

JAN 22 2007

S.B. NO. 1532

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## A BILL FOR AN ACT

RELATING TO KULEANA LANDS.

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

1           SECTION 1. The legislature finds that commercial  
2 development has led to sharp increases in taxes on real  
3 property, including kuleana land, throughout the State. Many  
4 Hawaiian families living on kuleana land face loss of their  
5 land, and possible homelessness, because they cannot afford the  
6 real property tax payments. The legislature finds this dire  
7 situation to be a matter of statewide concern due to the social,  
8 economic, and cultural disruption that it poses.

9           The legislature also finds that Hawaii law unnecessarily  
10 makes the escheat of kuleana lands to the office of Hawaiian  
11 affairs conditional on the department of land and natural  
12 resources' approval of an office of Hawaiian affairs plan for  
13 the use and management of the kuleana land. While this  
14 requirement may once have had merit, the office of Hawaiian  
15 affairs now has the capacity and infrastructure to acquire and  
16 manage real property without the need for oversight by the  
17 department of land and natural resources. Furthermore, the  
18 legislature's designation of the office of Hawaiian affairs as



1 the custodian of kuleana lands and as a real party in interest  
2 for actions involving these lands reflects the legislature's  
3 recognition that the office of Hawaiian affairs is created by  
4 Article XII of the Constitution of the State of Hawaii to, among  
5 other things, receive and hold lands in trust for Hawaiians.

6 The legislature further finds that from 1866 until 1977,  
7 Hawaii law provided that when an owner of an interest in kuleana  
8 land died intestate and without heirs, that interest escheated  
9 to the konohiki owner (the land chief appointed by the alii) of  
10 the ahupuaa or ili of which the kuleana land was originally a  
11 part.

12 True escheat occurs upon the intestate death without heirs  
13 of a person having an inheritable interest in property. In the  
14 event of a true escheat, title to the property vests in the  
15 designated successor entity at the time of the intestate death.

16 In the decades following the mahele, many of the lands  
17 surrounding kuleana lands passed out of the hands of the  
18 konohiki. Often, the new owners of the ahupuaa or ili blocked  
19 access to kuleana lands located within their lands, forcing the  
20 kuleana land owners to abandon their land. Other kuleana land  
21 owners were forced to abandon their land to move to towns to  
22 seek jobs as a result of the great social upheaval of the time.



1           While true escheats of kuleana land occurred during this  
2 time, there are many instances in which owners of surrounding  
3 lands claimed title to kuleana land falsely, in error when no  
4 true escheat ever occurred because of the existence of surviving  
5 heirs that were unknown to the surrounding owner or known but  
6 discouraged from asserting a claim by the surrounding owner, or  
7 by other causes.

8           In actions to quiet title, a surrounding owner may allege  
9 escheat and may acquire title by judicial decree because the  
10 true heirs are unknown, are not made parties, are unaware of  
11 their interest in the proceeding, or have abandoned possession  
12 of, but not the claim of title to, the kuleana land. As a  
13 result, many kuleana lands have passed to surrounding owners,  
14 even though there was no true escheat, and in some cases, no  
15 legitimate claim by inheritance, no bona fide purchase, and no  
16 legitimate claim based on adverse possession.

17           In 1987, the legislature enacted legislation to repeal the  
18 old kuleana escheat law. The 1987 kuleana law, codified at  
19 section 560:2-105.5, Hawaii Revised Statutes, provides that when  
20 the owner of an interest in kuleana land dies intestate without  
21 takers, the interest passes to the office of Hawaiian affairs  
22 for the benefit of its beneficiaries.



1           The 1987 kuleana law insured that, after 1987, kuleana  
2 lands would not escheat to surrounding landowners but did not  
3 address the problem of false, erroneous, or baseless claims by  
4 or through escheats that are alleged to have occurred prior to  
5 1987. Because the descendants of the original kuleana land  
6 owners may not know of their claim to the kuleana land,  
7 surrounding landowners may thus continue to acquire title to  
8 kuleana land without a legitimate basis for doing so. Since  
9 most alleged kuleana land escheats supposedly occurred in the  
10 last century, when epidemics devastated entire communities and  
11 people did not routinely use wills or trusts to provide for the  
12 distribution of their estates, there is a substantial problem in  
13 separating improper claims to ownership through alleged escheat  
14 from genuine escheat occurring before 1977.

