

JAN 25 2010

S.B. NO. 2771

A BILL FOR AN ACT

RELATING TO KALAUPAPA.

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

1 SECTION 1. The legislature finds that Father Damien's
2 canonization will likely increase the number of visitors
3 interested in traveling to Kalaupapa National Historical Park.
4 Presently, the department of health oversees the administration
5 of health services for the patients who reside in the Kalaupapa
6 settlement. In the future, however, when there is no longer a
7 resident patient population, the department of health will have
8 no reason to be involved in the administration of the Kalaupapa
9 settlement.

10 The legislature also finds that the department of Hawaiian
11 home lands is the appropriate agency to manage the lands when
12 there is no longer a resident patient population.

13 SECTION 2. Chapter 326, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "§326- Department of health; department of land and
17 natural resources; transfer of land. (a) Notwithstanding any
18 law to the contrary, when there is no longer any person



1 receiving care for Hansen's disease at Kalaupapa Settlement, the
2 department of health and the department of land and natural
3 resources shall timely execute the transfer to the department of
4 Hawaiian home lands of:

5 (1) All parcels of land in Kalawao county under the
6 department of health and the department of land and
7 natural resources' respective control; and

8 (2) Any administrative authority over Kalawao county that
9 the department of health and the department of land
10 and natural resources heretofore possessed;

11 provided that no parcel of land in Kalawao county that is
12 transferred to the department of Hawaiian home lands under this
13 subsection shall attain the status of Hawaiian home lands as
14 defined in section 201(a) of the Hawaiian Homes Commission Act,
15 1920, as amended.

16 (b) The department of health and the department of land
17 and natural resources shall not alienate any parcel of land in
18 Kalawao county that is under their respective control, except as
19 authorized under subsection (a).

20 (c) Upon the transfer as authorized under subsection (a),
21 the powers over Kalawao county heretofore reserved to the
22 department of health and the director of health, respectively,



1 and the department of land and natural resources and the
2 chairperson of the board of land and natural resources,
3 respectively, shall be vested with the department of Hawaiian
4 home lands and a commissioner of the Hawaiian homes commission
5 elected by commission members to serve as the executive
6 administrator of Kalawao county."

7 SECTION 3. Section 225, Hawaiian Homes Commission Act,
8 1920, as amended, is amended by amending subsection (b) to read
9 as follows:

10 "(b) (1) The department may receive, manage, and invest
11 moneys or other property, real, personal or mixed, or
12 any interest therein, which may be given, bequeathed,
13 or devised, or in any manner received from sources
14 other than the legislature or any federal
15 appropriation, for the purposes of the Act.

16 (2) All moneys received by or on behalf of the department
17 shall be deposited into the state treasury to be
18 expended according to law and for purposes in
19 accordance with the terms and conditions of the gift.
20 All moneys shall be appropriated for purposes
21 enumerated in such gifts and if no specific purpose is



1 enumerated, shall be appropriated to the Hawaiian home
2 trust fund.

3 (3) The department is authorized to sell, lease, or in any
4 way manage such real, personal, or mixed property or
5 any interest therein, in the manner and for the
6 purposes enumerated in the gift. If no conditions are
7 enumerated, the gift may be sold, leased, managed, or
8 disposed of and the income or proceeds therefrom shall
9 be deposited into the Hawaiian home trust fund.

10 (4) The real property or any interest therein received by
11 the department through contributions or grants shall
12 not attain the status of Hawaiian home lands as
13 defined in section [‡]201(a) [‡].

14 (5) The department shall cause to be kept suitable books
15 of account wherein shall be recorded each gift, the
16 essential facts of the management thereof, and the
17 expenditure of income.

18 (6) Any action to be taken with respect to gifts shall be
19 made in a public meeting where any pertinent
20 information and reasons for any decisions shall be
21 fully disclosed.



1 (7) Effective when there is no longer any person receiving
2 care for Hansen's disease at Kalaupapa Settlement, the
3 department is authorized to:

4 (A) Receive the transferred parcels of land in
5 Kalawao county from the department of health and
6 the department of land and natural resources;
7 provided that these transferred lands shall not
8 attain the status of Hawaiian home lands as
9 defined in section 201(a); and

10 (B) Manage Kalawao county and exercise its authority
11 as granted and vested pursuant to section 326- ,
12 Hawaii Revised Statutes;

13 provided that if a sovereign native Hawaiian entity is
14 recognized by the United States and the State, all of
15 the land subject to transfer under subparagraph (A)
16 and all of the authority described in subparagraph (B)
17 shall be transferred to that sovereign native Hawaiian
18 entity."

19 SECTION 4. Section 326-34, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§326-34 County of Kalawao; governance.** (a) The county
22 of Kalawao shall consist of that portion of the island of



1 Molokai known as Kalaupapa, Kalawao, and Waikolu, and commonly
2 known or designated as the Kalaupapa Settlement, and shall not
3 be or form a portion of the county of Maui, but is constituted a
4 county by itself. The county of Maui shall have no authority,
5 including zoning authority, in the county of Kalawao. As a
6 county [it], the county of Kalawao shall have only the powers
7 especially conferred and given by [~~sections 326-34 to 326-38~~]
8 section 326- and, except as provided in [~~those sections,~~]
9 that section, none of the provisions of the Hawaii Revised
10 Statutes regarding counties shall be deemed to refer to or shall
11 be applicable to the county of Kalawao.

