**HAWAIIAN HOMES COMMISSION ACT, 1920**

(Act of July 9, 1921, c 42, 42 Stat 108)

----------

**Note**

  This Act is now part of the State Constitution and is subject to amendment or repeal as prescribed in Article XII of the Constitution.

**Consent of Congress**

  Consent of Congress, see Pub. L. 99-557 (October 27, 1986); H.J. Res. 32, 105th Cong. 1st Sess., Pub. L. No. 105-21, 111 Stat. 235 (June 27, 1997), for §§209 and 219.1; and S.J. Res. 23, 102nd Cong. 2nd Sess., Pub. L. No. 102-398, 106 Stat. 1953 (October 6, 1992), for §§202, 203, 204, 208, 209, 213, 214, 215, 220, 221, 222, and 227.

**Law Journals and Reviews**

  The Native Hawaiian Trusts Judicial Relief Act:  The First Step in an Attempt to Provide Relief.  14 UH L. Rev. 889.

Title 1:  Definitions

Section

         1

         2

Title 1A:  Purpose

       101 Purpose

Title 2:  Hawaiian Homes Commission

       201 Definitions

     201.5 Federal reaffirmation

     201.6 Community based governance on Hawaiian home lands

       202 Department officers, staff, commission, members,

           compensation

       203 Certain public lands designated "available lands"

             Parcel I

             Parcel II

             Kewalo-Uka, Honolulu, Oahu

             Kewalo-Uka, Honolulu, Oahu

       204 Control by department of "available lands," return

           to board of land and natural resources, when; other

           lands, use of

     204.5 Additional powers

       205 Sale or lease, limitations on

       206 Other officers not to control Hawaiian home lands;

           exception

       207 Leases to Hawaiians, licenses

     207.5 Housing development

       208 Conditions of leases

       209 Successors to lessees

       210 Cancellation of leases

     210.5 Repealed

       211 Community pastures

       212 Lands returned to control of board of land and

           natural resources

       213 Funds and accounts

     213.5 Establishment of special fund

     213.6 Hawaiian home lands trust fund

       214 Purposes of loans; authorized actions

       215 Conditions of loans

       216 Insurance by borrowers; acceleration of loans; lien

           and enforcement thereof

       217 Ejectment, when; loan to new lessee for

           improvements

       218 Repealed

       219 Agricultural and aquacultural experts

     219.1 General assistance

       220 Development projects; appropriations by legislature;

           bonds issued by legislature; mandatory reservation

           of water

     220.5 Development by contract; development by project

           developer agreement

       221 Water

       222 Administration

       223 Right of amendment, etc.

       224 Sanitation and reclamation expert

       225 Investment of funds; disposition

       226 Qualification for federal programs

       227 Enterprise zones

       228 Commercial and multipurpose project leases;

           extension of term

Title 3:  Amendments to Hawaiian Organic Act

Title 4:  Miscellaneous Provisions

       401

       402

Title 5:  Homestead General Leasing Program

       501 to 516 Repealed

**Note**

  Amendment of Act and funding for Native Hawaiian roll commission.  L 2011, c 195, §§3, 4.

  Housing pilot projects; report to legislature through 2015 (repealed June 30, 2015).  L 2012, c 175, §2.

  Public land trust information system.  L 2011, c 54; L 2013, c 110, §2.

**Cross References**

  Native Hawaiian recognition, see chapter 10H.

**Attorney General Opinions**

  Threatened and endangered plants are protected on Hawaiian home lands under the provisions of chapter 195D, as well as under the provisions of the federal Endangered Species Act of 1973, to the same extent that the plants are protected elsewhere in Hawaii.  Anyone who "takes" threatened or endangered plants on Hawaiian home lands is subject to state and federal civil and criminal penalties.  Att. Gen. Op. 95-5.

**Law Journals and Reviews**

  Courts and the Cultural Performance:  Native Hawaiians' Uncertain Federal and State Law Rights to Sue.  16 UH L. Rev. 1.

  Native Hawaiian Homestead Water Reservation Rights:  Providing Good Living Conditions for Native Hawaiian Homesteaders.  25 UH L. Rev. 85.

  Ke Ala Pono--The Path of Justice:  The Moon Court's Native Hawaiian Rights Decisions.  33 UH L. Rev. 447 (2011).

  Where Justice Flows Like Water:  The Moon Court's Role in Illuminating Hawai‘i Water Law.  33 UH L. Rev. 537 (2011).

**Case Notes**

  Claims under Act arise exclusively under state law; hence, Eleventh Amendment bars federal court from deciding claims against state officials based solely on this Act.  45 F.3d 333.

  Appellant who claimed article XII's (of the state constitution) implementation of this Act violated the Fourteenth Amendment because government benefits, leases to public lands, are available only to native Hawaiians, lacked standing.  342 F.3d 934.

  Lessee defendants' motion to dismiss granted, where plaintiffs claimed native Hawaiian lessee defendants violated this Act, as well as plaintiffs' rights under 42 U.S.C. §1983 by subleasing Hawaiian home lands to non-native Hawaiians.  824 F. Supp. 1480.

  To the extent plaintiffs sought redress for violations of the Hawaii constitution or this Act, the Eleventh Amendment barred the state law claims; thus, state defendants' motion for summary judgment granted on all state law claims against state officials brought in their official capacities; state defendants sued in personal capacities were entitled to qualified immunity.  824 F. Supp. 1480.

  Association that included native Hawaiian beneficiaries asserted viable claim under 42 U.S.C. §1983 alleging breach of trust duties by appellees under this Act via Admission Act.  78 H. 192, 891 P.2d 279.

  Act is part of Hawai‘i constitution and does not constitute federal law; thus, federal preemption principles did not apply to case where there was no relevant federal law at issue and conflict between Act and state statute was matter of state constitutional law.  87 H. 91, 952 P.2d 379.

  Chapter 343 does not conflict with this Act, has only incidental impact on Hawaiian home lands, and is not inconsistent with interests of the beneficiaries; thus, chapter applies to Hawaiian home lands.  87 H. 91, 952 P.2d 379.

  For Hawaiian home lands, the department of Hawaiian home lands is the accepting authority for applicant proposals under §343-5(c); because the governor is not involved, there is no conflict with this Act.  87 H. 91, 952 P.2d 379.

  Where taxpayers failed to allege an injury-in-fact with regard to the Hawaiian homes commission act's native Hawaiian ancestry qualification for homestead leases, they did not have standing to challenge the constitutionality of the tax exemptions for homestead lessees or the Hawaiian homes commission act generally.  128 H. 89, 283 P.3d 695 (2011).

**TITLE 1:  DEFINITIONS**

**§1.**  That this Act may be cited as the "Hawaiian Homes Commission Act, 1920."

**§2.**That when used in this Act the term "Hawaiian Organic Act" means the Act entitled "An Act to provide a government for the Territory of Hawaii," approved April 30, 1900, as amended.

**Attorney General Opinions**

  This Act construed as a state constitutional provision rather than an Act of Congress.  Att. Gen. Op. 81-4.

**Case Notes**

  The Hawaii Admission Act transferred complete responsibility of the Hawaiian Homes Commission Act program and the homelands to Hawaii and claims based on that Act do not "arise under" federal laws.  588 F.2d 1216.

**§2.**That when used in this Act the term "Hawaiian Organic Act" means the Act entitled "An Act to provide a government for the Territory of Hawaii," approved April 30, 1900, as amended.

**Attorney General Opinions**

  This Act construed as a state constitutional provision rather than an Act of Congress.  Att. Gen. Op. 81-4.

**Case Notes**

  The Hawaii Admission Act transferred complete responsibility of the Hawaiian Homes Commission Act program and the homelands to Hawaii and claims based on that Act do not "arise under" federal laws.  588 F.2d 1216.

**TITLE 2:  HAWAIIAN HOMES COMMISSION**

**§201.  Definitions.**  (a)  When used in this title:

     "Commission" means the Hawaiian homes commission.

     "Fund" means the Hawaiian home loan fund.

     "Hawaiian home lands" means all lands given the status of Hawaiian home lands under the provisions of section 204 of this title.

     "Irrigated pastoral land" means land not in the description of the agricultural land but which, through irrigation, is capable of carrying more livestock the year through than first-class pastoral land.

     "Native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.

     "Public land" has the same meaning as defined in paragraph (3) of subdivision (a) of section 73 of the Hawaiian Organic Act.

     "State" means the State of Hawaii.

     "Tract" means any tract of Hawaiian home lands leased, as authorized by section 207 of this title, or any portion of the tract.

     (b)  Any term defined or described in section 347 or 351 of the Revised Laws of Hawaii of 1915, except a term defined in subsection (a) of this section, shall, whenever used in this title, have the same meaning as given by such definition or description. [Am Jun. 8, 1954, c 321, §2, 68 Stat 263; am L 1963, c 207, §5(a); am L 1997, c 197, §1]

**Revision Note**

  Definitions rearranged pursuant to §23G-15.

**Law Journals and Reviews**

  The Lum Court and Native Hawaiian Rights.  14 UH L. Rev. 377.

**Case Notes**

  Native Hawaiians have no standing to challenge constitutionality of Act on equal protection grounds as they would be asserting the rights of non-Hawaiian third parties.  795 F. Supp. 1009.

**[§201.5.]  Federal reaffirmation.**  *[Text of section subject to consent of Congress.]*  The United States and State of Hawaii hereby reaffirm and recognize that:

     (1)  The native Hawaiian people are a distinct native, indigenous people who have maintained their own language, culture, and traditions, and have established Hawaiian home lands areas protected under federal and state law;

     (2)  The United States has a unique trust responsibility to promote the welfare of the aboriginal, indigenous people of the State, and the federal government has delegated broad authority to the State to act for their betterment; and

     (3)  The aboriginal, indigenous people of the State retain their inherent sovereign authority and their right to organize for their common welfare. [L 2001, c 302, pt of §2]

**[§201.6.]  Community based governance on Hawaiian** **home lands.**  *[Text of section subject to consent of Congress.]*  It is the policy of the State to support participation in governance by promoting the empowerment of democratically-elected Hawaiian homestead community self-governance organizations.

