
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
16 in-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,



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 for 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 in addition to dispositions made
21 pursuant to chapter 171, Hawaii Revised Statutes, the



1 department may lease by direct negotiation and at fair
2 market rents, and for a term not to exceed five years,
3 any improvements on Hawaiian home lands, or portions
4 thereof, that are owned or controlled by the
5 department[-]; provided further that before the short-
6 or long-term disposition of Hawaiian home lands or any
7 improvements thereon, including easements, the
8 department shall be required to notify beneficiaries
9 through beneficiary consultation; provided further
10 that any trust land disposition, including a lease,
11 license, or revocable permit issued to a non-
12 beneficiary individual, firm, or organization, by the
13 department requires evidence presented to the
14 department that the lessee or licensee has entered
15 into a homestead beneficiary agreement. For the
16 purposes of this paragraph, "homestead beneficiary
17 agreement" means a contract or agreement signed by a
18 homestead association as defined under title 43 Code
19 of Federal Regulations section 47.10, wherein non-
20 beneficiary lessees provide specific amenities and



1 funding to the homestead association for community
2 programs and services.

3 (3) ~~[The department, with the approval of the Secretary of~~
4 ~~the Interior, in order to]~~ To consolidate its holdings
5 or to better effectuate the purposes of this Act, the
6 department, with the approval of the Secretary of the
7 Interior, may exchange the title to available lands
8 for land, privately or publicly owned, of an equal
9 value. All lands so acquired by the department shall
10 assume the status of available lands as though the
11 land were originally designated as available lands
12 under section 203 of this Act, and all lands so
13 conveyed by the department shall assume the status of
14 the land for which it was exchanged. The limitations
15 imposed by section 73(1) of the Hawaiian Organic Act
16 and the land laws of Hawaii as to the area and value
17 of land that may be conveyed by way of exchange shall
18 not apply to exchanges made pursuant hereto. No such
19 exchange of land publicly owned by the State shall be
20 made without the approval of two-thirds of the members
21 of the board of land and natural resources. For the



1 purposes of this paragraph, lands "publicly owned"
2 means land owned by a county or the State or the
3 United States."

4 SECTION 3. Section 207, Hawaiian Homes Commission Act,
5 1920, as amended, is amended to read as follows:

6 "**§207. Leases to Hawaiians, licenses.** (a) The department
7 is authorized to lease to native Hawaiians the right to the use
8 and occupancy of a tract or tracts of Hawaiian home lands within
9 the following acreage limits per each lessee: (1) not more than
10 forty acres of agriculture lands or lands used for aquaculture
11 purposes; or (2) not more than one hundred acres of irrigated
12 pastoral lands and not more than one thousand acres of other
13 pastoral lands; or (3) not more than one acre of any class of
14 land to be used as a residence lot; provided that in the case of
15 any existing lease of a farm lot in the Kalaniana'ole Settlement
16 on Molokai, a residence lot may exceed one acre but shall not
17 exceed four acres in area, the location of such area to be
18 selected by the department; provided further that a lease
19 granted to any lessee may include two detached farm lots or
20 aquaculture lots, as the case may be, located on the same island
21 and within a reasonable distance of each other, one of which, to



1 be designated by the department, shall be occupied by the lessee
2 as the lessee's home, the gross acreage of both lots not to
3 exceed the maximum acreage of an agricultural, pastoral, or
4 aquacultural lot, as the case may be, as provided in this
5 section.

6 (b) The title to lands so leased shall remain in the
7 State. Applications for tracts shall be made to and granted by
8 the department, under such regulations, not in conflict with any
9 provisions of this title, as the department may prescribe. The
10 department shall, whenever tracts are available, enter into such
11 a lease with any applicant who, in the opinion of the
12 department, is qualified to perform the conditions of such
13 lease[-]; provided that, notwithstanding any law to the contrary
14 and unless otherwise determined by federal law, the department
15 shall be prohibited from establishing additional criteria to
16 enter into such a lease without notifying beneficiaries through
17 beneficiary consultation.

18 (c) (1) The department is authorized to grant licenses or
19 enter into a general lease as easements for railroads,
20 telephone lines, electric power and light lines, gas
21 mains, and the like. The department is also



1 authorized to grant licenses for lots within a
2 district in which lands are leased under the
3 provisions of this section, for:

4 (A) Churches, hospitals, public schools, post
5 offices, and other improvements for public
6 purposes; and

7 (B) Theaters, garages, service stations, markets,
8 stores, and other mercantile establishments (all
9 of which shall be owned by native Hawaiians or by
10 organizations formed and controlled by native
11 Hawaiians).

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

16 (3) Any license issued or general lease entered into under
17 this subsection shall be subject to such terms,
18 conditions, and restrictions as the department shall
19 determine and shall not restrict the areas required by
20 the department in carrying on its duties, nor



1 interfere in any way with the department's operation
2 or maintenance activities.

