

**A Bill for an Act Relating to the Hawaiian Homes Commission Act.**

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

**SECTION 1.** Section 207, Hawaiian Homes Commission Act 1920, as amended, is amended by amending subsection (a) to read as follows:

“(a) The department is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands within the following acreage limits per each lessee: (1) not less than one nor more than forty acres of agri-

culture lands or lands used for aquaculture purposes; or (2) not less than one hundred nor more than five hundred acres of first-class pastoral lands; or (3) not less than two hundred and fifty nor more than one thousand acres of second-class pastoral lands; or (4) not less than forty nor more than one hundred acres of irrigated pastoral lands; (5) not more than one acre of any class of land to be used as a residence lot; provided that in the case of any existing lease of a farm lot in the Kalaiana'ole Settlement on Molokai, a residence lot may exceed one acre but shall not exceed four acres in area, the location of such area to be selected by the department; provided further that a lease granted to any lessee may include two detached farm lots or aquaculture lots, as the case may be, located on the same island and within a reasonable distance of each other, one of which, to be designated by the department, shall be occupied by the lessee as his home, the gross acreage of both lots not to exceed the maximum acreage of an agricultural, pastoral, or aquaculture lot, as the case may be, as provided in this section; provided further that the department may designate the location of the homesite on residence lots less than 10,000 square feet."

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

"§208. **Conditions of leases.** Each lease made under the authority granted the department by section 207 of this Act, 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, quit claimed, or canceled in accordance with the provisions of succeeding sections.
- (2) The lessee shall pay a rental of \$1 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 or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the lease is made.
- (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 other 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 inter-

est 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 Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years from date of lease."

SECTION 3. Section 209, Hawaiian Homes Commission Act 1920, as amended, is amended by amending subsection (1) to read as follows:

"(1) Upon the death of the lessee, his interest in the tract or tracts and the improvements thereon, including growing crops and aquacultural stock (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 paragraph. 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 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 the provisions of 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 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 is authorized to lease such land to a native Hawaiian or Hawaiians 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 appraise the value of all such improvements and growing crops or improvements and aquacultural stock, as the case may be, and shall pay to the legal representative of the deceased lessee, or to the

previous lessee, as the case may be, the value thereof, less any indebtedness to the department, or for taxes, or for any other indebtedness the payment of which has been assured by the department, from the deceased lessee or the previous lessee. 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.

Such appraisal shall be made by three appraisers, one of which shall be named by the department, one by the previous lessee or the legal representative of the deceased lessee, as the case may be, and the third shall be selected by the two appraisers hereinbefore mentioned."

SECTION 4. Section 213, Hawaiian Homes Commission Act 1920, as amended, is amended by amending subsection (a) to read as follows:

"(a) There are established in the treasury of the State seven revolving funds, to be known respectively as the Hawaiian home loan fund, the additional receipts loan fund, the Hawaiian home general loan fund, the Hawaiian home replacement loan fund, the Hawaiian home repair loan fund, the Hawaiian home farm loan fund, and the Hawaiian home operating fund.

(1) Hawaiian home loan fund. Thirty per cent of the state receipts derived from the leasing of cultivated sugarcane lands under any other provision of law or from water licenses shall be deposited into this fund. The aggregate amount of this fund including:

- (A) The outstanding principal of all loans, advances, and transfers which have been made to other funds for which this fund has not been or need not be reimbursed; and
- (B) The installments of principal paid by the lessees upon loans made to them from this fund, or payments representing reimbursements, on account of advances, but not including interests on such loans or advances,

shall not exceed \$5,000,000. The moneys in this fund shall be available for the purposes enumerated in section 214 of this Act.

That portion of the thirty per cent of the state receipts derived from the leasing of cultivated sugarcane lands under any other provision of law or from water licenses, in excess of the present ceiling in the Hawaiian home loan fund of \$5,000,000, which amount is called "additional receipts," shall be transferred to the Hawaiian home development fund, to the additional receipts loan fund, and the Hawaiian home education fund as follows: fifteen per cent to the additional receipts loan fund; thirteen per cent to the Hawaiian home development fund; and seventy-two per cent to the Hawaiian home education fund; provided that until June 30, 1979, the aggregate amount so transferred shall not exceed the maximum amount of \$5,000,000, which maximum amount shall be increased to \$5,000,000 from and after July 1, 1979.

