

Approved by the Governor

on JUL 2 2010

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

ACT 187

H.B. NO.

1015
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO OBLIGATIONS OF THE DEPARTMENT OF HAWAIIAN HOME LANDS
TRUST FUND.

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

1 PART I

2 SECTION 1. The purpose of this part is to establish a two-
3 year pilot project to enable the department of Hawaiian home
4 lands to begin housing and other projects without having the
5 full amount of the cost of the projects on hand at the start of
6 the project.

7 SECTION 2. Section 37-40, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§37-40 Exceptions; trust funds. Except as to
10 administrative expenditures, and except as otherwise provided by
11 law, expenditures from trust funds may be made by any department
12 or establishment without appropriation or allotment; provided
13 that no expenditure shall be made from and no obligation shall
14 be incurred against any trust fund in excess of the amount
15 standing to the credit of the fund or for any purpose for which
16 the fund may not lawfully be expended[-], except that
17 obligations in excess of the amount standing to the credit of

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1 any trust fund established under the Hawaiian Homes Commission
2 Act, 1920, as amended, may be incurred, subject to conditions
3 that the director of finance believes to be reasonably
4 necessary, when the director of finance determines that:

5 (1) Moneys to pay the obligation made in excess of the
6 amount standing to the credit of the trust fund are
7 expected to be received by the trust fund within a
8 reasonable time period; and

9 (2) With the approval of the governor, such action is in
10 the best interests of the State and will not impede or
11 hamper the financial obligations of the State.

12 No suit for damages, including an action for breach of
13 trust under chapter 673 or any other law, may be brought against
14 the State, the department of Hawaiian home lands, the Hawaiian
15 homes commission, the governor, the director of finance, or any
16 other state agency or official for relying or refusing to rely
17 on this section to permit expenditures in excess of the amount
18 standing to the credit of the trust fund established under the
19 Hawaiian Homes Commission Act, 1920, as amended.

20 Nothing in sections 37-31 to 37-41 shall require any trust
21 fund established pursuant to law be reappropriated annually."



1 SECTION 3. Section 103D-309, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Contracts awarded pursuant to section 103D-302,
4 103D-303, or 103D-306, shall neither be binding nor have any
5 force and effect of law unless the comptroller, the director of
6 finance of a county, or the respective chief financial officers
7 of the department of education, the judiciary, or the
8 legislative branches of the State or county, as the case may be,
9 endorses thereon a certificate that there is an appropriation or
10 balance of an appropriation over and above all outstanding
11 contracts, sufficient to cover the amount required by the
12 contract; provided that if the contract is a multi-term
13 contract, the comptroller, director of finance, or chief
14 financial officer shall only be required to certify that there
15 is an appropriation or balance of an appropriation over and
16 above all outstanding contracts, that is sufficient to cover the
17 amount required to be paid under the contract during the fiscal
18 year or remaining portion of the fiscal year of each term of the
19 multi-year contract; provided further that the administrator of
20 the state procurement office shall attest in writing to any
21 recommendation or solicitations. This section shall not apply



1 to any contract under which the total amount to be paid to the
2 contractor cannot be accurately estimated at the time the
3 contract is to be awarded, or to any contract for which
4 consideration is in kind or forbearance, or to any contract
5 awarded pursuant to section 103D-306 that is a one-time payment
6 through a purchase order[-], or to any contractual obligation
7 approved by the governor under section 37-40."

8 SECTION 4. The department of Hawaiian home lands shall
9 submit an interim report to the legislature no later than twenty
10 days prior to the convening of the regular session of 2011 and a
11 final report to the legislature no later than twenty days prior
12 to the convening of the regular session of 2012, including in
13 the interim and final reports:

- 14 (1) The number of instances and extent of obligations it
15 has incurred in excess of the amount standing to the
16 credit of each trust fund established under the
17 Hawaiian Homes Commission Act, 1920, as amended,
18 pursuant to the provisions of this part;
- 19 (2) The name, location, and description of any housing
20 projects, including the number and types of housing
21 units, and the projected delivery date of the units in



1 each project, that have benefitted from the
2 obligations incurred in paragraph 1; and
3 (3) Any other information that it may deem to be relevant;
4 during the period from the effective date of this Act to, and
5 including, the date of the filing of the interim and final
6 reports required by this section.

7 PART II

8 SECTION 5. Pursuant to section 101, Hawaiian Homes
9 Commission Act, 1920, as amended, the Hawaiian home lands are
10 intended to establish "a permanent land base for the benefit and
11 use of native Hawaiians, upon which they may live, farm, ranch,
12 and otherwise engage in commercial or industrial or any other
13 activities as authorized in this Act." The legislature finds
14 that commercial and multipurpose projects authorized under this
15 part to raise funds to enable the department of Hawaiian home
16 lands to operate and build the infrastructure necessary for the
17 native Hawaiian beneficiaries to make the homestead lands their
18 home, are well-intentioned. However, while these revenue-
19 raising commercial and multipurpose projects benefit the native
20 Hawaiian beneficiaries indirectly, there are times when
21 commercial and multipurpose projects result in short- and long-



1 term negative consequences for the beneficiaries that are not
2 adequately addressed.

