

'JAN 19 2024'

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 legislature finds that certain native
2 Hawaiians who are eligible for a lease pursuant to the Hawaiian
3 Homes Commission Act, 1920, as amended, have acquired a lease,
4 sold or transferred their interest in the lease, and then placed
5 their name on the waiting list for a second lease of Hawaiian
6 home lands. This has contributed to many otherwise eligible
7 native Hawaiians never receiving a lease offer.

8 The legislature believes that all department of Hawaiian
9 home lands beneficiaries should be able to enter the Hawaiian
10 Homes Commission Act program with a reasonable expectation of
11 eventually receiving a lease.

12 The purpose of this Act is to prohibit lessees who sell or
13 transfer their interest in a Hawaiian home lands tract for
14 personal gain from being placed on any subsequent waiting list
15 maintained by the department of Hawaiian home lands for an
16 additional lease.



1 SECTION 2. Section 208, Hawaiian Homes Commission Act,
2 1920, as amended, is amended to read as follows:

3 **"§208. Conditions of leases.** Each lease made under the
4 authority granted the department by section 207 of this Act, and
5 the tract in respect to which the lease is made, shall be deemed
6 subject to the following conditions, whether or not stipulated
7 in the lease:

8 (1) The original lessee shall be a native Hawaiian, not
9 less than eighteen years of age. In case two lessees
10 either original or in succession marry, they shall
11 choose the lease to be retained, and the remaining
12 lease shall be transferred, quitclaimed, or canceled
13 in accordance with the provisions of succeeding
14 sections[-];

15 (2) The lessee shall pay a rental of \$1 a year for the
16 tract and the lease shall be for a term of ninety-nine
17 years; except that the department may extend the term
18 of any lease; provided that the approval of any
19 extension shall be subject to the condition that the
20 aggregate of the initial ninety-nine year term and any



1 extension granted shall not be for more than one
2 hundred ninety-nine years[~~-~~];

3 (3) The lessee may be required to occupy and commence to
4 use or cultivate the tract as the lessee's home or
5 farm or occupy and commence to use the tract for
6 aquaculture purposes, as the case may be, within one
7 year after the commencement of the term of the
8 lease[~~-~~];

9 (4) The lessee thereafter, for at least [~~such~~] the part of
10 each year as the department shall prescribe by rules,
11 shall occupy and use or cultivate the tract on the
12 lessee's own behalf[~~-~~];

13 (5) The lessee shall not in any manner transfer to, or
14 otherwise hold for the benefit of, any other person or
15 group of persons or organizations of any kind, except
16 a native Hawaiian or Hawaiians, and then only upon the
17 approval of the department, or agree so to transfer,
18 or otherwise hold, the lessee's interest in the tract;
19 except that the lessee, with the approval of the
20 department, also may transfer the lessee's interest in
21 the tract to the following qualified relatives of the



1 lessee who are at least one-quarter Hawaiian:
2 ~~[husband, wife,]~~ spouse, child, or grandchild. A
3 lessee who is at least one-quarter Hawaiian who has
4 received an interest in the tract through succession
5 or transfer may, with the approval of the department,
6 transfer the lessee's leasehold interest to a ~~[brother~~
7 ~~or sister]~~ sibling who is at least one-quarter
8 Hawaiian. ~~[Such]~~ The interest shall not, except in
9 pursuance of ~~[such]~~ a transfer to or holding for or
10 agreement with a native Hawaiian or Hawaiians or
11 qualified relative who is at least one-quarter
12 Hawaiian approved of by the department or for any
13 indebtedness due the department or for taxes or for
14 any other indebtedness the payment of which has been
15 assured by the department, including loans from other
16 agencies where ~~[such]~~ the loans have been approved by
17 the department, be subject to attachment, levy, or
18 sale upon court process. The lessee shall not sublet
19 the lessee's interest in the tract or improvements
20 thereon; provided that a lessee may be permitted, with
21 the approval of the department, to rent to a native



