
TESTIMONY
HB921 HD1
LATE

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Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs

ATTN:

**Senator Clayton Hee, Chair
Senator Jill N. Tokuda, Vice Chair**

Testimony Supporting House Bill 921: Relating to Public Lands

March 18, 2009, 3:00 p.m.

Conference Room 229

Aloha Chair Hee and Members of the Committee:

My name is Moses Haia. I am a staff attorney with the Native Hawaiian Legal Corporation. The Native Hawaiian Legal Corporation is a non-profit, public interest law firm committed to the protection and preservation of Native Hawaiian rights and culture, including Native Hawaiian traditions and customs. The Native Hawaiian Legal Corporation strongly supports Bill 921, which would allow families residing on or otherwise connected to 999-year leasehold properties to collectively and cooperatively share in the responsibilities and benefits associated with these lands.

According to NHLC's title research, many of these lands appear to have been awarded to families whose presence in those areas far predated the lease award. For this reason among others, these leases represent a unique historical resource that cannot be easily replaced. The protection of this resource holds great value for all of the people of Hawai'i. Hawaiian families who still occupy ancestral lands are few in number, and the area-specific knowledge represented by their continued presence is in itself tremendously important.

In order to protect and care for these lands so that they can be appropriately passed to future generations, it is necessary to develop flexible legal solutions that can allow for cooperative land-sharing. Family land trusts, especially if inclusive of all interested parties and focused on the continuation of family legacies, bonding activities and the care of future generations, have the capacity to allow for this type of cooperation to be realistically developed.

As you may know, the 999-year lease program is rife with legal problems. The potential for extended litigation among families is alarming. The Attorney General's office also seems to be concerned about potential liability for the State as a result of an apparent discrepancy between its administrative practices over the past century and the strict letter of the law. The State's resulting posture is creating obstacles to those striving to untangle the legal and financial complexity of the situation and move forward positively. Proactive solutions are needed.

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We know of no opposition to this measure. It is a “win-win” solution in which families, state agencies, and the public all benefit through the expansion of the legal options available to lessees.

We respectfully ask that you pass this measure.

Mahalo for this opportunity to testify. Should you desire additional information of assistance, please contact us.

Mahalo Nui Loa,

Moses Haia, Esq.

COMMITTEE ON WATER, LAND, AGRICULTURE,
AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair
Senator Jill N. Tokuda, Vice Chair

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Testimony of Laulani Teale
NHBA/NHLC Peacemaking Project
Supporting House Bill 921, Relating to Public Lands
Conference Room 229

Aloha Chair Hee, Vice-Chair Tokuda, and Members of the Committee,

My name is Laulani Teale. I am the Project Coordinator for the Native Hawaiian Bar Association/Native Hawaiian Legal Corporation Peacemaking Project.

Our project is directly involved with families who are working together to hold some of Hawai'i's last remaining 999-year leases, and to develop cooperative family solutions in order to address the many challenges currently faced by these lessees. I am in strong support of HB921, because it offers a realistic means for families to meet these challenges by working together.

The passage of this bill would be a win-win situation all around, with no loser. It simply creates an additional option for families -- one that has the potential to help families to cooperatively address some very serious problems that currently exist in these leaseholds.

As you may know, the 999-year lease program began in 1901, and at its peak, 750 leases had been awarded. At the last count done by OHA in 1994, only 51 of these leases remained. The majority of these were Hawaiian families, many of whom are struggling with the many challenges presented by this unique, complex and rather confusing leasehold system. Some of the most common of these many challenges include the following:

Legal:

1) Under the original lease program established in 1900, successorship was predetermined by law. When a lessee died, the lease automatically passed to his or her spouse, and then to all of the children of the new lessee, with right of survivorship. This meant that the *last surviving sibling* inherited the lease, which

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then passed to that person's children, and so on. As no one knew who the last survivor would be, this sometimes laid the groundwork for very serious conflict within families.

2) In order to address this problem, many families drafted quit-claim deeds that served to voluntarily place the lease with a person of the whole family's choosing. These deeds were commonly stamped and filed by DLNR, and families have presumed them valid for generations. Some of these transfers were further confirmed in probate. However, no actual new lease documents were issued, and the Attorney General's office has recently opined that the successor under the original statute's structure *may* in fact be able to attempt to assert a claim to the lease. The resulting potential for conflict is alarming, particularly in consideration of other lease requirements (such as continuous occupancy) that the non-resident claimant would not meet, and issues over houses or other improvements built by the resident. In other words, any attempt to assert a claim from outside could well result in a horrific, drawn-out court battle that could go on for years with no one winning, draining the family's resources (along with the State's) and possibly putting the lease itself in jeopardy.

3) The law changed in 2000 to standard intestate succession, and assignment was allowed. While the change was helpful in some ways, one side effect was additional complexity, in that there were now two sets of rules; a detailed timeline (along with a thorough knowledge of the issues involved) is often needed in order to keep the picture straight.

4) These leases are all on ceded lands, adding legal complexity.

Financial:

- 5) There is no way to secure a loan on these properties. For this reason:
- a) many houses are substandard and/or in very serious disrepair.
 - b) some families have engaged in desperate alternate financing strategies (such as paying for construction with high-interest signature loans and/or credit cards), resulting in terrible debt.
 - c) family conflict may be often exacerbated by the financial pressure involved.
- 6) Taxes are charged at the same rate as surrounding properties, at full market value. This causes a sometimes extreme burden, especially on families on a sustenance-based lifestyle who live in areas of high-level development

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7) The original intent of the lease program was to enable subsistence farming. Some of the families have continued the practice, at least to some degree, until today, and live closely with the land. For this reason, it is especially difficult for them to meet the financial challenges presented by the situation.

There are many other issues to consider as well; in short, the 999-year lease program has, after a hundred years, become a rather complicated tangle of legal and financial matters that are not easily resolved.

While HB921 does not provide a “magic bullet” to solve these problems, it gives real hope to families by allowing them to pool their energies and resources to solve them together, themselves. It also creates a strong incentive for cooperation and positive participation, and perhaps most importantly of all, it allows them to dream together, to establish a collective vision of what is possible, and to ask themselves integral questions, such as, “what would our kupuna want?”

With the help of programs such as ours (we provide ho’oponopono, agreement-building and negotiation assistance at almost no cost to families) and the support of agencies such as the Office of Hawaiian Affairs (who have also been long involved in addressing this issue), the realization of ‘ohana vision is very possible. It is our hope that these cooperative solutions may in fact provide an important model for family land-sharing in general, and will have lasting, positive results for future generations. We ask that you pass HB921 as an important step in this endeavor.

Mahalo for this opportunity to testify. Please feel free to contact me at any time, with whatever questions you may have.

Me ka ‘oia‘i‘o,

Laulani Teale

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