

JAN 19 2023

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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 207 of the Hawaiian Homes Commission  
2 Act, 1920, as amended, is amended by amending subsection (c) to  
3 read as follows:

4           "~~(e)(1)~~ (c) The following provisions shall apply to any  
5 license that meets the description of this subsection,  
6 regardless of whether the license is entitled "license",  
7 "permit", "memorandum of agreement", or bears any other title:

8           (1) The department is authorized to grant licenses as  
9 easements for railroads, telephone lines, electric  
10 power and light lines, gas mains, and the like. The  
11 department is also authorized to grant licenses for  
12 lots within a district in which lands are leased under  
13 the provisions of this section, for:

14           (A) Churches, hospitals, public schools, post  
15 offices, and other improvements for public  
16 purposes; and



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1 (B) Theaters, garages, service stations, markets,  
2 stores, and other mercantile establishments (all  
3 of which shall be owned by native Hawaiians or by  
4 organizations formed and controlled by native  
5 Hawaiians).

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

10 (3) Any license issued under this subsection shall be  
11 subject to such terms, conditions, and restrictions as  
12 the department shall determine and shall not restrict  
13 the areas required by the department in carrying on  
14 its duties, nor interfere in any way with the  
15 department's operation or maintenance activities[-];  
16 provided that:

17 (A) The license shall be granted based on fees that  
18 are equal to the fair market rental value of the  
19 lot; provided that this subparagraph shall not  
20 apply if the licensee is a lessee to a lease  
21 under subsection (a) or is on the department of



1                   Hawaiian home lands waitlist to become a lessee  
2                   under subsection (a); and  
3            (B) A licensee may not reassign a license to another  
4                   party, or lease any portion of a licensed lot to  
5                   another party."

6           SECTION 2. Section 208 of the Hawaiian Homes Commission  
7 Act, 1920, as amended, is amended to read as follows:

8           "§208. Conditions of leases. Each lease made under the  
9 authority granted the department by section 207 of this Act, and  
10 the tract in respect to which the lease is made, shall be deemed  
11 subject to the following conditions, whether or not stipulated  
12 in the lease:

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

20           (2) The lessee shall pay a rental of \$1 a year for the  
21                   tract [and the]; provided that if:



- 1           (A) The tract is not for residential use;  
2           (B) The lessee is not the original lessee; and  
3           (C) At the time the lease interest in the tract was  
4           transferred to the lessee, the lessee was not on  
5           the department of Hawaiian home lands waitlist  
6           for a lease of a tract under this Act,  
7           the lessee shall pay rent at fair market value. The  
8           lease shall be for a term of ninety-nine years;  
9           [~~except~~] provided that the department may extend the  
10          term of any lease; provided further that the approval  
11          of any extension shall be subject to the condition  
12          that the aggregate of the initial ninety-nine year  
13          term and any extension granted shall not be for more  
14          than one hundred ninety-nine years.
- 15          (3) The lessee may be required to occupy and commence to  
16          use or cultivate the tract as the lessee's home or  
17          farm or occupy and commence to use the tract for  
18          aquaculture purposes, as the case may be, within one  
19          year after the commencement of the term of the lease.
- 20          (4) The lessee thereafter, for at least such part of each  
21          year as the department shall prescribe by rules, shall



1           occupy and use or cultivate the tract on the lessee's  
2           own behalf.

3           (5) The lessee shall not in any manner transfer to, or  
4           otherwise hold for the benefit of, any other person or  
5           group of persons or organizations of any kind, except  
6           a native Hawaiian or Hawaiians, and then only upon the  
7           approval of the department, or agree so to transfer,  
8           or otherwise hold, the lessee's interest in the tract;  
9           ~~[except]~~ provided that the lessee, with the approval  
10          of the department, ~~[also]~~ may also transfer the  
11          lessee's interest in the tract to the following  
12          qualified relatives of the lessee who are at least  
13          one-quarter Hawaiian: husband, wife, child, or  
14          grandchild. A lessee who is at least one-quarter  
15          Hawaiian who has received an interest in the tract  
16          through succession or transfer may, with the approval  
17          of the department, transfer the lessee's leasehold  
18          interest to a brother or sister who is at least  
19          one-quarter Hawaiian. Such interest shall not, except  
20          in pursuance of such a transfer to or holding for or  
21          agreement with a native Hawaiian or Hawaiians or



1 qualified relative who is at least one-quarter  
2 Hawaiian approved of by the department or for any  
3 indebtedness due the department or for taxes or for  
4 any other indebtedness the payment of which has been  
5 assured by the department, including loans from other  
6 agencies where such loans have been approved by the  
7 department, be subject to attachment, levy, or sale  
8 upon court process. The lessee shall not sublet the  
9 lessee's interest in the tract or improvements  
10 thereon; provided that a lessee may be permitted, with  
11 the approval of the department, to rent to a native  
12 Hawaiian or Hawaiians, lodging either within the  
13 lessee's existing home or in a separate residential  
14 dwelling unit constructed on the premises[-]; provided  
15 further that the foregoing exceptions shall not apply  
16 if the tract is also used for non-residential  
17 purposes.

