

JAN 17 2020

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 201, Hawaiian Homes Commission Act,
2 1920, as amended, is amended by adding a new definition to be
3 appropriately inserted and to read as follows:
4 "Beneficiary consultation" means, at a minimum, the
5 direct, timely, affirmative, and interactive process of
6 beneficiary organizations, as defined in 43 Code of Federal
7 Regulations Parts 47 and 48, on regulations, legislative
8 proposals, or department of Hawaiian home lands programmatic or
9 policy actions that have a substantial direct effect or
10 implications on one or more homestead areas, or that involves
11 the disposition of trust lands to non-beneficiary individuals or
12 organizations; provided that the department of Hawaiian home
13 lands shall provide at least forty-five days to receive input
14 from beneficiaries and beneficiary organizations. Beneficiary
15 consultation may be conducted through in-person listening
16 sessions, mail, email, or social media, and shall include



1 specific notification to all registered beneficiary
2 organizations."

3 SECTION 2. Section 204, Hawaiian Homes Commission Act,
4 1920, as amended, is amended by amending subsection (a) to read
5 as follows:

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

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



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

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

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



S.B. NO. 2525

1 restrictions, and uses applicable to the disposition
2 of public lands in chapter 171, Hawaii Revised
3 Statutes; provided that the department may not sell or
4 dispose of such lands in fee simple except as
5 authorized under section 205 of this Act; provided
6 further that the department shall not dispose of such
7 lands or extend a general lease to non-beneficiaries
8 unless there are no applicants seeking, on a waitlist
9 or otherwise, to enter into a lease to the use and
10 occupancy of a tract or tracts of Hawaiian home lands
11 under section 207(a) or section 207(c)(1)(B); provided
12 further that the department is expressly authorized to
13 negotiate, prior to negotiations with the general
14 public, the disposition of Hawaiian home lands or any
15 improvements thereon to a native Hawaiian, or
16 organization or association owned or controlled by
17 native Hawaiians, for commercial, industrial, or other
18 business purposes, in accordance with the procedures
19 set forth in chapter 171, Hawaii Revised Statutes[-];
20 provided further that the department, prior to the
21 disposition of Hawaiian home lands or any improvements



1 thereon, short- or long-term, including easements,
2 shall be required to notify beneficiaries through
3 beneficiary consultation.

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



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

3 SECTION 3. Section 207, Hawaiian Homes Commission Act,
4 1920, as amended, is amended to read as follows:

5 "**§207. Leases to Hawaiians, licenses.** (a) The department
6 is authorized to lease to native Hawaiians the right to the use
7 and occupancy of a tract or tracts of Hawaiian home lands within
8 the following acreage limits per each lessee: (1) not more than
9 forty acres of agriculture lands or lands used for aquaculture
10 purposes; or (2) not more than one hundred acres of irrigated
11 pastoral lands and not more than one thousand acres of other
12 pastoral lands; or (3) not more than one acre of any class of
13 land to be used as a residence lot; provided that in the case of
14 any existing lease of a farm lot in the Kalaniana'ole Settlement
15 on Molokai, a residence lot may exceed one acre but shall not
16 exceed four acres in area, the location of such area to be
17 selected by the department; provided further that a lease
18 granted to any lessee may include two detached farm lots or
19 aquaculture lots, as the case may be, located on the same island
20 and within a reasonable distance of each other, one of which, to
21 be designated by the department, shall be occupied by the lessee



1 as the lessee's home, the gross acreage of both lots not to
2 exceed the maximum acreage of an agricultural, pastoral, or
3 aquacultural lot, as the case may be, as provided in this
4 section.

5 (b) The title to lands so leased shall remain in the
6 State. Applications for tracts shall be made to and granted by
7 the department, under such regulations, not in conflict with any
8 provisions of this title, as the department may prescribe. The
9 department shall, whenever tracts are available, enter into such
10 a lease with any applicant who, in the opinion of the
11 department, is qualified to perform the conditions of such
12 lease[-]; provided that, notwithstanding any law to the
13 contrary, the department shall be prohibited from establishing
14 additional criteria to enter into such a lease with an applicant
15 without notifying beneficiaries through beneficiary
16 consultation, unless otherwise determined through the
17 promulgation of federal regulations.

18 (c) (1) The department is authorized to grant licenses or
19 enter into a general lease as easements for railroads,
20 telephone lines, electric power and light lines, gas
21 mains, and the like. The department is also



1 authorized to grant licenses for lots within a
2 district in which lands are leased under the
3 provisions of this section, for:

4 (A) Churches, hospitals, public schools, post
5 offices, and other improvements for public
6 purposes; and

7 (B) Theaters, garages, service stations, markets,
8 stores, and other mercantile establishments (all
9 of which shall be owned by native Hawaiians or by
10 organizations formed and controlled by native
11 Hawaiians).

