawaiian home  
20      lands, and which, at minimum, shall apply criteria to  
21      identify lands for homestead use and non-homestead



1           use, prioritize development or redevelopment, identify  
2           infrastructure requirements, and identify potential  
3           impacts on department land use and infrastructure;

4           (2) The preparation and amendment of any regional plan,  
5           which, within a region, at minimum, shall plan to  
6           build a sense of community and capacity, stimulate  
7           partnerships for development and improvements,  
8           facilitate beneficiary participation in issues and  
9           areas of concern, and identify priority projects  
10           within existing and planned homestead areas;

11           (3) The preparation and amendment of any area development  
12           plan, which, at minimum, shall provide more detail for  
13           specific projects in an island plan for purposes of  
14           establishing feasibility, budget, and schedule; and

15           (4) Proposed projects that require an environmental  
16           assessment or environmental impact statement.

17           A place-based consultation shall occur within the  
18           applicable geographic area. Notice shall be provided to all  
19           existing homesteaders, all native Hawaiians who have applied for  
20           leases of homestead lands and are waiting to be awarded leases,  
21           and other native Hawaiians who have registered with the



1 department; provided that they are associated with the  
 2 geographic area impacted by the proposed action. The  
 3 chairperson shall determine the appropriate scope of the notice.  
 4 The notice shall describe the proposed action and the date,  
 5 time, and place of a public meeting to be held within the  
 6 geographic area.

7 (d) An ad hoc consultation may be conducted for the  
 8 preparation and amendment of any plan or implementing action  
 9 described in this section. The chairperson may form an advisory  
 10 body, subject to consultation and ratification by the  
 11 commission, that provides input to the department for the  
 12 preparation or amendment of any plan or implementation of an  
 13 action. Any ad hoc consultation for the preparation and  
 14 amendment of plans may supplement, but not replace, any  
 15 comprehensive or place-based consultation required by this  
 16 section. The chairperson may select an ad hoc body for an  
 17 implementing action."

18 SECTION 2. Section 202, Hawaiian Homes Commission Act,  
 19 1920, as amended, is amended to read as follows:

20 "§202. Department officers, staff, commission, members,  
 21 compensation[-]; quarterly reports; inter-agency council. (a)



1 There shall be a department of Hawaiian home lands, which shall  
2 be headed by an executive board to be known as the Hawaiian  
3 homes commission. The members of the commission shall be  
4 nominated and appointed in accordance with section 26-34, Hawaii  
5 Revised Statutes. The commission shall be composed of nine  
6 members, as follows: three shall be residents of the city and  
7 county of Honolulu; two shall be residents of the county of  
8 Hawaii, one of whom shall be a resident of east Hawaii and the  
9 other a resident of west Hawaii; two shall be residents of the  
10 county of Maui, one of whom shall be a resident from the island  
11 of Molokai; one shall be a resident of the county of Kauai; and  
12 the ninth member shall be the [~~chairman~~] chairperson of the  
13 Hawaiian homes commission. All members shall have been  
14 residents of the State at least three years prior to their  
15 appointment and at least [~~four~~] five of the members shall be  
16 descendants of not less than one-fourth part of the blood of the  
17 races inhabiting the Hawaiian Islands previous to 1778[-] or  
18 beneficiaries of the trust; provided that the beneficiary  
19 members shall be on the waitlist for Hawaiian home lands at the  
20 time of their appointment. The members of the commission shall  
21 serve without pay, but shall receive actual expenses incurred by



1 them in the discharge of their duties as [~~such~~] members. The  
2 governor shall appoint the [~~chairman~~] chairperson of the  
3 commission from among the commission members [~~thereof~~].

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

13 (b) The provisions of section 76-16, Hawaii Revised  
14 Statutes, shall apply to the positions of first deputy and  
15 private secretary to the [~~chairman~~] chairperson of the  
16 commission. The department may hire temporary staff on a  
17 contractual basis not subject to chapters 76 and 78, Hawaii  
18 Revised Statutes, when the services to be performed will assist  
19 in carrying out the purposes of the Act. These positions may be  
20 funded through appropriations for capital improvement program  
21 projects and by the administration account, operating fund, or



1 native Hawaiian rehabilitation fund. No contract shall be for a  
2 period longer than two years, but individuals hired under  
3 contract may be employed for a maximum of six years; provided  
4 that the six-year limitation shall not apply if the department,  
5 with the approval of the governor, determines that [~~such~~] these  
6 contract individuals are needed to provide critical services for  
7 the efficient functioning of the department. All other  
8 positions in the department shall be subject to chapter 76,  
9 Hawaii Revised Statutes.

