
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 208, Hawaiian Homes Commission Act,
2 1920, as amended, is amended to read as follows:

3 "§208. **Conditions of leases.** Each lease made under the
4 authority granted the department by section 207 of this Act, and
5 the tract in respect to which the lease is made, shall be deemed
6 subject to the following conditions, whether or not stipulated
7 in the lease:

8 (1) The original lessee shall be a native Hawaiian, not
9 less than eighteen years of age. In case two lessees
10 either original or in succession marry, they shall
11 choose the lease to be retained, and the remaining
12 lease shall be transferred, quitclaimed, or canceled
13 in accordance with the provisions of succeeding
14 sections.

15 (2) The lessee shall pay a rental of \$1 a year for the
16 tract and the lease shall be for a term of ninety-nine
17 years; except that the department may extend the term
18 of any lease; provided that the approval of any



1 extension shall be subject to the condition that the
2 aggregate of the initial ninety-nine year term and any
3 extension granted shall not be for more than one
4 hundred ninety-nine years.

5 (3) The lessee may be required to occupy and commence to
6 use or cultivate the tract as the lessee's home or
7 farm or occupy and commence to use the tract for
8 aquaculture purposes, as the case may be, within one
9 year after the commencement of the term of the lease.

10 (4) The lessee thereafter, for at least such part of each
11 year as the department shall prescribe by rules, shall
12 occupy and use or cultivate the tract on the lessee's
13 own behalf.

14 (5) [The] Except as provided in paragraph (9), the lessee
15 shall not in any manner transfer to, or otherwise hold
16 for the benefit of, any other person or group of
17 persons or organizations of any kind, except a native
18 Hawaiian or Hawaiians, and then only upon the approval
19 of the department, or agree so to transfer, or
20 otherwise hold, the lessee's interest in the tract;
21 except that the lessee, with the approval of the
22 department, also may transfer the lessee's interest in



1 the tract to the following qualified relatives of the
2 lessee who are at least one-quarter Hawaiian: husband,
3 wife, child, or grandchild. A lessee who is at least
4 one-quarter Hawaiian who has received an interest in
5 the tract through succession or transfer may, with the
6 approval of the department, transfer the lessee's
7 leasehold interest to a brother or sister who is at
8 least one-quarter Hawaiian. Such interest shall not,
9 except in pursuance of such a transfer to or holding
10 for or agreement with a native Hawaiian or Hawaiians
11 or qualified relative who is at least one-quarter
12 Hawaiian approved of by the department or for any
13 indebtedness due the department or for taxes or for
14 any other indebtedness the payment of which has been
15 assured by the department, including loans from other
16 agencies where such loans have been approved by the
17 department, be subject to attachment, levy, or sale
18 upon court process. The lessee shall not sublet the
19 lessee's interest in the tract or improvements
20 thereon; provided that a lessee may be permitted, with
21 the approval of the department, to rent to a native
22 Hawaiian or Hawaiians, lodging either within the



1 lessee's existing home or in a separate residential
2 dwelling unit constructed on the premises.

3 (6) Notwithstanding the provisions of paragraph (5), the
4 lessee, with the consent and approval of the
5 commission, may mortgage or pledge the lessee's
6 interest in the tract or improvements thereon to a
7 recognized lending institution authorized to do
8 business as a lending institution in either the State
9 or elsewhere in the United States; provided the loan
10 secured by a mortgage on the lessee's leasehold
11 interest is insured or guaranteed by the Federal
12 Housing Administration, Department of Veterans
13 Affairs, or any other federal agency and their
14 respective successors and assigns, which are
15 authorized to insure or guarantee such loans, or any
16 acceptable private mortgage insurance as approved by
17 the commission. The mortgagee's interest in any such
18 mortgage shall be freely assignable. Such mortgages,
19 to be effective, must be consented to and approved by
20 the commission and recorded with the department.

21 Further, notwithstanding the authorized purposes
22 of loan limitations imposed under section 214 of this



1 Act and the authorized loan amount limitations imposed
2 under section 215 of this Act, loans made by lending
3 institutions as provided in this paragraph, insured or
4 guaranteed by the Federal Housing Administration,
5 Department of Veterans Affairs, or any other federal
6 agency and their respective successors and assigns, or
7 any acceptable private mortgage insurance, may be for
8 such purposes and in such amounts, not to exceed the
9 maximum insurable limits, together with such
10 assistance payments and other fees, as established
11 under section 421 of the Housing and Urban Rural
12 Recovery Act of 1983 which amended Title II of the
13 National Housing Act of 1934 by adding section 247,
14 and its implementing regulations, to permit the
15 Secretary of Housing and Urban Development to insure
16 loans secured by a mortgage executed by the homestead
17 lessee covering a homestead lease issued under section
18 207(a) of this Act and upon which there is located a
19 one to four family single family residence.

20 (7) The lessee shall pay all taxes assessed upon the tract
21 and improvements thereon. The department may pay such



1 taxes and have a lien therefor as provided by section
2 216 of this Act.

3 (8) The lessee shall perform such other conditions, not in
4 conflict with any provision of this Act, as the
5 department may stipulate in the lease; provided that
6 an original lessee shall be exempt from all taxes for
7 the first seven years after commencement of the term
8 of the lease.

9 (9) The lessee may enter into a sublease agreement with a
10 renewable energy producer, as defined in section 171-
11 95, Hawaii Revised Statutes, for the use of a portion
12 of the leasehold land; provided that:

13 (A) The term of the sublease shall not extend beyond
14 the lessee's original lease term and shall not
15 exceed sixty-five years;

16 (B) The sublessee shall indemnify, defend, and hold
17 harmless the lessee, the department, the State of
18 Hawaii, its officers, agents, and employees from
19 and against any and all claims arising out of or
20 resulting from activities carried out or projects
21 undertaken on the subleased land, and procure
22 sufficient insurance to provide this



1 indemnification and defense if requested to do so
2 by the lessee, the department, or the State of
3 Hawaii;

4 (C) Any lands under a sublease shall be subject to
5 withdrawal at any time during the term of the
6 agreement with reasonable notice; and

7 (D) Upon a withdrawal pursuant to subparagraph (C),
8 the sublessee's rent shall be reduced in
9 proportion to the value of the portion withdrawn
10 and the sublessee shall be entitled to receive
11 from the sublessor the proportionate value of the
12 sublessee's permanent improvements so taken in
13 the proportion that they bear to the unexpired
14 term of the agreement, with the value of the
15 permanent improvements determined on the basis of
16 fair market value or depreciated value, whichever
17 is less; or the sublessee, in the alternative,
18 may remove and relocate the sublessee's
19 improvements to the remainder of the lands
20 occupied by the sublessee."

21 SECTION 2. The provisions of the amendments made by this
22 Act to the Hawaiian Homes Commission Act, 1920, as amended, are



1 declared to be severable, and if any section, sentence, clause,
2 or phrase, or the application thereof to any person or
3 circumstances is held ineffective because there is a requirement
4 of having the consent of the United States to take effect, then
5 that portion only shall take effect upon the granting of consent
6 by the United States and effectiveness of the remainder of these
7 amendments or the application thereof shall not be affected.

8 SECTION 3. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on July 1, 2010.

11



Report Title:

HHCA; Native Hawaiian; Sublease; Renewable Energy Producers

Description:

Authorizes the native Hawaiian lessees of Hawaiian homestead land to sublease a portion of their land to renewable energy producers. (SD1)

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