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# A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1           SECTION 1. The legislature finds that it is necessary to  
2 protect the interests of nine hundred ninety-nine-year homestead  
3 lessees by defining intestate succession for the heirs of  
4 homestead leases and allowing for a period of reinstatement of  
5 the homestead lease for tenants-at-will who have cured  
6 arrearages in payment.

7           The purpose of this Act is to establish the order of  
8 intestate succession for decedent homestead lessees and  
9 authorize the board of land and natural resources to reinstate a  
10 nine hundred ninety-nine-year homestead lease that was canceled  
11 due to nonpayment of arrearages, provided that the tenant-at-  
12 will has continually occupied the land and has cured all  
13 arrearages.

14           SECTION 2. Section 171-99, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           "**§171-99 Continuation of rights under existing homestead**  
17 **leases, certificates of occupation, right of purchase leases,**



1 **and cash freehold agreements.** (a) Issuance of land patents to  
2 occupier or lessee of homestead lands. A fee simple patent  
3 shall be issued to every existing occupier under a certificate  
4 of occupation issued heretofore, and to every lessee under a  
5 nine hundred and ninety-nine year homestead lease issued  
6 heretofore, of public lands, where the lands have been improved  
7 under the certificate or lease~~[7]~~ or have been used as a place  
8 of residence by the occupier or lessee for an aggregate  
9 continuous period of not less than ten years, upon payment to  
10 the board ~~[of land and natural resources]~~ of a ~~[fair market]~~  
11 price~~[7]~~ equal to the real property tax assessed value of the  
12 land, disregarding the value of the improvements made by the  
13 occupier or lessee~~[7, which price shall be determined by~~  
14 ~~appraisal as provided for in this chapter]~~; provided that the  
15 board may exclude from these patents areas required as roadways  
16 to other lots.

17 (b) Issuance of patent, lessee of right of purchase lease.  
18 The lessee of any existing right of purchase lease, at a time  
19 and under conditions that are contained in the lease, shall be  
20 entitled to a land patent from the board conveying to the lessee  
21 a fee simple title to the land described in the lessee's lease  
22 upon the payment of the ~~[fair market price of the land as~~



1 ~~determined by appraisal as provided for in this chapter;~~ real  
2 property tax assessed value of the land without improvements;  
3 provided that the lessee has reduced to cultivation twenty-five  
4 per cent of the premises and has resided thereon not less than  
5 two years and has substantially performed all other conditions  
6 of the lessee's lease.

7 (c) Cash freeholds, agreement, patent, conditions. At the  
8 end of three years from the date of the payment of the first  
9 installment, the holder of a freehold agreement is entitled to a  
10 land patent for the premises described [~~therein,~~] in the  
11 freehold agreement, if the following conditions, in addition to  
12 those set forth [~~herein,~~] in the freehold agreement, have been  
13 substantially performed:

14 (1) Payment of the balance of the purchase price in equal  
15 installments, in one, two, and three years,  
16 respectively, from the date of the freehold agreement  
17 with interest annually at the rate of four per cent;  
18 provided that the freeholder may pay the installment  
19 before it is due and [~~thereby~~] stop the corresponding  
20 interest;

21 (2) Cultivation of not less than twenty-five per cent of  
22 the area of the premises, and the planting and care of



1 not less than an average of ten timber, shade, or  
2 fruit trees per acre, if agricultural land, at any one  
3 time before the end of the third year, or fencing in  
4 the premises if pastoral land within that time;  
5 provided that if the premises are classed as pastoral-  
6 agricultural land, the foregoing alternative  
7 conditions shall apply respectively to the two kinds  
8 of land;

9 (3) Maintenance by the freeholder of the freeholder's home  
10 on the premises from the end of the first year to the  
11 end of the third year;

12 (4) Conditions for the prevention of waste, the planting  
13 of trees or the protection of trees growing or to be  
14 planted on the premises, or for the destruction of  
15 vegetable pests that may be on the premises or the  
16 prevention of the future introduction of pests  
17 thereon;

18 (5) Payment of all taxes that may be due on account of the  
19 premises.

20 The holder of a freehold agreement shall allow the land  
21 agents to enter and examine the premises at all reasonable times  
22 to see that the conditions are being performed. The holder



1 shall not assign or sublet, conditionally or otherwise, the  
2 holder's interest or any part thereof, under the freehold  
3 agreement, without the written consent of the board indorsed on  
4 the agreement; and provided further that [~~freeholders~~] a  
5 freeholder having the whole interest in a freehold agreement, at  
6 any time when all the conditions thereof to be performed by the  
7 freeholder up to that time shall have been substantially  
8 performed, may surrender to the government the interest by  
9 delivery of the freehold agreement to the land agent, with the  
10 intention to surrender the interest clearly indorsed thereon and  
11 signed by [~~them~~] the freeholder and duly attested. The  
12 surrender shall release the [~~freeholders~~] freeholder from all  
13 further duty or performance of the conditions of the instrument  
14 surrendered[~~. But~~]; provided that no surrender shall be  
15 permitted if any [~~freeholders are~~] freeholder is under the age  
16 of eighteen years, unless the [~~minors are~~] minor is represented  
17 by statutory guardians; and provided further that any freeholder  
18 over the age of eighteen may assign the freeholder's interest to  
19 the freeholder's cotenants.

