

JAN 17 2020

A BILL FOR AN ACT

RELATING TO HAWAIIAN HOME LANDS.

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

1 PART I

2 SECTION 1. The legislature finds that in the Hawaiian
3 Homes Commission Act, 1920, as amended, the United States
4 Congress established the Hawaiian home lands trust, intending
5 that it would enable its native Hawaiian beneficiaries to return
6 to their land to improve and perpetuate their self-sufficiency
7 and cultural preservation. Administered by the department of
8 Hawaiian home lands, the Hawaiian Homes Commission Act
9 authorizes issuance of leases of available lands to native
10 Hawaiians for occupancy, and of licenses for theaters, garages,
11 service stations, markets, stores, and other mercantile
12 establishments, all of which shall be owned by native Hawaiians
13 or by organizations formed and controlled by native Hawaiians.

14 The legislature further finds that over the past one
15 hundred years, the number of native Hawaiians eligible for a
16 lease or license under the Hawaiian Homes Commission Act has
17 declined by approximately seventy-five per cent, and there may



1 be as few as twenty-five thousand eligible native Hawaiians
2 remaining. During this time, as well documented in reports by
3 the auditor and others, the department of Hawaiian home lands
4 has struggled to place native Hawaiians on their land,
5 challenged by a lack of funding and its own bureaucratic
6 shortcomings. More recently, the department has sought to
7 maximize its income by focusing on its authority to dispose of
8 lands that it determines are not necessary to lease to native
9 Hawaiians for housing, by leasing it to the general public
10 pursuant to the provisions of chapter 171, Hawaii Revised
11 Statutes.

12 The legislature also finds that while the department of
13 Hawaiian home lands is expressly authorized to negotiate, prior
14 to negotiations with the general public, the disposition of
15 Hawaiian home lands to a native Hawaiian, or organization or
16 association owned or controlled by native Hawaiians, for
17 commercial, industrial, or other business purposes, the
18 department has adopted a de facto policy declining to do so.
19 Rather, the department requires native Hawaiians to compete in a
20 bidding war against well-financed for-profit corporations, often
21 from the mainland, who may not employ native Hawaiians, use



1 native Hawaiian subcontractors and suppliers, or have any
2 ongoing commitment to native Hawaiian self-sufficiency or
3 cultural preservation. Instead, these entities seek only to
4 maximize profits for their investors. This policy is contrary
5 to the purpose of the Hawaiian Homes Commission Act, not
6 reflected in the department's administrative rules, and may
7 constitute prohibited rulemaking in violation of the Hawaii
8 Administrative Procedures Act, chapter 91, Hawaii Revised
9 Statutes. See, e.g., Nuuanau Valley Ass'n v. City and County of
10 Honolulu, 119 Hawaii 90, 194 P.3d 531 (2008).

11 The legislature further finds that in addition to the
12 department of Hawaiian home lands' failure to place the vast
13 majority of eligible native Hawaiians on their land, its policy
14 not to first negotiate with its own beneficiaries in the
15 development of their own commercial, industrial, and other
16 business purposes, works to prevent them from becoming
17 independent, self-sufficient, and self-reliant. Rather than
18 capitalizing native Hawaiians' own projects with land and
19 empowering them to support themselves and their communities on a
20 day-to-day basis, the department empowers only itself, and keeps
21 its beneficiaries in a patronizing state of dependency.



1 The purpose of this Act is to:

2 (1) Require the department of Hawaiian home lands to
3 negotiate with native Hawaiians for the development of
4 their own commercial, industrial, and other business
5 purposes before offering land sought by them to the
6 general public; and

7 (2) Require the department of Hawaiian home lands to
8 report annually to the legislature regarding each
9 disposition of available land for commercial purposes,
10 including when disposition of lands was ultimately
11 made to the general public and why its negotiations
12 with native Hawaiians did not succeed.

13 PART II

14 SECTION 2. Section 204, Hawaiian Homes Commission Act,
15 1920, as amended, is amended by amending subsection (a) to read
16 as follows:

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



S.B. NO. 2113

1 (1) In case any available land is under lease by the
2 Territory of Hawaii, by virtue of section 73 of the
3 Hawaiian Organic Act, at the time of the passage of
4 this Act, such land shall not assume the status of
5 Hawaiian home lands until the lease expires or the
6 board of land and natural resources withdraws the
7 lands from the operation of the lease. If the land is
8 covered by a lease containing a withdrawal clause, as
9 provided in section 73(d) of the Hawaiian Organic Act,
10 the board of land and natural resources shall withdraw
11 such lands from the operation of the lease whenever
12 the department gives notice to the board that the
13 department is of the opinion that the lands are
14 required by it for the purposes of this Act; and such
15 withdrawal shall be held to be for a public purpose
16 within the meaning of that term as used in section
17 73(d) of the Hawaiian Organic Act.

