
A BILL FOR AN ACT

RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

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

1 SECTION 1. The legislature finds that Hawaii law
2 unnecessarily makes the escheat of kuleana lands to the office
3 of Hawaiian affairs conditional on approval by the department of
4 land and natural resources of a plan by the office of Hawaiian
5 affairs for the use and management of such kuleana properties.
6 While this requirement may once have had merit, the office of
7 Hawaiian affairs has now developed the capacity and
8 infrastructure to acquire and manage real property without the
9 need for oversight by the department of land and natural
10 resources. Furthermore, the legislature's designation of the
11 office of Hawaiian affairs as the custodian of these kuleana
12 lands and as a real party in interest in actions involving these
13 lands reflects the legislature's recognition that the office of
14 Hawaiian affairs is created by article XII of the Constitution
15 of the State of Hawaii to, among other things, receive and hold
16 lands in trust for Hawaiians.

17 The legislature further finds that from 1866 until 1977,
18 Hawaii law provided that when an owner of an interest in kuleana



1 land died intestate without heirs, that interest escheated to
2 the konohiki owner of the ahupua`a or ili of which the kuleana
3 land was originally a part.

4 True escheat occurs upon the intestate death without heirs
5 of a person having an inheritable interest in property. In the
6 event of a true escheat, title to the property vests in the
7 designated successor entity at the time of the intestate death.

8 In the decades following the mahele, many of the lands
9 surrounding kuleana passed out of the hands of the konohiki.
10 Often, the new owners of the ahupua`a or ili blocked access to
11 kuleana located within their lands, forcing the kuleana owners
12 to abandon their land. Other kuleana owners were forced to
13 abandon their land to move to towns to seek jobs as a result of
14 the great social upheaval of the time.

15 While true escheats of kuleana occurred during this time,
16 there are many instances in which owners of lands surrounding
17 kuleana have claimed title to kuleana by escheat falsely or in
18 error when no true escheat ever occurred because of the
19 existence of surviving heirs that were unknown to the
20 surrounding owner or known but discouraged from asserting a
21 claim by the surrounding owner, or other causes.



1 In actions to quiet title, a surrounding owner may allege
2 escheat and may acquire title by judicial decree because the
3 true heirs are unknown, are not made parties, are unaware of
4 their interest in the proceeding, or have abandoned possession
5 of, but not the claim of title to, the kuleana. As a result,
6 many kuleana have passed to surrounding owners, even though
7 there was no true escheat, and in some cases, no legitimate
8 claim by inheritance, no bona fide purchase, and no legitimate
9 claim based on adverse possession.

10 In 1987, the legislature enacted legislation to repeal the
11 old kuleana escheat law. The 1987 kuleana law, codified at
12 section 560:2-105.5, Hawaii Revised Statutes, provides that when
13 the owner of an interest in kuleana dies intestate without
14 takers, the interest passes to the office of Hawaiian affairs
15 for the benefit of its beneficiaries.

16 The 1987 kuleana law insured that, after 1987, kuleana
17 would not escheat to surrounding landowners but did not address
18 the problem of false, erroneous, or baseless claims by or
19 through escheats that are alleged to have occurred prior to
20 1987. Because the descendants of the original kuleana owners
21 may not know of their claim to the kuleana, surrounding
22 landowners may thus continue to acquire title to kuleana without



1 a legitimate basis for doing so. Since most alleged kuleana
2 escheats supposedly occurred in the last century, when epidemics
3 devastated entire communities and people did not routinely use
4 wills or trusts to provide for the distribution of their
5 estates, there is a substantial problem in separating improper
6 claims to ownership through alleged escheat from genuine escheat
7 occurring before 1977.

8 Under section 669-2(e), Hawaii Revised Statutes, the office
9 of Hawaiian affairs is already required to be named in most
10 actions to quiet title to kuleana lands. It is appropriate and
11 desirable that the office of Hawaiian affairs be made a party to
12 all actions to quiet title to kuleana land in which escheat is
13 an issue, regardless of when the escheat is alleged to have
14 occurred, in order that the office of Hawaiian affairs may
15 ensure that all those seeking to quiet title to kuleana meet
16 their legal burden of providing that they have a valid claim and
17 thereby prevent the unlawful acquisition of title to kuleana by
18 those without a legitimate claim.