3 (d) Unless otherwise determined through federal law, the
4 department may grant a license or enter into a general lease for
5 public purpose or mercantile establishments under this section;
6 provided that before short- or long-term disposition of Hawaiian
7 home lands, including easements, the department shall be
8 required to notify beneficiaries through beneficiary
9 consultation."

10 SECTION 4. Section 213, Hawaiian Homes Commission Act,
11 1920, as amended, is amended by amending subsections (b) and (c)
12 to read as follows:

13 "(b) Hawaiian home loan fund. The moneys in this fund
14 shall be available for the purposes enumerated in section 214
15 and for payments provided in section 209 and shall not be
16 expended for any other purpose except as provided in subsection
17 (e).

18 Any interest or other earnings arising out of investments
19 from this fund shall be credited to and deposited into this
20 fund; provided that any interest or other earnings may be
21 credited to and deposited into the Hawaiian home operating



1 fund[-] upon the department's notification of beneficiaries
2 through beneficiary consultation.

3 (c) Hawaiian home general loan fund. Moneys appropriated
4 by the legislature for the construction of homes but not
5 otherwise set aside for a particular fund, for construction of
6 replacement homes, for home repairs or additions, or for the
7 development and operation of a farm, ranch, or aquaculture
8 operation; moneys transferred from other funds; and installments
9 of principal paid by the lessees upon loans made to them from
10 this fund, or as payments representing reimbursements on account
11 of advances, but not including interest on such loans or
12 advances, shall be deposited into this fund. The moneys in the
13 fund shall be used for purposes enumerated in section 214 and
14 for payments provided in section 209; provided that, in addition
15 to the conditions enumerated in section 215, farm loans shall be
16 subject to the following conditions:

17 (1) To be eligible for a farm loan the applicant shall
18 derive, or present an acceptable plan to derive, a
19 major portion of the applicant's income from farming;



1 (2) Farm loans made for the purpose of soil and water
2 conservation shall not exceed \$20,000 and shall be for
3 a term not to exceed ten years;

4 (3) Subsidies and grants or cost-sharing funds entitled
5 and received by the lessee for soil and water
6 conservation purposes shall be assigned to the
7 department for the repayment of the outstanding farm
8 indebtedness; and

9 (4) The lessee shall carry out recommended farm management
10 practices approved by a qualified agricultural agency.

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

16 The department may create an account within this fund for
17 moneys borrowed from government agencies or private lending
18 institutions to be used for any of the purposes enumerated in
19 section 214. Installments of principal and that part of the
20 interest equal to the interest charged to the department by the
21 lender paid by the lessees on the loans made to them from this



1 account shall be deposited into the same account. Any
2 additional interest or other earnings arising out of investments
3 from this account shall be credited to and deposited into this
4 fund; provided that any interest or other earnings may be
5 credited to and deposited into the Hawaiian home receipts
6 fund[-] upon the department notifying beneficiaries through
7 beneficiary consultation."

8 SECTION 5. Section 214, Hawaiian Homes Commission Act,
9 1920, as amended, is amended by amending subsection (a) to read
10 as follows:

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

17 (1) The repair or maintenance or purchase or erection of
18 dwellings on any tract, and the undertaking of other
19 permanent improvements thereon;

20 (2) The purchase of livestock, swine, poultry, fowl,
21 aquaculture stock, and farm and aquaculture equipment;



- 1 (3) Otherwise assisting in the development of tracts and
2 of farm, ranch, and aquaculture operations, including:
3 (A) The initial and on-going development,
4 improvement, operation, and expansion of
5 homestead farms, ranches, and aquaculture
6 enterprises;
7 (B) The liquidation of indebtedness incurred for any
8 of the foregoing purposes relating to farm loans
9 aged less than five years;
10 (C) The payment of normal and reasonable living
11 expenses of a full-time farmer;
12 (D) The planning, layout, and installation of soil
13 and water conservation practices; and
14 (E) Providing relief and rehabilitation to homestead
15 farmers and ranchers due to damage by rain and
16 windstorms, droughts, tidal wave, earthquake,
17 volcanic eruption, and other natural
18 catastrophes, and for livestock disease,
19 epidemics, crop blights, and serious effects of
20 prolonged shipping and dock strikes;



- 1 (4) The cost of breaking up, planting, and cultivating
2 land and harvesting crops[7]; the cost of excavating
3 or constructing aquaculture ponds and tanks[7]; the
4 purchase of seeds, fertilizers, feeds, insecticides,
5 medicines, and chemicals for disease and pest control
6 for animals, fish, shellfish, and crops, and the
7 related supplies required for farm, ranch, and
8 aquaculture operations[7]; and the erection of fences
9 and other permanent improvements for farm, ranch, and
10 aquaculture purposes and the expense of marketing; and
11 (5) To assist licensees in the operation or erection of
12 theaters, garages, service stations, markets, stores,
13 and other mercantile establishments, all of which
14 shall be owned by native Hawaiians or by organizations
15 formed and controlled by native Hawaiians."

