
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 of the Hawaiian Homes Commission
2 Act, 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[-] i

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[-] i

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

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 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 loans have been approved by the
17 department, be subject to attachment, levy, or sale
18 upon court process. The lessee shall not sublet the
19 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[-] i;

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 loans, or any
17 acceptable private mortgage insurance as approved by
18 the commission. The mortgagee's interest in any such
19 mortgage shall be freely assignable. Such mortgages,
20 to be effective, must be consented to and approved by
21 the commission and recorded with the department.



1 Further, notwithstanding the authorized purposes
2 of loan limitations imposed under section 214 of this
3 Act and the authorized loan amount limitations imposed
4 under section 215 of this Act, loans made by lending
5 institutions as provided in this paragraph, insured or
6 guaranteed by the Federal Housing Administration,
7 Department of Veterans Affairs, or any other federal
8 agency and their respective successors and assigns, or
9 any acceptable private mortgage insurance, may be for
10 such purposes and in such amounts, not to exceed the
11 maximum insurable limits, together with such
12 assistance payments and other fees, as established
13 under section 421 of the Housing and Urban Rural
14 Recovery Act of 1983, which amended Title II of the
15 National Housing Act of 1934 by adding section 247,
16 and its implementing regulations, to permit the
17 Secretary of Housing and Urban Development to insure
18 loans secured by a mortgage executed by the homestead
19 lessee covering a homestead lease issued under section
20 207(a) of this Act and upon which there is located a
21 one to four family single family residence[-]i



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



1 an original lessee shall be exempt from all taxes for
2 the first seven years after commencement of the term
3 of the lease."

4 SECTION 3. Section 209 of the Hawaiian Homes Commission
5 Act, 1920, as amended, is amended to read as follows:

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



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

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

- 16 (1) Spouse; [~~or~~]
17 (2) If there is no spouse, then the children; [~~or~~]
18 (3) If there is no spouse or child, then the
19 grandchildren; [~~or~~]
20 (4) If there is no spouse, child, or grandchild, then
21 [~~brothers or sisters,~~] siblings; or



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

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

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

16 Upon the death of a lessee who has not designated a
17 successor and who leaves a spouse not qualified to succeed to
18 the lease or children not qualified to succeed to the lease, or
19 upon the death of a lessee leaving no relative qualified to be a
20 lessee of Hawaiian home lands, or the cancellation of a lease by
21 the department, or the surrender of a lease by the lessee, the



1 department shall appraise the value of all the improvements and
2 growing crops or improvements and aquacultural stock, as the
3 case may be, and shall pay to the nonqualified spouse or the
4 nonqualified children as the lessee shall have designated prior
5 to the lessee's death, or to the legal representative of the
6 deceased lessee, or to the previous lessee, as the case may be,
7 the value thereof, less any indebtedness to the department, or
8 for taxes, or for any other indebtedness the payment of which
9 has been assured by the department, owed by the deceased lessee
10 or the previous lessee. These payments shall be made out of the
11 Hawaiian home loan fund and shall be considered an advance
12 therefrom and shall be repaid by the successor or successors to
13 the tract involved. If available cash in the Hawaiian home loan
14 fund is insufficient to make these payments, payments may be
15 advanced from the Hawaiian home general loan fund and shall be
16 repaid by the successor or successors to the tract involved;
17 provided that any repayment for advances made from the Hawaiian
18 home general loan fund shall be at the interest rate established
19 by the department for loans made from the Hawaiian home general
20 loan fund. The successor or successors may be required by the
21 commission to obtain private financing in accordance with



1 section 208(6) to pay off the amount advanced from the Hawaiian
2 home loan fund or Hawaiian home general loan fund.

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

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

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

14 (3) By not more than three disinterested appraisers of
15 which the first shall be contracted for and paid by
16 the department. If the previous lessee or the
17 deceased lessee's legal representative does not agree
18 with the appraised value, the previous lessee or the
19 deceased lessee's legal representative shall contract
20 with and pay for the services of a second appraiser
21 whose appraisal report shall be submitted to the



1 department not later than ninety days from the date of
2 the first appraisal report; provided that the first
3 appraisal shall be used if the second appraiser is not
4 hired within thirty days from the date the department
5 transmits the first appraisal report to the previous
6 lessee or the deceased lessee's representative. If
7 the appraisal values are different and a compromise
8 value between the two appraisals is not reached, a
9 third appraisal shall be made by an appraiser
10 appointed by the first two appraisers not later than
11 ninety days from the date of the second appraisal
12 report and the third appraiser shall determine the
13 final value. The cost of the third appraisal shall be
14 borne equally by the department and the previous
15 lessee or the deceased lessee's legal representative.

16 The department may adopt rules not in conflict with this
17 section to establish appraisal procedures, including the time
18 period by which the department and the previous lessee or the
19 deceased lessee's legal representative shall act on appraisal
20 matters.



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

15 (d) After the cancellation of a lease by the department in
16 accordance with sections 210 and 216 of this title, or the
17 surrender of a lease by a lessee, the department may transfer
18 the lease or issue a new lease to any qualified native Hawaiian
19 regardless of whether [~~or not~~] that person is related in any way
20 by blood or marriage to the previous lessee.



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

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

17 SECTION 4. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 5. The provisions of the amendments made by this
21 Act to the Hawaiian Homes Commission Act, 1920, as amended, are



1 declared to be severable, and if any section, sentence, clause,
2 or phrase, or the application thereof to any person or
3 circumstances is held ineffective because there is a requirement
4 of having the consent of the United States to take effect, then
5 that portion only shall take effect upon the granting of consent
6 by the United States and effectiveness of the remainder of these
7 amendments or the application thereof shall not be affected.

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

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



Report Title:

Native Hawaiian Caucus; Department of Hawaiian Home Lands;
Lessees; Waiting List

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. (SD1)

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