3 The legislature finds that setting aside a portion of those
4 commercial and multipurpose project revenues to be used for the
5 benefit of native Hawaiian beneficiaries, beneficiary-controlled
6 organizations, and homestead community associations is
7 consistent with the purpose and intent of the Hawaiian Homes
8 Commission Act, 1920, as amended, and will aid in ensuring that
9 native Hawaiian beneficiaries, either directly or through native
10 Hawaiian community organizations, such as beneficiary-controlled
11 organizations, and homestead community associations, benefit
12 from these commercial and multipurpose projects.

13 The purpose of this part is to:

- 14 (1) Direct the department of Hawaiian home lands to
15 establish a process for consulting with beneficiaries
16 prior to awarding leases for commercial and
17 multipurpose projects;
- 18 (2) Authorize the extension of commercial and multipurpose
19 project leases to make improvements to the property;
- 20 (3) Set aside fifteen per cent of all lease revenues from
21 extensions of commercial and multipurpose project



1 leases to be deposited into the native Hawaiian
2 rehabilitation fund to be used for the benefit of
3 native Hawaiian beneficiaries, beneficiary-controlled
4 organizations, and homestead community associations;

5 (4) Establish reporting requirements regarding leases of
6 Hawaiian home lands for commercial and multipurpose
7 projects; and

8 (5) Establish reporting requirements regarding the
9 expenditures of the native Hawaiian rehabilitation
10 fund.

11 SECTION 6. The Hawaiian Homes Commission Act, 1920, as
12 amended, is amended by adding a new section to be appropriately
13 designated and to read as follows:

14 "§ Commercial and multipurpose project leases;
15 extension of term. (a) Notwithstanding any law to the
16 contrary, the procedures under this section shall apply to
17 commercial and multipurpose projects under section 204 or 220.5,
18 and shall be in addition to any other procedures required by
19 law.

20 (b) Prior to the disposition of available land through a
21 request for proposals for an initial lease for a commercial or



1 multipurpose project, the department shall consult with
2 beneficiaries of the trust in the master planning of the
3 available lands. The process of beneficiary consultation shall
4 be as established by the department and shall:

5 (1) Engage beneficiaries and beneficiary-serving
6 organizations;

7 (2) Provide for the timely dissemination of information
8 about the proposed project and the gathering of input;
9 and

10 (3) Allow for a reasonable time and reasonable access to
11 relevant information for evaluation and consideration.

12 (c) Notwithstanding section 220.5(d)(1), the department
13 may extend the term of a lease of Hawaiian home lands for
14 commercial or multipurpose projects and with the approval by the
15 department of a written agreement proposed by the lessee, or the
16 lessee and developer, to:

17 (1) Make improvements to the leased property; or

18 (2) Obtain financing for the improvement of the leased
19 lands.



1 The extension of the lease pursuant to this section shall be
2 based upon the improvements made or to be made, shall be no
3 longer than twenty years, and shall be granted only once.

4 (d) Before the written agreement is approved, the lessee,
5 or the lessee and developer, shall submit to the department the
6 plans and specifications for the proposed development. The
7 department shall review the plans, specifications, and the
8 written agreement and determine:

- 9 (1) Whether the development is of sufficient value and
10 meets the priorities of the commission to justify an
11 extension of the lease;
- 12 (2) The estimated time needed to complete the improvements
13 and expected date of completion of the improvements;
14 and
- 15 (3) The minimum revised annual rent based on the fair
16 market value of the lands to be developed, as
17 determined by an appraiser for the department, and
18 percentage rent where gross receipts exceed a
19 specified amount.

20 The commission shall adopt and publish a policy pursuant to
21 chapter 91, Hawaii Revised Statutes, which shall be used to



1 evaluate any request for a lease extension, including the terms
2 of the lease, prospective payments, and renegotiation, and shall
3 be used by the commission for any final determination on a lease
4 extension request.

5 (e) Upon the extension of a lease term pursuant to
6 subsection (c), the department shall deposit fifteen per cent of
7 all revenues generated from the lease from the time the lease
8 extension is granted, into the native Hawaiian rehabilitation
9 fund under section 213(i).

