

ACT 197

H.B. NO. 1713

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 201 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“§201. [[]Definitions.[] (a) [That when] When used in this title:

[(1) The term “commission”] “Commission” means the Hawaiian [Homes Commission;] homes commission.

[(2) The term “public land”] “Public land” has the same meaning as defined in paragraph (3) of subdivision (a) of section 73 of the Hawaiian Organic Act[;].

[(3) The term “fund”] “Fund” means the Hawaiian home loan fund[;].

[(4) The term] “State” means the State of Hawaii[;].

[(5) The term] “Hawaiian home lands” means all lands given the status of Hawaiian home lands under the provisions of section 204 of this title[;].

[(6) The term “tract”] “Tract” means any tract of Hawaiian home lands leased, as authorized by section 207 of this title, or any portion of [such] the tract[;].

[(7) The term] “Native Hawaiian” means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778[;].

[(8) The term “irrigated pastoral land”] “Irrigated pastoral land” means land not in the description of the agricultural land but which, through irrigation, is capable of carrying more livestock the year through than first-class pastoral land.

(b) Any term defined or described in section 347 or 351 of the Revised Laws of Hawaii of 1915, except a term defined in [subdivision] subsection (a) of this section, shall, whenever used in this title, have the same meaning as given by such definition or description.”

SECTION 2. Section 204.5 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“[[§204.5.]] **Additional powers.** In addition and supplemental to the powers granted to the department by law, and notwithstanding any law to the contrary, the department may:

- (1) With the approval of the governor, undertake and carry out the development of any Hawaiian home lands available for lease under and pursuant to section 207 of this Act by assembling these lands in residential developments and providing for the construction, reconstruction, improvement, alteration, or repair of public facilities therein, including, without limitation, streets, storm drainage systems, pedestrian ways, water facilities and systems, sidewalks, street lighting, sanitary sewerage facilities and systems, utility and service corridors, and utility lines, where applicable, sufficient to adequately service developable improvements therein, sites for schools, parks, off-street parking facilities, and other community facilities;
- (2) With the approval of the governor, undertake and carry out the development of available lands for homestead, commercial, and multipurpose projects as provided in section 220.5 of this Act, as a developer under this section or in association with a developer agreement entered into pursuant to this section by providing for the construction, reconstruction, improvement, alteration, or repair of public facilities for development, including, without limitation, streets, storm drainage systems, pedestrian ways, water facilities and systems, sidewalks, street lighting, sanitary sewerage facilities and systems, utility and service corridors, and utility lines, where applicable, sufficient to adequately service developable improvements therein, sites for schools, parks, off-street parking facilities, and other community facilities;
- (3) With the approval of the governor, designate by resolution of the commission all or any portion of a development or multiple developments undertaken pursuant to this section an “undertaking” under part III of chapter 39, Hawaii Revised Statutes; and
- (4) Exercise the powers granted under section 39-53, Hawaii Revised Statutes, including the power to issue revenue bonds from time to time as authorized by the legislature.

All provisions of part III of chapter 39, Hawaii Revised Statutes, shall apply to the department and all revenue bonds issued by the department shall be issued pursuant to the provisions of that part, except these revenue bonds shall be issued in the name of the department, and not in the name of the State.

As applied to the department, the term “undertaking” as used in part III of chapter 39 shall include a residential development or a development of homestead, commercial, or multipurpose projects under this Act. The term “revenue” as used in part III of chapter 39, shall include all or any portion of the rentals derived from the leasing of Hawaiian home lands or available lands, whether or not the property is a part of the development being financed.”

SECTION 3. Section 205 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“§205. [[]Sale or lease, limitations on.[]] Available lands shall be sold or leased only [(1) in]:

- (1) In the manner and for the purposes set out in this title[, or (2) as]; or
- (2) As may be necessary to complete any valid agreement of sale or lease in effect at the time of the passage of this Act;

except that such limitations shall not apply to the unselected portions of lands from which the department has made a selection and given notice thereof, or failed so to

select and give notice within the time limit, as provided in paragraph (3) of section 204 of this title.”

