

JAN 26 2009

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# A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

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

1           SECTION 1. Section 204 of the Hawaiian Homes Commission  
2 Act, 1920, as amended, is amended by amending subsection (a) to  
3 read as follows:

4           "(a) Upon the passage of this Act, all available lands  
5 shall immediately assume the status of Hawaiian home lands and  
6 be under the control of the department to be used and disposed  
7 of in accordance with the provisions of this Act, except that:

8           (1) In case any available land is under lease by the  
9           Territory of Hawaii, by virtue of section 73 of the  
10           Hawaiian Organic Act, at the time of the passage of  
11           this Act, such land shall not assume the status of  
12           Hawaiian home lands until the lease expires or the  
13           board of land and natural resources withdraws the  
14           lands from the operation of the lease. If the land is  
15           covered by a lease containing a withdrawal clause, as  
16           provided in section 73(d) of the Hawaiian Organic  
17           Act, the board of land and natural resources shall  
18           withdraw such lands from the operation of the lease

1 whenever the department gives notice to the board that  
2 the department is of the opinion that the lands are  
3 required by it for the purposes of this Act; and such  
4 withdrawal shall be held to be for a public purpose  
5 within the meaning of that term as used in section  
6 73(d) of the Hawaiian Organic Act.

7 (2) Any available land, including lands selected by the  
8 department out of a larger area, as provided by this  
9 Act, not leased as authorized by section 207(a) of  
10 this Act, may be returned to the board of land and  
11 natural resources as provided under section 212 of  
12 this Act, or may be retained for management by the  
13 department. Any Hawaiian home lands general lease  
14 issued by the department after June 30, 1985, shall  
15 contain a withdrawal clause allowing the department to  
16 withdraw the land leased at any time during the term  
17 of the lease for the purposes of this Act.

18 In the management of any retained available lands  
19 not required for leasing under section 207(A), the  
20 department may dispose of those lands or any  
21 improvements thereon to the public, including native  
22 Hawaiians, on the same terms, conditions,

1 restrictions, and uses applicable to the disposition  
2 of public lands in chapter 171, Hawaii Revised  
3 Statutes; provided that ~~[the]~~:

4 (A) The department may not sell or dispose of such  
5 lands in fee simple except as authorized under  
6 section 205 of this Act; ~~[provided further that~~  
7 the]

8 (B) The department is expressly authorized to  
9 negotiate, prior to negotiations with the general  
10 public, the disposition of Hawaiian home lands or  
11 any improvements thereon to a native Hawaiian, or  
12 organization or association owned or controlled  
13 by native Hawaiians, for commercial, industrial,  
14 or other business purposes, in accordance with  
15 the procedures set forth in chapter 171, Hawaii  
16 Revised Statutes[-]; and

17 (C) Notwithstanding the provisions of sections 171-  
18 36(a)(2) and 171-95(a)(2), Hawaii Revised  
19 Statutes, the term of any existing lease or lease  
20 hereafter entered into pursuant to this section,  
21 including any extensions or renewals thereof,  
22 shall not exceed ninety-nine years in the

1           aggregate."

2           (3) The department, with the approval of the  
3           Secretary of the Interior, in order to  
4           consolidate its holdings or to better effectuate  
5           the purposes of this Act, may exchange the title  
6           to available lands for land, privately or  
7           publicly owned, of an equal value. All lands so  
8           acquired by the department shall assume the  
9           status of available lands as though the [~~land~~  
10          lands were originally designated as available  
11          lands under section 203 of this Act, and all  
12          lands so conveyed by the department shall assume  
13          the status of the land for which it was  
14          exchanged. The limitations imposed by section  
15          73(1) of the Hawaiian Organic Act and the land  
16          laws of Hawaii as to the area and value of land  
17          that may be conveyed by way of exchange shall not  
18          apply to exchanges made pursuant hereto. No such  
19          exchange of land publicly owned by the State  
20          shall be made without the approval of two-thirds  
21          of the members of the board of land and natural  
22          resources. For the purposes of this paragraph,

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1                   lands "publicly owned" means land owned by a  
2                   county or the State or the United States."