19 The purpose of this Act is to:

20 (1) Repeal the requirement that the department of land and
21 natural resources approve an office of Hawaiian
22 affairs plan for the use and management of kuleana



1 lands that escheat to the office of Hawaiian affairs;

2 and

3 (2) Make the office of Hawaiian affairs a party to all
4 actions to quiet title to kuleana land in which
5 escheat is an issue, regardless of when the escheat is
6 alleged to have occurred.

7 SECTION 2. Section 560:2-105.5, Hawaii Revised Statutes,
8 is amended to read as follows:

9 "**§560:2-105.5 Escheat of kuleana lands.** Any provision of
10 law to the contrary notwithstanding, if the owner of an
11 inheritable interest in kuleana land dies intestate, or dies
12 partially intestate and that partial intestacy includes the
13 decedent's interest in the kuleana land, and if there is no
14 taker under article II, [~~such~~] the inheritable interest shall
15 pass to the [~~department of land and natural resources to be held~~
16 ~~in trust until the office of Hawaiian affairs develops a land~~
17 ~~management plan for the use and management of such kuleana~~
18 ~~properties, and such plan is approved by the department of land~~
19 ~~and natural resources. Upon approval, the department of land~~
20 ~~and natural resources shall transfer such kuleana properties to~~
21 ~~the~~] office of Hawaiian affairs. For the purposes of this
22 section, "kuleana lands" means those lands granted to native



1 tenants pursuant to L. 1850, p. 202, entitled "An Act Confirming
2 Certain Resolutions of the King and Privy Council Passed on the
3 21st Day of December, A.D. 1849, Granting to the Common People
4 Allodial Titles for Their Own Lands and House Lots, and Certain
5 Other Privileges", as originally enacted and as amended."

6 SECTION 3. Section 669-2, Hawaii Revised Statutes, is
7 amended by amending subsection (e) to read as follows:

8 "(e) In any action brought under section 669-1, the office
9 of Hawaiian affairs shall be joined as a defendant, by service
10 upon the office of Hawaiian affairs, and shall have standing to
11 appear in and contest the action, when:

12 (1) The [~~land claimed by the plaintiff is~~] property that
13 is the subject of the action is or includes an
14 interest in kuleana land; and

15 (2) The plaintiff has reason to believe that an owner of
16 an inheritable interest in the kuleana land died
17 intestate or died partially intestate and there is or
18 was no taker under article II of the Hawaii uniform
19 probate code[+] or the claim of title to the kuleana
20 land is based upon adverse possession.

21 In any action in which the office of Hawaiian affairs is
22 required to be joined as a defendant under this subsection, no



1 judgment shall be awarded based upon a claim of escheat that is
2 alleged to have occurred before July 1, 1977, unless the party
3 claiming by or through such escheat establishes escheat by a
4 preponderance of evidence showing that the kuleana owner through
5 whom such escheat is alleged died intestate and without heirs
6 qualified to inherit under the law of intestate succession in
7 effect at the time of the kuleana owner's death. In all such
8 actions, it may not be presumed that the kuleana owner died
9 without qualified heirs unless the party claiming an escheat
10 establishes that no such heirs can be identified despite
11 diligent search and inquiry by that party. In all such actions
12 that the office of Hawaiian affairs is required to be a party
13 and in which no claim to the subject interest in kuleana land is
14 established, whether by escheat or otherwise, and no other
15 person or governmental agency is found to have title to such
16 interest, judgment shall be entered awarding the interest in
17 kuleana land to the office of Hawaiian affairs. Nothing
18 contained in this section shall be construed to affect any
19 escheat to the State of Hawaii occurring on or after July 1,
20 1977, under section 560:2-105.

21 For purposes of this [~~subsection, "kuleana]~~ section:



Report Title:

Office of Hawaiian Affairs; Kuleana Lands

Description:

Eliminates requirement that DLNR approve an OHA land management plan for the management of kuleana lands before the lands can escheat to OHA; makes OHA a party to all actions to quiet title to kuleana lands in which escheat is an issue, regardless of when the escheat is alleged to have occurred.

