

JAN 22 2021

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 "Beneficiary consultation" means, at a minimum, the
5 direct, timely, affirmative, and interactive process of
6 beneficiary organizations, as defined in 43 Code of Federal
7 Regulations Parts 47 and 48, on regulations, legislative
8 proposals, or department of Hawaiian home lands programmatic or
9 policy actions that have a substantial direct effect or
10 implications on one or more homestead areas, or that involves
11 the disposition of trust lands to non-beneficiary individuals or
12 organizations in which the department of Hawaiian home lands
13 provides at least forty-five days to receive input from
14 beneficiaries and beneficiary organizations. "Beneficiary
15 consultation" includes communications conducted through in-
16 person listening sessions, mail, email, or social media, and



1 includes specific notification to all registered beneficiary
2 organizations."

3 SECTION 2. Section 204, Hawaiian Homes Commission Act,
4 1920, as amended, is amended by amending subsection (a) to read
5 as follows:

6 "(a) Upon the passage of this Act, all available lands
7 shall immediately assume the status of Hawaiian home lands and
8 be under the control of the department to be used and disposed
9 of in accordance with the provisions of this Act, except that:

10 (1) In case any available land is under lease by the
11 Territory of Hawaii, by virtue of section 73 of the
12 Hawaiian Organic Act, at the time of the passage of
13 this Act, such land shall not assume the status of
14 Hawaiian home lands until the lease expires or the
15 board of land and natural resources withdraws the
16 lands from the operation of the lease. If the land is
17 covered by a lease containing a withdrawal clause, as
18 provided in section 73(d) of the Hawaiian Organic Act,
19 the board of land and natural resources shall withdraw
20 such lands from the operation of the lease whenever
21 the department gives notice to the board that the



1 department is of the opinion that the lands are
2 required by it for the purposes of this Act; and such
3 withdrawal shall be held to be for a public purpose
4 within the meaning of that term as used in section
5 73(d) of the Hawaiian Organic Act.

6 (2) Any available land, including lands selected by the
7 department out of a larger area, as provided by this
8 Act, not leased as authorized by section 207(a) of
9 this Act, may be returned to the board of land and
10 natural resources as provided under section 212 of
11 this Act, or may be retained for management by the
12 department. Any Hawaiian home lands general lease
13 issued by the department after June 30, 1985, shall
14 contain a withdrawal clause allowing the department to
15 withdraw the land leased at any time during the term
16 of the lease for the purposes of this Act.

17 In the management of any retained available lands
18 not required for leasing under section 207(a), the
19 department may dispose of those lands or any
20 improvements thereon to the public, including native
21 Hawaiians, on the same terms, conditions,



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1 restrictions, and uses applicable to the disposition
2 of public lands in chapter 171, Hawaii Revised
3 Statutes; provided that the department may not sell or
4 dispose of such lands in fee simple except as
5 authorized under section 205 of this Act; provided
6 further that the department shall not dispose of such
7 lands or extend a general lease to non-beneficiaries
8 unless there are no applicants seeking, on a waitlist
9 or otherwise, to enter into a lease to the use and
10 occupancy of a tract or tracts of Hawaiian home lands
11 under section 207(a) or section 207(c)(1)(B); provided
12 further that the department is expressly authorized to
13 negotiate, prior to negotiations with the general
14 public, the disposition of Hawaiian home lands or any
15 improvements thereon to a native Hawaiian, or
16 organization or association owned or controlled by
17 native Hawaiians, for commercial, industrial, or other
18 business purposes, in accordance with the procedures
19 set forth in chapter 171, Hawaii Revised Statutes[-];
20 provided further that the department, prior to the
21 disposition of Hawaiian home lands or any improvements



1 thereon, short- or long-term, including easements,
2 shall be required to notify beneficiaries through
3 beneficiary consultation; provided further that any
4 trust land disposition, including a lease, license or
5 revocable permit issued to a non-beneficiary
6 individual, firm, or organization, by the department
7 requires evidence presented to the department that the
8 lessee or licensee has entered into a homestead
9 beneficiary agreement for the purposes of this
10 paragraph, "homestead beneficiary agreement" means a
11 contract or agreement signed by a homestead
12 association as defined under title 43 C.F.R. section
13 47.10, wherein non-beneficiary lessees provide
14 specific amenities and funding to the homestead
15 association for community programs and services.

