

ACT 187

H.B. NO. 1015

A Bill for an Act Relating to Obligations of the Department of Hawaiian Home Lands Trust Fund.

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

PART I

SECTION 1. The purpose of this part is to establish a two-year pilot project to enable the department of Hawaiian home lands to begin housing and other projects without having the full amount of the cost of the projects on hand at the start of the project.

SECTION 2. Section 37-40, Hawaii Revised Statutes, is amended to read as follows:

“§37-40 Exceptions; trust funds. Except as to administrative expenditures, and except as otherwise provided by law, expenditures from trust funds may be made by any department or establishment without appropriation or allotment; provided that no expenditure shall be made from and no obligation shall be incurred against any trust fund in excess of the amount standing to the credit of the fund or for any purpose for which the fund may not lawfully be expended[-], except that obligations in excess of the amount standing to the credit of any trust fund established under the Hawaiian Homes Commission Act, 1920, as amended, may be incurred, subject to conditions that the director of finance believes to be reasonably necessary, when the director of finance determines that:

- (1) Moneys to pay the obligation made in excess of the amount standing to the credit of the trust fund are expected to be received by the trust fund within a reasonable time period; and
- (2) With the approval of the governor, such action is in the best interests of the State and will not impede or hamper the financial obligations of the State.

No suit for damages, including an action for breach of trust under chapter 673 or any other law, may be brought against the State, the department of Hawaiian home lands, the Hawaiian homes commission, the governor, the director of finance, or any other state agency or official for relying or refusing to rely on this section to permit expenditures in excess of the amount standing to the

credit of the trust fund established under the Hawaiian Homes Commission Act, 1920, as amended.

Nothing in sections 37-31 to 37-41 shall require any trust fund established pursuant to law be reappropriated annually.”

SECTION 3. Section 103D-309, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Contracts awarded pursuant to section 103D-302, 103D-303, or 103D-306, shall neither be binding nor have any force and effect of law unless the comptroller, the director of finance of a county, or the respective chief financial officers of the department of education, the judiciary, or the legislative branches of the State or county, as the case may be, endorses thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; provided that if the contract is a multi-term contract, the comptroller, director of finance, or chief financial officer shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract; provided further that the administrator of the state procurement office shall attest in writing to any recommendation or solicitations. This section shall not apply to any contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded, or to any contract for which consideration is in kind or forbearance, or to any contract awarded pursuant to section 103D-306 that is a one-time payment through a purchase order[-], or to any contractual obligation approved by the governor under section 37-40.”

SECTION 4. The department of Hawaiian home lands shall submit an interim report to the legislature no later than twenty days prior to the convening of the regular session of 2011 and a final report to the legislature no later than twenty days prior to the convening of the regular session of 2012, including in the interim and final reports:

- (1) The number of instances and extent of obligations it has incurred in excess of the amount standing to the credit of each trust fund established under the Hawaiian Homes Commission Act, 1920, as amended, pursuant to the provisions of this part;
- (2) The name, location, and description of any housing projects, including the number and types of housing units, and the projected delivery date of the units in each project, that have benefitted from the obligations incurred in paragraph 1; and
- (3) Any other information that it may deem to be relevant;

during the period from the effective date of this Act to, and including, the date of the filing of the interim and final reports required by this section.

PART II

SECTION 5. Pursuant to section 101, Hawaiian Homes Commission Act, 1920, as amended, the Hawaiian home lands are intended to establish “a permanent land base for the benefit and use of native Hawaiians, upon which they may live, farm, ranch, and otherwise engage in commercial or industrial or any other activities as authorized in this Act.” The legislature finds that commercial and multipurpose projects authorized under this part to raise funds to enable the department of Hawaiian home lands to operate and build the infra-

structure necessary for the native Hawaiian beneficiaries to make the homestead lands their home, are well-intentioned. However, while these revenue-raising commercial and multipurpose projects benefit the native Hawaiian beneficiaries indirectly, there are times when commercial and multipurpose projects result in short- and long-term negative consequences for the beneficiaries that are not adequately addressed.