(2) Additional receipts loan fund. Moneys transferred to this fund, installments of principal paid by the lessees upon loans made to them from this fund, or as payments representing reimbursement on account of advances, but not including interest on such loans or advances, shall be

- used for the purposes enumerated in section 214 of this Act.
- (3) Hawaiian home general loan fund. Moneys appropriated by the legislature for the construction of homes but not otherwise set aside for a particular fund, excluding moneys appropriated for construction of replacement homes; moneys transferred from the Hawaiian loan interest fund; and installments of principal paid by the lessees upon loans made to them from this fund, or as payments representing reimbursements on account of advances, but not including interest on such loans or advances; shall be deposited to this fund. The moneys in the fund shall be used for purposes enumerated in section 214 of this Act.
  - (4) Hawaiian home replacement loan fund. The moneys in this fund shall be used to make loans to lessees to construct replacement homes upon their residence lots. Moneys appropriated by the legislature for replacement home construction loans; moneys transferred from the Hawaiian loan interest fund; installments of principal paid by the lessees upon loans made to them from this fund; and moneys transferred from other funds or accounts by legislative authorization shall be deposited into this fund.
  - (5) Hawaiian home repair loan fund. Moneys appropriated to this fund by the legislature; moneys transferred from the Hawaiian loan interest fund; and installments of principal paid by the lessees upon loans made to them from this fund shall be deposited to this fund. The moneys in this fund shall be used to make loans in amounts not in excess of \$10,000 to lessees for repairs to their existing homes and for additions to such homes.
  - (6) Hawaiian home farm loan fund. Moneys appropriated to this fund by the legislature; moneys transferred from the Hawaiian loan interest fund; and installments of principal paid by the lessees upon loans made to them from this fund shall be deposited to this fund. The moneys in this fund shall be used to make loans not in excess of \$35,000 to lessees of agricultural tracts and tracts used for aquaculture leased under section 207 of this Act.
  - (7) Hawaiian home operating fund. The interest transferred from the Hawaiian home loan fund, all fees received by the department from any other source, and moneys transferred from the Hawaiian loan interest fund, except moneys received by the Hawaiian home administration account, shall be directly deposited into the Hawaiian home operating fund. The moneys in this fund shall be available:
    - (A) For construction and reconstruction of revenue-producing improvements intended to principally serve occupants of Hawaiian home lands, including acquisition or lease therefor of real property and interests therein, such as water rights or other interests;
    - (B) For payment into the treasury of the State of such amounts as are necessary to meet the interest and principal charges for state bonds issued for such revenue-producing improvements;
    - (C) For operation and maintenance of such improvements constructed from such funds or other funds;
    - (D) For the purchase of water or other utilities, goods, commodities, supplies, or equipment needed for services, or to be resold, rented,

or furnished on a charge basis to occupants of Hawaiian home lands; and

- (E) For appraisals, studies, consultants (architects, engineers), or any other staff services including those in section 202(b) required to implement, develop, and operate these projects. The moneys in this fund may be supplemented by other funds available for, or appropriated by the legislature for, the same purposes. In addition to such moneys, this fund, with the approval of the governor, may be supplemented by transfers, made on a loan basis from the Hawaiian home loan fund for a period not exceeding ten years; provided that the aggregated amount of such transfers outstanding at any one time shall not exceed \$500,000.”

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

“(a) The department may make loans from revolving funds to any lessee to whom, or any cooperative association to which, a lease or license has been issued under section 207 of this Act. Such loans may be made for the following purposes:

- (1) The repair or maintenance or purchase or erection of dwellings on any tract, and the undertaking of other permanent improvements thereon;
- (2) The purchase of livestock, swine, poultry, fowl, aquaculture stock, and farm and aquaculture equipment;
- (3) Otherwise assisting in the development of tracts and of farm, ranch, and aquaculture operations;
- (4) The cost of breaking up, planting, and cultivating land and harvesting crops, the cost of excavating or constructing aquaculture ponds and tanks, the purchase of seeds, fertilizers, feeds, insecticides, medicines, and chemicals for disease and pest control for animals, fish, shellfish, and crops, and the related supplies required for farm, ranch, and aquaculture operations, the erection of fences and other permanent improvements for farm, ranch and aquaculture purposes and the expense of marketing; and
- (5) To assist lessees in the operation or erection of theaters, garages, service stations, markets, stores, and other mercantile establishments, all of which shall be owned by lessees of the department or by organizations formed and controlled by the lessees.”

