



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 5, 2017

GOV. MSG. NO. 1181

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 5, 2017, the following bill was signed into law:

HB451 HD1 SD2 CD1

RELATING TO THE HAWAIIAN HOMES
COMMISSION ACT
ACT 080 (17)

Sincerely,

A handwritten signature in black ink that reads "David Y. Ige".

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUL 5 2017
HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

ORIGINAL

ACT 080
H.B. NO. 451
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

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

1 SECTION 1. The legislature recognizes that the State has a
2 fiduciary duty to support the rehabilitation of the Hawaiian
3 people, in part by ensuring long-term tenancies to beneficiaries
4 and successors of beneficiaries of the Hawaiian Homes Commission
5 Act, 1920, as amended.

6 The legislature emphasizes that many descendants of lessees
7 of Hawaiian home lands do not qualify as successors because
8 interracial marriages and blended families produce descendants
9 who are less than twenty-five per cent Hawaiian. These
10 disruptions create undue hardships of displacement and interfere
11 with families' abilities to maintain the equity of their homes
12 and businesses.

13 The legislature further finds that a reduction in blood
14 quantum requirements for certain successors will lead to a
15 reduction in the trend of "highest bid" and "leapfrog" homestead
16 lease sales. Further, this reform will encourage current
17 lessees to maintain and invest in their residences, as the



1 lessees anticipate that their descendants will be able to make
2 use of the properties for many generations to come.

3 The purpose of this Act is to reduce the minimum Hawaiian
4 blood quantum requirement of certain successors to lessees of
5 Hawaiian home lands from one quarter to one thirty-second.

6 SECTION 2. Section 209 of the Hawaiian Homes Commission
7 Act, 1920, as amended, is amended by amending subsection (a) to
8 read as follows:

9 "(a) Upon the death of the lessee, the lessee's interest
10 in the tract or tracts and the improvements thereon, including
11 growing crops and aquacultural stock (either on the tract or in
12 any collective contract or program to which the lessee is a
13 party by virtue of the lessee's interest in the tract or
14 tracts), shall vest in the relatives of the decedent as provided
15 in this paragraph. From the following relatives of the lessee
16 who are (1) at least ~~[one-quarter]~~ one thirty-second Hawaiian,
17 ~~[husband, wife,]~~ spouse, children, grandchildren, brothers, or
18 sisters, or (2) native Hawaiian, father and mother, widows or
19 widowers of the children, widows or widowers of the brothers and
20 sisters, or nieces and nephews,—the lessee shall designate the
21 person or persons to whom the lessee directs the lessee's



1 interest in the tract or tracts to vest upon the lessee's death.
 2 The Hawaiian blood requirements shall not apply to the
 3 descendants of those who are not native Hawaiians but who were
 4 entitled to the leased lands under section 3 of the Act of
 5 May 16, 1934 (48 Stat. 777, 779), as amended, or under section 3
 6 of the Act of July 9, 1952 (66 Stat. 511, 513). In all cases
 7 that person or persons need not be eighteen years of age. The
 8 designation shall be in writing, may be specified at the time of
 9 execution of the lease with a right in the lessee in similar
 10 manner to change the beneficiary at any time and shall be filed
 11 with the department and approved by the department in order to
 12 be effective to vest the interests in the successor or
 13 successors so named.

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

- 18 (1) [~~Husband or wife,~~] Spouse; or
- 19 (2) If there is no [~~husband or wife,~~] spouse, then the
 20 children; or



1 (3) If there is no [~~husband, wife,~~] spouse or child, then
2 the grandchildren; or

3 (4) If there is no [~~husband, wife,~~] spouse, child, or
4 grandchild, then brothers or sisters; or

5 (5) If there is no [~~husband, wife,~~] spouse, child,
6 grandchild, brother, or sister, then from the
7 following relatives of the lessee who are native
8 Hawaiian: father and mother, widows or widowers of
9 the children, widows or widowers of the brothers and
10 sisters, or nieces and nephews.

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

13 In the case of the death of a lessee leaving no designated
14 successor or successors, [~~husband, wife,~~] spouse, children,
15 grandchildren, or relative qualified to be a lessee of Hawaiian
16 home lands, the land subject to the lease shall resume its
17 status as unleased Hawaiian home lands and the department is
18 authorized to lease the land to a native Hawaiian as provided in
19 this Act.

20 Upon the death of a lessee who has not designated a
21 successor and who leaves a spouse not qualified to succeed to



1 the lease or children not qualified to succeed to the lease, or
2 upon the death of a lessee leaving no relative qualified to be a
3 lessee of Hawaiian home lands, or the cancellation of a lease by
4 the department, or the surrender of a lease by the lessee, the
5 department shall appraise the value of all the improvements and
6 growing crops or improvements and aquacultural stock, as the
7 case may be, and shall pay to the nonqualified spouse or the
8 nonqualified children as the lessee shall have designated prior
9 to the lessee's death, or to the legal representative of the
10 deceased lessee, or to the previous lessee, as the case may be,
11 the value thereof, less any indebtedness to the department, or
12 for taxes, or for any other indebtedness the payment of which
13 has been assured by the department, owed by the deceased lessee
14 or the previous lessee. These payments shall be made out of the
15 Hawaiian home loan fund and shall be considered an advance
16 therefrom and shall be repaid by the successor or successors to
17 the tract involved. If available cash in the Hawaiian home loan
18 fund is insufficient to make these payments, payments may be
19 advanced from the Hawaiian home general loan fund and shall be
20 repaid by the successor or successors to the tract involved;
21 provided that any repayment for advances made from the Hawaiian



1 home general loan fund shall be at the interest rate established
2 by the department for loans made from the Hawaiian home general
3 loan fund. The successor or successors may be required by the
4 commission to obtain private financing in accordance with
5 section 208(6) to pay off the amount advanced from the Hawaiian
6 home loan fund or Hawaiian home general loan fund."