18 (6) Notwithstanding the provisions of paragraph (5), the  
19 lessee, with the consent and approval of the  
20 commission, may mortgage or pledge the lessee's  
21 interest in the tract or improvements thereon to a



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

15 Further, notwithstanding the authorized purposes  
16 of loan limitations imposed under section 214 of this  
17 Act and the authorized loan amount limitations imposed  
18 under section 215 of this Act, loans made by lending  
19 institutions as provided in this paragraph, insured or  
20 guaranteed by the Federal Housing Administration,  
21 Department of Veterans Affairs, or any other federal



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

15 (7) The lessee shall pay all taxes assessed upon the tract  
16 and improvements thereon. The department may pay such  
17 taxes and have a lien therefor as provided by section  
18 216 of this Act.

19 (8) The lessee shall perform such other conditions, not in  
20 conflict with any provision of this Act, as the  
21 department may stipulate in the lease; provided that





1 an original lessee shall be exempt from all taxes for  
2 the first seven years after commencement of the term  
3 of the lease."

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

7 "(e) The project developer agreement may permit the  
8 developer, after the developer has completed construction of any  
9 required off-site improvement, to assign or sublease with the  
10 department's approval portions of the leased lands in which the  
11 construction of any required off-site improvement has been  
12 completed to a purchaser or sublessee who shall assume the  
13 obligations of the developer relative to the parcel being  
14 assigned or subleased, including the construction of any on-site  
15 improvement. The department may permit a developer to share in  
16 the lease rent from the assigned lease for a fixed period in  
17 order to recover costs and profit. This subsection shall not be  
18 construed to authorize:

- 19 (1) A lessee awarded a lease pursuant to section 207(a) of  
20 this Act to sublet the tract in violation of paragraph  
21 (5) of section 208 of this Act; or



1        (2) A licensee issued a lease pursuant to section 207(c)  
2                of this Act to transfer the license or lease a  
3                licensed lot in violation of section 207(c)."

4                SECTION 4. Section 222 of the Hawaiian Homes Commission  
5 Act, 1920, as amended, is amended by amending subsection (b) to  
6 read as follows:

7                "(b) When land originally leased by the department in  
8 accordance with chapter 171, Hawaii Revised Statutes, is, in  
9 turn, subleased by the department's lessee or sublessee, the  
10 department shall submit, upon the first day of the convening of  
11 any regular session, a written report to the legislature which  
12 shall cover the sublease transactions occurring in the fiscal  
13 year prior to the regular session and shall contain the names of  
14 the persons involved in the transaction, the size of the area  
15 under lease, the purpose of the lease, the land classification  
16 of the area under lease, the tax map key number, the lease  
17 rental, the reason for approval of the sublease by the  
18 department, and the estimated net economic result accruing to  
19 the department, lessee, and sublessee. This subsection shall  
20 not be construed to authorize:



- 1        (1) A lessee awarded a lease pursuant to section 207(a) of  
2                    this Act to sublet the tract in violation of paragraph  
3                    (5) of section 208 of this Act; or
- 4        (2) A licensee issued a license pursuant to section 207(c)  
5                    of this Act to transfer the license or lease a  
6                    licensed lot in violation section 207(c)."

7            SECTION 5. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun before its effective date.

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

19           SECTION 7. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

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1           SECTION 8. This Act shall take effect upon its approval by  
2 the governor of the State of Hawaii with the consent of the  
3 United States Congress.

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INTRODUCED BY: *Kurt Feilke*



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**Report Title:**

Department of Hawaiian Home Lands; Leases; Non-Residential Use;  
Fair Market Value; Subleases

**Description:**

Provides that licenses and leases for certain non-residential lots and tracts of land under issued pursuant to the Hawaiian Homes Commission Act, 1920, shall be issued based on fair market value, subject to certain exceptions. Prohibits subletting of certain lots and tracts of land. Clarifies that existing exceptions to conditions in the Hawaiian Homes Commission Act, 1920, that prohibit a beneficiary from subletting a tract do not apply if the tract is also used for non-residential purposes. Clarifies that certain provisions relating to subleases shall not be construed to override other provisions against transfers of licenses or subletting.

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