1 Hawaiian or Hawaiians, lodging either within the
2 lessee's existing home or in a separate residential
3 dwelling unit constructed on the premises[-];
4 (6) Notwithstanding the provisions of paragraph (5), the
5 lessee, with the consent and approval of the
6 commission, may mortgage or pledge the lessee's
7 interest in the tract or improvements thereon to a
8 recognized lending institution authorized to do
9 business as a lending institution in either the State
10 or elsewhere in the United States; provided that the
11 loan secured by a mortgage on the lessee's leasehold
12 interest is insured or guaranteed by the Federal
13 Housing Administration, Department of Veterans
14 Affairs, or any other federal agency and their
15 respective successors and assigns, which are
16 authorized to insure or guarantee [~~such~~] the loans, or
17 any acceptable private mortgage insurance as approved
18 by the commission. The mortgagee's interest in [~~any~~
19 ~~such~~] the mortgage shall be freely assignable. [~~Such~~]
20 The mortgages, to be effective, must be consented to



1 and approved by the commission and recorded with the
2 department.

3 Further, notwithstanding the authorized purposes
4 of loan limitations imposed under section 214 of this
5 Act and the authorized loan amount limitations imposed
6 under section 215 of this Act, loans made by lending
7 institutions as provided in this paragraph, insured or
8 guaranteed by the Federal Housing Administration,
9 Department of Veterans Affairs, or any other federal
10 agency and their respective successors and assigns, or
11 any acceptable private mortgage insurance, may be for
12 [~~such~~] the purposes and in [~~such~~] the amounts, not to
13 exceed the maximum insurable limits, together with
14 [~~such~~] the assistance payments and other fees, as
15 established under section 421 of the Housing and Urban
16 Rural Recovery Act of 1983, which amended Title II of
17 the National Housing Act of 1934 by adding section
18 247, and its implementing regulations, to permit the
19 Secretary of Housing and Urban Development to insure
20 loans secured by a mortgage executed by the homestead
21 lessee covering a homestead lease issued under section



- 1 207(a) of this Act and upon which there is located a
2 one to four family single family residence[-];
- 3 (7) The lessee shall pay all taxes assessed upon the tract
4 and improvements thereon. The department may pay
5 ~~[such]~~ the taxes and have a lien therefor as provided
6 by section 216 of this Act[-];
- 7 (8) Notwithstanding any law to the contrary, the
8 commission shall have the right of first refusal by
9 requiring the lessee to surrender the lease to the
10 department whenever the lessee seeks to sell or
11 transfer the lessee's interest in the lease for
12 personal gain; provided that if the commission does
13 not exercise the right of first refusal, the
14 respective lessee may proceed in the sale or transfer
15 in accordance with the law;
- 16 (9) If the lessee sells or transfers the lessee's interest
17 in the lease for personal gain, whether or not in a
18 manner otherwise authorized by this Act, the lessee
19 shall be ineligible for placement on any subsequent
20 waiting list maintained by the department to receive a
21 lease authorized by section 207; and



1 ~~[(8)]~~ (10) The lessee shall perform ~~[such]~~ other
 2 conditions, not in conflict with any provision of this
 3 Act as the department may stipulate in the lease;
 4 provided that an original lessee shall be exempt from
 5 all taxes for the first seven years after commencement
 6 of the term of the lease."

7 SECTION 3. Section 209, Hawaiian Homes Commission Act,
 8 1920, as amended, is amended to read as follows:

9 "**§209. Successors to lessees.** (a) Upon the death of the
 10 lessee, the lessee's interest in the tract or tracts and the
 11 improvements thereon, including growing crops and aquacultural
 12 stock (either on the tract or in any collective contract or
 13 program to which the lessee is a party by virtue of the lessee's
 14 interest in the tract or tracts), shall vest in the relatives of
 15 the decedent as provided in this paragraph. From the following
 16 relatives of the lessee who are: (1) at least one thirty-second
 17 Hawaiian, spouse, children, grandchildren, ~~[brothers, or~~
 18 ~~sisters,~~] siblings, or (2) native Hawaiian, ~~[father and mother,~~
 19 ~~widows or widowers]~~ parents, surviving spouses of the children,
 20 ~~[widows or widowers]~~ surviving spouses of the ~~[brothers and~~
 21 ~~sisters,~~] siblings, or ~~[nieces and nephews, --]~~ children of the