12 (2) The department is also authorized to grant licenses to
13 the United States for reservations, roads, and other
14 rights-of-way, water storage and distribution
15 facilities, and practice target ranges.

16 (3) Any license issued or general lease entered into under
17 this subsection shall be subject to such terms,
18 conditions, and restrictions as the department shall
19 determine and shall not restrict the areas required by
20 the department in carrying on its duties, nor



1 interfere in any way with the department's operation
2 or maintenance activities.

3 (d) For public purpose or mercantile under this section,
4 the department may grant a license or enter into a general
5 lease, unless otherwise determined through the promulgation of
6 federal regulations; provided that the department, prior to the
7 disposition of Hawaiian home lands, short- or long-term,
8 including easements, shall be required to notify beneficiaries
9 through beneficiary consultation."

10 SECTION 4. Section 213, Hawaiian Homes Commission Act,
11 1920, as amended, is amended by amending subsections (b) and (c)
12 to read as follows:

13 "(b) Hawaiian home loan fund. The moneys in this fund
14 shall be available for the purposes enumerated in section 214
15 and for payments provided in section 209 and shall not be
16 expended for any other purpose except as provided in subsection
17 (e).

18 Any interest or other earnings arising out of investments
19 from this fund shall be credited to and deposited into this
20 fund; provided that, upon the department notifying beneficiaries
21 through beneficiary consultation, any interest or other earnings



1 may be credited to and deposited into the Hawaiian home
2 operating fund.

3 (c) Hawaiian home general loan fund. Moneys appropriated
4 by the legislature for the construction of homes but not
5 otherwise set aside for a particular fund, for construction of
6 replacement homes, for home repairs or additions, or for the
7 development and operation of a farm, ranch, or aquaculture
8 operation; moneys transferred from other funds; and installments
9 of principal paid by the lessees upon loans made to them from
10 this fund, or as payments representing reimbursements on account
11 of advances, but not including interest on such loans or
12 advances, shall be deposited into this fund. The moneys in the
13 fund shall be used for purposes enumerated in section 214 and
14 for payments provided in section 209; provided that, in addition
15 to the conditions enumerated in section 215, farm loans shall be
16 subject to the following conditions:

17 (1) To be eligible for a farm loan the applicant shall
18 derive, or present an acceptable plan to derive, a
19 major portion of the applicant's income from farming;



1 (2) Farm loans made for the purpose of soil and water
2 conservation shall not exceed \$20,000 and shall be for
3 a term not to exceed ten years;

4 (3) Subsidies and grants or cost-sharing funds entitled
5 and received by the lessee for soil and water
6 conservation purposes shall be assigned to the
7 department for the repayment of the outstanding farm
8 indebtedness; and

9 (4) The lessee shall carry out recommended farm management
10 practices approved by a qualified agricultural agency.

11 The department may create an account within this fund to
12 support the guarantee of repayment of loans made by government
13 agencies or private lending institutions to a holder of a
14 general lease under section 207(a) or license issued under
15 section 207(c)(1)(B).

16 The department may create an account within this fund for
17 moneys borrowed from government agencies or private lending
18 institutions to be used for any of the purposes enumerated in
19 section 214. Installments of principal and that part of the
20 interest equal to the interest charged to the department by the
21 lender paid by the lessees on the loans made to them from this



1 account shall be deposited into the same account. Any
2 additional interest or other earnings arising out of investments
3 from this account shall be credited to and deposited into this
4 fund; provided that, upon the department notifying beneficiaries
5 through beneficiary consultation, any interest or other earnings
6 may be credited to and deposited into the Hawaiian home receipts
7 fund."

8 SECTION 5. Section 214, Hawaiian Homes Commission Act,
9 1920, as amended, is amended by amending subsection (a) to read
10 as follows:

11 "(a) The department [~~may~~] shall make loans from revolving
12 funds to any lessee or native Hawaiian to whom, or any
13 cooperative association to which, a lease has been issued under
14 section 207(a) of this Act or a license has been issued under
15 section 207(c)(1)(B) of this Act. Such loans [~~may~~] shall be
16 made for the following purposes:

17 (1) The repair or maintenance or purchase or erection of
18 dwellings on any tract, and the undertaking of other
19 permanent improvements thereon;

20 (2) The purchase of livestock, swine, poultry, fowl,
21 aquaculture stock, and farm and aquaculture equipment;



