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

16 The legislature further finds that from 1866 until 1977,
17 Hawaii law provided that when an owner of an interest in kuleana
18 land died intestate and without heirs, that interest escheated

1 to the konohiki owner (the land chief appointed by the ali`i) of
2 the ahupua`a or ili of which the kuleana land was originally a
3 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 lands passed out of the hands of the
10 konohiki. Often, the new owners of the ahupua`a or ili blocked
11 access to kuleana lands located within their lands, forcing the
12 kuleana land owners to abandon their land. Other kuleana land
13 owners were forced to abandon their land to move to towns to
14 seek jobs as a result of the great social upheaval of the time.

15 While true escheats of kuleana lands occurred during this
16 time, there are many instances in which owners of surrounding
17 lands claimed title to kuleana land falsely, in error when no
18 true escheat ever occurred because of the existence of surviving
19 heirs that were unknown to the surrounding owner or known but
20 discouraged from asserting a claim by the surrounding owner, or
21 by 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 land. As a
6 result, many kuleana lands have passed to surrounding owners,
7 even though there was no true escheat, and in some cases, no
8 legitimate claim by inheritance, no bona fide purchase, and no
9 legitimate 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 land 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 lands would not escheat to surrounding landowners but did not
18 address the problem of false, erroneous, or baseless claims by
19 or through escheats that are alleged to have occurred prior to
20 1987. Because the descendants of the original kuleana land
21 owners may not know of their claim to the kuleana land,
22 surrounding landowners may thus continue to acquire title to

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1 kuleana land without a legitimate basis for doing so. Since
2 most alleged kuleana land escheats supposedly occurred in the
3 last century, when epidemics devastated entire communities and
4 people did not routinely use wills or trusts to provide for the
5 distribution of their estates, there is a substantial problem in
6 separating improper claims to ownership through alleged escheat
7 from genuine escheat 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 lands
16 meet their legal burden of providing that they have a valid
17 claim and thereby preventing the unlawful acquisition of title
18 to kuleana lands by 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 must approve an office of Hawaiian
22 affairs plan for the use and management of kuleana

1 lands escheating to the office of Hawaiian affairs;

2 and

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

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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 the escheat establishes escheat by a
 4 preponderance of evidence showing that the kuleana land owner
 5 through whom the escheat is alleged died intestate and without
 6 heirs qualified to inherit under the law of intestate succession
 7 in effect at the time of the kuleana land owner's death. It may
 8 not be presumed that the kuleana land owner died without
 9 qualified heirs unless the party claiming an escheat establishes
 10 that no heirs can be identified despite diligent search and
 11 inquiry by that party. The office of Hawaiian affairs shall be
 12 awarded the interest in kuleana land in actions where the office
 13 of Hawaiian affairs is required to be a party if:

- 14 (1) No claim to the interest in the subject kuleana land
 15 is established, whether by escheat or otherwise; and
- 16 (2) No other person or governmental agency is found to
 17 have title to the interest.

18 Nothing contained in this section shall be construed to affect
 19 any escheat to the State of Hawaii occurring on or after
 20 July 1, 1977, under section 560:2-105.

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

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

7 "Governmental agency" includes any state or county
 8 department, bureau, division, agency, board, commission, or
 9 political subdivision."

10 SECTION 4. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.

PROPOSED

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. (SD2)