15           Under section 669-2(e), Hawaii Revised Statutes, the office  
16 of Hawaiian affairs is already required to be named in most  
17 actions to quiet title to kuleana lands. It is appropriate and  
18 desirable that the office of Hawaiian affairs be made a party to  
19 all actions to quiet title to kuleana land in which escheat is  
20 an issue, regardless of when the escheat is alleged to have  
21 occurred, in order that the office of Hawaiian affairs may  
22 ensure that all those seeking quiet title to kuleana lands meet



1 their legal burden of providing that they have a valid claim and  
2 thereby preventing the unlawful acquisition of title to kuleana  
3 lands by those without a legitimate claim.

4 Further, the legislature finds that Hawaii law needs  
5 amendment to bar actions to claim kuleana lands by adverse  
6 possession. Complex historical events have put kuleana lands at  
7 risk of inappropriate claims based on adverse possession. As  
8 noted above, in the decades following the mahele, many of the  
9 lands surrounding kuleana passed out of the hands of the  
10 konohiki. Often, the new owners of the ahupuaa or ili blocked  
11 access to kuleana located within their lands, forcing the  
12 kuleana owners to abandon their land. Other kuleana owners were  
13 forced to abandon their land to move to towns to seek jobs as a  
14 result of the great social upheaval of the time. Epidemics  
15 devastated entire communities and people did not routinely use  
16 wills or trusts to provide for the distribution of their  
17 estates. In actions of adverse possession, a surrounding owner  
18 or other party may have acquired title by judicial decree  
19 because the true heirs are unknown, are not made parties, are  
20 unaware of their interest in the proceeding, or have abandoned  
21 possession of, but not the claim of title to, the kuleana. As a  
22 result, kuleana may have passed to surrounding owners or other



1 parties based on claims of adverse possession, yet no legitimate  
2 claim existed.

3 In light of the historical context, the legislature finds  
4 that it would be fundamentally unfair to allow legitimate claims  
5 of ancestral title to kuleana land to be foreclosed by another  
6 party's adverse possession of such land.

7 The purposes of this Act are to:

- 8 (1) Ameliorate the effects of real property tax increases  
9 on Hawaiians living on kuleana land by requiring that  
10 the counties provide a real property tax exemption for  
11 such lands;
- 12 (2) Repeal the requirement that the department of land and  
13 natural resources must approve an office of Hawaiian  
14 affairs plan for the use and management of kuleana  
15 lands escheating to the office of Hawaiian affairs;
- 16 (3) Make the office of Hawaiian affairs a party to all  
17 quiet title actions for kuleana land where escheat is  
18 an issue, regardless of when the escheat is alleged to  
19 have occurred; and
- 20 (4) Bar claims to kuleana lands by adverse possession.



1 SECTION 2. Chapter 246, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§246- Kuleana land. (a) For purposes of this section,  
5 "kuleana land" means those lands granted to native tenants  
6 pursuant to L. 1850, p. 202, entitled "An Act Confirming Certain  
7 Resolutions of the King and Privy Council, Passed on the 21st  
8 Day of December, A.D. 1849, Granting to the Common People  
9 Allodial Titles for Their Own Lands and House Lots, and Certain  
10 Other Privileges," as originally enacted and amended.

11 (b) Notwithstanding any other law to the contrary, each  
12 county shall enact by ordinance and adopt as law for the county  
13 an exemption of kuleana land from all real property taxation;  
14 provided that, in order to qualify for the exemption, the land  
15 in question must be owned in whole or in part by a lineal  
16 descendant of the Hawaiian person or persons who received the  
17 original title to the land pursuant to L. 1850, p. 202, entitled  
18 "An Act Confirming Certain Resolutions of the King and Privy  
19 Council, Passed on the 21st Day of December, A.D. 1849, Granting  
20 to the Common People Allodial Titles for Their Own Lands and  
21 House Lots, and Certain Other Privileges," as originally enacted  
22 and amended."



