
A BILL FOR AN ACT

RELATING TO HOMESTEAD LEASES..

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

1 PART I.

2 SECTION 1. Chapter 10, Hawaii Revised Statutes, is amended
3 by adding a new part to be appropriately designated and to read
4 as follows:

5 "PART . RELATING TO EXISTING HOMESTEAD RIGHTS;

6 CONTINUATION THEREOF AND REMOVAL OF CERTAIN RESTRICTIONS

7 §10-A Definitions. As used in this part:

8 "Cash freehold" means a right of possession to land under
9 an agreement called a freehold agreement under section 73 of the
10 Hawaiian Organic Act.

11 "Certificate of occupation" means an instrument preliminary
12 to a homestead lease, giving the applicant possession of land.

13 "Freeholder" means a person holding land under a freehold
14 agreement.

15 "Homestead lease" means a lease of land made for a term of
16 nine hundred and ninety-nine years, under provisions of law
17 which were repealed by section 3 of Joint Resolution 12, Session



1 Laws of 1949, ratified by the Congress of the United States by
2 the Act of September 1, 1950 (64 Stat. 572).

3 "Land agent" means a duly authorized representative of the
4 office.

5 "Occupier" means a person entitled to the possession of
6 land under a certificate of occupation.

7 §10-B Release of restrictions. It being in the public
8 interest, all public land for which any certificate, lease,
9 agreement, or patent has heretofore been issued imposing
10 restrictions against alienation and forfeiture provisions
11 prescribed by Public Law 192, 61st Congress, 2d Session, 36
12 Statutes at Large 444 (1910), and Public Law 234, 76th Congress,
13 1st Session, 53 Statutes at Large 1126 (1939), (section 73(g)
14 and 73(h) of the Hawaiian Organic Act), be and the same is
15 hereby wholly released from such restrictions and provisions;
16 provided nothing herein contained shall be construed to defeat
17 or in any way impair the interest of any mortgagee or holder of
18 record having a security interest or owner of vested rights in
19 and to the public land affected by the release aforesaid.
20 Though no form of documentation shall be required to effect the
21 release provided by this section, the office of Hawaiian affairs
22 is authorized to issue to any owner of the land affected by the



1 release, upon payment of such documentary fees as may be
2 provided by the office, an appropriate certificate of release
3 suitable for recording.

4 §10-C Continuation of rights under existing homestead
5 leases, certificates of occupation, right of purchase leases,
6 and cash freehold agreements. (a) Issuance of land patents to
7 occupier or lessee of homestead lands. A fee simple patent
8 shall be issued to every existing occupier under a certificate
9 of occupation issued heretofore, and to every lessee under a
10 nine hundred and ninety-nine year homestead lease issued
11 heretofore, of public lands, where the lands have been improved
12 under the certificate or lease, or have been used as a place of
13 residence by the occupier or lessee for an aggregate continuous
14 period of not less than ten years upon payment to the office of
15 Hawaiian affairs of a fair market price, disregarding the value
16 of the improvements made by the occupier or lessee, which price
17 shall be determined by appraisal; provided that the office may
18 exclude from these patents areas required as roadways to other
19 lots.

20 (b) Issuance of patent, lessee of right of purchase lease.
21 The lessee of any existing right of purchase lease, at a time
22 and under conditions that are contained in the lease, shall be



1 entitled to a land patent from the office conveying to the
2 lessee a fee simple title to the land described in the lessee's
3 lease upon the payment of the fair market price of the land as
4 determined by appraisal; provided that the lessee has reduced to
5 cultivation twenty-five per cent of the premises and has resided
6 thereon not less than two years and has substantially performed
7 all other conditions of the lessee's lease.

