

SB2525

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committee on
EDUCATION AND HOUSING**

**Wednesday, February 17, 2010
1:30 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 2525, SENATE DRAFT 1
RELATING TO LANDS CONTROLLED BY THE STATE**

Senate Bill 2525, Senate Draft 1 proposes to allow the Board of Land and Natural Resources (Board) to transfer to every existing occupier or lessee of a homestead lease title to the lands in fee simple for below fair market value. The Department of Land and Natural Resources (Department) opposes this bill.

The Territorial government started issuing homestead leases in the early 1900's. Over the years, the majority of the once leased lands have been conveyed to the lessees pursuant to the provisions in Section 171-99, Hawaii Revised Statutes. Today, the Department notes there are 49 current homestead leases and certificates of occupancies statewide.

Prior to 2000, the leasehold interest could not be transferred until the death of the lessee(s). When Act 166, Session Laws of Hawaii 2000, became effective, lessees could transfer his/her interest to a family member as defined in the statutes. Since the issuance of the leases to the original lessees, many of the lessees and their successors have failed to notify the Department of major changes to family status, such as deaths, births, and divorces. As a result, the Department has little or no information whether the original lessees are still alive and the identities of legitimate heirs and successors. For example, of the 28 homestead leases on Oahu, the Department has proper documentation regarding legitimate successors to the leasehold interest for only 2 of those leases. If the original lessees are deceased, the determination of heirs to the deceased lessee will have to undergo the probate process in the court system. The Board has no statutory authority to determine the legal heirs to a deceased lessee. Since the issue of succession remains a major concern, the Department believes that the subject bill is premature in dealing with the conveyance of the underlying fee simple title of the lands.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

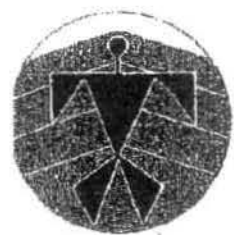
RUSSELL Y. TSUIJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Moreover, the Territorial and State governments have previously conveyed the titles to the homestead leases at fair market value, as statutorily mandated. If this bill is approved, it would not be fair to those former lessees who paid fair market value consideration to the State before they acquired their private title. Additionally, if the land involved is a portion of the ceded lands, selling at below fair market value at this time may become an issue for the State in its capacity to fulfill its fiduciary duties under the public land trust.

In conclusion, for the reasons stated above, the Department opposes this measure.



HUI KAKOO 'AINA HO'OPULAPULA

"Let the people flourish on the land."

TESTIMONY OF HUI KAKOO 'AINA HO'OPULAPULA BEFORE THE SENATE COMMITTEE ON EDUCATION AND HOUSING

SB 2525, SD1

DATE: Wednesday, February 17, 2010
TIME: 1:30 p.m.
PLACE: State Capitol Room 225

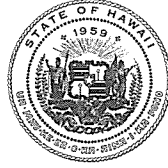
Aloha Chairman and members of the Committee. I am Kaipo Kincaid, Executive Director of Hui Kakoo 'o 'Aina Ho'opulapula (Hui Kakoo'o), a non-profit organization serving the interests of Applicants for Hawaiian Home Lands leases. Hui Kakoo'o strongly opposes SB 2525, SD1.

This measure authorizes the Department of Hawaiian Home Lands ("Department") and the Board of Land and Natural Resources to transfer title in fee simple to lessees of homestead lands.

This measure directly impacts the principal corpus of the Hawaiian home lands trust – the lands. Once trust lands are granted in fee it immediately becomes privately owned land to the homestead lessee. Subsequently, the new private land owner has no obligation to any statutes, provisions and/or policies set by the Department of Hawaiian Home Lands Commission. The Department's prerogative to reacquire the fee simple lands back from the homesteader will not, over the years, make the trust whole again. If the Department is not financially positioned to buy back the lands, when the offer is made, the homesteader will sell the land to others, thus diminishing the trust lands.

Alienation of the corpus leaves future trust beneficiaries without the opportunities which Prince Kuhio and Congress envisioned with enactment of the Hawaiian Homes Land Act. This bill would dissipate the land holdings of the trust which held collectively by the Department enables it to work greater advantages for the beneficiaries collectively. By winnowing away the trust lands through incremental alienation of the lands to lessees, Hawaiians will be at a great disadvantage. It should be noted that the Kuleana Act vested the kanaka maoli with fee title to their kuleana, and today most of the kuleana lands have passed out of the hands of kanaka maoli. This sad result is not the outcome we want for the trust lands that benefit Hawaiians today. We must preserve the corpus for future generations.

We urge you to reject this measure and hold it in committee. Thank you for this opportunity to testify.



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879
HONOLULU, HAWAII 96805

COMMENTS OF KAULANA H. R. PARK, CHAIRMAN
HAWAIIAN HOMES COMMISSION
TO THE SENATE COMMITTEE ON EDUCATION AND HOUSING
ON SB 2525 SD 1 - RELATING TO LANDS CONTROLLED BY THE STATE

February 17, 2010

Chair Sakamoto, Vice-Chair Kidani and Members of the Committee:

The Department of Hawaiian Home Lands provides the following comments on this legislation that would allow for the granting of title of lands in fee simple to our native Hawaiian lessees.

This legislation is a significant policy change and we have not had an opportunity to gather input from our beneficiaries through our consultation process. We respectfully urge that your committee defer this bill until such time that we have sufficiently consulted with our beneficiaries.