1 SECTION 3. Section 183-45, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§183-45 Accreted land. No structure, retaining wall,  
4 dredging, grading, or other use [~~which~~] that interferes or may  
5 interfere with the future natural course of the beach, including  
6 further accretion or erosion, shall be permitted on accreted  
7 land as judicially decreed under section 501-33 or [~~669-1(e).~~]  
8 669-1(f). This section shall not in any way be construed to  
9 affect state or county property.

10 Any structure or action in violation of this section shall  
11 be immediately removed or stopped and the property owner shall  
12 be fined in accordance with section 183C-7. Any action taken to  
13 impose or collect the penalty provided for in this section shall  
14 be considered a civil action."

15 SECTION 4. Section 343-3, Hawaii Revised Statutes, is  
16 amended by amending subsection (c) to read as follows:

17 "(c) The office shall inform the public of:  
18 (1) A public comment process or public hearing if a  
19 federal agency provides for the public comment process  
20 or public hearing to process a habitat conservation  
21 plan, safe harbor agreement, or incidental take





- 1 license pursuant to the federal Endangered Species  
2 Act;
- 3 (2) A proposed habitat conservation plan or proposed safe  
4 harbor agreement, and availability for inspection of  
5 the proposed agreement, plan, and application to enter  
6 into a planning process for the preparation and  
7 implementation of the habitat conservation plan for  
8 public review and comment;
- 9 (3) A proposed incidental take license as part of a  
10 habitat conservation plan or safe harbor agreement;  
11 and
- 12 (4) An application for the registration of land by  
13 accretion pursuant to section 501-33 or [~~669-1(e)~~  
14 669-1(f) for any land accreted along the ocean."

15 SECTION 5. Section 560:2-105.5, Hawaii Revised Statutes,  
16 is amended to read as follows:

17 "**§560:2-105.5 Escheat of kuleana lands.** Any provision of  
18 law to the contrary notwithstanding, if the owner of an  
19 inheritable interest in kuleana land dies intestate, or dies  
20 partially intestate and that partial intestacy includes the  
21 decedent's interest in the kuleana land, and if there is no  
22 taker under article II, [~~such~~] the inheritable interest shall



1 ~~pass to the [department of land and natural resources to be held~~  
2 ~~in trust until the office of Hawaiian affairs develops a land~~  
3 ~~management plan for the use and management of such kuleana~~  
4 ~~properties, and such plan is approved by the department of land~~  
5 ~~and natural resources. Upon approval, the department of land~~  
6 ~~and natural resources shall transfer such kuleana properties to~~  
7 ~~the] office of Hawaiian affairs. For the purposes of this~~  
8 section, "kuleana lands" means those lands granted to native  
9 tenants pursuant to L. 1850, p. 202, entitled "An Act Confirming  
10 Certain Resolutions of the King and Privy Council Passed on the  
11 21st Day of December, A.D. 1849, Granting to the Common People  
12 Allodial Titles for Their Own Lands and House Lots, and Certain  
13 Other Privileges", as originally enacted and as amended."

14 SECTION 6. Section 669-1, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§669-1 Object of action.** (a) Action may be brought by  
17 any person against another person who claims, or who may claim  
18 adversely to the plaintiff, an estate or interest in real  
19 property, for the purpose of determining the adverse claim.