     In furtherance of this policy, and with the consent of the Congress of the United States, the State may delegate to a democratically-elected organization representing a Hawaiian homestead community or communities the authorities delegated to the State by the United States relating to the administration of the Hawaiian Homes Commission Act, 1920, as amended.

     The commission may establish a working relationship with a democratically-elected Hawaiian homestead community self-governance organization to promote community welfare.  The selection of authorities to be delegated shall be left to the Hawaiian homes commission's discretion.  The commission may establish criteria to determine the boundaries and location of a Hawaiian homestead community and whether a Hawaiian homestead community organization is eligible for delegation.  Criteria for eligibility shall include but not be limited to the following:

     (1)  The organization and its leadership is a bona fide representative body of native Hawaiian residents, homestead lessees, qualified successors residing within the homestead community, and native Hawaiians who have designated that homestead community as their primary choice of residence with the department of Hawaiian home lands and who are awaiting an award of a lease under this Act;

     (2)  The organization is governed by free and fair elections; and

     (3)  The organization demonstrates sufficient capacity to implement the authorities that are delegated.

     The commission may contract with and delegate authority to a Hawaiian homestead community self-governance organization to perform governmental services for the homestead community represented by that homestead organization.  Any such contract shall include a requirement that the government service shall be performed at a level and quality comparable to the services that would otherwise be provided by the department of Hawaiian home lands.

     The department of Hawaiian home lands may adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to implement this section. [L 2001, c 302, pt of §2]

**§202.** **Department officers, staff, commission, members, compensation.**  (a)  There shall be a department of Hawaiian home lands which shall be headed by an executive board to be known as the Hawaiian homes commission.  The members of the commission shall be nominated and appointed in accordance with section 26‑34, Hawaii Revised Statutes.  The commission shall be composed of nine members, as follows:  three shall be residents of the city and county of Honolulu; two shall be residents of the county of Hawaii one of whom shall be a resident of east Hawaii and the other a resident of west Hawaii; two shall be residents of the county of Maui one of whom shall be a resident from the island of Molokai; one shall be a resident of the county of Kauai; and the ninth member shall be the chairman of the Hawaiian homes commission.  All members shall have been residents of the State at least three years prior to their appointment and at least four of the members shall be descendants of not less than one-fourth part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.  The members of the commission shall serve without pay, but shall receive actual expenses incurred by them in the discharge of their duties as such members.  The governor shall appoint the chairman of the commission from among the members thereof.

     The commission may delegate to the chairman such duties, powers, and authority or so much thereof, as may be lawful or proper for the performance of the functions vested in the commission.  The chairman of the commission shall serve in a full-time capacity.  He shall, in such capacity, perform such duties, and exercise such powers and authority, or so much thereof, as may be delegated to him by the commission as herein provided above.

     (b)  The provisions of section 76-16, Hawaii Revised Statutes, shall apply to the positions of first deputy and private secretary to the chairman of the commission.  The department may hire temporary staff on a contractual basis not subject to chapters 76 and 78, Hawaii Revised Statutes, when the services to be performed will assist in carrying out the purposes of the Act.  These positions may be funded through appropriations for capital improvement program projects and by the administration account, operating fund, or native Hawaiian rehabilitation fund.  No contract shall be for a period longer than two years, but individuals hired under contract may be employed for a maximum of six years; provided that the six-year limitation shall not apply if the department, with the approval of the governor, determines that such contract individuals are needed to provide critical services for the efficient functioning of the department.  All other positions in the department shall be subject to chapter 76, Hawaii Revised Statutes.

     All vacant and new civil service positions covered by chapter 76, Hawaii Revised Statutes, shall be filled in accordance with section 76-22.5, Hawaii Revised Statutes; provided that the provisions of these sections shall be applicable first to qualified persons of Hawaiian extraction. [Am Jul. 26, 1935, c 420, §1, 49 Stat 504; May 31, 1944, c 216, §1, 58 Stat 260; Jul. 9, 1952, c 618, 66 Stat 515; am L 1963, c 207, §1; am imp L 1965, c 223, §§5, 8; am L 1977, c 174, §1; am L 1983, c 147, §2; am L 1984, c 199, §2; am L 1985, c 295, §1; am L 1986, c 249, §1; am L 1989, c 265, §2; am L 2002, c 148, §48]

**Cross References**

  Acting board members, see §26-36.

  Membership on other boards prohibited, see §78-4.

  Public agency meetings and records, see chapter 92.

**Attorney General Opinions**

  Provision conferring employment preference to Hawaiians conflicts with Title VII of the Civil Rights Act of 1964 and is invalid.  Att. Gen. Op. 81-4.

**Law Journals and Reviews**

  Native Hawaiians, Self-Determination, and the Inadequacy of the State Land Trusts.  14 UH L. Rev. 519.

**§203.  Certain public lands designated "available lands."** All public lands of the description and acreage, as follows, excluding (a) all lands within any forest reservation, (b) all cultivated sugar-cane lands, and (c) all public lands held under a certificate of occupation, homestead lease, right of purchase lease, or special homestead agreement, are hereby designated, and hereinafter referred to, as "available lands":

     (1)  On the island of Hawaii:  Kamaoa-Puueo (eleven thousand acres, more or less), in the district of Kau; Puukapu (twelve thousand acres, more or less), Kawaihae 1 (ten thousand acres, more or less), and Pauahi (seven hundred and fifty acres, more or less), in the district of South Kohala; Kamoku-Kapulena (five thousand acres, more or less), Waimanu (two hundred acres, more or less), Nienie (seven thousand three hundred and fifty acres, more or less), in the district of Hamakua; fifty-three thousand acres to be selected by the department from the lands of Humuula Mauka, in the district of North Hilo; Panaewa, Waiakea (two thousand acres, more or less), Waiakea-kai, or Keaukaha (two thousand acres, more or less), and two thousand acres of agricultural lands to be selected by the department from the lands of Piihonua, in the district of South Hilo; and two thousand acres to be selected by the department from the lands of Kaohe-Makuu, in the district of Puna; land at Keaukaha, Hawaii, more particularly described as follows:

**PARCEL I**

     Now set aside as Keaukaha Beach Park by Executive Order Numbered 421, and being a portion of the Government land at Waiakea, South Hilo, Hawaii.

     Beginning at the southeast corner of this parcel of land, on the north side of Kalanianaole Road, the coordinates of said point of beginning referred to Government survey triangulation station "Halai" being five thousand six hundred and eighty-one and twelve one-hundredths feet north and seventeen thousand nine hundred and thirty-three and fifteen one-hundredths feet east, as shown on Government Survey Registered Map Numbered 2704, and running by true azimuths.

     1.  Sixty-one degrees fifty-eight minutes one thousand three hundred and fifty-one and seventy-three one-hundredths feet along the north side of Kalanianaole Road (fifty feet wide);

     2.  One hundred and fifty-one degrees fifty-eight minutes eight hundred and forty feet along United States military reservation for river and harbor improvements (Executive Order Numbered 176);

     Thence along the seashore at high-water mark, the direct azimuths and distances between points at seashore being:

     3.  Two hundred and eighty-two degrees no minutes four hundred and sixty-eight and fifty one-hundredths feet;

     4.  Three hundred and thirteen degrees twenty minutes four hundred and forty-one feet;

     5.  Two hundred and sixty degrees twenty minutes one hundred and forty feet;

     6.  Two hundred and forty-two degrees twenty minutes two hundred and fifty feet;

     7.  One hundred and eighty-eight degrees forty minutes sixty feet;

     8.  Two hundred and seventy-two degrees twenty minutes one hundred and seventy feet;

     9.  Two hundred and five degrees no minutes sixty feet;

    10.  One hundred and ten degrees twenty minutes two hundred and twenty feet;

    11.  Ninety degrees fifty minutes eighty feet;

    12.  One hundred and sixty-two degrees no minutes one hundred and seventy feet;

    13.  Two hundred and fifty degrees thirty minutes four hundred and thirty feet;

    14.  Three hundred and thirty-one degrees fifty-eight minutes three hundred and eighty feet along parcel II of Government land to the point of beginning and containing an area of eleven and twenty one-hundredths acres, more or less.

**PARCEL II**

     Being a portion of the Government land of Waiakea, South Hilo, Hawaii, and located on the north side of Kalanianaole Road and adjoining parcel I, hereinbefore described.

     Beginning at the south corner of this parcel of land, on the north side of Kalanianaole Road, the coordinates of said point of beginning referred to Government survey triangulation station "Halai," being five thousand six hundred and eighty-one and twelve one-hundredths feet north and seven thousand nine hundred and thirty-three and fifteen one-hundredths feet east and running by true azimuths:

     1.  One hundred and fifty-one degrees fifty-six minutes three hundred and eighty feet along the east boundary of parcel I;

     2.  Two hundred and twenty-nine degrees forty-five minutes thirty seconds one hundred and ninety-one and one one-hundredths feet;

     3.  One hundred and ninety-eight degrees no minutes two hundred and thirty feet to a one-and-one-half inch pipe set in concrete;

     4.  Three hundred and seven degrees thirty-eight minutes five hundred and sixty-two and twenty-one one-hundredths feet to a one-and-one-half inch pipe set in concrete;

     5.  Twenty-eight degrees no minutes one hundred and twenty-one and thirty-seven one-hundredths feet to the north side of Kalanianaole Road;

     6.  Sixty-one degrees fifty-eight minutes four hundred and eighty-three and twenty-two one-hundredths feet along the north side of Kalanianaole Road to the point of beginning and containing an area of five and twenty-six one-hundredths acres, more or less.

