

STAND. COM. REP. NO.

3043

Honolulu, Hawaii

APR 01 2010

RE: H.B. No. 921
H.D. 1
S.D. 2

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2010
State of Hawaii

Madam:

Your Committees on Judiciary and Government Operations and
Ways and Means, to which was referred H.B. No. 921, H.D. 1,
S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC LANDS,"

beg leave to report as follows:

The purpose of this measure is to:

- (1) Permit the Department of Hawaiian Home Lands to negotiate lease terms beyond sixty-five years and provide a right of first refusal to previous lessees; and
- (2) Prohibit the sale or transfer of ceded lands until the unrelinquished claims of the native Hawaiian people are resolved or reconciliation between the State and the native Hawaiian people is no longer supported, whichever occurs first.

Testimony in support of the measure was submitted by one state agency. One state agency submitted comments, and one state agency submitted testimony in opposition. Written testimony presented to the Committees may be reviewed on the Legislature's website.



Your Committees have amended this measure by replacing its contents with the contents of H.B. No. 921, H.D. 1, which allows 999-year homestead leases to be assigned to land trusts that are created for purposes of managing and holding the homestead leasehold estate for the benefit of the lessee and the lessee's family members.

By 1901, seven hundred and fifty homestead leases for 999 years had been awarded, and by 1994, only fifty-one remained. The majority of these leaseholds belong to native Hawaiian families, many of whom are struggling with the many challenges presented by this unique, complex, and rather confusing leasehold system. Your Committees find that this measure provides an additional option for lessee families, which has the potential to assist families in cooperatively addressing serious problems that exist with the leaseholds.

The two main problems faced by lessee families are successorship and the financial challenges. 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 then passed to that person's children, and so on. As no one knew who the last survivor would be, this laid the groundwork for some families to experience very serious conflict within the family. 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 the Department of Land and Natural Resources, and families have presumed them valid for generations. Some of these transfers were 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 result in a drawn-out court battle that could go on for years with no one winning, while draining the family's resources and possibly putting the lease itself in jeopardy. The law changed in 2000 to standard intestate succession, and assignment was allowed. While the change was

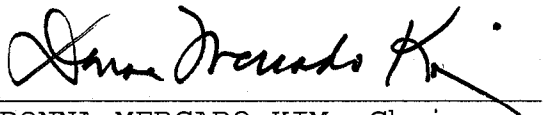


helpful in some ways, one side effect was the additional complexity of there being two sets of rules. A detailed timeline, along with a thorough knowledge of the issues involved, is often needed in order to understand the situation.

Additionally, the financial concern for the families is that there is no way to secure a loan on these properties. For this reason many houses are substandard or in very serious disrepair. Some families have engaged in alternative financing strategies increasing the family's debt burden. Family conflict is often exacerbated by the financial pressure involved. Taxes are charged at the same rate as surrounding properties, at full market value, and this causes an extreme burden, especially for families on a sustenance-based lifestyle who live in areas of high-level development. 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, and live closely with the land. For this reason, it is especially difficult for them to meet the financial challenges presented by the situation. Your Committees hope this measure will help these families resolve some of these complex issues.

As affirmed by the records of votes of the members of your Committees on Judiciary and Government Operations and Ways and Means that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 921, H.D. 1, S.D. 1, as amended herein, and recommend that it pass Third Reading in the form attached hereto as H.B. No. 921, H.D. 1, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committees on Judiciary and
Government Operations and Ways
and Means,



DONNA MERCADO KIM, Chair

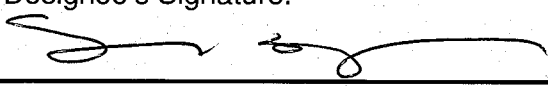


BRIAN T. TANIGUCHI, Chair



The Senate
 Twenty-Fifth Legislature
 State of Hawaii

Record of Votes
Committee on Ways and Means
WAM

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|--|---------------------|----------|-----|---------|
| Bill / Resolution No.:* | Committee Referral: | Date: | | |
| HB 922 HD1, SD1 | WTZ, JGO/WAM | 3/31/10 | | |
| <input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____ | | | | |
| The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313 | | | | |
| Members | Aye | Aye (WR) | Nay | Excused |
| KIM, Donna Mercado (C) | / | | | |
| TSUTSUI, Shan S. (VC) | / | | | |
| CHUN OAKLAND, Suzanne | / | | | |
| ENGLISH, J. Kalani | | | | / |
| FUKUNAGA, Carol | / | | | |
| GALUTERIA, Brickwood | / | | | |
| HEE, Clayton | / | | | |
| HOOSER, Gary L. | / | | | |
| KIDANI, Michelle N. | / | | | |
| KOKUBUN, Russell S. | / | | | |
| TOKUDA, Jill N. | / | | | |
| HEMMINGS, Fred | / | | | |
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| TOTAL | 11 | 0 | 0 | 1 |
| Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted | | | | |
| Chair's or Designee's Signature:  | | | | |
| Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy | | | | |

*Only one measure per Record of Votes