12 [~~(b) The county of Kalawao shall be under the jurisdiction~~
13 ~~and control of the department of health and be governed by the~~
14 ~~laws, and rules relating to the department and the care and~~
15 ~~treatment of persons affected with Hansen's disease, except as~~
16 ~~otherwise provided by law.] "~~

17 SECTION 5. Section 326-35, Hawaii Revised Statutes, is
18 repealed.

19 [~~"§326-35 Sheriff, appointment, removal. There shall be~~
20 ~~no county officer in the county other than a sheriff, who shall~~
21 ~~be a patient resident of and be appointed in the county by the~~
22 ~~department of health and who shall hold office at the pleasure~~



1 ~~of the department or until a successor is appointed by the~~
2 ~~department. When a qualified patient resident is not available,~~
3 ~~the department may appoint a staff employee or other qualified~~
4 ~~person to serve as sheriff."]~~

5 SECTION 6. Section 326-36, Hawaii Revised Statutes, is
6 repealed.

7 [~~§326-36 Sheriff, salary. The salary of the sheriff~~
8 ~~shall be fixed and paid by the department of health out of the~~
9 ~~appropriation allowed by the legislature for the care and~~
10 ~~treatment of persons affected with Hansen's disease."]~~

11 SECTION 7. Section 326-37, Hawaii Revised Statutes, is
12 repealed.

13 [~~§326-37 Sheriff, duties. The sheriff of the county of~~
14 ~~Kalawao shall preserve the public peace and shall arrest and~~
15 ~~take before the district judge for examination all persons who~~
16 ~~attempt to commit or who have committed a public offense and~~
17 ~~prosecute the same to the best of the sheriff's ability."]~~

18 SECTION 8. Section 326-38, Hawaii Revised Statutes, is
19 repealed.

20 [~~§326-38 Sheriff, powers. The sheriff may appoint and~~
21 ~~dismiss and reappoint as many police officers as may be~~
22 ~~authorized by the department of health for the county. Patient~~



1 ~~residents, for the services rendered as police officers, shall~~
2 ~~receive pay as the department determines and which pay shall be~~
3 ~~taken out of and from the appropriation made by the legislature~~
4 ~~for the care and treatment of persons affected with Hansen's~~
5 ~~disease. The sheriff shall have other powers and duties within~~
6 ~~the county of Kalawao and appropriate thereto as are prescribed~~
7 ~~by law for the chiefs of police or police officers of the~~
8 ~~several counties respectively."]~~

9 SECTION 9. All rights, powers, functions, and duties of
10 the department of health and the department of land and natural
11 resources are transferred to the executive administrator of
12 Kalawao county elected by members of the Hawaiian homes
13 commission pursuant to section 326- , Hawaii Revised Statutes.

14 All officers and employees whose functions are transferred
15 by this Act shall be transferred with their functions and shall
16 continue to perform their regular duties upon their transfer,
17 subject to the state personnel laws and this Act.

18 No officer or employee of the State having tenure shall
19 suffer any loss of salary, seniority, prior service credit,
20 vacation, sick leave, or other employee benefit or privilege as
21 a consequence of this Act, and such officer or employee may be
22 transferred or appointed to a civil service position without the



1 necessity of examination; provided that the officer or employee
2 possesses the minimum qualifications for the position to which
3 transferred or appointed; and provided that subsequent changes
4 in status may be made pursuant to applicable civil service and
5 compensation laws.

6 An officer or employee of the State who does not have
7 tenure and who may be transferred or appointed to a civil
8 service position as a consequence of this Act shall become a
9 civil service employee without the loss of salary, seniority,
10 prior service credit, vacation, sick leave, or other employee
11 benefits or privileges and without the necessity of examination;
12 provided that such officer or employee possesses the minimum
13 qualifications for the position to which transferred or
14 appointed.

15 If an office or position held by an officer or employee
16 having tenure is abolished, the officer or employee shall not
17 thereby be separated from public employment, but shall remain in
18 the employment of the State with the same pay and classification
19 and shall be transferred to some other office or position for
20 which the officer or employee is eligible under the personnel
21 laws of the State as determined by the head of the department or
22 the governor.



1 SECTION 10. All appropriations, records, equipment,
2 machines, files, supplies, contracts, books, papers, documents,
3 maps, and other personal property heretofore made, used,
4 acquired, or held by the department of health and the department
5 of land and natural resources relating to the functions
6 transferred to the department of Hawaiian home lands shall be
7 transferred with the functions to which they relate.

8 SECTION 11. The provisions of the amendments made by this
9 Act to the Hawaiian Homes Commission Act, 1920, as amended, are
10 declared to be severable, and if any section, sentence, clause,
11 or phrase, or the application thereof to any person or
12 circumstances is held ineffective because there is a requirement
13 of having the consent of the United States to take effect, then
14 that portion only shall take effect upon the granting of consent
15 by the United States and effectiveness of the remainder of these
16 amendments or the application thereof shall not be affected.

17 SECTION 12. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 13. This Act shall take effect upon its approval;
20 provided that sections 4, 5, 6, 7, 8, 9, and 10 shall take
21 effect when lands located in Kalawao county, that are under the



1 control of the department of health and department of land and
2 natural resources are transferred from the department of health
3 and the department of land and natural resources to the
4 department of Hawaiian home lands in conformance with this Act.

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INTRODUCED BY:

F. Keiani English

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Report Title:

Kalaupapa; Transfer; DOH; DLNR; DHHL

Description:

Transfers ownership and management of Kalawao county from DOH and DLNR to DHHL when there is no longer any person receiving care for Hansen's disease living in Kalaupapa; authorizes DHHL to accept the transfer, provided DHHL transfers that land to the native Hawaiian sovereign entity upon recognition; prohibits Maui county from zoning authority in Kalawao county.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