     (2)  On the island of Maui:  Kahikinui (twenty-five thousand acres, more or less) in the district of Kahikinui, and the public lands (six thousand acres, more or less) in the district of Kula;

     (3)  On the island of Molokai:  Palaau (eleven thousand four hundred acres, more or less), Kapaakea (two thousand acres, more or less), Kalamaula (six thousand acres, more or less), Hoolehua (three thousand five hundred acres, more or less), Kamiloloa I and II (three thousand six hundred acres, more or less), and Makakupaia (two thousand two hundred acres, more or less) and Kalaupapa (five thousand acres, more or less);

     (4)  On the island of Oahu:  Nanakuli (three thousand acres, more or less), and Lualualei (two thousand acres, more or less), in the District of Waianae; and Waimanalo (four thousand acres, more or less), in the District of Koolaupoko, excepting therefrom the military reservation and the beach lands; and those certain portions of the lands of Auwaiolimu, Kewalo, and Kalawahine described by metes and bounds as follows, to-wit:

     (I)  Portion of the Government land at Auwaiolimu, Punchbowl Hill, Honolulu, Oahu, described as follows:

     Beginning at a pipe at the southeast corner of this tract of land, on the boundary between the lands of Kewalo and Auwaiolimu, the coordinates of said point of beginning referred to Government Survey triangulation station "Punchbowl," being one thousand one hundred and thirty-five and nine-tenths feet north and two thousand five hundred and fifty-seven and eight-tenths feet east as shown on Government Survey Registered Map Numbered 2692, and running by true azimuths:

     1.  One hundred and sixty-three degrees thirty-one minutes two hundred and thirty-eight and eight-tenths feet along the east side of Punchbowl-Makiki Road;

     2.  Ninety-four degrees eight minutes one hundred and twenty-four and nine-tenths feet across Tantalus Drive and along the east side of Puowaina Drive;

     3.  One hundred and thirty-one degrees thirteen minutes two hundred and thirty-two and five-tenths feet along a twenty-five foot roadway;

     4.  One hundred and thirty-nine degrees fifty-five minutes twenty and five-tenths feet along same;

     5.  One hundred and sixty-eight degrees seventeen minutes two hundred and fifty-seven and eight-tenths feet along Government land (old quarry lot);

     6.  One hundred and fifty-six degrees thirty minutes three hundred and thirty-three feet along same to a pipe;

     7.  Thence following the old Auwaiolimu stone wall along L.C.  Award Numbered 3145, to Laenui, grant 5147 (lot 8 to C.W. Booth), L.C.  Award Numbered 1375, to Kapule, and L.C.  Award Numbered 1355, to Kekuanoni, the direct azimuth and distance being two hundred and forty-nine degrees forty-one minutes one thousand three hundred and three and five-tenths feet;

     8.  Three hundred and twenty-one degrees, twelve minutes, six hundred and ninety-three feet along the remainder of the land of Auwaiolimu;

     9.  Fifty-one degrees, twelve minutes, one thousand and four hundred feet along the land of Kewalo to the point of beginning, containing an area of twenty-seven acres, excepting and reserving therefrom Tantalus Drive and Auwaiolimu Street crossing this land.

     (II)  Portion of the land of Kewalo, Punchbowl Hill, Honolulu, Oahu, being part of the lands set aside for the use of the Hawaii Experiment Station of the United States Department of Agriculture by proclamation of the Acting Governor of Hawaii, dated June 10, 1901, and described as follows:

     Beginning at the northeast corner of this lot, at a place called "Puu Ea" on the boundary between the lands of Kewalo and Auwaiolimu, the coordinates of said point of beginning referred to Government survey triangulation station "Punchbowl," being three thousand two hundred and fifty-five and six-tenths feet north and five thousand two hundred and forty-four and seven-tenths feet east, as shown on Government Survey Registered Map Numbered 2692 of the State of Hawaii, and running by true azimuths:

     1.  Three hundred and fifty-four degrees thirty minutes nine hundred and thirty feet along the remainder of the land of Kewalo, to the middle of the stream which divides the lands of Kewalo and Kalawahine;

     2.  Thence down the middle of said stream along the land of Kalawahine, the direct azimuth and distance being forty-nine degrees sixteen minutes one thousand five hundred and twelve and five-tenths feet;

     3.  One hundred and forty-one degrees twelve minutes eight hundred and sixty feet along the remainder of the land of Kewalo;

     4.  Two hundred and thirty-one degrees twelve minutes five hundred and fifty-two and six-tenths feet along the land of Auwaiolimu to "PUU IOLE";

     5.  Thence still along the said land of Auwaiolimu following the top of the ridge to the point of beginning, the direct azimuth and distance being two hundred and thirty-two degrees twenty-six minutes one thousand four hundred and seventy feet and containing an area of thirty acres; excepting and reserving therefrom Tantalus Drive crossing this land;

     (III)  Portion of the land of Kalawahine makai of Tantalus Drive consisting of twelve acres, more or less, said parcel described more specifically in tax map key 2-4-34-8, which includes certain parcels adjoining the Ewa portion of Kalawahine Place currently occupied by short-term land dispositions if the persons residing on those parcels meet the qualifications established by the Legislature of the State of Hawaii and elect to have the land under their homes transferred to the department, and certain portions of the Ewa portion of the parcel, but excluding the hillside side portions of the southeast parcel, with metes and bounds designated by the department and approved by the department of land and natural resources; provided that persons now residing on portion of the land described, be given first opportunity to lease the lands on which they now reside, for a term of 99 years, whether or not they be native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920, as amended.

     (IV)  Portion of the Hawaii Experiment Station under the control of the United States Department of Agriculture, situated on the northeast side of Auwaiolimu Street.

**KEWALO-UKA, HONOLULU, OAHU**

     Being a portion of the land of Kewalo-uka conveyed by the Territory of Hawaii to the United States of America by proclamations of the Acting Governor of Hawaii, Henry E. Cooper, dated June 10, 1901, and August 16, 1901, and a portion of the United States Navy Hospital reservation described in Presidential Executive Order Numbered 1181, dated March 25, 1910.

     Beginning at the west corner of this parcel of land, on the Auwaiolimu-Kewalo-uka boundary and on the northeast side of Auwaiolimu Street, the coordinates of said point of beginning referred to Government survey triangulation station "Punchbowl," being one thousand two hundred and thirty and fifty-eight one-hundredths feet north and two thousand six hundred and seventy-five and six one-hundredths feet east as shown on Government Survey Registered Map Numbered 2985 and running by azimuths measured clockwise from true south:

     1.  Two hundred and thirty-one degrees twelve minutes one thousand two hundred and forty-eight and twenty-six one-hundredths feet along the land of Auwaiolimu;

     2.  Three hundred and twenty-one degrees twelve minutes eight hundred and sixty feet along Hawaiian home land as described in Presidential Executive Order Numbered 5561;

     3.  Thence down along the middle of stream in all its turns and windings along the land of Kalawahine to the north corner of Roosevelt High School lot, the direct azimuth and distance being thirty-three degrees forty-eight minutes forty seconds one thousand one hundred and twelve and twenty one-hundredths feet;

     Thence still down along the middle of stream for the next seven courses along the Roosevelt High School premises, the direct azimuth and distances between points in middle of said stream being:

     4.  Twenty-three degrees forty minutes twenty-eight and ninety one-hundredths feet;

     5.  Eight degrees no minutes one hundred and fifteen feet;

     6.  Three hundred and thirty-seven degrees fifty minutes forty-eight feet;

     7.  Two degrees thirty minutes sixty feet;

     8.  Forty-nine degrees forty minutes fifty-two feet;

     9.  Forty-six degrees six minutes ninety and seventy one-hundredths feet;

    10.  Ninety-two degrees forty-three minutes ninety-five and sixty one-hundredths feet; thence

    11.  Eighty-three degrees thirty-eight minutes seventy-one and sixty-three one-hundredths feet along state land to the northeast side of Auwaiolimu Street;

    12.  Thence on a curve to the left with a radius of one thousand one hundred and seventy-six and twenty-eight one-hundredths feet along the northeast side of Auwaiolimu Street along land described in Presidential Executive Order Numbered 1181, dated March 25, 1910, the direct azimuth and distance being one hundred and seventy-two degrees twenty-nine minutes thirty-five seconds one hundred and sixty-four and thirty-nine one-hundredths feet;

    13.  Thence continuing on a curve to the left with a radius of one thousand one hundred and seventy-six and twenty-eight one-hundredths feet along the northeast side of Auwaiolimu Street, the direct azimuth and distance being one hundred and sixty degrees fifty minutes forty-eight seconds three hundred and twelve and seventy-five one-hundredths feet;

    14.  Two hundred and twenty-four degrees fifty-three minutes six hundred and seventy and sixty-five one-hundredths feet along the Quarry Reservation (State of Hawaii, owner);

    15.  One hundred and ten degrees six minutes two hundred and thirty-nine and twenty one-hundredths feet along same;

    16.  Ninety-two degrees five minutes two hundred and two and twenty one-hundredths feet along same;

    17.  Fifty-three degrees twenty minutes three hundred and forty and thirty-four one-hundredths feet along same;

    18.  One hundred and forty-two degrees thirty minutes four hundred and twenty-four and sixty-eight one-hundredths feet along the northeast side of Auwaiolimu Street to the point of beginning and containing an area of twenty-seven and ninety one-hundredths acres; excepting and reserving therefrom that certain area included in Tantalus Drive, crossing this land.

    (V)  Portion of Kewalo-uka Quarry Reservation.  Situate on the northeast side of Auwaiolimu Street.

**KEWALO-UKA, HONOLULU, OAHU**

     Being land reserved by the State of Hawaii within the Hawaii Experiment Station under the control of the United States Department of Agriculture, as described in proclamations of the Acting Governor of Hawaii, Henry E. Cooper, dated June 10, 1901.

