

ACT 36

S.B. NO. 1726

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. Act 112, Session Laws of Hawaii 1981, amended section 209 of the Hawaiian Homes Commission Act, 1920, as amended, and added a new section providing for the valuation and purchase of improvements at the surrender or cancellation of a homestead lease. Act 112 is subject to the consent of the U. S. Congress, but has not been submitted for approval because its provisions conflict with subsequent amendments to the Hawaiian Homes Commission Act which were submitted for approval and have been approved of by Congress. Act 112 therefore has not, and cannot, be implemented.

Under section 209 of the Hawaiian Homes Commission Act, if a homestead lease is cancelled or surrendered, or if the lessee dies without leaving a relative qualified to succeed to the lease, the department of Hawaiian home lands is required to appraise the value of the improvements and growing crops, if any, and to pay that amount to the lessee, or in the case of a deceased lessee, to the deceased's designee or estate, less taxes due and any indebtedness to the department.

In 1982, the legislature passed Act 272 which reduced the blood quantum requirement of a lessee's spouse or children in order to succeed to one-quarter Hawaiian. Act 272 was made expressly subject to congressional consent as required under section 4, of the Admission Act. In 1985, the legislature passed Act 137 which also effected certain amendments to section 209 to permit payout of net proceeds to nonqualified spouse or nonqualified children as designated by a deceased lessee. Section 209(a) of the Hawaiian Homes Commission Act, as it appears in volume 1, Hawaii Revised Statutes (1985 Repl.) is the law as passed by Act 137, Session Laws of Hawaii 1985. Act 137, section 3 provides as follows:

"SECTION 3. The amendments made by this Act shall not affect the validity of any amendments to the Hawaiian Homes Commission Act, 1920, as amended, that may be pending before the United States Congress or that may be acted upon by the Congress before or after the effective date of this Act and, upon Congress' consent to such amendments, this Act shall be amended to conform to such amendments as consented to by Congress."

On October 27, 1986, by House Joint Resolution No. 17, Congress consented to all amendments to the Hawaiian Homes Commission Act, 1920, as amended, up to June 30, 1985, except Act 112, Session Laws of Hawaii 1981.

The purpose of this Act is to repeal Act 112, Session Laws of Hawaii 1981, and to revise the manner by which the department of Hawaiian home lands shall handle the payment of the net proceeds of the value of the leasehold interest whenever a homestead lease is surrendered, cancelled, or terminated by allowing the department to use the Hawaiian home general loan fund to pay net proceeds if the Hawaiian home loan fund does not have sufficient cash. A further purpose of this Act is to provide clarity to section 209 as amended by Act 272, Session Laws of Hawaii 1982, and Act 137, Session Laws of Hawaii 1985.

SECTION 2. Act 112, Session Laws of Hawaii 1981, is repealed.

SECTION 3. 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] the lessee's interest in the tract or tracts and the improvements thereon, including growing crops and [agricultural] aquacultural stock (either on the tract or in any collective contract or program to which the lessee is a party by virtue of [his] the lessee's 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 who are (1) at least one-quarter Hawaiian, husband, wife, or children, or (2) native Hawaiian, 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] the lessee directs [his] the lessee's interest in the tract or tracts to vest upon [his] the lessee's death. 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 [the provisions of] section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended. In all cases such person or persons need not be [twenty-one] eighteen years of age. Such designation [must] shall be in writing, may 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 case of the death of any lessee, except as hereinabove provided, who has failed to specify a successor or successors as approved by the department, the department may select from only the following qualified relatives of the decedent:

- (1) Husband or wife;
- (2) If there is no husband or wife, then the children.

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 designated successor or successors, husband, wife, or children 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 as provided in this Act.

Upon the death of a lessee who has not designated a successor and who leaves a spouse not qualified to succeed to the lease or children not qualified to succeed to the lease, or 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 nonqualified spouse or the nonqualified children as the lessee shall have designated prior to the lessee's death, or to the legal representative of the deceased lessee, or 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] owed by the deceased lessee or the previous lessee. Such payments shall be made out of the Hawaiian home loan fund and shall be considered an advance therefrom [reimbursable out of payments made] and shall be repaid by the successor or successors to the tract involved. If available cash in the Hawaiian home loan fund is insufficient to make such payments, payments may be advanced from the Hawaiian home general loan fund and shall be repaid by the successor or successors to the tract involved; provided that any repayment for advances made from the Hawaiian home general loan fund shall be at the interest rate established by the department for loans made from the Hawaiian home general loan fund.

Such appraisal shall be made by three appraisers, one of [which] whom 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] mentioned.

(b) After the cancellation of a lease by the department in accordance with [the provisions of] sections 210 and 216 of this title, or the surrender of a lease by a lessee, the department is authorized to transfer the lease or to issue a new lease to any qualified Hawaiian regardless of whether or not [he] the qualified Hawaiian 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] The guardian shall be authorized to represent the successor or successors in all matters pertaining to the leasehold[:]; provided[:], that [said] the guardian, [shall,] in so representing such successor or successors, shall comply with [the provisions of] this title and the stipulations and provisions contained in the lease, except that [said] the guardian need not be a native Hawaiian as defined in section 201 of this title."

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 two revolving funds, to be known respectively as the Hawaiian home loan fund and the Hawaiian home general loan fund.

- (1) Hawaiian home loan fund. The moneys in this fund shall be available for the purposes enumerated in section 214 of this Act and for payments provided in section 209 and shall not be expended for any other purpose except as provided in subsection (b)(1) [of this section].

Any interest or other earnings arising out of investments from this fund shall be credited to and deposited into the Hawaiian home operating fund.

- (2) Hawaiian home general loan fund. Moneys appropriated by the legislature for the construction of homes but not otherwise set aside for a particular fund, for construction of replacement homes, for home repairs or additions, or for the development and operation of a farm, ranch, or aquaculture operation; moneys transferred from other funds; 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 into this fund. The moneys in the fund shall be used for purposes enumerated in section 214 of this Act[:]; and for payments provided in section 209; provided that loans to lessees for repairs to their existing homes and for additions to such homes shall not be in excess of \$15,000; provided further that, in addition to the conditions enumerated in section 215, farm loans shall be subject to the following conditions: to be eligible for a farm loan the applicant shall derive, or present an acceptable plan to derive, a major portion of the applicant's income from farming; farm loans made for the purpose of soil and water conservation shall not exceed \$20,000 and shall be for a term not to exceed ten years. Subsidies and grants or cost-sharing funds entitled and received by the lessee for soil and water conservation purposes shall be assigned to the department for the repayment of the outstanding farm indebtedness; and the lessee shall carry out recommended farm management practices approved by a qualified agricultural agency.

- (A) The department may create an account within this fund to support the guarantee of repayment of loans made by government agencies or private lending institutions to a holder of a lease under section 207(a) of this Act or license issued under section 207(c)(1)(B) of this Act.

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- (B) The department may create an account within this fund for moneys borrowed from government agencies or private lending institutions to be used for any of the purposes enumerated in section 214 of this Act. Installments of principal and that part of the interest equal to the interest charged to the department by the lender paid by the lessees on the loans made to them from this account shall be deposited into the same account; any additional interest or other earnings arising out of investments from this account shall be credited to and deposited into the Hawaiian home receipts fund."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 11, 1987.)