

ACT 109

H.B. NO. 3152

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 209, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“§209. **Successors to lessees.** (a) Upon the death of the lessee, the lessee’s interest in the tract or tracts and the improvements thereon, including growing crops and aquacultural stock (either on the tract or in any collective contract or program to which the lessee is a party by virtue of the lessee’s interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this paragraph. From the following relatives of the lessee who are (1) at least one-quarter Hawaiian, husband, wife, or children, or (2) native Hawaiian, father and mother, widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews, — the lessee shall designate the person or persons to whom the lessee directs the lessee’s interest in the tract or tracts to vest upon the lessee’s death. The Hawaiian blood requirements shall not apply to the descendants of those who are not native Hawaiians but who were entitled to the leased lands or under section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended, or under section 3 of the Act of July 9, 1952 (66 Stat. 511, 513). In all cases that person or persons need not be eighteen years of age. The designation shall be in writing, may be specified at the time of execution of the lease with a right in the lessee in similar manner to change the beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest the interests in the successor or successors so named.

In case of the death of any lessee, except as hereinabove provided, who has failed to specify a successor or successor as approved by the department, the department may select from only the following qualified relatives of the decedent:

- (1) Husband or wife; or
- (2) If there is no husband or wife, then the children; or
- (3) If there is no husband, wife, or child, then from the following relatives of the lessee who are native Hawaiian: father and mother, widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews.

The rights to the use and occupancy of the tract or tracts may be made effective as of the date of the death of the lessee.

In the case of the death of a lessee leaving no designated successor or successors, husband, wife, children, or relative qualified to be a lessee of Hawaiian home lands, the land subject to the lease shall resume its status as unleased Hawaiian home lands and the department is authorized to lease the land to a native Hawaiian as provided in this Act.

Upon the death of a lessee who has not designated a successor and who leaves a spouse not qualified to succeed to the lease or children not qualified to succeed to the lease, or upon the death of a lessee leaving no relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall appraise the value of all the improvements and growing crops or improvements and aquacultural stock, as the case may be, and shall pay to the nonqualified spouse or the nonqualified children as the lessee shall have designated prior to the lessee's death, or to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, the value thereof, less any indebtedness to the department, or for taxes, or for any other indebtedness the payment of which has been assured by the department, owed by the deceased lessee or the previous lessee. These payments shall be made out of the Hawaiian home loan fund and shall be considered an advance therefrom and shall be repaid by the successor or successors to the tract involved. If available cash in the Hawaiian home loan fund is insufficient to make these payments, payments may be advanced from the Hawaiian home general loan fund and shall be repaid by the successor or successors to the tract involved; provided that any repayment for advances made from the Hawaiian home general loan fund shall be at the interest rate established by the department for loans made from the Hawaiian home general loan fund.

[The appraisal shall be made by three appraisers, one of whom shall be named by the department, one by the previous lessee or the legal representative of the deceased lessee, as the case may be, and the third shall be selected by the two appraisers aforementioned.]

(b) The appraisal of improvements and growing crops, or stock, if any, shall be made by any one of the following methods:

- (1) By a disinterested appraiser hired by the department; provided that the previous lessee or deceased lessee's legal representative shall not be charged for the cost of the appraisal; or
- (2) By one disinterested appraiser mutually agreeable to both the department and the previous lessee or the deceased lessee's legal representative, with the cost of appraisal borne equally by the two parties; or
- (3) By not more than three disinterested appraisers of which the first shall be contracted for and paid by the department. If the previous lessee or the deceased lessee's legal representative does not agree

with the appraised value, the previous lessee or the deceased lessee's legal representative shall contract with and pay for the services of a second appraiser whose appraisal report shall be submitted to the department not later than ninety days from the date of the first appraisal report; provided that the first appraisal shall be used if the second appraiser is not hired within thirty days from the date the department transmits the first appraisal report to the previous lessee or the deceased lessee's representative. If the appraisal values are different and a compromise value between the two appraisals is not reached, a third appraisal shall be made by an appraiser appointed by the first two appraisers not later than ninety days from the date of the second appraisal report and the third appraiser shall determine the final value. The cost of the third appraisal shall be borne equally by the department and the previous lessee or the deceased lessee's legal representative.

The department may adopt rules not in conflict with this section to establish appraisal procedures, including the time period by which the department and the previous lessee or the deceased lessee's legal representative shall act on appraisal matters.

(c) If a previous lessee has abandoned the tract or tracts or cannot be located after at least two attempts to contact the previous lessee by certified mail, the department by public notice published at least once in each of four successive weeks in a newspaper of general circulation in the State shall give notice to the previous lessee that the lease will be canceled in accordance with sections 210 and 216 of this title and the department will appraise the value of the improvements and growing crops and stock, if any, if the previous lessee does not present himself or herself within one hundred and twenty days from the first day of publication of the notice. Following cancellation of the lease and appraisal of the improvements and growing crops and stock, if any, the department shall make the payout as provided in subsection (a).

[(b)] (d) After the cancellation of a lease by the department in accordance with sections 210 and 216 of this title, or the surrender of a lease by a lessee, the department [is authorized to] may transfer the lease or [to] issue a new lease to any qualified native Hawaiian regardless of whether or not [the qualified Hawaiian] that person is related in any way by blood or marriage to the previous lessee.

[(c)] (e) [Should] If any successor or successors to a tract [be] is a minor or minors, the department may appoint a guardian therefor, subject to the approval of the court of proper jurisdiction. The guardian shall be authorized to represent the successor or successors in all matters pertaining to the leasehold; provided that the guardian, in so representing [such] the successor or successors, shall comply with this title and the stipulations and provisions contained in the lease, except that the guardian need not be a native Hawaiian as defined in section 201 of this title."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 8, 1994.)