     Beginning at the northwest corner of this parcel of land and on the northeast side of Auwaiolimu Street, the coordinates of said point of beginning referred to Government survey triangulation station "Punchbowl," being eight hundred and ninety-three and sixty-six one-hundredths feet north and two thousand nine hundred and thirty-three and fifty-nine one-hundredths feet east as shown on Government Survey Registered Map Numbered 2985 and running by azimuths measured clockwise from true south:

     1.  Two hundred and thirty-three degrees twenty minutes three hundred and forty and thirty-four one-hundredths feet along the Hawaii Experiment Station under the control of the United States Department of Agriculture;

     2.  Two hundred and seventy-two degrees five minutes two hundred and two and twenty one-hundredths feet along same;

     3.  Two hundred and ninety degrees six minutes two hundred and thirty-nine and twenty one-hundredths feet along same;

     4.  Forty-four degrees fifty-three minutes six hundred and seventy and sixty-five one-hundredths feet along same to the northeast side of Auwaiolimu Street;

     5.  Thence on a curve to the left with a radius of one thousand one hundred and seventy-six and twenty-eight one-hundredths feet along the northeast side of Auwaiolimu Street, the direct azimuth and distance being one hundred and forty-seven degrees fifty-one minutes thirteen seconds two hundred and nineteen and fifty one-hundredths feet;

     6.  One hundred and forty-two degrees thirty minutes one hundred and thirty-four and fifty-five one-hundredths feet along the northeast side of Auwaiolimu Street;

     7.  Two hundred and thirty-two degrees thirty minutes twenty feet along same;

     8.  One hundred and forty-two degrees thirty minutes seventy-one and fifty-seven one-hundredths feet along same to the point of beginning and containing an area of four and six hundred and forty-six one-thousandths acres.

    (VI)  Being a portion of government land of Auwaiolimu, situated on the northeast side of Hawaiian home land of Auwaiolimu and adjacent to the land of Kewalo-uka at Pauoa Valley, Honolulu, Oahu, State of Hawaii. Beginning at a pipe in concrete at the south corner of this parcel of land, being also the east corner of Hawaiian home land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Punchbowl," being two thousand twelve and seventy-five one-hundredths feet south and three thousand six hundred forty-seven and eighty-seven one-hundredths feet east, and thence   running by azimuths measured clockwise from true south:

     1.  One hundred and forty-one degrees twelve minutes six hundred and ninety-three feet along Hawaiian home land;

     2.  Thence along middle of stone wall along L.C.Aw. 1356 to Kekuanoni, Grant 5147, Apana 1 to C.W.Booth, L.C.Aw. 1351 to Kamakainau, L.C.Aw. 1602 to Kahawai, Grant 4197 to Keauloa, L.C.Aw. 5235 to Kaapuiki and Grant 2587 to Haalelea;

     3.  Two hundred and ninety-five degrees thirty minutes three hundred and twenty feet along the remainder of government land of Auwaiolimu;

     4.  Twenty-four degrees sixteen minutes thirty seconds one thousand five hundred seventy-nine and thirty-six one-hundredths feet along the remainder of government land of Auwaiolimu;

     5.  Thence along middle of ridge along the land of Kewalo-uka to a point called "Puu Iole" (pipe in concrete monument), the direct azimuth and distance being fifty-six degrees no minutes eight hundred and thirty feet;

     6.  Fifty-two degrees twelve minutes five hundred fifty-two and sixty one-hundredths feet along the land of Kewalo-uka to the point of beginning and containing an area of thirty-three and eighty-eight one-hundredths acres, more or less.

    (VII)  Being portions of government lands of Kewalo-uka and Kalawahine situated on the east side of Tantalus Drive at Pauoa Valley, Honolulu, Oahu, State of Hawaii.  Beginning at the west corner of this parcel of land, the true azimuth and distance to a point called "Puu Ea" (pipe in concrete monument) being one hundred and seventy-four degrees thirty minutes four hundred one and ninety-nine one-hundredths feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Punchbowl" being two thousand eight hundred fifty-five and ten one-hundredths feet north and five thousand two hundred eighty-two and twenty-five one-hundredths feet east and thence running by azimuths measured clockwise from true south:

     1.  Two hundred and forty-eight degrees nineteen minutes forty seconds eight hundred fifty and fifty-four one-hundredths feet along the land of Kewalo-uka;

     2.  Sixteen degrees thirty minutes five hundred feet along the land of Kewalo-uka, along the land of Kalawahine;

     3.  Twenty-five degrees no minutes five hundred feet along the land of Kalawahine;

     4.  Thirty-five degrees no minutes three hundred and twenty feet along the land of Kalawahine;

     5.  Fifty degrees forty-six minutes ninety-six and seventy one-hundredths feet along Makiki Forest Ridge lots;

     6.  Seventy-three degrees twenty minutes two hundred fifty-five and ninety one-hundredths feet along Makiki Forest Ridge lots;

     7.  Eighty-six degrees thirty-two minutes one hundred sixty-three and forty one-hundredths feet along Makiki Forest Ridge lots;

     8.  Thence along the south side of Tantalus Drive on a curve to the right with a radius of two hundred and seventy feet, the direct azimuth and distance being two hundred and twenty-one degrees twelve minutes nineteen seconds ninety-eight and thirty-six one-hundredths feet;

     9.  Two hundred and thirty-one degrees forty-two minutes one hundred ninety-three and thirty-five one-hundredths feet along the south side of Tantalus Drive;

    10.  Still along Tantalus Drive on a curve to the left with a radius of one hundred eighty and seventy-eight one-hundredths feet, the direct azimuth and distance being one hundred and eighty-one degrees forty-five minutes fifty-five seconds two hundred seventy-six and seventy-two one-hundredths feet;

    11.  Two hundred and forty-two degrees fifteen minutes sixty-two and thirty-two one-hundredths feet along the land of Kewalo-uka;

    12.  One hundred and seventy-four degrees thirty minutes five hundred twenty-eight and one one-hundredths feet along the land of Kewalo-uka to the point of beginning and containing an area of five hundred and seventy-four thousand seven hundred and thirty square feet or thirteen and one hundred ninety-four one-thousandths acres.

     (5)  On the island of Kauai:  Upper land of Waimea, above the cultivated sugar cane lands, in the district of Waimea (fifteen thousand acres, more or less); and Moloaa (two thousand five hundred acres, more or less), and Anahola and Kamalomalo (five thousand acres, more or less).

     Wailuku, Maui:  That parcel of government land, situate in the District of Wailuku, Island and County of Maui, comprising twelve and four hundred and fifty-five one-thousandths acres of the ILI OF KOU and being a portion of the land covered by General Lease Numbered 2286 to Wailuku Sugar Company, Limited, notwithstanding the fact that said parcel is cultivated sugar cane land, subject, however, to the terms of said lease.

     Cultivated Sugar Cane Lands:  That parcel of Anahola, Island of Kauai, comprising four hundred and one and four hundred and twenty-three one-thousandths acres, hereinafter described and being portion of the land covered by general lease numbered 2724 to the Lihue Plantation Company, Limited, notwithstanding the fact that said parcel is cultivated sugar cane land, subject however, to the terms of said lease, said parcel being more particularly described as follows:

     Being a portion of land described in general lease numbered 2724 to the Lihue Plantation Company situate in the district of Anahola, Kauai, State of Hawaii, beginning at the northwest corner of this parcel of land, the coordinates of which referred to government triangulation station south base are three thousand and forty-nine and sixty-two one-hundredths feet south, one thousand nine hundred and thirty-two and twenty-five one-hundredths feet west, and running thence by azimuths measured clockwise from true south two hundred and eighty-four degrees thirty minutes two hundred and fifty feet, thence on the arc of circular curve to the left, with a radius of eight hundred and ninety feet and a central angle of thirty-five degrees fifteen minutes, the direct azimuth and distance being two hundred and sixty-six degrees fifty-two minutes thirty seconds five hundred and thirty-eight and ninety-six one-hundredths feet, thence two hundred and forty-nine degrees fifteen minutes one thousand eight hundred and nine and twenty-five one-hundredths feet, thence two hundred and twenty-four degrees fifteen minutes three thousand fifty-six feet, thence one hundred and thirty-four degrees fifteen minutes two hundred and seven feet, to the seashore at Anahola Bay, thence along the seashore around Kahala Point, the direct azimuth and distance being two hundred and thirty-seven degrees six minutes seven seconds one thousand and sixty and fourteen one-hundredths feet, thence along the seashore, the direct azimuth and distance being three hundred and thirty-two degrees no minutes one thousand eight hundred and twenty-seven feet, thence along the seashore, the direct azimuth and distance being three hundred and fifty-five degrees no minutes one thousand eight hundred and twenty-seven feet, thence eighty-seven degrees twenty minutes seven hundred and forty feet, thence fifty-nine degrees no minutes two thousand seven hundred and fifteen feet, thence sixty-nine degrees fifteen minutes one thousand eight hundred and eighty-seven and thirty-six one-hundredths feet, thence on the arc of a circular curve to the right with a radius of three thousand and twelve feet, and a central angle of thirty-five degrees fifteen minutes the direct azimuth and distance being eighty-six degrees fifty-two minutes thirty seconds one thousand eight hundred and twenty-three and ninety-eight one-hundredths feet, thence one hundred and four degrees thirty minutes two hundred and fifty feet, thence one hundred and ninety-four degrees thirty minutes one thousand and thirty-one feet, thence on the arc of a circular curve to the left with a radius of six hundred and seven and ninety-five one-hundredths feet and a central angle of fifty-three degrees three minutes thirty seconds the direct azimuth and distance being seventy-seven degrees fifty-eight minutes fifteen seconds five hundred and forty-three and nine one-hundredths feet to the government road, thence two hundred and thirty-one degrees twenty-six minutes thirty seconds one hundred and thirteen and sixty-one one-hundredths feet along the government road, thence along the government road on the arc of a circular curve to the left with a radius of four hundred and seventy-seven feet and a central angle of forty-four degrees twenty-six minutes thirty seconds, the direct azimuth and distance being two hundred and nine degrees thirteen minutes fifteen seconds three hundred and sixty and seventy-eight one-hundredths feet, thence one hundred and eighty-seven degrees no minutes one hundred and sixty-nine and fifty-four one-hundredths feet along the government road, thence on the arc of a circular curve to the left with a radius of three hundred and fifty-one and eight one-hundredths feet and a central angle of eighty-two degrees thirty minutes the direct azimuth and distance being three hundred and twenty-five degrees forty-five minutes four hundred and sixty-two and ninety-seven one-hundredths feet, thence one hundred and ninety-four degrees thirty minutes five hundred and seventy-nine feet, thence one hundred and four degrees thirty minutes three hundred feet, thence one hundred and ninety-four degrees thirty minutes two hundred feet, thence two hundred eighty-four degrees thirty minutes three hundred feet, thence one hundred and ninety-four degrees thirty minutes two hundred and fifty-two feet to the point of beginning containing an area of four hundred and one and four hundred and twenty-three one-thousandths acres more or less.  [Am May 16, 1934, c 290, §1, 48 Stat 777; Aug. 29, 1935, c 810, §1, 49 Stat 966; Jul. 10, 1937, c 482, 50 Stat 497; Nov. 26, 1941, c 544, §1, 55 Stat 782; May 31, 1944, c 216, §2, 58 Stat 260; Jun. 3, 1948, cc 384, 397, 62 Stat 295, 303; Jul. 9, 1952, c 614, §§1, 2, 66 Stat 511; am L 1963, c 207, §§2, 5; am L 1990, c 150, §7]