18 (2) Any available land, including lands selected by the
19 department out of a larger area, as provided by this
20 Act, not leased as authorized by section 207(a) of
21 this Act, may be returned to the board of land and



S.B. NO. 2113

1 natural resources as provided under section 212 of
2 this Act, or may be retained for management by the
3 department. Any Hawaiian home lands general lease
4 issued by the department after June 30, 1985, shall
5 contain a withdrawal clause allowing the department to
6 withdraw the land leased at any time during the term
7 of the lease for the purposes of this Act.

8 In the management of any retained available lands
9 not required for leasing under section 207(a), the
10 department may dispose of those lands or any
11 improvements thereon to the public, including native
12 Hawaiians, on the same terms, conditions,
13 restrictions, and uses applicable to the disposition
14 of public lands in chapter 171, Hawaii Revised
15 Statutes; provided that the department may not sell or
16 dispose of such lands in fee simple except as
17 authorized under section 205 of this Act; provided
18 further that the department [~~is expressly authorized~~
19 ~~to~~] shall negotiate, prior to [~~negotiations with~~] any
20 disposition to the general public, the disposition of
21 Hawaiian home lands or any improvements thereon to a



1 native Hawaiian, or organization or association owned
2 or controlled by native Hawaiians, for commercial,
3 industrial, or other business purposes, in accordance
4 with the procedures set forth in chapter 171, Hawaii
5 Revised Statutes.

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



1 the approval of two-thirds of the members of the board
2 of land and natural resources. For the purposes of
3 this paragraph, lands "publicly owned" means land
4 owned by a county or the State or the United States."

5 SECTION 3. Section 171-59, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§171-59 Disposition by negotiation[-]; negotiation with
8 native Hawaiians for disposition of Hawaiian home lands. (a) A
9 lease of public land may be disposed of through negotiation upon
10 a finding by the board of land and natural resources that the
11 public interest demands it[-]; provided that prior to any
12 disposition of Hawaiian home lands to the general public
13 pursuant to section 204, Hawaiian Homes Commission Act, 1920, as
14 amended, the department of Hawaiian home lands shall negotiate a
15 disposition to a native Hawaiian, or an organization or
16 association owned or controlled by native Hawaiians, for
17 commercial, industrial, or other business purposes, pursuant to
18 subsection (c). Where the public land is being sought under
19 this section by a sugar or pineapple company, and the company is
20 the owner or operator of a mill or cannery, then, for the
21 purposes of this section, the economic unit shall be that



1 acreage of public land which when taken together with the lands
2 already owned or controlled or available to the company, when
3 cultivated is found by the board to be necessary for the
4 company's optimum mill or cannery operation. In all other
5 cases, public land to be sold under this section shall be an
6 economic unit as provided in section 171-33(3).

7 After a determination is made to negotiate the disposition
8 of a lease, the board shall:

- 9 (1) Give public notice as in public auction, in accordance
10 with the procedure set forth in section 171-16(a), of
11 its intention to lease public land through negotiation
12 setting forth the minimum conditions thereunder, the
13 use for which the public land will be leased. Any
14 person interested in securing the lease shall file an
15 application with the board not later than forty-five
16 days after the first publication of the notice;
- 17 (2) Establish reasonable criteria for the selection of the
18 lessee; provided that where the intended use of the
19 land is agriculture, the department of agriculture
20 shall establish the criteria;



1 (3) Determine the applicants who meet the criteria for
2 selection set by the board or the department of
3 agriculture, as the case may be, and notify all
4 applicants of its determination. Any applicant may
5 examine the basis of the determination, which shall be
6 in writing, to ascertain whether or not the conditions
7 and criteria established by the board or the
8 department of agriculture were followed; provided that
9 if any applicant does not notify the board of the
10 applicant's objections, and the grounds therefor, in
11 writing, within twenty days of the receipt of the
12 notice, the applicant shall be barred from proceeding
13 to seek legal remedy for any alleged failure of the
14 board to follow the conditions and criteria.

15 If only one applicant meets the criteria for selection of
16 the lessee, the board may, after notice as provided in (3),
17 above, dispose of the lease by negotiation.

18 If two or more applicants meet the criteria for the
19 selection of the lessee, the board shall select the lessee who
20 submits the highest offer contained in a sealed bid deposited
21 with the board.



1 (b) Disposition of public lands for airline, aircraft,
2 airport-related, agricultural processing, cattle feed
3 production, aquaculture, marine, maritime, and maritime-related
4 operations may be negotiated without regard to the limitations
5 set forth in subsection (a) and section 171-16(c); provided
6 that:

7 (1) The disposition encourages competition within the
8 aeronautical, airport-related, agricultural,
9 aquaculture, maritime, and maritime-related
10 operations;

11 (2) The disposition shall not exceed a maximum term of
12 thirty-five years, except in the case of:

13 (A) Maritime and maritime-related operations, which
14 may provide for a maximum term of seventy years;
15 and

16 (B) Aquaculture operations, which may provide for a
17 maximum term of sixty-five years; provided that
18 aquaculture operations in good standing may seek
19 to renew a lease issued under this section and,
20 during the lease term, may engage in supportive



1 activities that are related to or integrated with
2 aquaculture; and

3 (3) The method of disposition of public lands for cattle
4 feed production as set forth in this subsection shall
5 not apply after December 31, 1988.