8 (c) Cash freeholds, agreement, patent, conditions. At the
9 end of three years from the date of the payment of the first
10 installment, the holder of a freehold agreement is entitled to a
11 land patent for the premises described therein, if the following
12 conditions, in addition to those set forth herein, have been
13 substantially performed:

- 14 (1) Payment of the balance of the purchase price in equal
15 installments, in one, two, and three years
16 respectively, from the date of the freehold agreement
17 with interest annually at the rate of four per cent;
18 provided that the freeholder may pay the installment
19 before it is due and thereby stop the corresponding
20 interest;
- 21 (2) Cultivation of not less than twenty-five per cent of
22 the area of the premises, and the planting and care of



1 not less than an average of ten timber, shade, or
2 fruit trees per acre, if agricultural land, at any one
3 time before the end of the third year, or fencing in
4 the premises if pastoral land within that time;
5 provided that if the premises are classed as pastoral-
6 agricultural land, the foregoing alternative
7 conditions shall apply respectively to the two kinds
8 of land;

9 (3) Maintenance by the freeholder of the freeholder's home
10 on the premises from the end of the first to the end
11 of the third year;

12 (4) Conditions for the prevention of waste, the planting
13 of trees or the protection of trees growing or to be
14 planted on the premises, or for the destruction of
15 vegetable pests that may be on the premises or the
16 prevention of the future introduction of pests
17 thereon; and

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

20 The holder of a freehold agreement shall allow the land
21 agents to enter and examine the premises at all reasonable times
22 to see that the conditions are being performed. The holder

1 shall not assign or sublet, conditionally or otherwise, the
2 holder's interest or any part thereof, under the freehold
3 agreement, without the written consent of the office endorsed on
4 the agreement; and provided further that freeholders having the
5 whole interest in a freehold agreement, at any time when all the
6 conditions thereof to be performed by the freeholder up to that
7 time shall have been substantially performed, may surrender to
8 the government the interest by delivery of the freehold
9 agreement to the land agent, with the intention to surrender the
10 interest clearly endorsed thereon and signed by them and duly
11 attested. The surrender shall release the freeholders from all
12 further duty or performance of the conditions of the instrument
13 surrendered. But no surrender shall be permitted if any
14 freeholders are under the age of eighteen years, unless the
15 minors are represented by statutory guardians; and provided
16 further that any freeholder over the age of eighteen may assign
17 the freeholder's interest to the freeholder's cotenants.

18 (d) Right of purchase lease; termination, forfeiture, or
19 surrender. Upon the termination of a right of purchase lease by
20 lapse of time, or upon the forfeiture or surrender of the lease
21 or a freehold agreement, the office, in its discretion and
22 within the limit of its authority, may open the premises or any



1 part thereof for disposition in the manner or for the uses as
2 provided in this chapter. Before the disposition, the fair
3 market value thereof shall be established by appraisal. The
4 value attributable to the improvements in the appraisal shall be
5 paid to the surrendering lessees or freeholders, upon resale of
6 the premises, and the director of finance shall pay the amount
7 of the valuation upon the requisition of the office out of the
8 funds.

9 (e) Assignment; certificate of occupation or homestead
10 lease. No existing certificate of occupation or existing
11 homestead lease, or fractional interest thereof, shall be
12 transferable or assignable except by conveyance, devise,
13 bequest, or intestate succession and with the prior approval of
14 the office of Hawaiian affairs; provided that transfer or
15 assignment by conveyance, devise, or bequest shall be limited to
16 a member or members of the occupier's or lessee's family.

17 For the purposes of this section, "family" means the
18 spouse, reciprocal beneficiary, children, parents, siblings,
19 grandparents, grandchildren, nieces, nephews, a parent's
20 siblings, children of a parent's siblings, and grandchildren of
21 a parent's siblings, of the occupier or lessee.



1 All the successors shall be subject to the performance of
2 the unperformed conditions of the certificate of occupation or
3 the homestead lease.

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

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



1 consideration on the lease and pay to the persons the amount of
2 the consideration deposited with the land agent according to
3 their individual interest; and the interest of the persons shall
4 thereupon vest in the persons making the offer. The fact of the
5 transfer shall be properly recorded in the official records of
6 the land agent and endorsed upon the lease held by the lessee.