16 SECTION 6. Section 216, Hawaiian Homes Commission Act,
17 1920, as amended, is amended to read as follows:

18 "**§216. Insurance by borrowers; acceleration of loans; lien**
19 **and enforcement thereof.** (a) The department may require the
20 borrower to insure[~~7, in such amount as the department may~~
21 ~~prescribe,~~] any livestock, aquaculture stock, swine, poultry,



1 fowl, machinery, equipment, dwellings, and permanent
2 improvements purchased or constructed out of any moneys loaned
3 or assured by the department [~~or~~] in such amounts as the
4 department may prescribe. In lieu thereof, the department may
5 directly take out such insurance and add the cost thereof to the
6 amount of principal payable under the loan.

7 (b) Whenever the department has reason to believe that the
8 borrower has violated any condition enumerated in paragraph (2),
9 (4), (5), or (6) of section 215 of this Act, the department
10 shall give due notice and afford opportunity for a hearing to
11 the borrower or the successor or successors to his interest, as
12 the case demands. If upon such hearing the department finds
13 that the borrower has violated the condition, the department may
14 declare all principal and interest of the loan immediately due
15 and payable notwithstanding any provision in the contract of
16 loan to the contrary.

17 (c) The department shall have a first lien upon the
18 borrower's or lessee's interest in any lease, growing crops,
19 aquacultural stock, either on his tract or share in any
20 collective contract or program, livestock, swine, poultry, fowl,
21 aquaculture stock, machinery, and equipment purchased with



1 moneys loaned by the department, and in any dwellings or other
2 permanent improvements on any leasehold tract, to the amount of
3 all principal and interest due and unpaid and of all taxes and
4 insurance and improvements paid by the department, and any other
5 indebtedness of the borrower, the payment of which has been
6 assured by the department. Such lien shall have priority over
7 any other obligation for which the property subject to the lien
8 may be security.

9 (d) The department may, subject to this Act and procedures
10 established by rule, enforce any lien by declaring the
11 borrower's interest in the property subject to the lien to be
12 forfeited, any lease held by the borrower canceled, and shall
13 thereupon order such leasehold premises vacated and the property
14 subject to the lien surrendered within a reasonable time. The
15 right to the use and occupancy of the Hawaiian home lands
16 contained in such lease shall thereupon revert in the
17 department, and the department may take possession of the
18 premises covered therein and the improvements and growing crops
19 or improvements and aquaculture stock thereon; provided that the
20 department shall pay to the borrower any difference which may be



1 due him after the appraisal provided for in section 209 has been
2 made.

3 (e) The department shall submit a quarterly report to the
4 legislature and beneficiaries. The report shall include data on
5 the inventory of formerly leased properties and disposition
6 status of homestead properties and improvements under the
7 control of the department. The department shall post and
8 maintain a listing of such properties on its website and conduct
9 auctions of properties to the beneficiaries on the waitlist at
10 least twice per year."

11 SECTION 7. Section 221, Hawaiian Homes Commission Act,
12 1920, as amended, is amended to read as follows:

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

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

18 (2) The term "surplus water" means so much of any
19 government-owned water covered by a water license or
20 so much of any privately owned water as is in excess



1 of the quantity required for the use of the licensee
2 or owner, respectively.

3 (b) All water licenses issued after the passage of this
4 Act shall be deemed subject to the condition, whether or not
5 stipulated in the license, that the licensee shall, upon the
6 demand of the department, grant to it the right to use, free of
7 all charge, any water which the department deems necessary
8 adequately to supply the livestock, aquaculture operations,
9 agriculture operations, or domestic needs of individuals upon
10 any tract.

11 (c) [~~In order~~] To adequately [~~to~~] supply livestock, [~~the~~]
12 aquaculture operations, [~~the~~] agriculture operations, or [~~the~~]
13 domestic needs of individuals upon any tract, the department [~~is~~
14 ~~authorized~~] may:

15 (1) [~~to use,~~] Use, free of all charge, government-owned
16 water not covered by any water license or covered by a
17 water license issued after the passage of this Act or
18 covered by a water license issued previous to the
19 passage of this Act but containing a reservation of
20 such water for the benefit of the public[~~7~~]; and



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

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



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

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

16 (e) All rights conferred on the department by this section
17 to use, contract for, or acquire the use of water shall be
18 deemed to include the right to use, contract for, or acquire the
19 use of any ditch or pipeline constructed for the distribution
20 and control of such water and necessary to such use by the
21 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]~~ For the purposes of this subsection, water systems
9 include all real and personal property together with all
10 improvements to such systems acquired or constructed by the
11 department for the distribution and control of water for
12 domestic or agricultural use.

13 (g) Unless otherwise determined by federal law, the
14 department may negotiate with homestead association governed
15 water agencies to maintain water systems, including water
16 billing, before negotiating with other service providers."

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



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:



JAN 26 2022



H.B. NO. 2467

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. 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.

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