20 (d) Right of purchase lease; termination, forfeiture, or  
21 surrender. Upon the termination of a right of purchase lease by  
22 lapse of time, or upon the forfeiture or surrender of the lease



1 or a freehold agreement, the board, in its discretion and within  
2 the limit of its authority, may open the premises or any part  
3 thereof for disposition in the manner or for the uses as  
4 provided in this chapter. Before the disposition, the fair  
5 market value thereof shall be established by appraisal. [~~The  
6 value attributable to the improvements in the appraisal shall be  
7 paid to the surrendering lessees or freeholders, upon resale of  
8 the premises, and the director of finance shall pay the amount  
9 of the valuation upon the requisition of the board out of the  
10 funds.~~] Upon resale of the premises and requisition of the  
11 board, the director of finance shall pay to the surrendering  
12 lessee or freeholder from the proceeds of the sale the appraised  
13 value of the improvements.

14 (e) Assignment; certificate of occupation or homestead  
15 lease. No existing certificate of occupation or existing  
16 homestead lease, or fractional interest thereof, shall be  
17 transferable or assignable except by conveyance, devise,  
18 bequest, or intestate succession and with the prior approval of  
19 the board [~~of land and natural resources~~]; provided that  
20 transfer or assignment by conveyance, devise, or bequest shall  
21 be limited to a member or members of the occupier's or lessee's  
22 family.



1 For the purposes of this section, "family" means the  
2 spouse, reciprocal beneficiary, children, parents, siblings,  
3 grandparents, grandchildren, nieces, nephews, a parent's  
4 siblings, children of a parent's siblings, and grandchildren of  
5 a parent's siblings, of the occupier or lessee.

6 In the event of intestate succession, the interest of the  
7 decedent shall vest in relations of the decedent in the  
8 following order:

- 9 (1) In the widow or widower;  
10 (2) If there is no widow or widower, then in the children;  
11 (3) If there are no children, then in the widows or  
12 widowers of the children;  
13 (4) If there are no widows or widowers of the children,  
14 then in the grandchildren;  
15 (5) If there are no grandchildren, then in the parents or  
16 surviving parent;  
17 (6) If there is no surviving parent, then in the sisters  
18 and brothers;  
19 (7) If there are no sisters or brothers, then in the  
20 widows or widowers of the sisters and brothers;  
21 (8) If there are no widows or widowers of the sisters and  
22 brothers, then in the nieces and nephews;



1        (9) If there are no nieces or nephews, then in the widows  
2        or widowers of the nieces and nephews;

3        (10) If there are no widows or widowers of the nieces and  
4        nephews, then in the grandchildren of the sisters and  
5        brothers; and

6        (11) If there are no grandchildren of the sisters and  
7        brothers, then in the State.

8        All the successors shall be subject to the performance of  
9        the unperformed conditions of the certificate of occupation or  
10       the homestead lease.

11       (f) Option of cotenant to compel others to buy or sell.  
12       In case two or more persons become cotenants under any existing  
13       right of purchase lease, certificate of occupation, or homestead  
14       lease by inheritance or otherwise, any one or more of the  
15       persons, less than the whole number, may file in the office of  
16       the land agent an offer to the remainder of the persons to buy  
17       their interest in the premises or to sell them their own  
18       interest therein at a stated price, according to the proportion  
19       of the respective interest in question, and may deposit with the  
20       land agent the amount of the offered price in money, with a fee  
21       of \$10. The land agent shall thereupon notify the persons to  
22       whom the offer is made of the nature of the offer and order them





1 to file with the land agent their answer within sixty days  
2 whether they will buy or sell according to the offer. If the  
3 persons to whom the offer is made file with the land agent,  
4 within sixty days of the time of their receiving the  
5 notification, their answer stating that they will sell their  
6 interest according to the terms of the offer, the land agent  
7 shall indorse the fact of the sale with the amount of the  
8 consideration on the lease and pay to the persons the amount of  
9 the consideration deposited with the land agent according to  
10 their individual interest; and the interest of the persons shall  
11 thereupon vest in the persons making the offer. The fact of the  
12 transfer shall be properly recorded in the official records of  
13 the land agent and indorsed upon the lease held by the lessee.

