

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

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

SECTION 1. Section 209, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“§209. Successors to lessees. (a) Upon the death of the lessee, his interest in the tract or tracts and the improvements thereon, including growing crops (either on the tract or in any collective contract or program to which the lessee is a party by virtue of his interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this subsection. From the following relatives of the lessee, husband and wife, children, widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews, the lessee shall designate the person or persons to whom he directs his interest in the tract or tracts to vest upon his death. Such person or persons must be qualified to be a lessee of Hawaiian home lands; provided that the Hawaiian blood requirements shall not apply to the descendants of those who are not native Hawaiians but who were entitled to the leased lands under section 3 of the Act of May 16, 1934 (48 Stat. 777,

779), as amended; provided further that such person or persons need not be twenty-one years of age. Such designation shall be in writing, shall be specified at the time of execution of such lease with a right in such lessee in similar manner to change such beneficiary at any time, and shall be filed with the department and approved by the department in order to be effective to vest such interests in the successor or successors so named.

In the absence of such a designation as approved by the department, the department shall select from the relatives of the lessee in the order named above as limited by the foregoing paragraph one or more persons who are qualified to be lessees of Hawaiian home lands, except as hereinabove provided, as the successor or successors of the lessee's interest in the tract or tracts, and upon the death of the lessee, his interest shall vest in the person or persons so selected. The department may select such a successor or successors after the death of the lessee, and the rights to the use and occupancy of the tract or tracts may be made effective as of the date of the death of such lessee.

In the case of the death of a lessee leaving no such relative qualified to be a lessee of Hawaiian home lands, the land subject to the lease shall resume its status as unleased Hawaiian home lands and the department may lease such land to a native Hawaiian as provided in this Act.

Upon the death of a lessee leaving no such relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall determine the value of improvements on the lot and shall pay to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, the amount determined in accordance with section . Such payments shall be made out of the loan fund and shall be considered an advance therefrom reimbursable out of payments made by the successor or successors to the tract involved.

(b) After the cancellation of a lease by the department in accordance with sections 210 and 216 of this Act, or the surrender of a lease by a lessee, the department may transfer the lease or issue a new lease to any native Hawaiian regardless of whether or not he is related in any way by blood or marriage to the previous lessee.

(c) Should any successor or successors to a tract be a minor or minors, the department may appoint a guardian therefor, subject to the approval of the court of proper jurisdiction. Such guardian may represent the successor or successors in all matters pertaining to the leasehold; provided that the guardian shall, in so representing such successor or successors, comply with this Act and the stipulations and provisions contained in the lease, except that the guardian need not be a native Hawaiian as defined in section 201 of this Act."

SECTION 2. Hawaiian Homes Commission Act, 1920, as amended, is amended by adding a new section be appropriately designated and to read as follows:

"§ . **Value and purchase of improvements at surrender or cancellation.** (a) For a period of ten years after the effective date of an award, transfer, succession, home replacement, or substantial improvement, as the case may be, if the lessee surrenders or the lessor cancels the lease, the department shall purchase the improvements on the lot at a price which shall not exceed the sum of:

- (1) The original cost of improvements to the lessee;
 - (2) The original cost of improvements added by the lessee, except when the department determines, in accordance with adopted rules, that such improvements are luxurious in nature; and
 - (3) Simple interest on the lessee's equity in the improvements at the rate of seven per cent a year. "Equity", as used in this paragraph, means the difference between the sum of the original cost of the improvements to the lessee and improvements added by the lessee, and the principal amount on any mortgage, lien, or note outstanding.
- (b) After the end of the tenth year from the effective date of an award, transfer, succession, home replacement, or substantial improvement, as the case may be, the department shall purchase the improvements on the lot at a price not to exceed the appraised value of the improvements, except when the department determines, in accordance with adopted rules, that such improvements are luxurious in nature.
- (c) For a surrender or cancellation involving a commercial farm, in addition to purchasing the improvements, the department shall also purchase the mature crops and tree crops. The purchase price shall not exceed the value of the mature crops and the residual value of the tree crops, and shall be established by appraisal, whether or not surrender or cancellation occurs during the ten-year restriction period.
- (d) In a surrender or cancellation occurring during the ten-year restriction period, the department's purchase price of the improvements shall be the lesser of the price calculated in subsection (a) and the value appraised in subsection (b).
- (e) In a surrender or cancellation, the department's payment to the lessee shall be the difference of the amount calculated in subsection (a) or appraised in subsections (b) and (c), as the case may be, and any indebtedness to the department, any indebtedness for taxes, or any indebtedness the payment of which has been assured by the department at the time of surrender or cancellation of the residential lot lease.
- (f) Notwithstanding any other law to the contrary, if upon surrender or cancellation, the department determines that the cost to remedy, renovate, or to restore the premises to a safe and reasonably comfortable condition is unwarranted due to the age, condition, or the estimated remaining economic life of the improvements, the department shall assign no value to the improvements. The lessee or the lessee's legal representative may be authorized by the department to dispose of the improvements under terms and conditions prescribed by the department.
- (g) For the purposes of this section, the appraisal of improvements or crops to be purchased by the department shall be performed by either of the following methods:
- (1) By one appraiser mutually agreeable to both the department and the lessee. The cost of the appraisal shall be borne equally by the department and the lessee; or
 - (2) By not more than three disinterested appraisers of which the first shall be contracted for by the department; provided that should the lessee fail to agree upon the value, the lessee may appoint the lessee's own appraiser. If the appraisal values are different and a settlement between the department and lessee is not possible, a third appraisal shall be performed by a disinterested appraiser appointed by the department's appraiser and the