20 (b) Action for the purpose of establishing title to a  
21 parcel of real property of five acres or less may be brought by  
22 any person who has been in adverse possession of the real



1 property for not less than twenty years. Action for the purpose  
2 of establishing title to a parcel of real property of greater  
3 than five acres may be brought by any person who had been in  
4 adverse possession of the real property for not less than twenty  
5 years prior to November 7, 1978, or for not less than earlier  
6 applicable time periods of adverse possession. For purposes of  
7 this section, any person claiming title by adverse possession  
8 shall show that [~~such~~] the person acted in good faith. Good  
9 faith means that, under all the facts and circumstances, a  
10 reasonable person would believe that the person has an interest  
11 in title to the lands in question and [~~such~~] the belief is based  
12 on inheritance, a written instrument of conveyance, or the  
13 judgment of a court of competent jurisdiction.

14 (c) Notwithstanding subsections (a) and (b), no action may  
15 be brought to claim real property if the real property is  
16 kuleana lands. For purposes of this section "kuleana lands"  
17 shall have the same meaning as it does in section 560:2-105.5.

18 [~~(e)~~] (d) Action brought to claim property of five acres  
19 or less on the basis of adverse possession may be asserted in  
20 good faith by any person not more than once in twenty years,  
21 after November 7, 1978.



1           ~~(d)~~ (e) Action under subsection (a) or (b) shall be  
2 brought in the circuit court of the circuit in which the  
3 property is situated.

4           ~~(e)~~ (f) Action may be brought by any person to quiet  
5 title to land by accretion; provided that no action shall be  
6 brought by any person other than the State to quiet title to  
7 land accreted along the ocean, except that a private property  
8 owner whose eroded land has been restored by accretion may also  
9 bring such an action for the restored portion. The person  
10 bringing the action shall prove by a preponderance of the  
11 evidence that the accretion is natural and permanent. The  
12 person bringing the action shall supply the office of  
13 environmental quality control with notice of the action for  
14 publication in the office's periodic bulletin in compliance with  
15 section 343-3(c)(4). The quiet title action shall not be  
16 decided by the court unless the office of environmental quality  
17 control has properly published notice of the action in the  
18 office's periodic bulletin.

19           As used in this section, "permanent" means that the  
20 accretion has been in existence for at least twenty years. The  
21 accreted portion of land shall be state land except as otherwise  
22 provided in this section and shall be considered within the



1 conservation district. Prohibited uses are governed by section  
2 183-45."

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

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

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

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

18 In any action in which the office of Hawaiian affairs is  
19 required to be joined as a defendant under this subsection, no  
20 judgment shall be awarded based upon a claim of escheat that is  
21 alleged to have occurred before July 1, 1977, unless the party  
22 claiming by or through the escheat establishes escheat by a



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

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

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

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

19       "Governmental agency" includes any state or county  
20 department, bureau, agency, board, commission, or political  
21 subdivision.



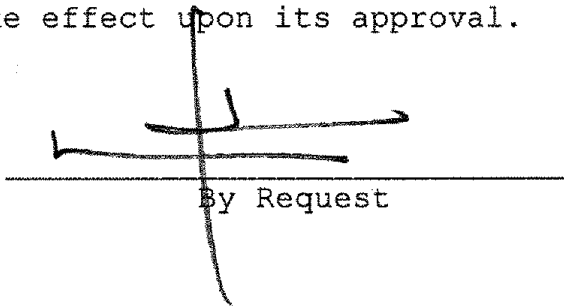
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 6 Other Privileges", as originally enacted and as amended."

7 SECTION 8. Statutory material to be repealed is bracketed  
 8 and stricken. New statutory material is underscored.

9 SECTION 9. This Act shall take effect upon its approval.

10

INTRODUCED BY:



A handwritten signature is written over a horizontal line. Below the line, the words "By Request" are printed.





Requires counties to adopt ordinance to exempt Kuleana Lands from real property taxes; eliminates department of land and natural resources approval of office of Hawaiian affairs land management plan before land may escheat to office of Hawaiian affairs; makes office of Hawaiian affairs party to all quiet title actions of Kuleana Lands where escheat is an issue; bars claim to Kuleana Lands based on claim of adverse possession.

**Description:**

**Report Title:** Kuleana Lands; Real Property Tax; Quiet Title; Adverse Possession