**WITHDRAWALS OF AVAILABLE LAND**

  The Act of May 31, 1944, c 216, §2, 58 Stat 260, repealed so   much of the above section as designates the lands hereinafter described as "available lands," and restored such lands to their previous status under the control of the Territory of Hawaii. The lands so restored on the island of Hawaii are:

  Those portions of Keaukaha tract 1, being additions to the Hilo airplane landing field, comprising several parcels of land as follows:

  Parcel 1.  Land situated at Keaukaha, tract 1, Waiakea, South Hilo, island of Hawaii, State of Hawaii, being portions of lots 96, 97, 182, 183, 184, 185, Desha Avenue, and twenty-five foot alley, of the Keaukaha residence lots, as shown on government survey registered maps 2723 and 3017, on file in the department of accounting and general services at Honolulu.

  Beginning at the south corner of this piece of land and on the west boundary of the Hawaiian home land, the true azimuth and distance from the northwest corner of the Hilo airport addition, as shown on government survey registered maps 2723 and 3017 on file in the department of accounting and general services at Honolulu, and on the south side of Kamehameha Avenue, being one hundred and eighty degrees no minutes four hundred and three and thirty-one one-hundredths feet, and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halai" being two thousand five hundred and twenty and thirty-one one-hundredths feet north and fifteen thousand five hundred and fifty-three one-hundredths feet east, thence running by azimuths measured clockwise from true south:

  1.  One hundred and eighty degrees no minutes six hundred and fifteen and ninety-five one-hundredths feet along Government land and tract A of grant deeded by Territory of Hawaii to Hilo Railroad Company;

  2.  Three hundred and ten degrees forty-two minutes four hundred and one and sixty-six one-hundredths feet along the remainders of Desha Avenue, lots 96, 97, twenty-five-foot alley, and lot 182 of the Keaukaha residence lots; and

  3.  Forty degrees forty-two minutes four hundred and sixty-six and ninety-seven one-hundredths feet along the remainders of lots 182, 183, 184, 185, and Desha Avenue and the Keaukaha residence lots to the point of beginning, and containing an area of two and one hundred and fifty-five one-thousandths acres, more or less.

  Parcel 2.  Land situated on the south side of Kamehameha Avenue, at Keaukaha, tract 1, Waiakea, South Hilo, Island of Hawaii, State of Hawaii, being all of lots 449 to 486, inclusive, all of lots 546 to 564, inclusive, and portions of Kauhane, Spencer, Pua, and Kamaka Avenues of the Keaukaha residence lots, as shown on Government Survey Registered Maps 2723 and 3017, on file in the department of accounting and general services at Honolulu.

  Beginning at the northwest corner of this piece of land; being also the southwest corner of Kamehameha and Kauhane Avenues, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halai" being two thousand one hundred and seventeen feet north and sixteen thousand eight hundred and eighty feet east, thence running by azimuths measured clockwise from true south:

  1.  Two hundred and seventy degrees no minutes two thousand and seventeen and eighty-five one-hundredths feet along the south side of Kamehameha Avenue;

  2.  Three hundred and sixty degrees no minutes four hundred and fifty feet along lots 448 and 487 of the Keaukaha residence lots;

  3.  Three hundred and sixty degrees no minutes fifty feet across Kamaka Avenue;

  4.  Three hundred and sixty degrees no minutes two hundred and twenty-five feet along lot 545 of the Keaukaha residence lots;

  5.  Ninety degrees no minutes three hundred and ninety-two and forty-eight one-hundredths feet along lots 583, 582, 581, and 580 of the Keaukaha residence lots;

  6.  Ninety degrees no minutes fifty feet across Pua Avenue;

  7.  Ninety degrees no minutes eight hundred and one and fifteen one-hundredths feet along lots 579, 578, 577, 576, 575, 574, 573, and 572, of the Keaukaha residence lots;

  8.  Ninety degrees no minutes fifty feet across Spencer Avenue;

  9.  Ninety degrees no minutes six hundred and seventy-four and twenty-two one-hundredths feet along lots 571, 570, 569, 568, 567, 566, and 565, of the Keaukaha residence lots;

  10.  Ninety degrees no minutes fifty feet across Kauhane Avenue; and

  11.  One hundred and eight degrees no minutes seven hundred and twenty-five feet along Puuhala Reserve and the present Hilo airport addition, as shown on Government Survey Registered Maps 2723 and 3017 on file in the department of accounting and general services at Honolulu, to the point of beginning, and containing an area of thirty-three and five hundred and eighty-five one-thousandths acres, more or less.

  Parcel 3.  As returned to the Commissioner of Public Lands of the Territory of Hawaii by resolution numbered 78 of the Hawaiian Homes Commission, dated May 13, 1942.  Land situated at Keaukaha, tract 1, Waiakea, South Hilo, Island of Hawaii, State of Hawaii, being the whole of lots 446, 447, 448, 487, 488, 489, 543, 544, 545, 584, 585, and 586 and portions of lots 581, 582, and 583, and a portion of Kamaka Avenue, of the Keaukaha residence lots, as shown on Government Survey Registered Maps 2723 and 3017, more particularly described as follows:

  Beginning at the northeast corner of this piece of land, being also the northeast corner of lot 446 and the southwest corner of Kamehameha and Baker Avenues, the true azimuth and distance from the northwest corner of Hilo airport addition (of twenty and fifty-four one-hundredths acres and on the south side of Kamehameha Highway), as shown on Government Survey Registered Maps 2723 and 3017, being two hundred and seventy degrees no minutes and three thousand six hundred and eighty-eight and seventy one-hundredths feet, and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halai" being two thousand one hundred and seventeen feet north and nineteen thousand one hundred and ninety-two and twenty-three one-hundredths feet east, thence running by azimuths measured clockwise from true south:

  1.  Three hundred and sixty degrees no minutes four hundred and fifty feet along the west side of Baker Avenue;

  2.  Three hundred and sixty degrees no minutes fifty feet across Kamaka Avenue;

  3.  Three hundred and sixty degrees no minutes four hundred and fifty feet along the west side of Baker Avenue;

  4.  Ninety degrees no  minutes two hundred and ninety-four and thirty-eight one-hundredths feet along the north side of Kawika Avenue;

  5.  One hundred and eighty degrees no minutes one hundred and twelve and fifty one-hundredths feet along lot 583 of the Keaukaha residence lots;

  6.  One hundred and ten degrees fifty-five minutes three hundred and fifteen and thirteen one-hundredths feet along the remainders of lots 583, 582, and 581 of the Keaukaha residence lots;

  7.  Two hundred and seventy degrees no minutes two hundred and ninety-four and thirty-six one-hundredths feet along lots 548, 547, and 546 of the Keaukaha residence lots;

  8.  One hundred and eighty degrees no minutes two hundred and twenty-five feet along lot 546 of the Keaukaha residence lots;

  9.  One hundred and eighty degrees no minutes fifty feet across Kamaka Avenue;

  10.  One hundred and eighty degrees no minutes four hundred and fifty feet along lots 486 and 449 of the Keaukaha lots to the south side of Kamehameha Avenue; and

  11.  Two hundred and seventy degrees no minutes two hundred and ninety-four and thirty-eight one-hundredths feet along the south side of Kamehameha Avenue to the point of beginning and containing an area of six and eighty one-hundredths acres.

  Parcel 4.  As returned to the Commissioner of Public Lands of the Territory of Hawaii by resolution numbered 78 of the Hawaiian Homes Commission, dated May 13, 1942.  Land situated at Keaukaha, tract 1, Waiakea, South Hilo, Island of Hawaii, State of Hawaii, being the whole of lots 93, 94, 95, 98, 99, 100, 101, and 102 and portions of lots 92, 96, 97, and 103 and a portion of Desha Avenue of the Keaukaha residence lots, as shown on Government Survey Registered Maps 2723 and 3017, more particularly described as follows:

  Beginning at the northwest corner of this piece of land, being also the northwest corner of lot 94 and on the southeast side of twenty-five-foot road, the true azimuth and distance from the northwest corner of Hilo airport addition (of twenty and fifty-four one-hundredths acres and on the south side of Kamehameha Highway), as shown on Government Survey Registered Maps 2723 and 3017, being one hundred and eighty degrees no minutes one thousand seven hundred and fifty-one and eighty-seven one-hundredths feet, and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halai" being three thousand eight hundred and sixty-eight and eighty-seven one-hundredths feet north and fifteen thousand five hundred and three and fifty-three one-hundredths feet east, thence running by azimuths measured clockwise from true south:

  1.  Two hundred and forty-three degrees fifty minutes one hundred and seventy-seven and ninety-three one-hundredths feet along the southeast side of twenty-five-foot road;

  2.  Three hundred and thirty-three degrees  fifty minutes two hundred and thirty-five and sixty one-hundredths feet along lot 92 of the Keaukaha residence lots;

  3.  Two hundred and forty-three degrees fifty minutes one hundred feet along the remainder of lot 92 of the Keaukaha residence lots;

  4.  Three hundred and thirty-three degrees fifty minutes two hundred feet along lot 91 of the Keaukaha residence lots;

  5.  Three hundred and thirty-three degrees fifty minutes fifty feet across Desha Avenue;

  6.  Two hundred and forty-three degrees fifty minutes one hundred feet along the southeast side of Desha Avenue;

  7.  Three hundred and thirty-three degrees fifty minutes two hundred and thirty-five and sixty one-hundredths feet along lot 103 of the Keaukaha residence lots;

  8.  Two hundred and forty-three degrees fifty minutes one hundred feet along the remainder of lot 103 of the Keaukaha residence lots;

  9.  Three hundred and thirty-three degrees fifty minutes two hundred feet along the southwest side of Kauhane Avenue;

  10.  Sixty-three degrees fifty minutes six hundred and eighty-eight and thirty-six one-hundredths feet along the northwest side of twenty-five-foot road;

  11.  One hundred and thirty degrees forty-two minutes two hundred and eighty-six and seventy-three one-hundredths feet along the remainders of lots 97 and 96 and Desha Avenue of the Keaukaha residence lots; and

  12.  One hundred and eighty degrees no minutes seven hundred and thirty-two and sixty-one one-hundredths feet along Government land and tract A of grant deed by the Territory of Hawaii to Hilo Railroad Company to the point of beginning and containing an area of ten and eight hundred and forty-nine one-thousandths acres.

