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# A BILL FOR AN ACT

RELATING TO LAND USE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 171-99, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§171-99 Continuation of rights under existing homestead**  
4 **leases, certificates of occupation, right of purchase leases,**  
5 **and cash freehold agreements.** (a) Issuance of land patents to  
6 occupier or lessee of homestead lands. A fee simple patent  
7 shall be issued to every existing occupier under a certificate  
8 of occupation issued heretofore, and to every lessee under a  
9 nine hundred and ninety-nine year homestead lease issued  
10 heretofore, of public lands, where the lands have been improved  
11 under the certificate or lease~~[7]~~ or have been used as a place  
12 of residence by the occupier or lessee for an aggregate  
13 continuous period of not less than ten years~~,~~ upon payment to  
14 the board ~~[of land and natural resources]~~ of a ~~[fair market]~~  
15 price~~[7]~~ equal to the real property tax assessed value of the  
16 land, disregarding the value of the improvements made by the  
17 occupier or lessee~~[7, which price shall be determined by~~  
18 ~~appraisal as provided for in this chapter]~~; provided that the



1 board may exclude from these patents areas required as roadways  
2 to other lots.

3 (b) Issuance of patent, lessee of right of purchase lease.

4 The lessee of any existing right of purchase lease, at a time  
5 and under conditions that are contained in the lease, shall be  
6 entitled to a land patent from the board conveying to the lessee  
7 a fee simple title to the land described in the lessee's lease  
8 upon the payment of the [~~fair market price of the land as~~  
9 ~~determined by appraisal as provided for in this chapter;~~] real  
10 property tax assessed value of the land without improvements;  
11 provided that the lessee has reduced to cultivation twenty-five  
12 per cent of the premises and has resided thereon not less than  
13 two years and has substantially performed all other conditions  
14 of the lessee's lease.

15 (c) Cash freeholds, agreement, patent, conditions. At the  
16 end of three years from the date of the payment of the first  
17 installment, the holder of a freehold agreement is entitled to a  
18 land patent for the premises described [~~therein,~~] in the  
19 freehold agreement, if the following conditions, in addition to  
20 those set forth [~~herein,~~] in the freehold agreement, have been  
21 substantially performed:



- 1           (1) Payment of the balance of the purchase price in equal  
2           installments, in one, two, and three years,  
3           respectively, from the date of the freehold agreement  
4           with interest annually at the rate of four per cent;  
5           provided that the freeholder may pay the installment  
6           before it is due and [~~thereby~~] stop the corresponding  
7           interest;
- 8           (2) Cultivation of not less than twenty-five per cent of  
9           the area of the premises, and the planting and care of  
10          not less than an average of ten timber, shade, or  
11          fruit trees per acre, if agricultural land, at any one  
12          time before the end of the third year, or fencing in  
13          the premises if pastoral land within that time;  
14          provided that if the premises are classed as pastoral-  
15          agricultural land, the foregoing alternative  
16          conditions shall apply respectively to the two kinds  
17          of land;
- 18          (3) Maintenance by the freeholder of the freeholder's home  
19          on the premises from the end of the first year to the  
20          end of the third year;
- 21          (4) Conditions for the prevention of waste, the planting  
22          of trees or the protection of trees growing or to be



1           planted on the premises, or for the destruction of  
2           vegetable pests that may be on the premises or the  
3           prevention of the future introduction of pests  
4           thereon; and

5           (5) Payment of all taxes that may be due on account of the  
6           premises.

7           The holder of a freehold agreement shall allow the land  
8           agents to enter and examine the premises at all reasonable times  
9           to see that the conditions are being performed. The holder  
10          shall not assign or sublet, conditionally or otherwise, the  
11          holder's interest or any part thereof, under the freehold  
12          agreement, without the written consent of the board indorsed on  
13          the agreement; and provided further that [~~freeholders~~] a  
14          freeholder having the whole interest in a freehold agreement, at  
15          any time when all the conditions thereof to be performed by the  
16          freeholder up to that time shall have been substantially  
17          performed, may surrender to the government the interest by  
18          delivery of the freehold agreement to the land agent, with the  
19          intention to surrender the interest clearly indorsed thereon and  
20          signed by [~~them~~] the freeholder and duly attested. The  
21          surrender shall release the [~~freeholders~~] freeholder from all  
22          further duty or performance of the conditions of the instrument



1 surrendered[~~— But~~]; provided that no surrender shall be  
2 permitted if any [~~freeholders are~~] freeholder is under the age  
3 of eighteen years, unless the [~~minors are~~] minor is represented  
4 by statutory guardians; and provided further that any freeholder  
5 over the age of eighteen may assign the freeholder's interest to  
6 the freeholder's cotenants.