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

20 If any funds held by the land agent hereunder are not paid
21 to the persons to whom properly payable, because of the
22 inability of the land agent to locate those persons, the funds,



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

17 But if the persons to whom the offer is made, within sixty
18 days from the time of the notification, shall make answer to the
19 land agent that they will buy the interest of the offering
20 parties and shall deposit within sixty days with the land agent
21 the amount required for the purpose according to the terms of
22 the offer, the land agent shall endorse and record the fact of



1 the sale as above provided, and pay to the offering parties the
2 amount according to their individual interest; and the interest
3 of the offering parties shall thereupon vest in the answering
4 parties. In such case, the consideration money deposited by the
5 offering parties shall be returned to them.

6 (g) Forfeiture; existing certificate of occupation or
7 homestead lease. The violation of any of the conditions of any
8 existing certificate of occupation or homestead lease shall be
9 sufficient cause for the office, upon failure of the occupier or
10 lessee within a reasonable period of time to remedy the default,
11 after notice thereof, to take possession of the demised premises
12 without demand or previous entry, with or without legal process,
13 and thereby terminate the estate created.

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



1 (i) Mortgage of homestead leases. Whenever an existing
2 homestead lease is mortgaged, the consent to mortgage from the
3 office may contain a condition exempting the lease from
4 subsection (e) for the duration of the mortgage.

5 §10-D Successor determination program. (a) The office of
6 Hawaiian affairs may establish a successor determination program
7 to assist persons with an interest or presumed interest in a
8 nine hundred ninety-nine-year homestead lease to determine their
9 legal interests under the provisions of section 10-C(e).

10 (b) The successor determination program may provide:

- 11 (1) Genealogy data and information;
12 (2) Assistance and guidance regarding genealogy research;
13 (3) Research services;
14 (4) Mediation services; and
15 (5) Binding and nonbinding arbitration.

16 (c) The arbitration program shall:

- 17 (1) Establish a panel of persons knowledgeable in matters
18 of genealogy who will be available as arbitrators for
19 the arbitration program;
20 (2) Within one hundred twenty days of April 24, 1995,
21 adopt written procedures under chapter 91 for the
22 conduct of arbitrations under this section; provided



1 that if no such written procedures are adopted within
2 one hundred twenty days, the commercial arbitration
3 rules of the American Arbitration Association shall
4 apply to the extent not inconsistent with this section
5 until such time as other written procedures are
6 adopted; provided further that any proceedings that
7 are commenced under the commercial arbitration rules
8 of the American Arbitration Association shall be
9 completed under those rules;

10 (3) Provide for notice of the arbitration proceeding in
11 the same manner as required for a probate court
12 determination of heirs;

13 (4) Provide an opportunity for all persons claiming an
14 interest in the subject nine hundred ninety-nine-year
15 leasehold to participate;

16 (5) Provide for binding arbitration if all participants
17 who respond to a notice of arbitration indicate that
18 they desire the arbitration to be binding. If any
19 participant fails to indicate, or indicates that the
20 participant desires nonbinding arbitration, the
21 arbitration shall be nonbinding;



- 1 (6) Apply section 10-C(e), to determine the legal
- 2 interests of the participants in the subject nine
- 3 hundred ninety-nine-year lease;
- 4 (7) Provide a written arbitration award setting forth the
- 5 legal interests of the participants in the subject
- 6 nine hundred ninety-nine-year lease; and
- 7 (8) Conduct arbitrations under and subject to chapter
- 8 658A, and subject to confirmation by the circuit court
- 9 upon application of any participant in the arbitration
- 10 pursuant to section 658A-22."