- 16 (3) The department, with the approval of the Secretary of
17 the Interior, in order to consolidate its holdings or
18 to better effectuate the purposes of this Act, may
19 exchange the title to available lands for land,
20 privately or publicly owned, of an equal value. All
21 lands so acquired by the department shall assume the



1 status of available lands as though the land were
2 originally designated as available lands under section
3 203 of this Act, and all lands so conveyed by the
4 department shall assume the status of the land for
5 which it was exchanged. The limitations imposed by
6 section 73(1) of the Hawaiian Organic Act and the land
7 laws of Hawaii as to the area and value of land that
8 may be conveyed by way of exchange shall not apply to
9 exchanges made pursuant hereto. No such exchange of
10 land publicly owned by the State shall be made without
11 the approval of two-thirds of the members of the board
12 of land and natural resources. For the purposes of
13 this paragraph, lands "publicly owned" means land
14 owned by a county or the State or the United States."

15 SECTION 3. Section 207, Hawaiian Homes Commission Act,
16 1920, as amended, is amended to read as follows:

17 "§207. Leases to Hawaiians, licenses. (a) The department
18 is authorized to lease to native Hawaiians the right to the use
19 and occupancy of a tract or tracts of Hawaiian home lands within
20 the following acreage limits per each lessee: (1) not more than
21 forty acres of agriculture lands or lands used for aquaculture



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

17 (b) The title to lands so leased shall remain in the
18 State. Applications for tracts shall be made to and granted by
19 the department, under such regulations, not in conflict with any
20 provisions of this title, as the department may prescribe. The
21 department shall, whenever tracts are available, enter into such



1 a lease with any applicant who, in the opinion of the
2 department, is qualified to perform the conditions of such
3 lease[-]; provided that, notwithstanding any law to the
4 contrary, the department shall be prohibited from establishing
5 additional criteria to enter into such a lease with an applicant
6 without notifying beneficiaries through beneficiary
7 consultation, unless otherwise determined through the
8 promulgation of federal regulations.

9 (c) (1) The department is authorized to grant licenses or
10 enter into a general lease as easements for railroads,
11 telephone lines, electric power and light lines, gas
12 mains, and the like. The department is also
13 authorized to grant licenses for lots within a
14 district in which lands are leased under the
15 provisions of this section, for:

16 (A) Churches, hospitals, public schools, post
17 offices, and other improvements for public
18 purposes; and

19 (B) Theaters, garages, service stations, markets,
20 stores, and other mercantile establishments (all
21 of which shall be owned by native Hawaiians or by



1 organizations formed and controlled by native
2 Hawaiians).

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

7 (3) Any license issued or general lease entered into under
8 this subsection shall be subject to such terms,
9 conditions, and restrictions as the department shall
10 determine and shall not restrict the areas required by
11 the department in carrying on its duties, nor
12 interfere in any way with the department's operation
13 or maintenance activities.

14 (d) For public purpose or mercantile under this section,
15 the department may grant a license or enter into a general
16 lease, unless otherwise determined through the promulgation of
17 federal regulations; provided that the department, prior to the
18 disposition of Hawaiian home lands, short- or long-term,
19 including easements, shall be required to notify beneficiaries
20 through beneficiary consultation."



1 SECTION 4. Section 213, Hawaiian Homes Commission Act,
2 1920, as amended, is amended by amending subsections (b) and (c)
3 to read as follows:

4 "(b) Hawaiian home loan fund. The moneys in this fund
5 shall be available for the purposes enumerated in section 214
6 and for payments provided in section 209 and shall not be
7 expended for any other purpose except as provided in subsection
8 (e).

9 Any interest or other earnings arising out of investments
10 from this fund shall be credited to and deposited into this
11 fund; provided that, upon the department notifying beneficiaries
12 through beneficiary consultation, any interest or other earnings
13 may be credited to and deposited into the Hawaiian home
14 operating fund.