14 If, however, the persons to whom the offer is made fail to  
15 answer within sixty days from the time of their being notified  
16 of the offer or within sixty days from the time the notice of  
17 the offer [+]is[+] mailed to their last known place or places of  
18 abode, or [~~shall~~] answer within sixty days that they will buy  
19 the interest of the persons making the offer on the terms  
20 offered, but fail within sixty days after the notification to  
21 deposit the amount representing the value of the interest  
22 according to the terms offered, their interest shall vest in the



1 persons making the offer, and the amount of the consideration  
2 shall be paid by the land agent [~~of~~] to them individually or  
3 their respective representatives upon application. In such  
4 case, the fact of the transfer shall be recorded and indorsed as  
5 above provided.

6 In the event that any funds held by the land agent  
7 hereunder are not paid to the persons to whom the funds are  
8 properly payable[~~7~~] because of the inability of the land agent  
9 to locate those persons, the funds, after the expiration of one  
10 year, shall be deposited in the department of budget and finance  
11 [~~of the State~~] and there abide the claim of any person thereto  
12 lawfully entitled; provided that no claim to the funds shall be  
13 allowed unless the claim is made within five years after the  
14 deposit. Payment of any claim duly filed may be made if the  
15 department of budget and finance and the board concur in finding  
16 the claim valid and proper, but if the claimant fails to obtain  
17 concurrency of the department of budget and finance and the  
18 board within sixty days of the filing of the claimant's claim,  
19 the claimant may present a petition to the circuit court of the  
20 first judicial circuit in that behalf, notice [~~whereof~~] of which  
21 shall be given to the attorney general, who may appear and  
22 defend on behalf of the State, and if the court renders a



1 judgment in favor of the claimant, the department of budget and  
2 finance shall pay the amount due without interest.

3 But if the persons to whom the offer is made, within sixty  
4 days from the time of the notification, [~~shall~~] make answer to  
5 the land agent that they will buy the interest of the offering  
6 parties and [~~shall~~] deposit within sixty days with the land  
7 agent the amount required for the purpose according to the terms  
8 of the offer, the land agent shall indorse and record the fact  
9 of the sale, as above provided, and pay to the offering parties  
10 the amount according to their individual interest; and the  
11 interest of the offering parties shall thereupon vest in the  
12 answering parties. In such case, the consideration money  
13 deposited by the offering parties shall be returned to them.

14 (g) Forfeiture; existing certificate of occupation or  
15 homestead lease. The violation of any of the conditions of any  
16 existing certificate of occupation or homestead lease shall be  
17 sufficient cause for the board, upon failure of the occupier or  
18 lessee within a reasonable period of time to remedy the default,  
19 after notice thereof in the manner provided in section 171-20,  
20 to take possession of the demised premises without demand or  
21 previous entry, with or without legal process, and thereby,  
22 subject to section 171-21, terminate the estate created.



1 (h) Forfeiture; cash freeholds. In the case of default in  
2 the payment of any of the installments due on any cash freehold  
3 agreement for thirty days after the installments are due, or  
4 failure of performance of any other conditions, the board may  
5 take possession of the premises, upon failure of the freeholder  
6 within a reasonable period of time to remedy the default, after  
7 notice thereof in the manner provided in section 171-20, without  
8 demand or previous entry, with or without legal process, and  
9 thereby, subject to section 171-21, terminate the estate  
10 created.

11 (i) Mortgage of homestead leases. Whenever an existing  
12 homestead lease is mortgaged pursuant to section 171-22, the  
13 consent to mortgage from the board [~~of land and natural~~  
14 ~~resources~~] may contain a condition exempting the lease from  
15 subsection (e) for the duration of the mortgage.

16 (j) Reinstatement. A person who has continually occupied  
17 land while holding the land under a certificate of occupation,  
18 nine hundred ninety-nine-year homestead lease, right of purchase  
19 lease, or cash freehold agreement, that became a tenant-at-will  
20 on the property when the certificate, lease, or agreement was  
21 canceled, terminated, or forfeited due to the nonpayment of an  
22 outstanding arrearage may submit an application to the board for



1 reinstatement of the certificate of occupation, nine hundred  
 2 ninety-nine-year homestead lease, right of purchase lease, or  
 3 cash freehold agreement. The board, in its discretion, may  
 4 reinstate the certificate of occupancy, nine hundred ninety-  
 5 nine-year homestead lease, right of purchase lease, or cash  
 6 freehold agreement:

7 (1) Provided that the outstanding arrearage is cured to  
 8 the satisfaction of the board; and

9 (2) Under terms and conditions that the board may  
 10 prescribe, including but not limited to any repayment  
 11 period, term, encumbrance, designated tenant, tenancy,  
 12 rent, or other consideration.

13 Reinstatements as provided by this subsection shall not be  
 14 available after December 31, 2008."

15 SECTION 3. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.

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**Report Title:**

999-Year Homestead Leases

**Description:**

Gives board of land and natural resources up to 12/31/08, the authorization to reinstate a 999-year homestead lease that was cancelled due to nonpayment of arrearages; provided, among other things, that the tenant-at-will has continually occupied the land and has cured all arrearages.