11 SECTION 2. Section 171-21, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§171-21 Rights of holder of security interest. Whenever
14 any notice of breach or default is given to any party under
15 section 171-20, or under the terms of any lease, patent,
16 license, agreement, or other instrument issued or to be issued
17 under this chapter, a copy of the notice shall be delivered by
18 the board of land and natural resources to all holders of record
19 of any security interest in the land or interest covered by the
20 lease, patent, license, agreement, or other instrument whose
21 security interest has been recorded with the board. Should the
22 board seek to forfeit the privilege, interest, or estate created



1 by the lease, license, agreement, patent, or other instrument,
2 each holder may, at its option, cure or remedy the breach or
3 default, if the same can be cured or remedied, by the payment of
4 money or, if such is not the case, by performing or undertake in
5 writing to perform all the terms, covenants, restrictions, or
6 conditions of any lease, patent, license, agreement, or other
7 instrument capable of performance by the holder, as determined
8 by the board, within the time period provided in section 171-20
9 or within such additional period as the board may allow for good
10 cause and add the cost thereof to the mortgage debt and the lien
11 of the mortgage. Any lease, patent, license, agreement, or
12 other instrument transferred pursuant to this section shall not
13 be subject to the requirements in section 171-14. Upon failure
14 of the holder to exercise its option, the board may:

15 (1) Pay to the holder from any moneys at its disposal,
16 including the special land and development fund, which
17 is made available for that purpose, the amount of the
18 mortgage debt, together with interest and penalties,
19 and secure an assignment of the debt and mortgage from
20 the holder, or if ownership of the interest or estate
21 shall then have vested in the holder by way of
22 foreclosure or action in lieu thereof the board shall



1 be entitled to a conveyance of the interest or estate
2 upon payment to the holder of the amount of the
3 mortgage debt, including interest and penalties, and
4 all reasonable expenses incurred by the holder in
5 connection with the foreclosure and preservation of
6 its security interest, less appropriate credits,
7 including income received from the privilege,
8 interest, or estate subsequent to the foreclosure; or

- 9 (2) If the property cannot be reasonably reassigned
10 without loss to the State, then terminate the
11 outstanding privilege, interest, or estate without
12 prejudice to any other right or remedy for arrears of
13 rent or for any preceding or other breach or default,
14 and use its best efforts to redispense of the affected
15 land to a qualified and responsible person free and
16 clear of the mortgage and the debt thereby secured;
17 provided that a reasonable delay by the board in
18 instituting or prosecuting any right or remedy it may
19 have under this section shall not operate as a waiver
20 of the right or to deprive it of the remedy when it
21 may still hope otherwise to resolve the problems
22 created by the breach or default involved.



1 Section 171-19 to the contrary notwithstanding, the proceeds of
 2 any redistribution under paragraph (2) shall be applied: first,
 3 to reimburse the board for costs and expenses in connection with
 4 the redistribution; second, to discharge in full any unpaid
 5 purchase price or other indebtedness owing the State in
 6 connection with the privilege, interest, or estate terminated;
 7 third, to the mortgagee to the extent of the value received by
 8 the State upon redistribution which exceeds the fair market lease
 9 value of the land as previously determined by the State's
 10 appraiser; and fourth, to the owner of the privilege, interest,
 11 or estate. Nothing contained in this section shall be construed
 12 in a manner as to infringe upon or prejudice in any way the
 13 rights of a holder of record having a security interest which
 14 shall have vested prior to the effective date hereof, and to the
 15 extent that this section and section [~~171-98~~] 10-B shall or may
 16 conflict and adversely affect such interests, the same shall be
 17 of no force and effect."

18 SECTION 3. Section 532-2, Hawaii Revised Statutes, is
 19 amended to read as follows:

20 "§532-2 To heirs. Whenever any person dies intestate, his
 21 property, both real and personal, of every kind and description,
 22 shall descend to and be divided among his heirs, as in this



1 chapter prescribed; provided that upon the death, testate or
 2 intestate, of any occupier or lessee of public land, holding
 3 under an existing certificate of occupation or an existing nine
 4 hundred and ninety-nine year homestead lease, succession to the
 5 decedent's interest in such land shall be determined as provided
 6 in section [~~171-99(e)~~] 10-C(e)."

