

Amendment to the Hawaiian Homes Commission Act, 1920, as amended – Act 80 (2017)
LEGAL AND POLICY ANALYSIS FOR PROPOSED AMENDMENTS TO THE HHCA

Proposed Amendment to the HHCA

[Describe existing provision that is being amended]

Section 209 of the HHCA allows lessees to designate successors of the lessee's interest in the tract or tracts of Hawaiian home lands or 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 of Hawaiian home lands) upon the death of the lessee. Only certain family members may be named as successors to the lessee's interest. Under section 209, relatives eligible to succeed to a lease with one-quarter Hawaiian include a lessee's husband, wife, children, grandchildren, brothers, or sisters.

[Describe proposed amendment]

Act 80, 2017 Session Laws of Hawai'i, proposes to lower the required blood quantum from one-quarter to one thirty-second Hawaiian for the lessee's relatives currently eligible to succeed to a lease, specifically a lessee's husband, wife, children, grandchildren, brothers, or sisters.

1. What are the challenges or issues that the proposed amendment addresses?

DHHL continues to receive requests from beneficiaries, particularly lessees in our first homestead communities, to reduce the blood quantum requirement for successors. As these communities age, the successor-lessees with one-quarter Hawaiian blood are facing the possible loss of a homestead lease that has been within the family for several generations because their descendants lack the required blood quantum. This amendment will provide DHHL lessees with greater flexibility and opportunity to retain homestead leases within their families.

2. Is the proposed amendment limited to administration and powers and duties of officers other than those charged with the administration of the HHCA, as further defined in section 4 of the Admissions Act?

If yes, please provide an analysis.

No.

3. Does the proposed amendment reduce or impair the enumerated funds in section 213 of the HHCA as amended?

If yes, please provide an analysis.

No.

4. Does the proposed amendment increase the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of the HHCA?

If yes, please provide an analysis.

No.

5. Does the proposed amendment change the requirement that all proceeds and income from the available lands shall be used only in carrying out the provision of the HHCA?

If yes, please provide an analysis.

No.

6. Does the proposed amendment change the qualifications of lessees?

If yes, please provide an analysis.

Yes, Act 80 changes the qualifications of successor-lessees by lowering the minimum required Hawaiian blood quantum from one quarter to one thirty-second for certain relatives of a homestead lessee to succeed to the homestead lease upon death that has been in their family for generations and quite possibly are the homesteads the successors could have lived on and worked their entire lives. Whereas prior to Act 80 a person less than one quarter Hawaiian blood quantum would not be qualified to become a lessee through successorship under the HHCA, they would now be qualified to succeed to a lease for certain relatives. Act 80 does not change the one-half Hawaiian blood quantum requirement for original lessees.

7. Does the proposed amendment increase the benefits to lessees of Hawaiian home lands?

If yes, please provide an analysis.

Yes. The benefit from this proposed amendment is one that is an intangible human need rooted in a sense of security and posterity. This proposed amendment is in response to requests from beneficiaries, particularly lessees in the first homestead communities, to reduce the blood quantum requirement for successors. Successor-lessees with one-quarter Hawaiian blood are facing the loss of a homestead lease that has been the family home for

several generations because their descendants lack the required blood quantum. The ability to leave the legacy of the family homestead to a descendant provides a fundamental sense of security and an invaluable legacy. Hawaiians are a native people that identify with the land. These first homesteads have become that place that maintains the identity and strength of family bonds in a way that is more meaningful and lasting for these Hawaiian families than the cash payout they would receive for the improvements if the last surviving qualified family member were to die without a qualified successor.

8. How does the proposed amendment advance or otherwise impact current Hawaiian homestead lessees (native Hawaiians and Native Hawaiians) of Hawaiian home lands?

The proposed amendment advances the interests of the current Hawaiian homestead lessees by increasing the likelihood that a homestead lease will remain with the family, especially since the HHCA currently provides for a term of ninety-nine years and the ability to extend the term of any lease for a total of up to one hundred ninety-nine years.

