

## ACT 175

H.B. NO. 2256-74

A Bill for an Act Amending the Hawaiian Homes Commission Act, 1920, As Amended, to Enable Guarantee of Loans Made by Private Lending Institutions.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

**“Sec. 208. Conditions of leases.** Each lease made under the authority granted the department by the provisions of section 207 of this title, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

(1) The original lessee shall be a native Hawaiian, not less than twenty-one years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred or cancelled in accordance with the provisions of succeeding sections.

(2) The lessee shall pay a rental of one dollar a year for the tract and the lease shall be for a term of ninety-nine years.

(3) The lessee shall occupy and commence to use or cultivate the tract as his home or farm within one year after the lease is made. The lessee of agricultural lands shall plant and maintain not less than five, ten, fifteen and twenty trees per acre of land leased and the lessee of pastoral lands shall plant and maintain not less than two, three, four, and five trees per acre of land leased during the first, second, third and fourth years, respectively, after the date of lease. Such trees shall be of types approved by the department and at locations specified by the department's agent. Such planting and maintenance shall be by or under the immediate control and direction of the lessee. Such trees shall be furnished by the department free of charge.

(4) The lessee shall thereafter, for at least such part of each year as the department shall by regulation prescribe, so occupy and use or cultivate the tract on his own behalf.

(5) The lessee shall not in any manner transfer to, or mortgage, pledge, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, mortgage, pledge, or otherwise hold, his interest in the tract. Such interest shall not, except in pursuance of such a transfer, mortgage, or pledge to or holding for or agreement with a native Hawaiian or Hawaiians approved of by the department, or for any indebtedness due the department or for taxes, or for any other indebtedness the payment of which has been assured by the department, including loans from governmental agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet his interest in the tract or improvements thereon.

(6) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may in its discretion pay such taxes and have a lien therefor as provided by section 216 of this act.

(7) The lessee shall perform such other conditions, not in conflict with any provision of this title, as the department may stipulate in the lease: provided, however, that an original lessee shall be exempt from all taxes for the first seven years from date of lease.

(8) The department may assure the repayment of loans made by governmental agencies or by private lending institutions, defined as banks, building or savings and loan associations, trustees, guardians, trust companies, insurance companies, fiduciaries, and all other persons or organizations having moneys to invest, to lessees when such loans have been approved by the department, up to the limits prescribed in section 215; provided that the lessee has no indebtedness due the department and the department shall not make any loans to the lessee while such assured loans are outstanding; provided further that upon receipt of notice of default in the payment of such assured loans, the department may, upon failure of the lessee to cure the default within 60 days, cancel the lease and thereupon use its best efforts to re-dispose of the tract to a qualified and responsible native Hawaiian or Hawaiians as a new lessee who will assume the obligation of the outstanding debt thereby assured, and make payments to the governmental agency or the private lending institution from available funds either for the monthly payments as they become due and payable or for the amount of the debt. In no event shall the aggregate amount assured by the department exceed \$8,000,000."

SECTION 2. Section 213, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read:

"(b) Hawaiian home-loan fund. Thirty per cent of the state receipts derived from the leasing of cultivated sugar-cane lands under any other provisions of law or from water licenses, shall be deposited into the Hawaiian home-loan fund until the aggregate amount of the fund (including in said amount the principal of all outstanding loans and advances, and all transfers which

have been made from this fund to other funds for which this fund has not been or need not be reimbursed) shall equal \$5,000,000. In addition to these moneys, there shall be covered into the loan fund the installments of principal paid by lessees upon loans made to them as provided in paragraph 2 of section 215, or as payments representing reimbursements on account of advances made pursuant to section 209(1), but not including interest on such loans or advances. The moneys in said fund shall be available only for loans to lessees as provided for in this Act, and for the payments provided for in section 209(1), and shall not be expended for any other purpose whatsoever, except as provided in paragraphs (c) and (d) of this section.

Thirty per cent of the state receipts derived from the leasing of cultivated sugar-cane lands under any other provisions of law or from water licenses, over and above the present ceiling in the Hawaiian home-loan fund of \$5,000,000, which additional amount is hereinafter called 'Additional Receipts', shall be deposited into a special revolving account within the Hawaiian home-loan fund until the aggregate amount of the Additional Receipts so deposited (including the principal and advances made from the Additional Receipts but not from moneys borrowed under (6) hereinbelow, and all transfers which have been made from the Additional Receipts to other funds for which this fund has not been or need not be reimbursed) shall equal \$5,000,000. In addition to these moneys there shall be covered into the special revolving account of the loan fund, moneys borrowed under (6) hereinafter, installments of principal and interest paid by borrowers upon loans from the special revolving account, whether from the Additional Receipts or such borrowed moneys. To the extent as stated hereinafter, the Additional Receipts shall be repaid to the general fund of the State upon proper action by the legislature directing repayment.

Eighty-five per cent of the annual Additional Receipts, hereinafter called the 'Additional Receipts—Development Fund Portion', is to be transferred to the Hawaiian home development fund, to be used in accordance with the amended provisions of subsection (c) of this section.

