

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. Under existing provisions of the Hawaiian Homes Commission Act, 1920, as amended, (HHCA), the department of Hawaiian home lands is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands for residential, agricultural, pastoral, or aquacultural purposes. The HHCA requires that the lease be for a term of ninety-nine years at a rental of \$1 a year, and does not allow the lessee, among other restrictions, to sublet or to pledge the leasehold interest to secure private financing, except for loans insured or guaranteed by a federal agency. Generally, the lessee's spouse or children who are not native Hawaiians are prohibited from succeeding to the lessee's leasehold interest.

The purpose of this Act is to provide an alternative means by which native Hawaiians may lease Hawaiian home lands for residential, agricultural, pastoral, or aquacultural purposes by authorizing the department to lease a tract or tracts of Hawaiian home lands to native Hawaiians through an alternative leasing program which would be in addition to, but would not supplant, the existing homestead leasing program.

The alternative program would allow lessees greater flexibility in financing improvements on the land, in obtaining the financing and construction of off-site and on-site infrastructure improvements, and in passing their leasehold interest to a surviving spouse or children or others.

This alternative leasing program will provide the lessee with the opportunity to obtain financing on the lessee's equity in the leasehold as well as greater flexibility in disposing of the leasehold.

SECTION 2. The Hawaiian Homes Commission Act, 1920, as amended, is amended by adding a new title to read as follows:

"TITLE 5: HOMESTEAD GENERAL LEASING PROGRAM

§501. Definitions. As used in this title if not inconsistent with the context:

"Homestead general lease" means a lease for residential, agricultural, pastoral, or aquacultural purposes issued under this title;

"Homestead general lessee" means the lessee under a homestead general lease and the successors in interest of the lessee.

§502. Subdivision, improvement, and lease of Hawaiian home lands. (a) The department is authorized to subdivide and improve any Hawaiian home lands suitable for residential use including single-family, multiple-family, apartment, cluster, and row housing, or for agricultural, pastoral, or aquacultural uses, or a combination of uses.

(b) The department is authorized to enter into agreements, including leases, subleases, conditional leasing agreements, or other agreements or combinations thereof, with one or more developers without recourse to public auction for the construction of off-site and on-site infrastructure improvements and for the development of tracts or residential units on Hawaiian home lands; provided that the developers' lease and security interest therein will be retired on a pro rata basis by the issuance of either homestead leases or homestead general leases to native Hawaiians purchasing the subdivided lots and the improvements related thereto; provided further that no state funds shall be utilized.

(c) The qualification requirements to be met by developers and the minimum standards for improvements to be built shall be as provided by rules adopted by the department.

§503. Term, rent, and other conditions of the homestead general lease.

(a) Leases under this title may be for an initial term of not more than fifty-five years with the privilege of extension when such extension is a condition for participation in any government or private mortgage lending, guarantee, or insurance program; provided that the initial term and extensions shall not exceed seventy-five years.

(b) Annual lease rent shall be an amount equal to the fair market rent of the premises at the inception of the homestead general lease, as determined by appraisal. The homestead general lease may include rent escalation and renegotiation clauses for specific periods during the term of the homestead general lease as determined by the department; provided that the department is authorized to subsidize lease rents for native Hawaiian homestead general lessees.

(c) The homestead general lessee shall pay all real property taxes, assessments for the homestead general lessee's pro rata share of the costs of improvements of the tract in which the land is located, and such other charges made against or levied upon the premises.

(d) When constructing any improvements on the premises, the homestead general lessee shall comply with building standards and requirements established by the department.

(e) The premises shall be used for the purpose prescribed in the original homestead general lease and shall not be used for any other purpose without the prior written consent of the department.

(f) Leases under this title shall contain conditions permitting the homestead general lessee to sublet or part with the possession of the whole or any part of the premises and to sell, assign, transfer, or otherwise dispose of, or encumber by way of a mortgage or otherwise, any interest in the homestead general lease or any improvements erected on the premises with the prior written consent of the department.

(g) The department is authorized from time to time upon the issuance of a homestead general lease, to modify any provision contained in this section and section 512 of this title to the extent necessary to qualify the homestead general lease for any government or private mortgage lending, guarantee, or insurance program.