6 For the purposes of this subsection:

7 "Agricultural processing" means the processing of
8 agricultural products, including dairying, grown, raised, or
9 produced in Hawaii.

10 "Airport-related" means a purpose or activity that requires
11 air transportation to achieve that purpose or activity; or an
12 activity that generates revenue for the airport system as
13 provided in section 261-7.

14 "Aquaculture" means the propagation, cultivation, or
15 farming of aquatic plants and animals in controlled or selected
16 environments for research, commercial, or stocking purposes,
17 including aquaponics or any growing of plants or animals with
18 aquaculture effluents.

19 "Maritime-related" means a purpose or activity that
20 requires and is directly related to the loading, off-loading,



1 storage, or distribution of goods and services of the maritime
2 industry.

3 (c) When negotiating disposition of a lease for Hawaiian
4 home lands to native Hawaiians, or an organization or
5 association owned or controlled by native Hawaiians, for
6 commercial, industrial, or other business purposes, the
7 department of Hawaiian home lands shall:

8 (1) Give public notice to native Hawaiians in a culturally
9 appropriate manner of its intention to lease Hawaiian
10 home lands land through negotiation, setting forth the
11 minimum conditions thereunder and the use for which
12 the public land will be leased. Any person interested
13 in securing the lease shall file an application with
14 the board not later than forty-five days after notice
15 has been given;

16 (2) Establish reasonable criteria for the selection of the
17 lessee, including primarily that the lease furthers
18 the betterment of native Hawaiians; and

19 (3) Determine the applicants who meet the conditions and
20 criteria for selection and notify all applicants of
21 its determination. Any applicant may examine the



1 basis of the determination, which shall be in writing,
2 to ascertain whether or not the conditions and
3 criteria established by the department of Hawaiian
4 home lands were followed; provided that if any
5 applicant does not notify the board of the applicant's
6 objections, and the grounds therefor, in writing,
7 within thirty days of the receipt of the notice, the
8 applicant shall be barred from proceeding to seek
9 legal remedy for any alleged failure of the department
10 to follow the conditions and criteria.

11 If only one applicant meets the criteria for selection of
12 the lessee, the board may, after notice as provided in
13 subsection (3), above, dispose of the lease by negotiation.

14 If two or more applicants meet the criteria for the
15 selection of the lessee, the board shall select the lessee who
16 submits the offer best designed to achieve the betterment of
17 native Hawaiians.

18 The department of Hawaiian home lands shall adopt rules,
19 pursuant to chapter 91, necessary for the purposes of this
20 subsection."

21 PART III



1 SECTION 4. The department of Hawaiian home lands shall
2 submit a report to the legislature no later than twenty days
3 prior to the convening of each regular session setting forth the
4 following:

5 (1) The total number of dispositions by lease of Hawaiian
6 home lands pursuant to the second paragraph of section
7 204(a)(2), Hawaiian Homes Commission Act, 1920, as
8 amended;

9 (2) Of the total in paragraph (1):

10 (A) The number of dispositions to native Hawaiians,
11 or organizations or associations owned or
12 controlled by native Hawaiians;

13 (B) The number of dispositions to the general public
14 that took place only after negotiations for
15 dispositions to dispositions to native Hawaiians,
16 or organizations or associations owned or
17 controlled by native Hawaiians were not
18 successful, and the reasons therefor in each
19 instance; and

20 (3) The department's findings and recommendations,
21 including any proposed legislation, to increase the



1 number of successful negotiations for dispositions to
2 native Hawaiians, or organizations or associations
3 owned or controlled by native Hawaiians.


4 SECTION 5. The provisions of the amendments made by this
5 Act to the Hawaiian Homes Commission Act, 1920, as amended, are
6 declared to be severable, and if any section, sentence, clause,
7 or phrase, or the application thereof to any person or
8 circumstances is held ineffective because there is a requirement
9 of having the consent of the United States to take effect, then
10 that portion only shall take effect upon the granting of consent
11 by the United States and effectiveness of the remainder of these
12 amendments or the application thereof shall not be affected.

13 SECTION 6. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect upon its approval.

16

INTRODUCED BY:



By Request



S.B. NO. 2113

Report Title:

DHHL; Hawaiian Home Lands; Disposition; Negotiation;
Beneficiaries

Description:

Requires the department of Hawaiian home lands to negotiate with native Hawaiians before offering Hawaiian home lands for lease to the public by auction. Requires annual report regarding negotiations.

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