15 (c) Hawaiian home general loan fund. Moneys appropriated
16 by the legislature for the construction of homes but not
17 otherwise set aside for a particular fund, for construction of
18 replacement homes, for home repairs or additions, or for the
19 development and operation of a farm, ranch, or aquaculture
20 operation; moneys transferred from other funds; and installments
21 of principal paid by the lessees upon loans made to them from



1 this fund, or as payments representing reimbursements on account
2 of advances, but not including interest on such loans or
3 advances, shall be deposited into this fund. The moneys in the
4 fund shall be used for purposes enumerated in section 214 and
5 for payments provided in section 209; provided that, in addition
6 to the conditions enumerated in section 215, farm loans shall be
7 subject to the following conditions:

- 8 (1) To be eligible for a farm loan the applicant shall
9 derive, or present an acceptable plan to derive, a
10 major portion of the applicant's income from farming;
- 11 (2) Farm loans made for the purpose of soil and water
12 conservation shall not exceed \$20,000 and shall be for
13 a term not to exceed ten years;
- 14 (3) Subsidies and grants or cost-sharing funds entitled
15 and received by the lessee for soil and water
16 conservation purposes shall be assigned to the
17 department for the repayment of the outstanding farm
18 indebtedness; and
- 19 (4) The lessee shall carry out recommended farm management
20 practices approved by a qualified agricultural agency.



1 The department may create an account within this fund to
2 support the guarantee of repayment of loans made by government
3 agencies or private lending institutions to a holder of a
4 general lease under section 207(a) or license issued under
5 section 207(c) (1) (B).

6 The department may create an account within this fund for
7 moneys borrowed from government agencies or private lending
8 institutions to be used for any of the purposes enumerated in
9 section 214. Installments of principal and that part of the
10 interest equal to the interest charged to the department by the
11 lender paid by the lessees on the loans made to them from this
12 account shall be deposited into the same account. Any
13 additional interest or other earnings arising out of investments
14 from this account shall be credited to and deposited into this
15 fund; provided that, upon the department notifying beneficiaries
16 through beneficiary consultation, any interest or other earnings
17 may be credited to and deposited into the Hawaiian home receipts
18 fund."

19 SECTION 5. Section 214, Hawaiian Homes Commission Act,
20 1920, as amended, is amended by amending subsection (a) to read
21 as follows:



1 "(a) The department [~~may~~] shall make loans from revolving
2 funds to any lessee or native Hawaiian to whom, or any
3 cooperative association to which, a lease has been issued under
4 section 207(a) of this Act or a license has been issued under
5 section 207(c)(1)(B) of this Act. Such loans [~~may~~] shall be
6 made for the following purposes:

- 7 (1) The repair or maintenance or purchase or erection of
8 dwellings on any tract, and the undertaking of other
9 permanent improvements thereon;
- 10 (2) The purchase of livestock, swine, poultry, fowl,
11 aquaculture stock, and farm and aquaculture equipment;
- 12 (3) Otherwise assisting in the development of tracts and
13 of farm, ranch, and aquaculture operations, including:
- 14 (A) The initial and on-going development,
15 improvement, operation, and expansion of
16 homestead farms, ranches, and aquaculture
17 enterprises;
- 18 (B) The liquidation of indebtedness incurred for any
19 of the foregoing purposes relating to farm loans
20 aged less than five years;



- 1 (C) The payment of normal and reasonable living
2 expenses of a full-time farmer;
- 3 (D) The planning, layout, and installation of soil
4 and water conservation practices; and
- 5 (E) Providing relief and rehabilitation to homestead
6 farmers and ranchers due to damage by rain and
7 windstorms, droughts, tidal wave, earthquake,
8 volcanic eruption, and other natural
9 catastrophes, and for livestock disease,
10 epidemics, crop blights, and serious effects of
11 prolonged shipping and dock strikes;
- 12 (4) The cost of breaking up, planting, and cultivating
13 land and harvesting crops, the cost of excavating or
14 constructing aquaculture ponds and tanks, the purchase
15 of seeds, fertilizers, feeds, insecticides, medicines,
16 and chemicals for disease and pest control for
17 animals, fish, shellfish, and crops, and the related
18 supplies required for farm, ranch, and aquaculture
19 operations, the erection of fences and other permanent
20 improvements for farm, ranch, and aquaculture purposes
21 and the expense of marketing; and



1 (5) To assist licensees in the operation or erection of
2 theaters, garages, service stations, markets, stores,
3 and other mercantile establishments, all of which
4 shall be owned by native Hawaiians or by organizations
5 formed and controlled by native Hawaiians."