The legislature finds that setting aside a portion of those commercial and multipurpose project revenues to be used for the benefit of native Hawaiian beneficiaries, beneficiary-controlled organizations, and homestead community associations is consistent with the purpose and intent of the Hawaiian Homes Commission Act, 1920, as amended, and will aid in ensuring that native Hawaiian beneficiaries, either directly or through native Hawaiian community organizations, such as beneficiary-controlled organizations, and homestead community associations, benefit from these commercial and multipurpose projects.

The purpose of this part is to:

- (1) Direct the department of Hawaiian home lands to establish a process for consulting with beneficiaries prior to awarding leases for commercial and multipurpose projects;
- (2) Authorize the extension of commercial and multipurpose project leases to make improvements to the property;
- (3) Set aside fifteen per cent of all lease revenues from extensions of commercial and multipurpose project leases to be deposited into the native Hawaiian rehabilitation fund to be used for the benefit of native Hawaiian beneficiaries, beneficiary-controlled organizations, and homestead community associations;
- (4) Establish reporting requirements regarding leases of Hawaiian home lands for commercial and multipurpose projects; and
- (5) Establish reporting requirements regarding the expenditures of the native Hawaiian rehabilitation fund.

SECTION 6. The Hawaiian Homes Commission Act, 1920, as amended, is amended by adding a new section to be appropriately designated and to read as follows:

“§ Commercial and multipurpose project leases; extension of term. (a) Notwithstanding any law to the contrary, the procedures under this section shall apply to commercial and multipurpose projects under section 204 or 220.5, and shall be in addition to any other procedures required by law.

(b) Prior to the disposition of available land through a request for proposals for an initial lease for a commercial or multipurpose project, the department shall consult with beneficiaries of the trust in the master planning of the available lands. The process of beneficiary consultation shall be as established by the department and shall:

- (1) Engage beneficiaries and beneficiary-serving organizations;
- (2) Provide for the timely dissemination of information about the proposed project and the gathering of input; and
- (3) Allow for a reasonable time and reasonable access to relevant information for evaluation and consideration.

(c) Notwithstanding section 220.5(d)(1), the department may extend the term of a lease of Hawaiian home lands for commercial or multipurpose projects and with the approval by the department of a written agreement proposed by the lessee, or the lessee and developer, to:

- (1) Make improvements to the leased property; or
- (2) Obtain financing for the improvement of the leased lands.

The extension of the lease pursuant to this section shall be based upon the improvements made or to be made, shall be no longer than twenty years, and shall be granted only once.

(d) Before the written agreement is approved, the lessee, or the lessee and developer, shall submit to the department the plans and specifications for the proposed development. The department shall review the plans, specifications, and the written agreement and determine:

- (1) Whether the development is of sufficient value and meets the priorities of the commission to justify an extension of the lease;
- (2) The estimated time needed to complete the improvements and expected date of completion of the improvements; and
- (3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the department, and percentage rent where gross receipts exceed a specified amount.

The commission shall adopt and publish a policy pursuant to chapter 91, Hawaii Revised Statutes, which shall be used to evaluate any request for a lease extension, including the terms of the lease, prospective payments, and renegotiation, and shall be used by the commission for any final determination on a lease extension request.

(e) Upon the extension of a lease term pursuant to subsection (c), the department shall deposit fifteen per cent of all revenues generated from the lease from the time the lease extension is granted, into the native Hawaiian rehabilitation fund under section 213(i).

(f) The department shall submit an annual report to the legislature and the United States Department of the Interior, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2011, of all leases of available lands for commercial and multipurpose projects, including the following:

- (1) The total number of leases;
- (2) Acreage of each lease;
- (3) Terms of each lease;
- (4) Whether the lessee is a beneficiary or beneficiary controlled organization; and
- (5) Whether the lease was for retained available lands not required for leasing under section 207(a), and was negotiated with a native Hawaiian, or organization or association owned or controlled by native Hawaiians, under section 204(a)(2).