  The Act of June 12, 1948, c 458, 62 Stat 387, withdrew certain land as available land.  The Act provided:

  "That the portion of Hawaiian Homes Commission land of Waiakea-kai or Keaukaha, South Hilo, Hawaii, Territory of Hawaii, more fully described as follows, is withdrawn as 'available land' within the meaning of the Hawaiian Homes Commission Act of 1920 (42 Stat. 108), as amended, and is hereby restored to its previous status under the control of the Territory of Hawaii:

  "Portion of Hawaiian home land of Keaukaha, tract 2, Waiakea, South Hilo, Island of Hawaii, Territory of Hawaii, as returned to the Commissioner of Public Lands of the Territory of Hawaii by Resolution numbered 85 of the Hawaiian Homes Commission, dated July 18, 1944, and more particularly described as follows:

  "Beginning at a spike at the northwest corner of this tract of land and on the southeast corner of the intersection of Nene and Akepa Streets, the coordinates of said point of beginning referred to Government Survey Triangulation Station 'Halai' being five thousand two hundred and eight and twenty-one one-hundredths feet north and twenty-four thousand eight hundred and eighteen and six one-hundredths feet east, and running by azimuths measured clockwise from true south:

  "1.  Two hundred and ninety degrees eleven minutes five hundred and sixty-one and eighty-two one-hundredths feet along the south side of Nene Street;

  "2.  Thence along same on a curve to the left with a radius of one thousand four hundred and sixty-five and four-tenths feet, the chord azimuth and distance being two hundred and sixty-eight degrees thirty-seven minutes one thousand and seventy-seven and thirty one-hundredths feet;

  "3.  Two hundred and forty-seven degrees three minutes five hundred and ninety-six and sixty-two one-hundredths feet along same;

  "4.  Three hundred and sixty degrees no minutes one thousand two hundred and thirty-seven and eighty-five one-hundredths feet;

  "5.  Ninety degrees no minutes two thousand one hundred and fifty-three and sixty-nine one-hundredths feet;

  "6.  One hundred and eighty degrees no minutes one thousand one hundred and seventy-three and four one-hundredths feet along the east side of the proposed extension of Akepa Street to the point of beginning, and containing an area of fifty acres, more or less.

  "Section 2.  Notwithstanding the foregoing provisions of this Act, if, at any time, in the opinion of the Commissioner of Public Lands, use of the above described lands has been discontinued by the Department of Commerce, upon the making of such a determination by the Commissioner of Public Lands such lands shall become available lands within the meaning of Section 203 of title II of the Hawaiian Homes Commission Act, 1920, as amended."

  The Act of August 29, 1935, c 819, §1, 49 Stat 966, and the Act of May 31, 1944, c 216, §2, 58 Stat 260, repealed so much of the above section as designates the lands hereinafter described as "available lands", and restored such lands to their previous status under the control of the Territory of Hawaii. The lands so restored on the Island of Molokai as of August 29, 1935 are:

  Those portions of Hoolehua, apana 2, and Palaau, apana 2, comprising the Molokai airplane landing field as set aside for public purposes by Executive Order Numbered 307 of the Governor of the Territory of Hawaii, dated December 15, 1927, consisting of two hundred four and nine-tenths acres, more or less, and particularly described as follows:

  Beginning at a point on the southeast corner of the said land, from which the azimuth (measured clockwise from true south) and distance to United States Coast and Geodetic Survey Triangulation Station "Middle Hill" (Kualapuu) is two hundred and seventy-two degrees twenty-three minutes thirty-nine seconds, twelve thousand seven hundred twenty and nine-tenths feet, thence from said point of beginning by metes and bounds, eighty-five degrees ten minutes thirty seconds, three thousand four hundred and twenty-seven feet; one hundred and eighty degrees fifty-six minutes thirty seconds, two thousand six hundred thirty and two-tenths feet; two hundred and seventy-nine degrees fifty-five minutes thirty seconds, four thousand nine hundred seven and three-tenths feet; three hundred and forty-six degrees twenty minutes, three hundred forty-two and three-tenths feet near west edge of Kakainapahao Gulch; three degrees twenty-six minutes, four hundred twenty-seven and one-tenth feet; eighty-three degrees twenty-four minutes, one thousand four hundred sixty-eight and two tenths feet; five degrees fifty-eight minutes, five hundred seventy-one and three-tenths feet to the point of beginning.

  The land so restored on the Island of Molokai as of May 31, 1944 is:

  That portion of Palaau, Apana 2, being an addition to the Molokai airplane landing field, as follows:

  Parcel 1.  As returned to the Commissioner of Public Lands of the Territory of Hawaii by resolution numbered 68 of the Hawaiian Homes Commission, dated March 3, 1941, and consisting of thirteen and five hundred and twenty-seven one-thousandths acres, more or less, more particularly described as follows:

  Beginning at the southeast corner of this piece of land, on the west boundary of the present Molokai airport, the true azimuth and distance from the northwest corner of the Molokai airport (Executive Order Numbered 809) being no degrees fifty-six minutes thirty seconds two hundred and forty-two feet, and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Middle Hill" being one and fifteen one-hundredths feet north and sixteen thousand one hundred and twenty-eight and one one-hundredths feet west, thence running by true azimuths measured clockwise from south:

  (1)  Sixty degrees twenty-five minutes eight hundred and forty-one and seventy-four one-hundredths feet along the remainders of fifty-foot road and lot 170 of the Hawaiian Homes land;

  (2)  One hundred and eighty degrees fifty-six minutes thirty seconds eight hundred and twelve and sixty-two one-hundredths feet along the remainder of lot 170 of the Hawaiian Homes land;

  (3)  Two hundred and forty degrees twenty-five minutes eight hundred and forty-one and seventy-four one-hundredths feet along the remainders of Lot 170, Pine Avenue, lot 158 and fifty-foot road of the Hawaiian Homes land, to the west side of the Molokai airport; and

  (4)  No degrees fifty-six minutes thirty seconds eight hundred and twelve and sixty-two one-hundredths feet along the west side of the present Molokai airport to the point of beginning.

**Attorney General Opinions**

  The term "available lands" does not include land already set apart by Presidential Executive Order at time of enactment of this Act.  Att. Gen. Op. 64-44.

**§204.  Control by department of "available lands," return to board of land and natural resources, when; other lands, use of.**  (a)  Upon the passage of this Act, all available lands shall immediately assume the status of Hawaiian home lands and be under the control of the department to be used and disposed of in accordance with the provisions of this Act, except that:

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

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

              In the management of any retained available lands not required for leasing under section 207(a), the department may dispose of those lands or any improvements thereon to the public, including native Hawaiians, on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands in chapter 171, Hawaii Revised Statutes; provided that the department may not sell or dispose of such lands in fee simple except as authorized under section 205 of this Act; provided further that the department is expressly authorized to negotiate, prior to negotiations with the general public, the disposition of Hawaiian home lands or any improvements thereon to a native Hawaiian, or organization or association owned or controlled by native Hawaiians, for commercial, industrial, or other business purposes, in accordance with the procedures set forth in chapter 171, Hawaii Revised Statutes.

     (3)  The department, with the approval of the Secretary of the Interior, in order to consolidate its holdings or to better effectuate the purposes of this Act, may exchange the title to available lands for land, privately or publicly owned, of an equal value.  All lands so acquired by the department shall assume the status of available lands as though the land were originally designated as available lands under section 203 of this Act, and all lands so conveyed by the department shall assume the status of the land for which it was exchanged.  The limitations imposed by section 73(l) of the Hawaiian Organic Act and the land laws of Hawaii as to the area and value of land that may be conveyed by way of exchange shall not apply to exchanges made pursuant hereto.  No such exchange of land publicly owned by the State shall be made without the approval of two-thirds of the members of the board of land and natural resources.  For the purposes of this paragraph, lands "publicly owned" means land owned by a county or the State or the United States.

     (b)  Unless expressly provided elsewhere in this Act, lands or an interest therein acquired by the department pursuant to section [213(e)], 221(c), or 225(b), or any other section of this Act authorizing the department to acquire lands or an interest therein, may be managed and disposed of in the same manner and for the same purposes as Hawaiian home lands. [Am Mar. 27, 1928, c 142, §1, 45 Stat 246; Jul. 10, 1937, c 482, 50 Stat 503; Feb. 20, 1954, c 10, §1, 68 Stat 16; Jun. 18, 1954, c 319, §1, 68 Stat 262; am L 1963, c 207, §§2, 5(b); am L 1965, c 271, §1; am L 1976, c 24, §1; am Const Con 1978 and election Nov 7, 1978; am L 1985, c 60, §1; am L 1990, c 14, §1; am L 2000, c 119, §1]

**Revision Note**

  In subsection (b), "section 213(e)" substituted for "section 213(b)(1)".

**Cross References**

  As to last two sentences of subsection (a)(3), compare §§171-5 and 171-50.