1 siblings,--the lessee shall designate the person or persons to
2 whom the lessee directs the lessee's interest in the tract or
3 tracts to vest upon the lessee's death. The Hawaiian blood
4 requirements shall not apply to the descendants of those who are
5 not native Hawaiians but who were entitled to the leased lands
6 under section 3 of the Act of May 16, 1934 (48 Stat. 777, 779),
7 as amended, or under section 3 of the Act of July 9, 1952 (66
8 Stat. 511, 513). In all cases that person or persons need not
9 be eighteen years of age. The designation shall be in writing,
10 may be specified at the time of execution of the lease with a
11 right in the lessee in similar manner to change the beneficiary
12 at any time and shall be filed with the department and approved
13 by the department in order to be effective to vest the interests
14 in the successor or successors so named.

15 In case of the death of any lessee, except as hereinabove
16 provided, who has failed to specify a successor or successors as
17 approved by the department, the department may select from only
18 the following qualified relatives of the decedent:

19 (1) Spouse; [~~or~~]

20 (2) If there is no spouse, then the children; [~~or~~]



- 1 (3) If there is no spouse or child, then the
2 grandchildren; [~~or~~]
- 3 (4) If there is no spouse, child, or grandchild, then
4 [~~brothers or sisters,~~] siblings; or
- 5 (5) If there is no spouse, child, grandchild, [~~brother, or~~
6 ~~sister,~~] sibling, then from the following relatives of
7 the lessee who are native Hawaiian: [~~father and~~
8 ~~mother, widows or widowers~~] parents, surviving spouses
9 of the children, [~~widows or widowers~~] surviving
10 spouses of the [~~brothers and sisters,~~] siblings, or
11 [~~nieces and nephews,~~] children of the siblings.

12 The rights to the use and occupancy of the tract or tracts may
13 be made effective as of the date of the death of the lessee.

14 In the case of the death of a lessee leaving no designated
15 successor or successors, spouse, children, grandchildren, or
16 relative qualified to be a lessee of Hawaiian home lands, the
17 land subject to the lease shall resume its status as unleased
18 Hawaiian home lands and the department is authorized to lease
19 the land to a native Hawaiian as provided in this Act.

20 Upon the death of a lessee who has not designated a
21 successor and who leaves a spouse not qualified to succeed to



1 the lease or children not qualified to succeed to the lease, or
2 upon the death of a lessee leaving no relative qualified to be a
3 lessee of Hawaiian home lands, or the cancellation of a lease by
4 the department, or the surrender of a lease by the lessee, the
5 department shall appraise the value of all the improvements and
6 growing crops or improvements and aquacultural stock, as the
7 case may be, and shall pay to the nonqualified spouse or the
8 nonqualified children as the lessee shall have designated prior
9 to the lessee's death, or to the legal representative of the
10 deceased lessee, or to the previous lessee, as the case may be,
11 the value thereof, less any indebtedness to the department, or
12 for taxes, or for any other indebtedness the payment of which
13 has been assured by the department, owed by the deceased lessee
14 or the previous lessee. These payments shall be made out of the
15 Hawaiian home loan fund and shall be considered an advance
16 therefrom and shall be repaid by the successor or successors to
17 the tract involved. If available cash in the Hawaiian home loan
18 fund is insufficient to make these payments, payments may be
19 advanced from the Hawaiian home general loan fund and shall be
20 repaid by the successor or successors to the tract involved;
21 provided that any repayment for advances made from the Hawaiian



1 home general loan fund shall be at the interest rate established
2 by the department for loans made from the Hawaiian home general
3 loan fund. The successor or successors may be required by the
4 commission to obtain private financing in accordance with
5 section 208(6) to pay off the amount advanced from the Hawaiian
6 home loan fund or Hawaiian home general loan fund.