7 SECTION 4. Part IV of chapter 171, Hawaii Revised
 8 Statutes, is repealed.

9 PART II.

10 SECTION 5. (a) By not later than , the department
 11 of land and natural resources shall transfer all rights, powers,
 12 functions, and duties relating to homestead leases to the office
 13 of Hawaiian affairs.

14 (b) The office of Hawaiian affairs shall assume all
 15 rights, powers, functions, and duties relating to homestead
 16 leases transferred by this Act.

17 SECTION 6. All rights, powers, functions, and duties of
 18 the department of land and natural resources relating to
 19 homestead leases that are being transferred pursuant to this Act
 20 are transferred to the office of Hawaiian affairs.

21 All officers and employees whose functions are transferred
 22 by this Act shall be transferred with their functions and shall



1 continue to perform their regular duties upon their transfer,
2 subject to the state personnel laws and this Act.

3 No officer or employee of the State having tenure shall
4 suffer any loss of salary, seniority, prior service credit,
5 vacation, sick leave, or other employee benefit or privilege as
6 a consequence of this Act, and such officer or employee may be
7 transferred or appointed to a civil service position without the
8 necessity of examination; provided that the officer or employee
9 possesses the minimum qualifications for the position to which
10 transferred or appointed; and provided that subsequent changes
11 in status may be made pursuant to applicable civil service and
12 compensation laws.

13 An officer or employee of the State who does not have
14 tenure and who may be transferred or appointed to a civil
15 service position as a consequence of this Act shall become a
16 civil service employee without the loss of salary, seniority,
17 prior service credit, vacation, sick leave, or other employee
18 benefits or privileges and without the necessity of examination;
19 provided that such officer or employee possesses the minimum
20 qualifications for the position to which transferred or
21 appointed.



1 If an office or position held by an officer or employee
2 having tenure is abolished, the officer or employee shall not
3 thereby be separated from public employment, but shall remain in
4 the employment of the State with the same pay and classification
5 and shall be transferred to some other office or position for
6 which the officer or employee is eligible under the personnel
7 laws of the State as determined by the head of the department or
8 the governor.

9 SECTION 7. All appropriations, records, equipment,
10 machines, files, supplies, contracts, books, papers, documents,
11 maps, and other personal property heretofore made, used,
12 acquired, or held by the department of land and natural
13 resources relating to the functions transferred to the office of
14 Hawaiian affairs pursuant to this Act shall be transferred with
15 the functions to which they relate.

16 SECTION 8. All rules, policies, procedures, guidelines,
17 and other material adopted or developed by the department of
18 land and natural resources to implement provisions of the Hawaii
19 Revised Statutes that are reenacted or made applicable to the
20 office of Hawaiian affairs by this Act, shall remain in full
21 force and effect until amended or repealed by the office of
22 Hawaiian affairs pursuant to chapter 91, Hawaii Revised



1 Statutes. In the interim, every reference to the department of
 2 land and natural resources or chairperson of the board of land
 3 and natural resources in those rules, policies, procedures,
 4 guidelines, and other material is amended to refer to the office
 5 of Hawaiian affairs or chairperson of the board of the office of
 6 Hawaiian affairs as appropriate.

7 PART III.

8 SECTION 9. In codifying the new sections added by section
 9 1 of this Act, the revisor of statutes shall substitute
 10 appropriate section numbers for the letters used in designating
 11 the new sections in this Act.

12 SECTION 10. Statutory material to be repealed is bracketed
 13 and stricken. New statutory material is underscored.

14 SECTION 11. This Act shall take effect upon its approval;
 15 provided that part I of this Act shall take effect upon the
 16 complete transfer of rights, powers, functions, and duties
 17 pursuant to part II.

18

INTRODUCED BY:

Hele Canoe

Jessie W. [Signature]
[Signature]
[Signature]



H.B. NO. 2395

Report Title:

DLNR; OHA; Homestead Leases; Transfer

Description:

Transfers all rights, powers, functions, and duties relating to homestead leases from DLNR to OHA.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