SECTION 6. 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, mercantile, or aquacultural 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, ranch, or aquaculture operation shall not exceed \$35,000, except that when loans

are made to an agricultural or aquaculture 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(1), 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) of this section.

- (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) of this section. 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) of this section. 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 dates 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-offs and cancellation shall be made only after an appraisal of all improvements and growing crops or improvements and aquaculture stock, as the case may be, on the tract involved, such appraisal to be made in the manner and as provided for by section 209(1). 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) of this section.

- (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 title, 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 the provisions of section 209 of this title 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 7. Section 216, Hawaiian Homes Commission Act 1920, as amended, is amended as follows:

1. By amending subsection (a) to read as follows:

"(a) The department may require the borrower to insure, in such amount as the department may prescribe, any livestock, aquaculture stock, swine, poultry, fowl, machinery, equipment, dwellings, and permanent improvements purchased or constructed out of any moneys loaned or assured by the department; or, in lieu thereof, the department may directly take out such insurance and add the cost thereof to the amount of principal payable under the loan."

2. By amending subsections (c) and (d) to read as follows:

"(c) The department shall have a first lien upon the borrower's or lessee's interest in any lease, growing crops, aquaculture stock, either on his tract or share in any collective contract or program, livestock, swine, poultry, fowl, aquaculture stock, machinery, and equipment purchased with moneys loaned by the department, and in any dwellings or other permanent improvements on any leasehold tract, to the



amount of all principal and interest due and unpaid and of all taxes and insurance and improvements paid by the department, and any other indebtedness of the borrower, the payment of which has been assured by the department. Such lien shall have priority over any other obligation for which the property subject to the lien may be security.

(d) The department may, subject to this Act and procedures established by rule, enforce any lien by declaring the borrower's interest in the property subject to the lien to be forfeited, any lease held by the borrower canceled and shall thereupon order such leasehold premises vacated and the property subject to the lien surrendered within a reasonable time. The right to the use and occupancy of the Hawaiian home lands contained in such lease shall thereupon revert in the department, and the department may take possession of the premises covered therein and the improvements and growing crops or improvements and aquaculture stock thereon; provided that the department shall pay to the borrower any difference which may be due him after the appraisal provided for in section 209 has been made."

SECTION 8. Section 219, Hawaiian Homes Commission Act 1920, as amended, is amended to read as follows:

"§219. **Agricultural and aquacultural experts.** The department is authorized to employ agricultural and aquacultural experts at such compensation and in such number as it deems necessary. The annual expenditures for such compensation shall not exceed \$6,000. It shall be the duty of such agricultural and aquacultural experts to instruct and advise the lessee of any tract or the successor to the lessee's interest therein as to the best methods of diversified farming and stock raising and aquaculture operations and such other matters as will tend successfully to accomplish the purposes of this title."

SECTION 9. Section 219.1, Hawaiian Homes Commission Act 1920, as amended, is amended to read as follows:

"§219.1. **General assistance.** The department is authorized to carry on any activities it deems necessary to assist the lessees in obtaining maximum utilization of the leased lands, including taking any steps necessary to develop these lands for their highest and best use commensurate with the purposes for which the land is being leased as provided for in section 207, and assisting the lessees in all phases of farming, ranching, and aquaculture operations and the marketing of their agricultural or aquacultural produce and livestock."

SECTION 10. Section 221, Hawaiian Homes Commission Act 1920, as amended, by amending subsections (b) and (c) to read as follows:

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

(c) In order adequately to supply livestock, the aquaculture operations, or the domestic needs of individuals upon any tract, the department is authorized (1) to use, free of all charge, government-owned water not covered by any water license or covered by a water license issued after the passage of this Act or covered by a water

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

SECTION 11. The provisions of these legislative amendments are declared to be severable, and if any section, sentence, clause, or phrase of the legislative amendments or any of them, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of these legislative amendments or the application thereof shall not be affected.

SECTION 12. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 13. This Act shall take effect upon its approval.

(Approved June 2, 1981.)

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