lessee's appraiser; provided that the third appraiser shall act as an arbitrator and determine the final value which shall be between the values of the first and second appraisals. The department shall pay for its own appraiser, the lessee or lessee's legal representative shall pay for the lessee's own appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the department.

(h) Nothing contained in this section shall be construed in a manner as to infringe upon or prejudice in any way rights or interests which shall have vested prior to the effective date hereof."

SECTION 3. Section 215, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§215. **Conditions of loans.** Except as otherwise provided in section 213(a) (5), each contract of loan with the lessee or any successor or successors to his interest in the tract or with any agricultural or mercantile cooperative association composed entirely of lessees shall be held subject to the following conditions whether or not stipulated in the contract loan:

- (1) At any one time, the outstanding amount of loans made to any lessee, or successor or successors in interest, for the repair, maintenance, purchase, and erection of a dwelling and related permanent improvements shall not exceed \$35,000, for the development and operation of a farm or a ranch shall not exceed \$35,000, except that when loans are made to an agricultural cooperative association for the purposes stated in section 214(a) (4), the loan limit shall be determined by the department on the basis of the proposed operations and the available security of the association, and for the development and operation of a mercantile establishment shall not exceed the loan limit determined by the department on the basis of the proposed operations and the available security of the lessee or of the organization formed and controlled by lessees; provided that where, upon the death of a lessee leaving no relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall make the payment provided for by section 209(a), the amount of any such payment made to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, shall be considered as part or all, as the case may be, of any such loan to the successor or successors, without limitation as to the above maximum amounts; provided further that in case of the death of a lessee, or cancellation of a lease by the department, or the surrender of a lease by the lessee, the successor or successors to the tract shall assume any outstanding loan or loans thereon, if any, without limitation as to the above maximum amounts but subject to paragraph (3).
- (2) The loans shall be repaid in periodic installments, such installments to be monthly, quarterly, semi-annual, or annual as may be determined by the department in each case. The term of any loan shall not exceed thirty years. Payments of any sum in addition to the required installments, or payment of the entire amount of the loan, may be made at any time within the term of the loan. All unpaid balances of principal shall bear interest at

the rate of two and one-half per cent a year for loans made directly from the Hawaiian home loan fund, or at the rate of two and one-half per cent or higher as established by law for other loans, payable periodically or upon demand by the department, as the department may determine. The payment of any installment due shall be postponed in whole or in part by the department for such reasons as it deems good and sufficient and until such later date as it deems advisable. Such postponed payments shall continue to bear interest on the unpaid principal at the rate established for the loan.

- (3) In the case of the death of a lessee the department shall, in any case, permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). In case of the cancellation of a lease by the department or the surrender of a lease by the lessee, the department may, at its option declare all installments upon the loan immediately due and payable, or permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). The department may, in such cases where the successor or successors to the tract assume the contract of loan, waive the payment, wholly or in part, of interest already due and delinquent upon the loan, or postpone the payment of any installment thereon, wholly or in part, until such later date as it deems advisable. Such postponed payments shall, however, continue to bear interest on the unpaid principal at the rate established for the loan. Further, the department may, if it deems it advisable and for the best interests of the lessees, write off and cancel, wholly or in part, the contract of loan of the deceased lessee, or previous lessee, as the case may be, where such loans are delinquent and deemed uncollectible. Such write-off and cancellation shall be made only after an appraisal of all improvements and growing crops on the tract involved, such appraisal to be made in the manner as provided for by section In every case, the amount of such appraisal, or any part thereof, shall be considered as part or all, as the case may be, of any loan to such successor or successors, subject to paragraph (1).
- (4) No part of the moneys loaned shall be devoted to any purpose other than those for which the loan is made.
- (5) The borrower or the successor to his interest shall comply with such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the contract of loan.
- (6) The borrower or the successor to his interest shall comply with the conditions enumerated in section 208, and with section 209 of this Act in respect to the lease of any tract.
- (7) Whenever the department shall determine that a borrower is delinquent in the payment of any indebtedness to the department, it may require such borrower to execute an assignment to it, not to exceed, however, the amount of the total indebtedness of such borrower, including the indebtedness to others the payment of which has been assured by the department of all moneys due or to become due to such borrower by reason of any agreement or contract, collective or otherwise, to which the borrower is a party. Failure to execute such an assignment when

requested by the department shall be sufficient ground for cancellation of the borrower's lease or interest therein.”

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 5. This Act shall take effect upon its approval by the Governor of the State of Hawaii and with the consent of the United States Congress.

(Approved June 8, 1981.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.