(h) The department is authorized to include any other conditions in homestead general leases that it deems advisable to effectuate the purposes of this title.

§504. Qualifications of original lessee. The original lessee of a homestead general lease shall be a native Hawaiian or native Hawaiians not less than eighteen years of age.

§505. Individuals not eligible to receive an original homestead general lease. The following shall not be eligible to receive a homestead general lease:

- (1) Any individual, or the spouse of any individual who holds a homestead lease under section 207(a) of this Act; provided that such an individual shall be eligible if the homestead lease is transferred or surrendered to the department prior to assuming the homestead general lease, or if the homestead lease is converted to a homestead general lease as provided by section 507.
- (2) Any individual, or the spouse of any individual who currently holds a homestead general lease.

§506. Award of homestead general leases; notification of applicants on homestead waiting lists; disposition by rent. (a) Homestead general leases in a new subdivision created under this title shall be offered and awarded in the following priority order:

- (1) First, to applicants on the appropriate waiting list (residential, agricultural, pastoral, or aquacultural) of the island on which the lots are located, in rank order based on rules of the department;
- (2) Second, to applicants on all other homestead waiting lists of the island on which the lots are located, consolidated in rank order based on date of application;
- (3) Third, to all other applicants on homestead waiting lists, consolidated in rank order based on date of application; and
- (4) Finally, to any native Hawaiian who is at least eighteen years of age, based on the date that written applications are received;

provided that the department shall not be required to maintain the applications received as a waiting list for other subdivisions subsequently created.

(b) The department shall notify applicants on homestead waiting lists of the availability of homestead general leases by publishing a public notice in a newspaper of general circulation and in a newspaper published in each county; provided that the department shall also notify active applicants on the appropriate waiting list on the island on which the lots are located by certified mail.

(c) If lots or units are available after all interested and qualified native Hawaiians have been awarded lots or units, the department may temporarily dispose of the remaining lots or units at fair market rental to the general public with preference to native Hawaiians. The department may develop rental units on the remaining lots and rent them at fair market rental to the general public, with preference given to native Hawaiians.

§507. Conversion of homestead lease to homestead general lease. The department is authorized to permit a lessee to convert any homestead lease to a homestead general lease. The procedures and conditions for such conversion shall be as provided by rules adopted by the department.

§508. Transfer of title by bequest, devise, intestate succession, or operation of law, and upon foreclosure. Title to a homestead general lease and to the improvement upon the premises, may be transferred by assignment, sublease, testamentary bequest or devise, intestate succession, or otherwise by operation of law. Individuals, partnerships, corporations, or agencies of government, disqualified under the Act to take a lease for homestead purposes, may succeed and take title to a homestead general lease and the improvements on the premises by transfer or by purchasing at or after a sale upon a foreclosure of a mortgage permitted under this title.

§509. Notice of breach or default. In the event of a breach or default of any term, covenant, restriction, or condition of any homestead general lease or other instrument issued under this title, the department shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease or other instrument, making demand upon the party to cure or remedy the breach or default within sixty calendar days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the homestead general lease or other instrument issued under this title, the written notice shall include a demand upon the party to cure the breach within not less than five or more than thirty calendar days after receipt of the notice. Upon failure of the party to cure or remedy the breach or default within the time period provided in this section or within such additional period as the department may allow for good cause, subject to section 510, the department may exercise such rights as it may have at law or as set forth in the homestead general lease or other instrument.

§510. Rights of holder of security interest. Whenever any notice of breach or default is given to any party under section 509, or under the terms of any homestead general lease or other instrument issued under this title, a copy of the notice shall be delivered by the department to all holders of record of any security interest covered by the homestead general lease or other instrument whose security interest has been duly recorded with the bureau of conveyances. If the department chooses to forfeit the privilege, interest, or estate created by the homestead general lease or other instrument, each holder, at its option, may cure or remedy the breach or default, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or pledging in writing to perform all the terms, covenants, restrictions, or conditions of any homestead general lease or other instrument capable of performance by the holder, as determined by the department, within the time period provided in section 509 or within such additional period as the department may allow for good cause and add the cost thereof to the mortgage debt and the lien of the mortgage.

