

TESTIMONY

SB 2525

LATE



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

LATE TESTIMONY

ON THE FOLLOWING MEASURE:

S.B. NO. 2525, RELATING TO LANDS CONTROLLED BY THE STATE.

BEFORE THE:

**SENATE COMMITTEE ON
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

DATE: Wednesday, February 3, 2010 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Diane K. Taira, Deputy Attorney General

Chair Hee and Members of the Committee:

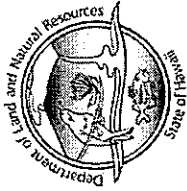
This bill would fundamentally alter the leasehold homestead program established by Congress in 1921, when it passed the Hawaiian Homes Commission Act of 1920 (HHCA).

We believe that consent of the United States would be required for the amendments this bill makes to the HHCA, before any of the changes can take effect. For this purpose, if this bill is passed, the severability language in section 4 of the bill should be integrated into the effective date section of the bill.

If this bill is passed, the phrase "right of first refusal" at page 2, lines 2, 9, and 22, should be clarified because it is ambiguous as to what it refers, particularly if it is intended that the Department of Hawaiian Homes Lands have the right to re-acquire fee simple title to the land for the Hawaiian Homes Lands trust, so that the land thereafter can be leased or conveyed to an otherwise qualified beneficiary of the trust.

LATE TESTIMONY

LINDA LINGLE
GOVERNOR OF HAWAII



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

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
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LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
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Testimony of
LAURA H. THIELEN
Chairperson

Before the Senate Committee on
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Wednesday, February 3, 2010
3:00 PM
State Capitol, Conference Room 229

In consideration of
SENATE BILL 2525
RELATING TO LANDS CONTROLLED BY THE STATE

Senate Bill 2525 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.

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.

LATE TESTIMONY

KAULANA H. R. PARK
CHAIRMAN
HAWAIIAN HOMES COMMISSION
ANITA S. WONG
DEPUTY TO THE CHAIRMAN
ROBERT J. HALL
EXECUTIVE ASSISTANT



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 WATER, LAND, AGRICULTURE AND
HAWAIIAN AFFAIRS
ON SB 2525 - RELATING TO LANDS CONTROLLED BY THE STATE

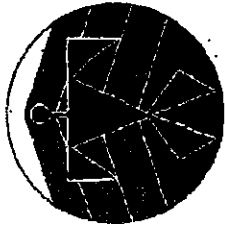
February 3, 2010

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

The Hawaiian Homes Commission and Department of Hawaiian Home Lands provide 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.

Thank you for the opportunity to testify on this measure.



LATE TESTIMONY

HUI KAKO'O AINA HO'OPULAPULA

"Let the people flourish on the land."

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EXECUTIVE DIRECTOR
Kaipo Kincaid

TESTIMONY OF KAIPO KINCAID BEFORE

THE SENATE COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS

SB 2525

DATE: Wednesday, February 3, 2010
TIME: 3:00 p.m.
PLACE: State Capitol Room _____

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

This measure authorizes the Department of Hawaiian Home Lands 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. Despite language that references that the Department shall have the "right of first refusal", which is unclear and ambiguous, once trust lands are granted in fee, it immediately becomes a 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.

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

TESTIMONY

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LATE

(END)