**Attorney General Opinions**

  Hawaiian home lands needed for purposes of the Act are to be used and disposed of in accordance with the Act and are not subject to county zoning requirements.  Att. Gen. Op. 72-21.

  Threatened and endangered plants are protected on Hawaiian home lands under the provisions of chapter 195D, as well as under the provisions of the federal Endangered Species Act of 1973, to the same extent that the plants are protected elsewhere in Hawaii.  Anyone who "takes" threatened or endangered plants on Hawaiian home lands is subject to state and federal civil and criminal penalties.  Att. Gen. Op. 95-5.

**Law Journals and Reviews**

  The Lum Court and Native Hawaiian Rights.  14 UH L. Rev. 377.

**Case Notes**

  In dealing with eligible native Hawaiians, department of Hawaiian home lands must adhere to high fiduciary duties normally owed by a trustee to its beneficiaries.  64 H. 327, 640 P.2d 1161.

  Commission may lease lands in accordance with §207(a) to the government because it is a member of the public.  69 H. 538, 751 P.2d 81.

  Section not violated by application of chapter 343.  87 H. 91, 952 P.2d 379.

**§204.5.  Additional powers.**  In addition and supplemental to the powers granted to the department by law, and notwithstanding any law to the contrary, the department may:

     (1)  With the approval of the governor, undertake and carry out the development of any Hawaiian home lands available for lease under and pursuant to section 207 of this Act by assembling these lands in residential developments and providing for the construction, reconstruction, improvement, alteration, or repair of public facilities therein, including, without limitation, streets, storm drainage systems, pedestrian ways, water facilities and systems, sidewalks, street lighting, sanitary sewerage facilities and systems, utility and service corridors, and utility lines, where applicable, sufficient to adequately service developable improvements therein, sites for schools, parks, off-street parking facilities, and other community facilities;

     (2)  With the approval of the governor, undertake and carry out the development of available lands for homestead, commercial, and multipurpose projects as provided in section 220.5 of this Act, as a developer under this section or in association with a developer agreement entered into pursuant to this section by providing for the construction, reconstruction, improvement, alteration, or repair of public facilities for development, including, without limitation, streets, storm drainage systems, pedestrian ways, water facilities and systems, sidewalks, street lighting, sanitary sewerage facilities and systems, utility and service corridors, and utility lines, where applicable, sufficient to adequately service developable improvements therein, sites for schools, parks, off-street parking facilities, and other community facilities;

     (3)  With the approval of the governor, designate by resolution of the commission all or any portion of a development or multiple developments undertaken pursuant to this section an "undertaking" under part III of chapter 39, Hawaii Revised Statutes; and

     (4)  Exercise the powers granted under section 39-53, Hawaii Revised Statutes, including the power to issue revenue bonds from time to time as authorized by the legislature.

     All provisions of part III of chapter 39, Hawaii Revised Statutes, shall apply to the department and all revenue bonds issued by the department shall be issued pursuant to the provisions of that part, except these revenue bonds shall be issued in the name of the department, and not in the name of the State.

     As applied to the department, the term "undertaking" as used in part III of chapter 39 shall include a residential development or a development of homestead, commercial, or multipurpose projects under this Act.  The term "revenue" as used in part III of chapter 39, shall include all or any portion of the rentals derived from the leasing of Hawaiian home lands or available lands, whether or not the property is a part of the development being financed. [L 1989, c 283, pt of §2; ree L 1997, c 197, §2]

**§205.  Sale or lease, limitations on.**Available lands shall be sold or leased only:

     (1)  In the manner and for the purposes set out in this title; or

     (2)  As may be necessary to complete any valid agreement of sale or lease in effect at the time of the passage of this Act;

except that such limitations shall not apply to the unselected portions of lands from which the department has made a selection and given notice thereof, or failed so to select and give notice within the time limit, as provided in paragraph (3) of section 204 of this title. [Am L 1963, c 207, §2; am L 1997, c 197, §3]

**Note**

The reference was to paragraph (3) of section 204 as originally enacted, which fixed a period of eight years after the first meeting of the commission [department].  The first meeting was held September 20, 1921.

**§206.  Other officers not to control Hawaiian home lands; exception.**  The powers and duties of the governor and the board of land and natural resources, in respect to lands of the State, shall not extend to lands having the status of Hawaiian home lands, except as specifically provided in this title. [Am L 1963, c 207, §5(a), (b); ree L 1997, c 197, §4]

**Note**

  The Act of July 10, 1937, c 484, 50 Stat 508, provides in part:  "That the legislature of the Territory of Hawaii may create a public corporate authority to engage in slum clearance, or housing undertakings, or both, within such Territory....  The legislature.... may, without regard to any federal acts restricting the disposition of public lands of the Territory, authorize the commissioner of public lands, the Hawaiian homes commissioner, and any other officers of the Territory having power to manage and dispose of its public lands, to grant, convey, or lease to such authority parts of the public domain, and may provide that any of the public domain or other property acquired by such authority may be mortgaged by it as security for its bonds...."

**Attorney General Opinions**

  Governor's power to set aside public lands by executive order does not extend to Hawaiian home lands.  Att. Gen. Op. 75-3.

  Threatened and endangered plants are protected on Hawaiian home lands under the provisions of chapter 195D, as well as under the provisions of the federal Endangered Species Act of 1973, to the same extent that the plants are protected elsewhere in Hawaii.  Anyone who "takes" threatened or endangered plants on Hawaiian home lands is subject to state and federal civil and criminal penalties.  Att. Gen. Op. 95-5.

**Law Journals and Reviews**

  Native Hawaiians, Self-Determination, and the Inadequacy of the State Land Trusts.  14 UH L. Rev. 519.

**Case Notes**

  Absent demonstrable intent to restrict government's authority to enforce state and county criminal laws on Hawaiian home lands, section does not preclude enforcement of such laws.  80 H. 168, 907 P.2d 754.

**§207.  Leases to Hawaiians, licenses.**  (a)  The department is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands within the following acreage limits per each lessee:  (1) not more than forty acres of agriculture lands or lands used for aquaculture purposes; or (2) not more than one hundred acres of irrigated pastoral lands and not more than one thousand acres of other pastoral lands; or (3) not more than one acre of any class of land to be used as a residence lot; provided that in the case of any existing lease of a farm lot in the Kalanianaole Settlement on Molokai, a residence lot may exceed one acre but shall not exceed four acres in area, the location of such area to be selected by the department; provided further that a lease granted to any lessee may include two detached farm lots or aquaculture lots, as the case may be, located on the same island and within a reasonable distance of each other, one of which, to be designated by the department, shall be occupied by the lessee as the lessee's home, the gross acreage of both lots not to exceed the maximum acreage of an agricultural, pastoral, or aquacultural lot, as the case may be, as provided in this section.

     (b)  The title to lands so leased shall remain in the State.  Applications for tracts shall be made to and granted by the department, under such regulations, not in conflict with any provisions of this title, as the department may prescribe.  The department shall, whenever tracts are available, enter into such a lease with any applicant who, in the opinion of the department, is qualified to perform the conditions of such lease.

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

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

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

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

     (3)  Any license issued under this subsection shall be subject to such terms, conditions, and restrictions as the department shall determine and shall not restrict the areas required by the department in carrying on its duties, nor interfere in any way with the department's operation or maintenance activities. [Am Feb. 3, 1923, c 56, §1, 42 Stat 1222; May 16, 1934, c 290, §2, 48 Stat 779; Jul. 10, 1937, c 482, 50 Stat 504; May 31, 1944, c 216, §§3, 4, 58 Stat 264; Jun. 14, 1948, c 464, §§1, 2, 62 Stat 390; Jun. 18, 1954, c 321, §1, 68 Stat 263; Aug. 23, 1958, Pub L 85-733, 72 Stat 822; am L 1963, c 207, §2; am L 1981, c 90, §1; am L 1983, c 125, §2; am L 1984, c 27, §1 and c 37, §2; am L 1985, c 69, §1 and c 159, §2; am L 1997, c 196, §2]

**Note**

  In addition to the provisions herein made for leases to native Hawaiians, the Act of June 20, 1938, c 530, §3, 52 Stat 781, after providing for the Kalapana extension to the Hawaii National Park, authorized the Secretary of the Interior to lease home sites herein to native Hawaiians under certain circumstances.

  Homesteaders Cooperative Association use of Hoolehua Store building free of rent, subject to certain conditions.  L 1959, JR 17.

**Revision Note**

  In subsection (b), "State" substituted for "United States" in view of section 5(b) of Hawaii Admission Act.

**Attorney General Opinions**

  Section does not authorize the commission to grant a permit to occupy Hawaiian homes premises from month to month on a monthly charge basis.  Att. Gen. Op. 61-64.

  Commission has no authority to permit a lessee to subdivide homestead tract and sublease a portion thereof to daughter.  Att. Gen. Op. 61-65.

  Neither the department nor any lessee is authorized to develop multi-unit dwellings.  Att. Gen. Op. 62-9.

  Lands not needed for purposes of Act could be subjected to county zoning regulations.  Att. Gen. Op. 72-21.

**Law Journals and Reviews**

  The Lum Court and Native Hawaiian Rights.  14 UH L. Rev. 377.

**Case Notes**

  As subsection (c)(1)(A) of this Act does not provide a "statutory entitlement" to any entity which may be granted a license pursuant to it, plaintiff energy producer failed to establish that plaintiff's exclusive telecommunications service license issued under this subsection constituted "property" which would entitle plaintiff to due process protection.  110 H. 419, 134 P.3d 585.

  Where taxpayers failed to allege an injury-in-fact with regard to the Hawaiian homes commission act's native Hawaiian ancestry qualification for homestead leases, they did not have standing to challenge the constitutionality of the tax exemptions for homestead lessees or the Hawaiian homes commission act generally.  128 H. 89, 283 P.3d 695 (2011).