The foundation of our program is the 99-year lease (with an option to renew for an additional 100 years) at a lease rate of one dollar per year. While the cumulative lease term is finite unlike fee simple, it does provide the most affordable opportunity for generational continuity on limited lands within the State of Hawai'i. The lease to fee conversion may create a problem by diminishing DHHL's

trust inventory which imposes a further hardship on our beneficiaries on the waitlist.

Further, our current lease terms allow our leases to use their homestead lots much like a fee simple land owner would. Various lenders offer our financial programs tailored for DHHL homestead lessees to allow them to leverage their home equity to secure loans for home repair or to refinance their mortgage. Lessees also have the option to transfer or sell their leases (and improvements) to another qualified native Hawaiian beneficiary for an amount agreed upon by buyer and seller. This is an option for our lessees to use proceeds from the sale of the lease to purchase land or a home in fee simple elsewhere. Finally, upon surrender of a homestead lease to DHHL or upon death of a lessee with no eligible successors, DHHL appraises the improvements of the homestead and pays out the net proceeds, less any indebtedness owed.

In view of a lack of consultation with beneficiaries and the issues highlighted here, we request you defer this measure until such time that we have completed consultation and a comprehensive analysis of this bill's implications.

Thank you for the opportunity to provide comments on this measure.

From: Pkbrandt@aol.com
Sent: Sunday, February 14, 2010 11:48 AM
To: EDH Testimony
Subject: SB2525, SD1

Relating to Lands Controlled by the State
SB 2525, SD1
February 17, 2010, 1:30 p.m.

To the Chair and Members of the EDH and WTL Committees.

My name is Patricia K. Brandt. I am a DHHL Lessee and am testifying AGAINST this bill. Lands currently available to DHHL are already limited and located in less than optimal areas of the islands. Passing this bill will further and forever deplete the lands expressly set aside for Hawaiians. History will show that most of these lands will end up in the hands of those who do not qualify for DHHL leases.

Before we consider such a drastic measure, please consider the following questions:

1. Is the pool of qualified (by blood quantum) residents so small that DHHL cannot find lessees on that long list of applicants? (or those who might apply if they knew that the "wait" is now less than the 30-40 year "waits" of their kupuna)?
2. If DHHL is having trouble finding qualified (by blood quantum) lessees, might that be because the costs of homes have inched up beyond \$200,000, \$250,000 for homes that may be far from work, family and familiar community connections?
3. If DHHL had access to more prime real estate, in areas where people actually live and work, would they be more able to build affordable homes to accommodate our people?
4. If we cannot fulfill the intent of Prince Kuhio, to improve the quality of life of our native Hawaiians, perhaps we should spend more time developing innovative solutions, involving Hawaiians in those discussions, that actually work rather than changing the rules to take away even more of our lands and opportunities.

Mahalo for the opportunity to share my mana'o. I know you face a difficult challenge, seeking solutions that work for Hawai'i. Please don't take the "easy" solution that may help some but hurt more. Trust lands are trust lands and should remain so, in perpetuity.

COMMITTEE ON EDUCATION AND HOUSING

Senator Norman Sakamoto, Chair
Senator Michelle Kidani, Vice Chair

February 17, 2010
1:30 PM
Capitol Room 325

I OPPOSE this bill.

This is a bad idea

The sale of trust lands intended to be a PERMANENT land base for native Hawaiians is premature. It has not been analyzed for its potential to disrupt the very land base set aside 90 years ago as a means of improving the lives of native Hawaiians. The precedent that comes to mind is the Dawes Act, passed by Congress in 1868 to allow for fee simple dispositions of Indian lands previously set aside in trust for them. It resulted in a massive loss of lands to the tribal entities which once controlled them and resulted in a patchwork of domain that was difficult if not impossible to regulate and keep intact as part of the cultural heritage of a native people.

At a minimum, the Legislature owes native Hawaiians a thorough period of beneficiary consultation statewide to assess the potential impacts. The lack of hearing opportunities is a fatal flaw in this process for such a drastic change in policy.

Finally, the effort is futile. It needs the consent of Congress to become effective. While consent is conceptually possible, it will divert huge attention and resources from an already poorly funded program that needs to focus on settling beneficiaries on land, rather than wild goose chases that are not likely to be fruitful.

Please kill this bill.

Alan T. Murakami

sakamoto2 - Erin

From: Kevin O'GradyEsquire [KevinOGradyEsquire@hawaii.rr.com]
Sent: Tuesday, February 16, 2010 2:52 PM
To: EDH Testimony
Subject: SB2525 SD1

To the Chairman,

I urge a vote against this proposed legislation for the reasons that follow. It is assumed that lands held by the DHHL, public lands, can be held in trust, and later disposed of through leases to members of one ethnicity. This notion is constitutionally suspect. This legislation proposes that those lands be given as fee simple lands to the leasees. Once it was thought that the OHA could only have one ethnicity of voters vote for positions for that state office. I think based on the current state of the law and the progress that has been made over the years against laws that favor one ethnicity, even with a purported noble intent. If laws, such as laws that favor one ethnicity, are struck down one by one over the years, then the legislature may well regret having made the decision to give away these public lands in fee simple. As a matter of principle it is also wrong to perpetuate the paternalistic notion that any ethnicity needs laws that benefit them alone against all other state residents and U.S. citizens.

Sincerely,

Kevin O'Grady, Esquire.

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