10 (f) The department shall submit an annual report to the
11 legislature and the United States Department of the Interior, no
12 later than twenty days prior to the convening of each regular
13 session, beginning with the regular session of 2011, of all
14 leases of available lands for commercial and multipurpose
15 projects, including the following:

- 16 (1) The total number of leases;
17 (2) Acreage of each lease;
18 (3) Terms of each lease;
19 (4) Whether the lessee is a beneficiary or beneficiary
20 controlled organization; and



1 (5) Whether the lease was for retained available lands not
2 required for leasing under section 207(a), and was
3 negotiated with a native Hawaiian, or organization or
4 association owned or controlled by native Hawaiians,
5 under section 204(a)(2).

6 (g) As used in this section, "improvements" means any
7 renovation, rehabilitation, reconstruction, or construction of
8 the property, including minimum requirements for off-site and
9 on-site improvements."

10 SECTION 7. Section 213, Hawaiian Homes Commission Act,
11 1920, as amended, is amended by amending subsection (i) to read
12 as follows:

13 "(i) Native Hawaiian rehabilitation fund. Pursuant to
14 Article XII, Section 1, of the [State] Hawaii Constitution,
15 thirty [~~percent~~] per cent of the state receipts, derived from
16 lands previously cultivated as sugarcane lands under any other
17 provision of law and from water licenses, and fifteen per cent
18 of all revenues from lease agreements granted lease extensions
19 pursuant to section _____, shall be deposited into this fund.

20 The department shall use this money for the rehabilitation of
21 native Hawaiians, native Hawaiian families, and Hawaiian



1 homestead communities, which shall include the educational,
2 economic, political, social, and cultural processes by which the
3 general welfare and conditions of native Hawaiians are thereby
4 improved and perpetuated.

5 The native Hawaiian rehabilitation fund shall be subject to
6 the following conditions:

- 7 (1) All moneys received by the fund shall be deposited
8 into the state treasury and kept separate and apart
9 from all other moneys in the state treasury;
- 10 (2) The director of finance shall serve as a custodian of
11 the fund. All payments from the fund shall be made by
12 the director of finance only upon vouchers approved by
13 the commission;
- 14 (3) The commission shall develop guidelines for the
15 investment of moneys in the fund;
- 16 (4) The commission may invest and reinvest in investments
17 authorized by chapter 88, Hawaii Revised Statutes.
18 The commission may hold, purchase, sell, assign,
19 transfer, or dispose of any securities and investments
20 in which any of the moneys shall have been invested,
21 as well as the proceeds of such investments; and



1 (5) The commission may pay out of any of the moneys held
2 for investment, a reasonable amount to any person for
3 supplying investment advisory or consultive services;
4 and to meet such other costs incident to the prudent
5 investment of moneys as the commission may approve.

6 Any payment of principal, interest, or other earnings
7 arising out of the loan or investment of money from this fund
8 shall be credited to and deposited into this fund.

9 Sections 214, 215, 216, and 217 shall not apply to
10 administration of this fund. The department is authorized to
11 adopt rules under chapter 91, Hawaii Revised Statutes, necessary
12 to administer and carry out the purposes of this fund.

13 The department shall submit an annual report to the
14 legislature and the United States Department of the Interior, no
15 later than twenty days prior to the convening of each regular
16 session of the legislature, beginning with the regular session
17 of 2011, on expenditures from this fund that are derived from
18 the amounts deposited from commercial and multipurpose project
19 lease extensions pursuant to section (e), including the amount
20 expended, the recipient of the moneys expended, and the purpose
21 of the expenditure."



1 SECTION 8. The Hawaiian homes commission shall adopt and
2 publish the policy described in section 6 of this Act pursuant
3 to chapter 91, Hawaii Revised Statutes, to evaluate any request
4 for a lease extension, including the terms of the lease,
5 prospective payments, and renegotiation, and for any final
6 determination on a lease extension request no later than October
7 31, 2010.

8 SECTION 9. All lease revenues from commercial and
9 multipurpose project leases collected by the department of
10 Hawaiian home lands to which section , Hawaiian Homes
11 Commission Act, 1920, as amended, applies shall be deposited
12 into the Hawaiian home lands trust fund established under
13 section 213.6, Hawaiian Homes Commission Act, 1920, as amended;
14 provided that the department of Hawaiian home lands shall
15 deposit fifteen per cent of those revenues that are derived from
16 the amounts deposited from commercial and multipurpose project
17 lease extensions pursuant to section (e), Hawaiian Homes
18 Commission Act, 1920, as amended, into the native Hawaiian
19 rehabilitation fund established under section 213(i), Hawaiian
20 Homes Commission Act, 1920, as amended.



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

10 PART III

11 SECTION 11. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 12. This Act shall take effect on July 1, 2010;
14 provided that on June 30, 2012, part I of this Act shall be
15 repealed and sections 37-40 and 103D-309(a), Hawaii Revised
16 Statutes, shall be reenacted in the form in which they read on
17 the day prior to the effective date of this Act.

APPROVED this 2 day of JUL , 2010



GOVERNOR OF THE STATE OF HAWAII