Fifteen per cent of the annual Additional Receipts, hereinafter called the 'Additional Receipts—Loan Fund Portion,' shall be retained in the special revolving fund and be used for and in connection with the repair or maintenance or purchase or erection or improvement of dwellings on either Hawaiian home lands or non-Hawaiian home lands, whether owned or leased. In furtherance of the purposes herein, the department may do any one or more of the following, with moneys from the Additional Receipts—Loan Fund Portion and any borrowed moneys under (6) hereinbelow:

- (1) The department may extend the benefits of the special revolving account only to native Hawaiians as defined in the Act;
- (2) The department may loan, or guarantee the repayment of or otherwise underwrite any authorized loan, up to a maximum of \$25,000; provided, that where, upon the death of a lessee living on Hawaiian home lands who leaves no relatives qualified to be a lessee on Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall be authorized to make payment and to permit assumption of loan in

excess of \$25,000 under and in accordance with the provisos of section 215(1), subject, as stated, to the provisions of section 215(3);

- (3) Where the dwelling is on Hawaiian home lands, anything in the Act to the contrary notwithstanding, either the department, other governmental agencies, or private lending institutions may make loans, and the loans made in connection with the repair or maintenance or purchase or erection or improvement of dwellings shall be subject to, all applicable provisions of the Act, including but not limited to the provisions of sections 207, 208, 209, 210, 215, 216, and 217, and to such legislative amendments of the Act herein or hereafter enacted, provided such amendments do not change the qualifications of lessees or constitute a reduction or impairment of the Hawaiian home loan fund, Hawaiian home operating fund or Hawaiian home development fund or otherwise require the consent of the United States. Loans made to lessees by governmental agencies or private lending institutions shall be approved by the department, and the department may assure the payment of such loans, provided that the department shall reserve the following rights, among others: the right of succession to the lessee's interest and assumption of the contract of loan; right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and any other rights necessary to protect the monetary and other interests of the department.
- (4) Where the dwelling is on non-Hawaiian home lands, anything in the Act to the contrary notwithstanding, either the department, other governmental agencies, or private lending institutions may make loans, and in connection with such loans, the department shall be governed by, and the loans made in connection with the repair or maintenance or purchase or erection or improvement of dwellings shall be subject to, such terms and conditions as the department may, by rules and regulations not inconsistent with the provisions of this legislative amendment to such Act, promulgate; provided, the department shall require any loan made or guaranteed or otherwise underwritten to be secured adequately and suitably by a first or second mortgage or other securities;
- (5) The department shall establish interest rate or rates at two and one-half per cent a year or higher, in connection with authorized loans on Hawaiian home lands or non-Hawaiian home lands, and where the going rate of interest on moneys borrowed by the department under (6) immediately following or loans made by other governmental agencies or by private lending institutions to native Hawaiians is higher, the department may pay from the special revolving fund from either the Additional Receipts—Loan Fund Portion or the moneys borrowed, the difference in interest rates;
- (6) The department may borrow and deposit into the special revolving account for the purposes of repairing or maintaining or purchasing or erecting or improving dwellings on Hawaiian home lands and

non-Hawaiian home lands and related purposes as provided for in the second paragraph of (8) hereinafter, from governmental agencies or private lending institutions and if necessary in connection therewith, to pledge, secure or otherwise guarantee the repayment of moneys borrowed with all or a portion of the estimated sums of Additional Receipts for the next ensuing ten years from the date of borrowing, less any portion thereof previously encumbered for similar purposes;

- (7) The department may purchase or otherwise acquire, or agree so to do, before or after default, any notes and mortgages or other securities covering loans made by other governmental agencies or by private lending institutions to native Hawaiians or guarantee the repayment of or otherwise underwrite the loans and accept the assignment of any notes and mortgages or other securities in connection therewith;
- (8) The department may exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by the department with funds from the Additional Receipts—Loan Fund Portion or with funds borrowed under (6) hereinabove (but not with funds from the original \$5,000,000, unless such exercise is authorized by the Act), or in all loans made by other governmental agencies or by private lending institutions to native Hawaiians. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling, foreclosing, buying upon foreclosure, guaranteeing the repayment or otherwise underwriting, of any loan, protecting of security interest, and after foreclosure, the repairing, renovating or modernization and sale of the property covered by the loan and mortgage, to achieve the purposes of this program while protecting the monetary and other interests of the department.

The Additional Receipts—Loan Fund Portion, less any amounts thereof utilized to pay the difference in interest rates, discounts, premiums, necessary loan processing expenses, and other expenses authorized in this legislative amendment, are subject to repayment to the general fund upon appropriate legislative action or actions directing whole or partial repayment.”

SECTION 3. Section 213, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (k) to read:

“(k) The Hawaiian loan guarantee fund. The department is authorized to create a fund to support, if necessary, its guarantee of repayment of loans made by governmental agencies or by private lending institutions to those holding leases or licenses issued under section 207 of this Act. The loan guarantees shall be subject to the restrictions imposed by section 208, 214, and 215 of this Act. The department’s guarantee of repayment shall be adequate security for a loan under any State law prescribing the nature, amount, or form of security or requiring security upon which loans may be made.”

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SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 5. This Act shall take effect upon its approval.

(Approved June 7, 1974.)

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\*Edited accordingly.