7 (b) The appraisal of improvements and growing crops, or
8 stock, if any, shall be made by any one of the following
9 methods:

10 (1) By a disinterested appraiser hired by the department;
11 provided that the previous lessee or deceased lessee's
12 legal representative shall not be charged for the cost
13 of the appraisal; [~~or~~]

14 (2) By one disinterested appraiser mutually agreeable to
15 both the department and the previous lessee or the
16 deceased lessee's legal representative, with the cost
17 of appraisal borne equally by the two parties; or

18 (3) By not more than three disinterested appraisers of
19 which the first shall be contracted for and paid by
20 the department. If the previous lessee or the
21 deceased lessee's legal representative does not agree



1 with the appraised value, the previous lessee or the
2 deceased lessee's legal representative shall contract
3 with and pay for the services of a second appraiser
4 whose appraisal report shall be submitted to the
5 department [~~not~~] no later than ninety days from the
6 date of the first appraisal report; provided that the
7 first appraisal shall be used if the second appraiser
8 is not hired within thirty days from the date the
9 department transmits the first appraisal report to the
10 previous lessee or the deceased lessee's
11 representative. If the appraisal values are different
12 and a compromise value between the two appraisals is
13 not reached, a third appraisal shall be made by an
14 appraiser appointed by the first two appraisers [~~not~~]
15 no later than ninety days from the date of the second
16 appraisal report and the third appraiser shall
17 determine the final value. The cost of the third
18 appraisal shall be borne equally by the department and
19 the previous lessee or the deceased lessee's legal
20 representative.



1 The department may adopt rules not in conflict with this
2 section to establish appraisal procedures, including the time
3 period by which the department and the previous lessee or the
4 deceased lessee's legal representative shall act on appraisal
5 matters.

6 (c) If a previous lessee has abandoned the tract or tracts
7 or cannot be located after at least two attempts to contact the
8 previous lessee by certified mail, the department by public
9 notice published at least once in each of four successive weeks
10 in a newspaper of general circulation in the State shall give
11 notice to the previous lessee that the lease will be canceled in
12 accordance with sections 210 and 216 of this title and the
13 department will appraise the value of the improvements and
14 growing crops and stock, if any, if the previous lessee does not
15 present [~~himself or herself~~] oneself within one hundred and
16 twenty days from the first day of publication of the notice.
17 Following cancellation of the lease and appraisal of the
18 improvements and growing crops and stock, if any, the department
19 shall make the payout as provided in subsection (a).

20 (d) After the cancellation of a lease by the department in
21 accordance with sections 210 and 216 of this title, or the



1 surrender of a lease by a lessee, the department may transfer
2 the lease or issue a new lease to any qualified native Hawaiian
3 regardless of whether [~~or not~~] that person is related in any way
4 by blood or marriage to the previous lessee.

5 (e) If any successor or successors to a tract is a minor
6 or minors, the department may appoint a guardian therefor,
7 subject to the approval of the court of proper jurisdiction.
8 The guardian shall be authorized to represent the successor or
9 successors in all matters pertaining to the leasehold; provided
10 that the guardian, in so representing the successor or
11 successors, shall comply with this title and the stipulations
12 and provisions contained in the lease, except that the guardian
13 need not be a native Hawaiian as defined in section 201 of this
14 title.

15 (f) If the successor sells or transfers the successor's
16 interest in the lease for personal gain, whether or not in a
17 manner otherwise authorized by this Act, the successor shall be
18 ineligible for placement on any subsequent waiting list
19 maintained by the department to receive a lease authorized by
20 section 207."



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. The provisions of the amendments made by this
5 Act to the Hawaiian Homes Commission Act, 1920, as amended, are
6 declared to be severable, and if any section, sentence, clause,
7 or phrase, or the application thereof to any person or
8 circumstances is held ineffective because there is a requirement
9 of having the consent of the United States to take effect, then
10 that portion only shall take effect upon the granting of consent
11 by the United States and effectiveness of the remainder of these
12 amendments or the application thereof shall not be affected.

13 SECTION 6. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

Lynne Schulte



S.B. NO. 2397

Report Title:

DHHL; Native Hawaiian Caucus; Lessees; Waiting List; Sale; Transfer; Right of First Refusal

Description:

Excludes from any waiting list maintained by the Department of Hawaiian Home Lands any lessee or successor who sells or transfers their lease on a tract of Hawaiian home lands for personal gain. Establishes that the Hawaiian Homes Commission shall have a right of first refusal for the sale or transfer of a lessee's interest in the lease when the sale or transfer is for personal gain.

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