7 SECTION 3. The provisions of the amendments made by this
8 Act to the Hawaiian Homes Commission Act, 1920, as amended, are
9 declared to be severable, and if any section, sentence, clause,
10 or phrase, or the application thereof to any person or
11 circumstances is held ineffective because there is a requirement
12 of having the consent of the United States to take effect, then
13 that portion only shall take effect upon the granting of consent
14 by the United States and effectiveness of the remainder of these
15 amendments or the application thereof shall not be affected.

16 SECTION 4. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect upon its approval by
19 the governor of the State of Hawaii with the consent of the
20 United States Congress.



H.B. NO. 451
H.D. 1
S.D. 2
C.D. 1

APPROVED this 5 day of JUL , 2017



GOVERNOR OF THE STATE OF HAWAII

HB No. 451, HD 1, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.



Joseph M. Souki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.


President of the Senate


Clerk of the Senate

Report Title:

Hawaiian Home Lands; Successors; Blood Quantum

Description:

Reduces the minimum Hawaiian blood quantum requirement of certain successors to lessees of Hawaiian home lands from one-quarter to one thirty-second. (HB451 CD1)

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



DAVID Y. IGE
GOVERNOR



DOUGLAS S. CHIN
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

December 13, 2017

Jobie M. K. Masagatani
Chairman
Hawaiian Homes Commission
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

Re: United States Consent to Act 80, 2017 Hawaii Session Laws

Dear Chairman Masagatani:

This letter responds to your request that our office provide an opinion as to whether Act 80, 2017 Hawaii Sessions Laws 380, requires the consent of the United States. We understand that this letter will be forwarded to the United States Department of the Interior under 43 C.F.R. § 48.15.

Act 80 amends Section 209 of the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"), to lower the minimum required Hawaiian blood quantum for certain relatives of a homestead lessee to succeed to a lessee's homestead lease upon death. Act 80 lowers the minimum required Hawaiian blood quantum from one quarter to one thirty-second.¹ Act 80 does not change the one-half Hawaiian blood quantum requirement for original lessees.

As discussed below, it is our opinion that Act 80 requires consent of the United States.

As an initial matter, section 5 of Act 80 specifically provides that, "[t]his Act shall take effect upon its approval by the governor of the State of Hawaii with the consent of the United States Congress." (emphasis added).² By Act 80's own terms, it is not effective until the United States gives its consent.

Furthermore, Section 4 of the Admission Act requires the consent of the United States for any amendment to the HHCA, unless such amendment falls within several enumerated exceptions. Section 4 provides:

As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, as

¹ A copy of Act 80 is attached to this letter for your reference.

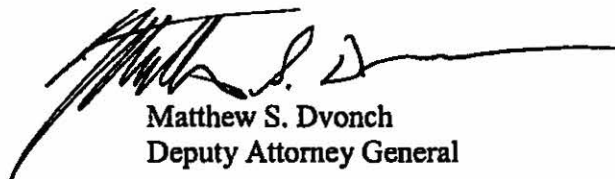
² Governor Ige signed Act 80 into law on July 5, 2017.

provided in section 7, subsection (b) of this Act, subject to amendment or repeal only with the consent of the United States, and in no other manner: Provided, That (1) sections 202, 213, 219, 220, 222, 224, and 225 and other provisions relating to administration, and paragraph (2) of section 204, section 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the "available lands", as defined by said Act, shall be used only in carrying out the provisions of said Act. (Emphasis added).

Act 80 changes the qualifications of lessees by lowering the minimum required Hawaiian blood quantum to succeed to a homestead lease from one quarter to one thirty-second. Whereas prior to Act 80 a person with one thirty-second Hawaiian blood quantum would not be qualified to become a lessee through successorship under the HHCA, they would now be qualified to succeed to the lease.

Because Act 80 expressly provides that it will not be effective unless and until the United States gives its consent, and section 4 of the Admission Act requires consent of the United States for all amendments to the HHCA that change the qualifications of lessees, DHHL should not implement Act 80's provisions until consent of the United States is received.

Sincerely yours,



Matthew S. Dvonch
Deputy Attorney General

APPROVED:



Douglas S. Chin
Attorney General

Enclosure

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

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

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5 Act, 1920, as amended.

6 The legislature emphasizes that many descendants of lessees
7 of Hawaiian home lands do not qualify as successors because
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9 who are less than twenty-five per cent Hawaiian. These
10 disruptions create undue hardships of displacement and interfere
11 with families' abilities to maintain the equity of their homes
12 and businesses.

13 The legislature further finds that a reduction in blood
14 quantum requirements for certain successors will lead to a
15 reduction in the trend of "highest bid" and "leapfrog" homestead
16 lease sales. Further, this reform will encourage current
17 lessees to maintain and invest in their residences, as the



1 lessees anticipate that their descendants will be able to make
2 use of the properties for many generations to come.

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12 any collective contract or program to which the lessee is a
13 party by virtue of the lessee's interest in the tract or
14 tracts), shall vest in the relatives of the decedent as provided
15 in this paragraph. From the following relatives of the lessee
16 who are (1) at least [~~one-quarter~~] one thirty-second Hawaiian,
17 [~~husband, wife,~~] spouse, children, grandchildren, brothers, or
18 sisters, or (2) native Hawaiian, father and mother, widows or
19 widowers of the children, widows or widowers of the brothers and
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6 of the Act of July 9, 1952 (66 Stat. 511, 513). In all cases
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9 execution of the lease with a right in the lessee in similar
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HB451 CD1 HMS 2017-3698