9. How does the proposed amendment advance or otherwise impact HHCA beneficiaries (native Hawaiians) currently on a waiting list for a Hawaiian homestead lease?

The proposed amendment could impact the interests of HHCA beneficiaries (native Hawaiians) currently on a waiting list for a Hawaiian homestead lease because a homestead lease without a qualified successor could theoretically become available to a beneficiary currently on a waiting list. These beneficiaries, however, may eventually face the same situation among current lessees that the proposed amendment seeks to remedy.

10. How does the proposed amendment advance or otherwise impact HHCA native Hawaiians beneficiaries who have not yet applied for a Hawaiian homestead lease?

The proposed amendment could impact HHCA native Hawaiian beneficiaries who have not yet applied for a Hawaiian homestead lease because a homestead lease without a qualified successor could theoretically be transferred to a native Hawaiian who has not yet applied for a Hawaiian homestead lease. It may just as likely not impact this group of native Hawaiians at all because they may not be interested in a homestead lease.

11. How does the proposed amendment advance or otherwise impact interests other than those of the HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees?

The proposed amendment advances the interest of the family members of Hawaiian homestead lessees who may not meet the current blood quantum requirements to receive an original lease award or succeed to a lease, but under this proposed amendment could now succeed to a homestead lease.

12. How does the proposed amendment balance the interests of HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees?

The proposed amendment balances the interests of HHCA native Hawaiian beneficiaries and Hawaiian homestead lessees by reducing the blood quantum for certain relatives of a homestead lessee to succeed to the homestead lease upon the lessee's death. Limiting the class of relatives when lowering the minimum required Hawaiian blood quantum from one quarter to one thirty-second to the lessee's husband, wife, children, grandchildren, brothers, or sisters, keeps those eligible to succeed to a lease as someone within the lessee's immediate family. Additionally, this proposed amendment allows one lot to stay within the family through successorship or upon the death of the lessee. The Hawaiian Homes Commission and DHHL have the trust responsibility to serve the interests of HHCA native Hawaiian beneficiaries, including awarding more homestead lots. Addressing the HHCA beneficiaries currently on a waiting list or who have not yet applied for a Hawaiian homestead lease is not the responsibility of the Hawaiian homestead lessee. The lessee should be allowed to designate a qualified relative to succeed to the lease, which provides a sense of security and an invaluable legacy for the lessee's family.

13. Does the purpose/benefit to lessees of the proposed amendment outweigh the impact of the change in qualifications of lessees on the existing class of HHCA beneficiaries?

Please provide an analysis.

Yes, the purpose/benefit to lessees of the proposed amendment outweighs the impact of the change in qualifications of lessees on the existing class of HHCA beneficiaries. As the HHCA is nearing its 100th anniversary, lessees, particularly in the first homestead communities, are facing the possible loss of a homestead lease that has been within the family for several generations; the HHCA provides the opportunity to extend a lease up to another 100 years. Every member of the beneficiary class could face this same situation – the lease has not expired, and will not expire for another 100 years, but there is no qualified successor. Approval of the lease extension logically anticipates the situation where the lease term has not expired but there are family members who could otherwise succeed and maintain productivity of the lease. This proposed amendment would fulfill Prince Kuhio's mission of returning lessees and their families to the land.

14. Does the proposed amendment impair or place at risk the corpus of the Trust?

Please provide an analysis.

This proposed amendment does not impair or place at risk the corpus of the Trust.

15. Alternatives Considered and Reasons Rejected (if applicable)

At the Hawaiian Homes Commission meeting on November 16, 2015, the Hawaiian Homes Commission considered a proposed amendment to reduce the blood quantum from one-quarter to one-eighth for certain relatives of a homestead lessee. After discussing the proposed amendment, the Hawaiian Homes Commission voted to approve the amendment proposed in Act 80 to reduce the blood quantum from one quarter to one thirty-second.

16. Anomalies Created and Explained (if applicable)

None.

17. Additional Considerations and Discussion (optional)

None.

18. Is Congressional approval of the proposed amendment required?

Please provide an analysis.

Yes.