- 1 (3) Otherwise assisting in the development of tracts and
2 of farm, ranch, and aquaculture operations, including:
3 (A) The initial and on-going development,
4 improvement, operation, and expansion of
5 homestead farms, ranches, and aquaculture
6 enterprises;
7 (B) The liquidation of indebtedness incurred for any
8 of the foregoing purposes relating to farm loans
9 aged less than five years;
10 (C) The payment of normal and reasonable living
11 expenses of a full-time farmer;
12 (D) The planning, layout, and installation of soil
13 and water conservation practices; and
14 (E) Providing relief and rehabilitation to homestead
15 farmers and ranchers due to damage by rain and
16 windstorms, droughts, tidal wave, earthquake,
17 volcanic eruption, and other natural
18 catastrophes, and for livestock disease,
19 epidemics, crop blights, and serious effects of
20 prolonged shipping and dock strikes;



- 1 (4) The cost of breaking up, planting, and cultivating
2 land and harvesting crops, the cost of excavating or
3 constructing aquaculture ponds and tanks, the purchase
4 of seeds, fertilizers, feeds, insecticides, medicines,
5 and chemicals for disease and pest control for
6 animals, fish, shellfish, and crops, and the related
7 supplies required for farm, ranch, and aquaculture
8 operations, the erection of fences and other permanent
9 improvements for farm, ranch, and aquaculture purposes
10 and the expense of marketing; and
- 11 (5) To assist licensees in the operation or erection of
12 theaters, garages, service stations, markets, stores,
13 and other mercantile establishments, all of which
14 shall be owned by native Hawaiians or by organizations
15 formed and controlled by native Hawaiians."

16 SECTION 6. Section 216, Hawaiian Homes Commission Act,
17 1920, as amended, is amended to read as follows:

18 "**§216. Insurance by borrowers; acceleration of loans; lien**
19 **and enforcement thereof.** (a) The department may require the
20 borrower to insure, in such amount as the department may
21 prescribe, any livestock, aquaculture stock, swine, poultry,



1 fowl, machinery, equipment, dwellings, and permanent
2 improvements purchased or constructed out of any moneys loaned
3 or assured by the department; or, in lieu thereof, the
4 department may directly take out such insurance and add the cost
5 thereof to the amount of principal payable under the loan.

6 (b) Whenever the department has reason to believe that the
7 borrower has violated any condition enumerated in paragraph (2),
8 (4), (5), or (6) of section 215 of this Act, the department
9 shall give due notice and afford opportunity for a hearing to
10 the borrower or the successor or successors to his interest, as
11 the case demands. If upon such hearing the department finds
12 that the borrower has violated the condition, the department may
13 declare all principal and interest of the loan immediately due
14 and payable notwithstanding any provision in the contract of
15 loan to the contrary.

16 (c) The department shall have a first lien upon the
17 borrower's or lessee's interest in any lease, growing crops,
18 aquacultural stock, either on his tract or share in any
19 collective contract or program, livestock, swine, poultry, fowl,
20 aquaculture stock, machinery, and equipment purchased with
21 moneys loaned by the department, and in any dwellings or other



1 permanent improvements on any leasehold tract, to the amount of
2 all principal and interest due and unpaid and of all taxes and
3 insurance and improvements paid by the department, and any other
4 indebtedness of the borrower, the payment of which has been
5 assured by the department. Such lien shall have priority over
6 any other obligation for which the property subject to the lien
7 may be security.

8 (d) The department may, subject to this Act and procedures
9 established by rule, enforce any lien by declaring the
10 borrower's interest in the property subject to the lien to be
11 forfeited, any lease held by the borrower canceled, and shall
12 thereupon order such leasehold premises vacated and the property
13 subject to the lien surrendered within a reasonable time. The
14 right to the use and occupancy of the Hawaiian home lands
15 contained in such lease shall thereupon revert in the
16 department, and the department may take possession of the
17 premises covered therein and the improvements and growing crops
18 or improvements and aquaculture stock thereon; provided that the
19 department shall pay to the borrower any difference which may be
20 due him after the appraisal provided for in section 209 has been
21 made.



1 (e) The department shall submit a quarterly report to the
2 legislature and beneficiaries. The report shall include data on
3 the inventory of formerly leased properties and disposition
4 status of homestead properties and improvements under the
5 control of the department. The department shall post and
6 maintain a listing of such properties on its website and conduct
7 auctions of properties to the waitlist at least twice per year."

8 SECTION 7. Section 221, Hawaiian Homes Commission Act,
9 1920, as amended, is amended to read as follows:

10 **"§221. Water.** (a) When used in this section:

11 (1) The term "water license" means any license issued by
12 the board of land and natural resources granting to
13 any person the right to the use of government-owned
14 water; and

15 (2) The term "surplus water" means so much of any
16 government-owned water covered by a water license or
17 so much of any privately owned water as is in excess
18 of the quantity required for the use of the licensee
19 or owner, respectively.

20 (b) All water licenses issued after the passage of this
21 Act shall be deemed subject to the condition, whether or not



1 stipulated in the license, that the licensee shall, upon the
2 demand of the department, grant to it the right to use, free of
3 all charge, any water which the department deems necessary
4 adequately to supply the livestock, aquaculture operations,
5 agriculture operations, or domestic needs of individuals upon
6 any tract.