7 (d) Right of purchase lease; termination, forfeiture, or  
8 surrender. Upon the termination of a right of purchase lease by  
9 lapse of time, or upon the forfeiture or surrender of the lease  
10 or a freehold agreement, the board, in its discretion and within  
11 the limit of its authority, may open the premises or any part  
12 thereof for disposition in the manner or for the uses as  
13 provided in this chapter. Before the disposition, the fair  
14 market value thereof shall be established by appraisal. [~~The~~  
15 ~~value attributable to the improvements in the appraisal shall be~~  
16 ~~paid to the surrendering lessees or freeholders, upon resale of~~  
17 ~~the premises, and the director of finance shall pay the amount~~  
18 ~~of the valuation upon the requisition of the board out of the~~  
19 ~~funds.] Upon resale of the premises and requisition of the  
20 board, the director of finance shall pay to the surrendering  
21 lessee or freeholder from the proceeds of the sale the appraised  
22 value of the improvements.~~



1 (e) Assignment; certificate of occupation or homestead  
2 lease. No existing certificate of occupation or existing  
3 homestead lease, or fractional interest thereof, shall be  
4 transferable or assignable except by conveyance, devise,  
5 bequest, or intestate succession and with the prior approval of  
6 the board [~~of land and natural resources~~]; provided that  
7 transfer or assignment by conveyance, devise, or bequest shall  
8 be limited to a member or members of the occupier's or lessee's  
9 family.

10 For the purposes of this section, "family" means the  
11 spouse, reciprocal beneficiary, children, parents, siblings,  
12 grandparents, grandchildren, nieces, nephews, a parent's  
13 siblings, children of a parent's siblings, and grandchildren of  
14 a parent's siblings, of the occupier or lessee.

15 In the event of intestate succession, the interest of the  
16 decedent shall vest in relations of the decedent in the  
17 following order:

- 18 (1) In the widow or widower;  
19 (2) If there is no widow or widower, then in the children;  
20 (3) If there are no children, then in the widows or  
21 widowers of the children;



- 1        (4) If there are no widows or widowers of the children,  
2        then in the grandchildren;
- 3        (5) If there are no grandchildren, then in the parents or  
4        surviving parent;
- 5        (6) If there is no surviving parent, then in the sisters  
6        and brothers;
- 7        (7) If there are no sisters or brothers, then in the  
8        widows or widowers of the sisters and brothers;
- 9        (8) If there are no widows or widowers of the sisters and  
10       brothers, then in the nieces and nephews;
- 11       (9) If there are no nieces or nephews, then in the widows  
12       or widowers of the nieces and nephews;
- 13       (10) If there are no widows or widowers of the nieces and  
14       nephews, then in the grandchildren of the sisters and  
15       brothers; and
- 16       (11) If there are no grandchildren of the sisters and  
17       brothers, then in the State.

18       All the successors shall be subject to the performance of  
19 the unperformed conditions of the certificate of occupation or  
20 the homestead lease.

21       (f) Option of cotenant to compel others to buy or sell.

22 In case two or more persons become cotenants under any existing



1 right of purchase lease, certificate of occupation, or homestead  
2 lease by inheritance or otherwise, any one or more of the  
3 persons, less than the whole number, may file in the office of  
4 the land agent an offer to the remainder of the persons to buy  
5 their interest in the premises or to sell them their own  
6 interest therein at a stated price, according to the proportion  
7 of the respective interest in question, and may deposit with the  
8 land agent the amount of the offered price in money, with a fee  
9 of \$10. The land agent shall thereupon notify the persons to  
10 whom the offer is made of the nature of the offer and order them  
11 to file with the land agent their answer within sixty days  
12 whether they will buy or sell according to the offer. If the  
13 persons to whom the offer is made file with the land agent,  
14 within sixty days of the time of their receiving the  
15 notification, their answer stating that they will sell their  
16 interest according to the terms of the offer, the land agent  
17 shall indorse the fact of the sale with the amount of the  
18 consideration on the lease and pay to the persons the amount of  
19 the consideration deposited with the land agent according to  
20 their individual interest; and the interest of the persons shall  
21 thereupon vest in the persons making the offer. The fact of the





1 transfer shall be properly recorded in the official records of  
2 the land agent and indorsed upon the lease held by the lessee.

3 If, however, the persons to whom the offer is made fail to  
4 answer within sixty days from the time of their being notified  
5 of the offer or within sixty days from the time the notice of  
6 the offer [+]is[+] mailed to their last known place or places of  
7 abode, or [~~shall~~] answer within sixty days that they will buy  
8 the interest of the persons making the offer on the terms  
9 offered, but fail within sixty days after the notification to  
10 deposit the amount representing the value of the interest  
11 according to the terms offered, their interest shall vest in the  
12 persons making the offer, and the amount of the consideration  
13 shall be paid by the land agent [~~of~~] to them individually or  
14 their respective representatives upon application. In such  
15 case, the fact of the transfer shall be recorded and indorsed as  
16 above provided.