§511. Cancellation of homestead general lease. After giving notice of breach or default as provided in section 509, and subject to the rights of each holder of record having a security interest as provided in section 510, the department may terminate the homestead general lease or tenancy and take possession of the leased land together with all improvements placed thereon, without demand or previous entry and without legal process, and shall retain all rent paid in advance as damages for the breach or default.

§512. Restrictions on transfers; appraisals; waiver when. (a) The following restrictions shall apply to any transfers, assignments of lease, or agreements of sale:

- (1) For a period of ten years after the date of the original lease, the department shall be given the first option to purchase the unit, property, or lease at a price which shall not exceed the sum of:
 - (A) The original cost to the homestead general lessee;
 - (B) The cost of any improvements added by the homestead general lessee; and
 - (C) Simple interest on the homestead general lessee's equity in the property at the rate of seven per cent a year.

The department may purchase the unit, property, or lease either outright, free and clear of all liens and encumbrances, or by transfer subject to an existing mortgage.

If by outright purchase, the department shall insure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the homestead general lessee.

In any purchase by transfer subject to an existing mortgage, the department shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the homestead general lessee to obtain funds for the purchase of the unit, property, or lease and any other mortgages which were created with the approval and consent of the department. In such cases, the amount to be paid to the homestead general lessee by the department shall be the difference between the above-mentioned price and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the department.

- (2) After the end of the tenth year from the date of the original homestead general lease, the department shall have the first option to purchase the improvements on the lot at a price not to exceed the appraised value of the improvements.
 - (3) For a transfer, assignment of lease, or agreement of sale involving a commercial farm, in addition to purchasing the improvements, the department may 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 the transfer, assignment of lease, or agreement of sale occurs during the ten-year restriction period.
 - (4) In a transfer, assignment of lease, or agreement of sale occurring during the ten-year restriction period, the department's purchase price of the improvements shall be the lesser of the price calculated in paragraph (1) and the value appraised in paragraph (2).
 - (5) In a transfer, assignment of lease, or agreement of sale, the department's payment to the homestead general lessee shall be the difference of the amount calculated in paragraph (1) or appraised in paragraphs (2) and (3), as the case may be, and any indebtedness to the department.
 - (6) Notwithstanding any other law to the contrary, if upon transfer, assignment of lease, or agreement of sale, 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 homestead general lessee or legal representative may be authorized by the department to dispose of the improvements under terms and conditions prescribed by the department.
- (b) 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 homestead general lessee and the cost of the appraisal shall be borne equally; or
 - (2) By not more than three disinterested appraisers of which the first shall be contracted for by the department; provided that should the

homestead general lessee fail to agree upon the value, the homestead general lessee may appoint the homestead general lessee's own appraiser. If the appraisal values are different and a settlement between the department and homestead general lessee is not possible, a third appraisal shall be performed by a disinterested appraiser appointed by the department's appraiser and the homestead general 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 homestead general lessee or legal representative shall pay for the homestead general lessee's own appraiser, and the cost of the third appraiser shall be borne equally.

(c) The restrictions in subsection (a) may be waived by the department if the homestead general lessee wishes to transfer title to the homestead general lease by devise or through the laws of descent.

§513. Approval by department required. Any subdivision of land covered by a homestead general lease and any purchase or sale of improvements erected or installed on lots covered by a homestead general lease shall be subject to the approval of the department.

§514. Receipts from homestead general leasing and other sources. All receipts from homestead general leasing, from fees and charges, from the sale of improvements authorized by this title, rental of units, and any appropriation made for homestead general leasing purposes shall be deposited into the Hawaiian home receipts fund and shall be available for purposes authorized by this title.

§515. Administration. The department shall adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to carry out the purposes of this title.

§516. Repeal date. This title is repealed five years after consent to this Act by the United States or December 31, 1995, whichever shall first occur."

SECTION 3. This Act shall take effect upon the approval of the Governor of the State of Hawaii with the consent of the United States Congress.

(Approved April 22, 1986.)