6 SECTION 6. Section 216, Hawaiian Homes Commission Act,
7 1920, as amended, is amended to read as follows:

8 "**§216. Insurance by borrowers; acceleration of loans; lien**
9 **and enforcement thereof.** (a) The department may require the
10 borrower to insure, in such amount as the department may
11 prescribe, any livestock, aquaculture stock, swine, poultry,
12 fowl, machinery, equipment, dwellings, and permanent
13 improvements purchased or constructed out of any moneys loaned
14 or assured by the department; or, in lieu thereof, the
15 department may directly take out such insurance and add the cost
16 thereof to the amount of principal payable under the loan.

17 (b) Whenever the department has reason to believe that the
18 borrower has violated any condition enumerated in paragraph (2),
19 (4), (5), or (6) of section 215 of this Act, the department
20 shall give due notice and afford opportunity for a hearing to
21 the borrower or the successor or successors to his interest, as



1 the case demands. If upon such hearing the department finds
2 that the borrower has violated the condition, the department may
3 declare all principal and interest of the loan immediately due
4 and payable notwithstanding any provision in the contract of
5 loan to the contrary.

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

19 (d) The department may, subject to this Act and procedures
20 established by rule, enforce any lien by declaring the
21 borrower's interest in the property subject to the lien to be



1 forfeited, any lease held by the borrower canceled, and shall
2 thereupon order such leasehold premises vacated and the property
3 subject to the lien surrendered within a reasonable time. The
4 right to the use and occupancy of the Hawaiian home lands
5 contained in such lease shall thereupon revert in the
6 department, and the department may take possession of the
7 premises covered therein and the improvements and growing crops
8 or improvements and aquaculture stock thereon; provided that the
9 department shall pay to the borrower any difference which may be
10 due him after the appraisal provided for in section 209 has been
11 made.

12 (e) The department shall submit a quarterly report to the
13 legislature and beneficiaries. The report shall include data on
14 the inventory of formerly leased properties and disposition
15 status of homestead properties and improvements under the
16 control of the department. The department shall post and
17 maintain a listing of such properties on its website and conduct
18 auctions of properties to the waitlist at least twice per year."

19 SECTION 7. Section 221, Hawaiian Homes Commission Act,
20 1920, as amended, is amended to read as follows:

21 "§221. Water. (a) When used in this section:



1 (1) The term "water license" means any license issued by
2 the board of land and natural resources granting to
3 any person the right to the use of government-owned
4 water; and

5 (2) The term "surplus water" means so much of any
6 government-owned water covered by a water license or
7 so much of any privately owned water as is in excess
8 of the quantity required for the use of the licensee
9 or owner, respectively.

10 (b) All water licenses issued after the passage of this
11 Act shall be deemed subject to the condition, whether or not
12 stipulated in the license, that the licensee shall, upon the
13 demand of the department, grant to it the right to use, free of
14 all charge, any water which the department deems necessary
15 adequately to supply the livestock, aquaculture operations,
16 agriculture operations, or domestic needs of individuals upon
17 any tract.

18 (c) In order adequately to supply livestock, the
19 aquaculture operations, the agriculture operations, or the
20 domestic needs of individuals upon any tract, the department is
21 authorized (1) to use, free of all charge, government-owned



1 water not covered by any water license or covered by a water
2 license issued after the passage of this Act or covered by a
3 water license issued previous to the passage of this Act but
4 containing a reservation of such water for the benefit of the
5 public, and (2) to contract with any person for the right to use
6 or to acquire, under eminent domain proceedings similar, as near
7 as may be, to the proceedings provided in respect to land by
8 sections 101-10 to 101-34, Hawaii Revised Statutes, the right to
9 use any privately owned surplus water or any government-owned
10 surplus water covered by a water license issued previous to the
11 passage of this Act, but not containing a reservation of such
12 water for the benefit of the public. Any such requirement shall
13 be held to be for a public use and purpose. The department may
14 institute the eminent domain proceedings in its own name.