(g) As used in this section, "improvements" means any renovation, rehabilitation, reconstruction, or construction of the property, including minimum requirements for off-site and on-site improvements."

SECTION 7. Section 213, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (i) to read as follows:

"(i) Native Hawaiian rehabilitation fund. Pursuant to Article XII, Section 1, of the [State] Hawaii Constitution, thirty [~~percent~~] per cent of the state receipts, derived from lands previously cultivated as sugarcane lands under any other provision of law and from water licenses, and fifteen per cent of all revenues from lease agreements granted lease extensions pursuant to section _____, shall be deposited into this fund. The department shall use this money for the rehabilitation of native Hawaiians, native Hawaiian families, and Hawaiian homestead communities, which shall include the educational, economic, political, social, and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved and perpetuated.

The native Hawaiian rehabilitation fund shall be subject to the following conditions:

- (1) All moneys received by the fund shall be deposited into the state treasury and kept separate and apart from all other moneys in the state treasury;
- (2) The director of finance shall serve as a custodian of the fund. All payments from the fund shall be made by the director of finance only upon vouchers approved by the commission;
- (3) The commission shall develop guidelines for the investment of moneys in the fund;
- (4) The commission may invest and reinvest in investments authorized by chapter 88, Hawaii Revised Statutes. The commission may hold, purchase, sell, assign, transfer, or dispose of any securities and investments in which any of the moneys shall have been invested, as well as the proceeds of such investments; and
- (5) The commission may pay out of any of the moneys held for investment, a reasonable amount to any person for supplying investment advisory or consultive services; and to meet such other costs incident to the prudent investment of moneys as the commission may approve.

Any payment of principal, interest, or other earnings arising out of the loan or investment of money from this fund shall be credited to and deposited into this fund.

Sections 214, 215, 216, and 217 shall not apply to administration of this fund. The department is authorized to adopt rules under chapter 91, Hawaii Revised Statutes, necessary to administer and carry out the purposes of this fund.

The department shall submit an annual report to the legislature and the United States Department of the Interior, no later than twenty days prior to the convening of each regular session of the legislature, beginning with the regular session of 2011, on expenditures from this fund that are derived from the amounts deposited from commercial and multipurpose project lease extensions pursuant to section (e), including the amount expended, the recipient of the moneys expended, and the purpose of the expenditure.

SECTION 8. The Hawaiian homes commission shall adopt and publish the policy described in section 6 of this Act pursuant to chapter 91, Hawaii Revised Statutes, to evaluate any request for a lease extension, including the terms of the lease, prospective payments, and renegotiation, and for any final determination on a lease extension request no later than October 31, 2010.

SECTION 9. All lease revenues from commercial and multipurpose project leases collected by the department of Hawaiian home lands to which section , Hawaiian Homes Commission Act, 1920, as amended, applies shall be deposited into the Hawaiian home lands trust fund established under section 213.6, Hawaiian Homes Commission Act, 1920, as amended; provided that the department of Hawaiian home lands shall deposit fifteen per cent of those revenues that are derived from the amounts deposited from commercial and multipurpose project lease extensions pursuant to section (e), Hawaiian Homes Commission Act, 1920, as amended, into the native Hawaiian rehabilitation fund established under section 213(i), Hawaiian Homes Commission Act, 1920, as amended.

SECTION 10. The provisions of the amendments made by this part to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable, and if any section, sentence, clause, or phrase, 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 effectiveness of the remainder of these amendments or the application thereof shall not be affected.

PART III

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 12. This Act shall take effect on July 1, 2010; provided that on June 30, 2012, part I of this Act shall be repealed and sections 37-40 and 103D-309(a), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.

(Approved July 2, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.