3           SECTION 2. Section 220.5 of the Hawaiian Homes Commission  
4 Act, 1920, as amended, is amended by amending subsection (d) to  
5 read as follows:

6           "(d) ~~[Any]~~ The term of any project developer agreement  
7 entered into pursuant to this section may ~~[provide for options~~  
8 ~~for renewal of the term of the project developer agreement;]~~ be  
9 extended or renewed; provided that:

10           (1) The term of any one project developer agreement,  
11           including any extensions or renewals thereof, whether  
12           such project developer agreement is existing or  
13           hereafter entered into pursuant to this section, shall  
14           not exceed ~~[sixty-five]~~ ninety-nine years~~[+]~~ in the  
15           aggregate;

16           (2) Any lands disposed of under a project developer  
17           agreement shall be subject to withdrawal at any time  
18           during the term of the agreement, with reasonable  
19           notice; and

20           (3) The rental shall be reduced in proportion to the value  
21           of the portion withdrawn and the developer shall be  
22           entitled to receive from the department the



**Report Title:**

Hawaiian Homes Commission Act; General Lease

**Description:**

Proposes to extend from 65 to 99 years the maximum aggregate term of general lease and project developer agreements that are for uses other than homesteading programs, including existing agreements.

SB 911

JUSTIFICATION SHEET

DEPARTMENT: Hawaiian Home Lands

TITLE: A BILL FOR AN ACT RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

PURPOSE: To extend from 65 to 99 years the maximum aggregate term of general lease and project developer agreements that are for uses other than homesteading programs, including existing agreements, the initial term, and any extensions.

MEANS: Amend sections 204(a) and 220.5(d) of the Hawaiian Homes Commission Act, 1920.

JUSTIFICATION: Over the past several years, the Department of Hawaiian Home Lands (DHHL) has worked to accelerate homesteading opportunities for native Hawaiians. DHHL has further strived towards operational self sufficiency and to become less dependent on tax-payer support. Income generated through non-homestead general leases has been critical for DHHL to achieve these goals and continuity of these revenues is crucial. DHHL's proposal to extend the maximum lease term from 65 up to 99 years allows for greater revenue security and supports small business and community development.

DHHL utilizes less than four percent of its total landholdings for commercial, industrial and general leases. Approximately two-thirds of DHHL's commercial and industrial leases are beyond the midpoint of their lease terms. After 20 to 30 years, and as a result of the normal wear and tear over time, major improvements and upgrades are needed to keep building facilities functioning safely and viably. Tenants encounter difficulty in making the re-investment as lender underwriting criteria for securing the necessary financing require longer lease terms. The



current lease terms are inadequate and limit DHHL's ability to secure reinvestment as well as to attract greater interest in commercial and industrial lease properties so it can carry out its mission of providing home ownership opportunities for native Hawaiians. With global recession upon us, and the current tumultuous state of the markets, investors are now requiring a greater degree of certainty. This certainty is best achieved with extended or longer lease terms. This amendment will significantly increase the value of DHHL's properties and provide a better level of certainty from which DHHL can better serve its beneficiaries.

This amendment also directly benefits DHHL's respective homestead community-based organizations. Several of them have received or are in the process of receiving an income generating property such as the Nanakuli Village Center (Nanakuli Hawaiian Homestead Community Association), the Papakolea Community Center (Papakolea Hawaiian Homestead Association), the Waimanalo Community Center (Waimanalo Hawaiian Homestead Association), the proposed Kuhio Heritage Community Center, Kapolei, Oahu (Maluohai Hawaiian Homestead Association) and the proposed multi-purpose community center in Laiopua, Hawaii (Laiopua 2020). The income generated from these commercial parcels will provide a consistent stream of revenues upon which the association can sustain its community center and the myriad of social welfare services it provides to the community.

Impact on the public: The longevity of extended lease terms supports small business and leverages community development and sustainability. Projects undertaken by the homestead community based organizations will serve not only native Hawaiians, but the broader community in which it is situated as well.

Impact on the department and other agencies:  
Moves DHHL towards becoming more self-  
sufficient in terms of income generation to  
support its operations while becoming less  
reliant on general funding by taxpayers.

GENERAL FUND:           None.  
OTHER FUNDS:           None.  
PPBS PROGRAM  
DESIGNATION:           HHL 602  
OTHER AFFECTED  
AGENCIES:               None.  
EFFECTIVE DATE:        Upon approval.