7 (c) In order adequately to supply livestock, the
8 aquaculture operations, the agriculture operations, or the
9 domestic needs of individuals upon any tract, the department is
10 authorized (1) to use, free of all charge, government-owned
11 water not covered by any water license or covered by a water
12 license issued after the passage of this Act or covered by a
13 water license issued previous to the passage of this Act but
14 containing a reservation of such water for the benefit of the
15 public, and (2) to contract with any person for the right to use
16 or to acquire, under eminent domain proceedings similar, as near
17 as may be, to the proceedings provided in respect to land by
18 sections 101-10 to 101-34, Hawaii Revised Statutes, the right to
19 use any privately owned surplus water or any government-owned
20 surplus water covered by a water license issued previous to the
21 passage of this Act, but not containing a reservation of such



1 water for the benefit of the public. Any such requirement shall
2 be held to be for a public use and purpose. The department may
3 institute the eminent domain proceedings in its own name.

4 (d) The department is authorized, for the additional
5 purpose of adequately irrigating any tract, to use, free of all
6 charge, government-owned surplus water tributary to the Waimea
7 river upon the island of Kauai, not covered by a water license
8 or covered by a water license issued after July 9, 1921. Any
9 water license issued after that date and covering any such
10 government-owned water shall be deemed subject to the condition,
11 whether or not stipulated therein, that the licensee shall, upon
12 the demand of the department, grant to it the right to use, free
13 of all charge, any of the surplus water tributary to the Waimea
14 river upon the island of Kauai, which is covered by the license
15 and which the department deems necessary for the additional
16 purpose of adequately irrigating any tract.

17 Any funds which may be appropriated by Congress as a grant-
18 in-aid for the construction of an irrigation and water
19 utilization system on the island of Molokai designed to serve
20 Hawaiian home lands, and which are not required to be reimbursed
21 to the federal government, shall be deemed to be payment in



1 advance by the department and lessees of the department of
2 charges to be made to them for the construction of such system
3 and shall be credited against such charges when made.

4 (e) All rights conferred on the department by this section
5 to use, contract for, or acquire the use of water shall be
6 deemed to include the right to use, contract for, or acquire the
7 use of any ditch or pipeline constructed for the distribution
8 and control of such water and necessary to such use by the
9 department.

10 (f) Water systems in the exclusive control of the
11 department shall remain under its exclusive control; provided
12 that the department may negotiate an agreement to provide for
13 the maintenance of the water system and the billing and
14 collection of user fees. If any provision or the application of
15 that provision is inconsistent with provisions contained in this
16 section, this section shall control.

17 Water systems include all real and personal property
18 together with all improvements to such systems acquired or
19 constructed by the department for the distribution and control
20 of water for domestic or agricultural use.



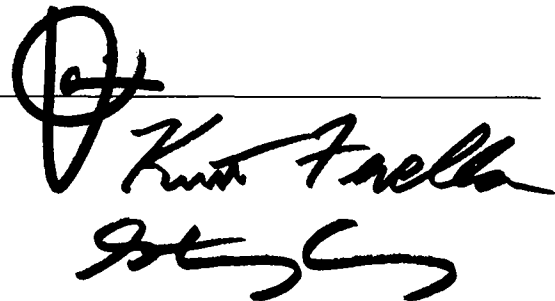
1 (g) The department shall be authorized to negotiate with
 2 homestead association governed water agencies to maintain water
 3 systems, including water billing, prior to other service
 4 providers, unless otherwise determined through the promulgation
 5 of federal regulations."

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

15 SECTION 9. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 10. This Act shall take effect upon its approval.
 18

INTRODUCED BY:


 Kurt Faelke



S.B. NO. 2525

Report Title:

Hawaiian Homes Commission Act; Beneficiary Consultation; Leases;
Department of Hawaiian Home Lands

Description:

Defines "beneficiary consultation". Prohibits the department of Hawaiian home lands from disposing or extending a general lease to non-beneficiaries, unless there are no applicants seeking to enter into a general lease to the use and occupancy of a tract of Hawaiian home lands. Requires the department to notify beneficiaries through beneficiary consultation prior to the disposition of Hawaiian home lands. Prohibits the department from establishing additional criteria to enter into a general lease with an applicant, under certain conditions. Specifies that the department may grant a license or enter into a general lease, under certain conditions. Allocates the interest or other earnings from the Hawaiian home loan fund and Hawaiian home general loan fund into their respective funds, under certain conditions. Requires the department to submit a quarterly report to the legislature and beneficiaries. Authorizes the department to negotiate with homestead association governed water agencies to maintain water systems prior to other service providers, under certain conditions.

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