SECTION 4. Section 206 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“**§206. []Other officers not to control Hawaiian home lands; exception.**[] The powers and duties of the governor and the board of land and natural resources, in respect to lands of the State, shall not extend to lands having the status of Hawaiian home lands, except as specifically provided in this title.”

SECTION 5. Section 210 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“**§210. []Cancellation of leases.**[] Whenever the department has reason to believe that any condition enumerated in section 208, or any provision of section 209, of this title has been violated, the department shall give due notice and afford opportunity for a hearing to the lessee of the tract in respect to which the alleged violation relates or to the successor of the lessee’s interest therein, as the case demands. If upon such hearing the department finds that the lessee or [his] the lessee’s successor has violated any condition in respect to the leasing of such tract, the department may declare [his] the lessee’s interest in the tract and all improvements thereon to be forfeited and the lease in respect thereto canceled, and shall thereupon order the tract to be vacated within a reasonable time. The right to the use and occupancy of the Hawaiian home lands contained in such tract shall thereupon revert in the department and the department may take possession of the tract and the improvements thereon.”

SECTION 6. Section 211 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“**§211. []Community pastures.**[] The department shall, when practicable, provide from the Hawaiian home lands a community pasture adjacent to each district in which agricultural lands are leased, as authorized by the provisions of section 207 of this title.”

SECTION 7. Section 213.5 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“**[]§213.5. [] Establishment of special fund.** A separate special fund of the department shall be established for each undertaking or part thereof financed from the proceeds of revenue bonds equally secured. Each fund shall be designated “department of Hawaiian home lands revenue bond special fund” and bear any additional designation the department deems appropriate to properly identify the fund. Any law to the contrary notwithstanding, including any provision of this Act, from and after the issuance of revenue bonds under and pursuant to the provisions of this Act and part III of chapter 39, Hawaii Revised Statutes, to finance an undertaking, all rentals, income, receipts, and other revenues derived by the department from the particular undertaking for which financing is undertaken shall be paid into the special fund established pursuant to this Act and applied in the manner and for the purposes set forth in part III of chapter 39, Hawaii Revised Statutes, and the proceedings authorizing the issuance of revenue bonds.”

SECTION 8. Section 215 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“**§215. Conditions of loans.** Except as otherwise provided in []section 213(c)[], each contract of loan with the lessee or any successor or successors to the lessee’s 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 fifty per cent of the maximum single residence loan amount allowed in Hawaii by the United States Department of Housing and Urban Development’s Federal Housing Administration (FHA), for the development and operation of a farm, ranch, or aquaculture operation shall not exceed \$50,000, except that when loans are made to an agricultural or aquacultural 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 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 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, semiannual, 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 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 off 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(a). 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] the borrower's 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] the borrower's 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 9. Section 217 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“§217. [[E]jectment, when[:]; loan to new lessee for improvements.[]]

In case the lessee or borrower or the successor to [his] an interest in the tract, as the case may be, fails to comply with any order issued by the department under the provisions of section 210 or 216 of this title, the department may [(1) bring]:

- (1) Bring action of ejectment or other appropriate proceedings[, or (2) invoke]; or
- (2) Invoke the aid of the circuit court of the State for the judicial circuit in which the tract designated in the department's order is situated. Such court may thereupon order the lessee or [his] the lessee's successor to comply with the order of the department. Any failure to obey the order of the court may be punished by it as contempt thereof. Any tract forfeited under the provisions of section 210 or 216 of this title may be

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again leased by the department as authorized by the provisions of section 207 of this title, except that the value, in the opinion of the department, of all improvements made in respect to such tract by the original lessee or any successor to [his] an interest therein shall constitute a loan by the department to the new lessee. Such loan shall be subject to the provisions of this section and sections 215, except paragraph (1), and 216 to the same extent as loans made by the department from the Hawaiian loan fund.”

SECTION 10. Section 227 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“~~[[§227.]]~~ **Enterprise zones.** The department is authorized to participate in any federal or state program that permits the establishment of one or more enterprise zones on available lands, provided that participation in the program will result in economic benefits to native Hawaiians. The administration of the program shall be governed by rules adopted by the department in accordance with chapter 91, Hawaii Revised Statutes.”

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved June 16, 1997.)