17 In the event that any funds held by the land agent  
18 hereunder are not paid to the persons to whom the funds are  
19 properly payable[~~7~~] because of the inability of the land agent  
20 to locate those persons, the funds, after the expiration of one  
21 year, shall be deposited in the department of budget and finance  
22 [~~of the State~~] and there abide the claim of any person thereto



1 lawfully entitled; provided that no claim to the funds shall be  
2 allowed unless the claim is made within five years after the  
3 deposit. Payment of any claim duly filed may be made if the  
4 department of budget and finance and the board concur in finding  
5 the claim valid and proper, but if the claimant fails to obtain  
6 concurrency of the department of budget and finance and the  
7 board within sixty days of the filing of the claimant's claim,  
8 the claimant may present a petition to the circuit court of the  
9 first judicial circuit in that behalf, notice [~~whereof~~] of which  
10 shall be given to the attorney general, who may appear and  
11 defend on behalf of the State, and if the court renders a  
12 judgment in favor of the claimant, the department of budget and  
13 finance shall pay the amount due without interest.

14 But if the persons to whom the offer is made, within sixty  
15 days from the time of the notification, [~~shall~~] make answer to  
16 the land agent that they will buy the interest of the offering  
17 parties and [~~shall~~] deposit within sixty days with the land  
18 agent the amount required for the purpose according to the terms  
19 of the offer, the land agent shall indorse and record the fact  
20 of the sale, as above provided, and pay to the offering parties  
21 the amount according to their individual interest; and the  
22 interest of the offering parties shall thereupon vest in the



1 answering parties. In such case, the consideration money  
2 deposited by the offering parties shall be returned to them.

3 (g) Forfeiture; existing certificate of occupation or  
4 homestead lease. The violation of any of the conditions of any  
5 existing certificate of occupation or homestead lease shall be  
6 sufficient cause for the board, upon failure of the occupier or  
7 lessee within a reasonable period of time to remedy the default,  
8 after notice thereof in the manner provided in section 171-20,  
9 to take possession of the demised premises without demand or  
10 previous entry, with or without legal process, and thereby,  
11 subject to section 171-21, terminate the estate created.

12 (h) Forfeiture; cash freeholds. In the case of default in  
13 the payment of any of the installments due on any cash freehold  
14 agreement for thirty days after the installments are due[7] or  
15 failure of performance of any other conditions, the board may  
16 take possession of the premises, upon failure of the freeholder  
17 within a reasonable period of time to remedy the default, after  
18 notice thereof in the manner provided in section 171-20, without  
19 demand or previous entry, with or without legal process, and  
20 thereby, subject to section 171-21, terminate the estate  
21 created.



1 (i) Mortgage of homestead leases. Whenever an existing  
2 homestead lease is mortgaged pursuant to section 171-22, the  
3 consent to mortgage from the board [~~of land and natural~~  
4 ~~resources~~] may contain a condition exempting the lease from  
5 subsection (e) for the duration of the mortgage.

6 (j) Reinstatement. A person who has continually occupied  
7 land while holding the land under a certificate of occupation,  
8 nine hundred and ninety-nine year homestead lease, right of  
9 purchase lease, or cash freehold agreement, that became a  
10 tenant-at-will on the property when the certificate, lease, or  
11 agreement was canceled, terminated, or forfeited due to the  
12 nonpayment of an outstanding arrearage may submit an application  
13 to the board for reinstatement of the certificate of occupation,  
14 nine hundred and ninety-nine year homestead lease, right of  
15 purchase lease, or cash freehold agreement. The board in its  
16 discretion may reinstate the certificate of occupancy, nine  
17 hundred ninety-nine year homestead lease, right of purchase  
18 lease, or cash freehold agreement:

19 (1) Provided that the outstanding arrearage is cured to  
20 the satisfaction of the board; and

21 (2) Under terms and conditions that the board may  
22 prescribe, including but not limited to any repayment



1           period, term, encumbrance, designated tenant, tenancy,  
2           rent, or other consideration; and  
3 reinstatements as provided by this subsection shall no longer be  
4 available after December 31, 2007."

5           SECTION 2. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7           SECTION 3. This Act shall take effect upon its approval;  
8 provided that subsection (j) added to section 171-99 by section  
9 1 of this Act shall be repealed on December 31, 2007.



**Report Title:**

999-Year Homestead Leases

**Description:**

Gives BLNR up to 12/31/07, the authorization to reinstate a 999-year homestead lease, certificates of occupancy, right of purchase leases, and cash freehold agreements that were cancelled due to nonpayment of arrearages; provided, among other things, that the tenant-at-will has continually occupied the land and has cured all arrearages. (SB1015 HD1)