15 (d) The department is authorized, for the additional
16 purpose of adequately irrigating any tract, to use, free of all
17 charge, government-owned surplus water tributary to the Waimea
18 river upon the island of Kauai, not covered by a water license
19 or covered by a water license issued after July 9, 1921. Any
20 water license issued after that date and covering any such
21 government-owned water shall be deemed subject to the condition,



1 whether or not stipulated therein, that the licensee shall, upon
2 the demand of the department, grant to it the right to use, free
3 of all charge, any of the surplus water tributary to the Waimea
4 river upon the island of Kauai, which is covered by the license
5 and which the department deems necessary for the additional
6 purpose of adequately irrigating any tract.

7 Any funds which may be appropriated by Congress as a grant-
8 in-aid for the construction of an irrigation and water
9 utilization system on the island of Molokai designed to serve
10 Hawaiian home lands, and which are not required to be reimbursed
11 to the federal government, shall be deemed to be payment in
12 advance by the department and lessees of the department of
13 charges to be made to them for the construction of such system
14 and shall be credited against such charges when made.

15 (e) All rights conferred on the department by this section
16 to use, contract for, or acquire the use of water shall be
17 deemed to include the right to use, contract for, or acquire the
18 use of any ditch or pipeline constructed for the distribution
19 and control of such water and necessary to such use by the
20 department.



1 (f) Water systems in the exclusive control of the
2 department shall remain under its exclusive control; provided
3 that the department may negotiate an agreement to provide for
4 the maintenance of the water system and the billing and
5 collection of user fees. If any provision or the application of
6 that provision is inconsistent with provisions contained in this
7 section, this section shall control.

8 Water systems include all real and personal property
9 together with all improvements to such systems acquired or
10 constructed by the department for the distribution and control
11 of water for domestic or agricultural use.

12 (g) The department shall be authorized to negotiate with
13 homestead association governed water agencies to maintain water
14 systems, including water billing, prior to other service
15 providers, unless otherwise determined through the promulgation
16 of federal regulations."

17 SECTION 8. The provisions of the amendments made by this
18 Act to the Hawaiian Homes Commission Act, 1920, as amended, are
19 declared to be severable, and if any section, sentence, clause,
20 or phrase, or the application thereof to any person or
21 circumstances is held ineffective because there is a requirement



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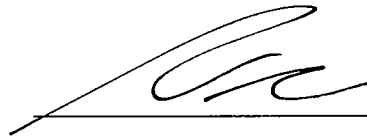
1 of having the consent of the United States to take effect, then
2 that portion only shall take effect upon the granting of consent
3 by the United States and effectiveness of the remainder of these
4 amendments or the application thereof shall not be affected.

5 SECTION 9. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 10. This Act shall take effect upon its approval.

8

INTRODUCED BY: _____

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Report Title:

Hawaiian Homes Commission Act; Beneficiary Consultation; Leases;
Department of Hawaiian Home Lands

Description:

Defines "beneficiary consultation". Prohibits the department of Hawaiian home lands from disposing or extending a general lease to non-beneficiaries, unless there are no applicants seeking to enter into a general lease to the use and occupancy of a tract of Hawaiian home lands. Requires the department to notify beneficiaries through beneficiary consultation prior to the disposition of Hawaiian home lands. Adds language to require Section 204 lessees mandate Homestead Beneficiary Agreements. Prohibits the department from establishing additional criteria to enter into a general lease with an applicant, under certain conditions. Specifies that the department may grant a license or enter into a general lease, under certain conditions. Allocates the interest or other earnings from the Hawaiian home loan fund and Hawaiian home general loan fund into their respective funds, under certain conditions. Requires the department to submit a quarterly report to the legislature and beneficiaries. Authorizes the department to negotiate with homestead association governed water agencies to maintain water systems prior to other service providers, under certain conditions.

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