**[§207.5.]**  **Housing development.**  The department is authorized to develop and construct single-family and multifamily units for housing native Hawaiians.  The method of disposition, including rentals, as well as the terms, conditions, covenants, and restrictions as to the use and occupancy of such single-family and multifamily units shall be prescribed by rules adopted by the department pursuant to chapter 91. [L 1997, c 196, §1]

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

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

     (2)  The lessee shall pay a rental of $1 a year for the tract and the lease shall be for a term of ninety-nine years; except that the department may extend the term of any lease; provided that the approval of any extension shall be subject to the condition that the aggregate of the initial ninety-nine year term and any extension granted shall not be for more than one hundred ninety-nine years.

     (3)  The lessee may be required to occupy and commence to use or cultivate the tract as the lessee's home or farm or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the commencement of the term of the lease.

     (4)  The lessee thereafter, for at least such part of each year as the department shall prescribe by rules, shall occupy and use or cultivate the tract on the lessee's own behalf.

     (5)  The lessee shall not in any manner transfer to, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, or otherwise hold, the lessee's interest in the tract; except that the lessee, with the approval of the department, also may transfer the lessee's interest in the tract to the following qualified relatives of the lessee who are at least one-quarter Hawaiian: husband, wife, child, or grandchild.  A lessee who is at least one-quarter Hawaiian who has received an interest in the tract through succession or transfer may, with the approval of the department, transfer the lessee's leasehold interest to a brother or sister who is at least one-quarter Hawaiian.  Such interest shall not, except in pursuance of such a transfer to or holding for or agreement with a native Hawaiian or Hawaiians or qualified relative who is at least one-quarter Hawaiian approved of by the department or for any indebtedness due the department or for taxes or for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process.  The lessee shall not sublet the lessee's interest in the tract or improvements thereon; provided that a lessee may be permitted, with the approval of the department, to rent to a native Hawaiian or Hawaiians, lodging either within the lessee's existing home or in a separate residential dwelling unit constructed on the premises.

     (6)  Notwithstanding the provisions of paragraph (5), the lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans, or any acceptable private mortgage insurance as approved by the commission.  The mortgagee's interest in any such mortgage shall be freely assignable.  Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

              Further, notwithstanding the authorized purposes of loan limitations imposed under section 214 of this Act and the authorized loan amount limitations imposed under section 215 of this Act, loans made by lending institutions as provided in this paragraph, insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, or any acceptable private mortgage insurance, may be for such purposes and in such amounts, not to exceed the maximum insurable limits, together with such assistance payments and other fees, as established under section 421 of the Housing and Urban Rural Recovery Act of 1983 which amended Title II of the National Housing Act of 1934 by adding section 247, and its implementing regulations, to permit the Secretary of Housing and Urban Development to insure loans secured by a mortgage executed by the homestead lessee covering a homestead lease issued under section 207(a) of this Act and upon which there is located a one to four family single family residence.

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

     (8)  The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years after commencement of the term of the lease. [Am Jul. 10, 1937, c 482, 50 Stat 504; Nov. 26, 1941, c 544, §2, 55 Stat 783; Aug. 21, 1958, Pub L 85-710, 72 Stat 706; am L 1963, c 207, §2; am L 1967, c 146, §§1, 2; am L 1973, c 66, §1; am L 1974, c 175, §1; am L 1978, c 229, §5; am L 1981, c 90, §2; am L 1985, c 60, §2 and c 284, §1; am L 1990, c 305, §1; am L 1997, c 196, §3; am L 1999, c 17, §1; am L 2002, c 12, §1; am L 2005, c 53, §1]

**Attorney General Opinions**

  Lessee is prohibited from subdividing homestead tract and subleasing a portion thereof to lessee's daughter.  Att. Gen. Op. 61-65.

  Bank of Hawaii is not an eligible mortgagee; improvements may not be treated as personalty.  Att. Gen. Op. 65-15.

**Case Notes**

  Tax on the tract is the tax on the fee simple estate and not on lessee's leasehold interest.  60 H. 487, 591 P.2d 607.

  Third party agreements with non-Hawaiians which transferred portion of lessees' interest in homesteads void ab initio as violative of paragraph (5).  81 H. 474, 918 P.2d 1130.

  Where taxpayers failed to allege an injury-in-fact with regard to the Hawaiian homes commission act's native Hawaiian ancestry qualification for homestead leases, they did not have standing to challenge the constitutionality of the tax exemptions for homestead lessees or the Hawaiian homes commission act generally.  128 H. 89, 283 P.3d 695 (2011).

  Approval of home loan did not constitute approval of department for transfer of lease.  4 H. App. 446, 667 P.2d 839.

**§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, children, grandchildren, brothers, or sisters, or (2) native Hawaiian, father and mother, widows or widowers of the children, widows or widowers of thebrothers 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 nativeHawaiians but who were entitled to the leased lands 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 successors 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 the grandchildren; or

     (4)  If there is no husband, wife, child, or grandchild, then brothers or sisters; or

     (5)  If there is no husband, wife, child, grandchild, brother, or sister, then from the following relatives of the lessee who are native Hawaiian:  father and mother, widows or widowers of the children, 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, grandchildren, 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 previouslessee, 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 previouslessee.  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 successor or successors may be required by the commission to obtain private financing in accordance with section 208(6) to pay off the amount advanced from the Hawaiian home loan fund or Hawaiian home general loan fund.

     (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).

     (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 may transfer the lease or issue a new lease to any qualified native Hawaiian regardless of whether or not that person is related in any way by blood or marriage to the previous lessee.

     (e)  If any successor or successors to a tract 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 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. [Am Jul. 10, 1937, c 482, 50 Stat 504; Nov. 26, 1941, c 544, §3, 55 Stat 783; Jul. 9, 1952, c 614, §4, 66 Stat 514; am L 1963, c 207, §2; am L 1981, c 90, §3 and c 112, §1; am L 1982, c 272, §1; am L 1985, c 137, §1; am L 1987, c 36, §§2, 3; am L 1990, c 150, §8; am L 1992, c 92, §1; am L 1993, c 147, §1; am L 1994, c 37, §1 and c 109, §1; am L 2001, c 122, §1; am L 2005, c 16, §1]

**Attorney General Opinions**

  A lessee surrendering a lease is entitled to payment for appraised value of pineapple crops growing on tract at date of surrender less deduction for indebtedness.  Att. Gen. Op. 61-66.

  On discretion of commission in the selection of a successor to a lessee who dies without designating the lessee's own successor.  Att. Gen. Op. 61-75.

  Distribution of "pineapple money" which includes "advances" for expenditures.  Att. Gen. Op. 61-88.

  Person claiming to be common-law wife under relationship established in Hawaii is not a qualified successor to lessee. Att. Gen. Op. 73-5.

  "Children" construed.  Att. Gen. Op. 73-18.

**Case Notes**

  Native Hawaiians have no standing to challenge constitutionality of Act on equal protection grounds as they would be asserting the rights of non-Hawaiian third parties.  795 F. Supp. 1009.

  Lessee has right to change designated successor at any time and successor's interest vests only upon lessee's death; private agreement cannot alter that right.  4 H. App. 446, 667 P.2d 839.

**§210.  Cancellation of leases.** Whenever the department has reason to believe that any condition enumerated in section 208, or any provision of section 209, of this title has been violated, the department shall give due notice and afford opportunity for a hearing to the lessee of the tract in respect to which the alleged violation relates or to the successor of the lessee's interest therein, as the case demands.  If upon such hearing the department finds that the lessee or the lessee's successor has violated any condition in respect to the leasing of such tract, the department may declare the lessee's interest in the tract and all improvements thereon to be forfeited and the lease in respect thereto canceled, and shall thereupon order the tract to be vacated within a reasonable time.  The right to the use and occupancy of the Hawaiian home lands contained in such tract shall thereupon revest in the department and the department may take possession of the tract and the improvements thereon. [Am L 1963, c 207, §2; am L 1997, c 197, §5]

**§210.5.  REPEALED.**  L 1987, c 36, §2.

**§211.  Community pastures.**  The department shall, when practicable, provide from the Hawaiian home lands a community pasture adjacent to each district in which agricultural lands are leased, as authorized by the provisions of section 207 of this title. [Am L 1963, c 207, §2; ree L 1997, c 197, §6]

**§212.  Lands returned to control of board of land and natural resources.**  The department may return any Hawaiian home lands not leased as authorized by the provisions of section 207 of this Act to the control of the board of land and natural resources.  Any Hawaiian home lands so returned shall, until the department gives notice as hereinafter in this section provided, resume and maintain the status of public lands in accordance with the provisions of the [Hawaii Revised Statutes]; provided that such lands may not be sold, leased, set aside, used, transferred or otherwise disposed of except under a general lease only.  Any lease by the board of land and natural resources hereafter entered into shall contain a withdrawal clause, and the lands so leased shall be withdrawn by the board, for the purpose of this Act, upon the department giving at its option, not less than one nor more than five years' notice of such withdrawal; provided, that the minimum withdrawal-notice period shall be specifically stated in such lease.  Each such lease, whether or not stipulated therein, shall be deemed subject to the right and duty of the board of land and natural resources to terminate the lease and return the lands to the department whenever the department gives notice to the board that the department is of the opinion that the lands are required.

     Notwithstanding the provisions of section 171-95, Hawaii Revised Statutes, in the leasing of Hawaiian home lands by the board to a public utility or other governmental agency, where such use directly benefits the department of Hawaiian home lands or the homestead lessees, the rental may be nominal; in all other instances, the lease rental shall be no less than the value determined in accordance with section 171-17(b), Hawaii Revised Statutes.

     Any general lease of Hawaiian home lands hereafter entered into by the board shall be void unless prior to the disposition of such lease by public auction, direct negotiation or otherwise, approval shall be obtained from the department of Hawaiian home lands. [Am L 1963, c 207, §§2, 5(b); am Const Con 1978 and election Nov. 7, 1978]

**Revision Note**

  In the first paragraph, "Hawaii Revised Statutes" substituted for "the Hawaiian Organic Act and the Revised Laws of Hawaii 1915".

**Attorney General Opinions**

  Governor does not have power to set aside by executive order any of the returned Hawaiian home lands.  Att. Gen. Op. 75-3.