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

15 (c) The department shall distribute by email or its  
16 website a quarterly report to the beneficiaries, registered  
17 homestead associations, and the legislature. The report shall  
18 identify each land disposition and lease cancellation,  
19 including:

20 (1) The land instrument used;



1       (2) The amount of land, under which section of the Act the  
2           disposition or cancellation is authorized; and

3       (3) Whether the disposition or cancellation was made on  
4           behalf of a beneficiary or non-beneficiary.

5 The quarterly report shall also identify all trust fund receipts  
6 and expenditures.

7       (d) The commission may recommend that the governor  
8 establish an inter-agency council to address the purposes of  
9 this Act. The recommendation may address council membership and  
10 other specifics regarding the council. The governor may  
11 establish the inter-agency council based on the commission's  
12 recommendation. The inter-agency council, if established, shall  
13 meet at least three 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. Each annual report 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  
17 procedures established by rule, may enforce any lien by  
18 declaring the borrower's interest in the property subject to the  
19 lien to be forfeited, any lease held by the borrower canceled,  
20 and shall thereupon order such leasehold premises vacated and  
21 the property subject to the lien surrendered within a reasonable



1 time. The right to the use and occupancy of the Hawaiian home  
2 lands 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."



1 SECTION 6. Section 228 of the Hawaiian Homes Commission  
2 Act, 1920, as amended, is amended by amending subsection (b) to  
3 read as follows:

4 "(b) Prior to the disposition of available land through a  
5 request for proposals for an initial lease for a commercial or  
6 multipurpose project, the department shall consult with  
7 beneficiaries of the trust in the master planning of the  
8 available lands. The process of beneficiary consultation shall  
9 be as established by the department and shall:

- 10 (1) Engage beneficiaries and beneficiary-serving  
11 organizations;
- 12 (2) Provide for the timely dissemination of information  
13 about the proposed project and the gathering of input;  
14 [~~and~~]
- 15 (3) Allow for a reasonable time and reasonable access to  
16 relevant information for evaluation and  
17 consideration[~~-~~]; and
- 18 (4) Comply with section \_\_\_\_\_, to the extent applicable."

19 SECTION 7. Section 28-8.3, Hawaii Revised Statutes, is  
20 amended as follows:

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



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

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

11           (2) By any court or judicial or legislative office of the  
12 State; provided that if the attorney general is  
13 requested to provide representation to a court or  
14 judicial office by the chief justice or the chief  
15 justice's designee, or to a legislative office by the  
16 speaker of the house of representatives and the  
17 president of the senate jointly, and the attorney  
18 general declines to provide such representation on the  
19 grounds of conflict of interest, the attorney general  
20 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; [~~or~~]
- 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 8. (a) The legislative reference bureau shall  
15 conduct a study on the potential consequences of creating a  
16 position for the director of Hawaiian home lands that is  
17 separate from the chairperson of the Hawaiian homes commission.  
18 In conducting the study, the bureau shall assume that: .

19           (1) The governor shall appoint the director of Hawaiian  
20 home lands under section 26-17, Hawaii Revised  
21 Statutes;



1           (2) The director of Hawaiian home lands would be a member  
2           of the Hawaiian homes commission;

3           (3) The director of Hawaiian home lands would not be  
4           eligible to be considered as the chairperson of the  
5           Hawaiian homes commission;

6           (4) The members of the Hawaiian homes commission shall  
7           choose the chairperson amongst their own members; and

8           (5) The director of Hawaiian home lands would have the  
9           authority to veto major policy and budgetary decisions  
10          of the Hawaiian homes commission with written  
11          justification.

12          (b) The study shall consider the effectiveness, cost,  
13          potential conflicts of interests (such as in contested case  
14          hearings), and other issues that may arise from the proposed  
15          change in the governance structure of the department of Hawaiian  
16          home lands.

17          (c) The legislative reference bureau shall submit a report  
18          of its findings and recommendations, including any proposed  
19          legislation, to the legislature no later than twenty days prior  
20          to the convening of the regular session of 2022.



1 SECTION 9. 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 10. 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 11. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 12. This Act shall take effect on July 1, 2050.



**Report Title:**

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

**Description:**

Establishes requirements for Hawaiian home lands beneficiary consultation. Requires that a majority of the members of the Hawaiian homes commission be beneficiaries or on the waitlist for Hawaiian homestead lands. Requires quarterly reporting to the legislature and beneficiaries on land dispositions made during the quarter. Authorizes the governor to establish an inter-agency council, based on a recommendation from the Hawaiian homes commission. Requires an annual accounting of Act 14, Special Session Laws of Hawaii 1995, expenditures. Requires the department of Hawaiian home lands 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 potential effects of creating a position for the director of Hawaiian home lands that is separate from the chairperson of the Hawaiian homes commission. Effective 7/1/2050. (SD2)

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

