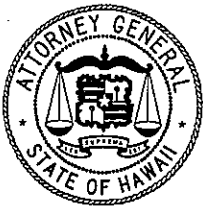


HB922

Testimony



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

H.B. NO. 922, S.D. 1, RELATING TO PUBLIC LANDS.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON WAYS AND MEANS

DATE: Thursday, April 7, 2011 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Charleen M. Aina, Deputy Attorney General

Chairs Hee and Ige and Members of the Committees:

The Attorney General takes no position on whether this measure should be enacted.

We testify only to recommend that part III, section 4, of the bill be revised. Part III of the bill appears to be the entirety of what the Senate earlier approved and transmitted to the House of Representatives as S.B. No. 2, S.D. 2, Relating to the Public Land. It also appears to be the same as what the Senate Committees on Hawaiian Affairs and Water, Land, and Housing approved for passage on Second Reading as the S.D. 1 of H.B. No. 377, H.D. 2.

We recommend that the Committees delete the first four paragraphs of section 4, on pages 4-5 of this measure, because these paragraphs incorrectly suggest that the State is not presently fulfilling its responsibilities under section 5(f) of the Admission Act, and article XII, section 4, of the State Constitution. It could also erroneously imply that the Office of Hawaiian Affairs (OHA) has not received that portion of the receipts from the ceded lands that the Legislature has determined it is to expend to better the conditions of native Hawaiians under article XII, section 6, of the State

Constitution.¹ Further, the third of these four paragraphs could be misconstrued to suggest that the entire inventory of the section 5(f) public land trust lands is not accurate. The focus of part III, however, is to collect and maintain more information about the lands in the public land trust in a more comprehensive computerized information system.

We also recommend that the references to "public lands" on page 4, line 14, and page 5, lines 6-7, and 8, and to "public land inventory" on page 5, line 1, be revised to read "public land trust lands" and "inventory of public land trust lands," respectively. Some, but not all "public lands" are "public land trust lands."

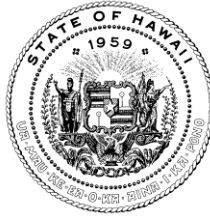
Finally, part III of the bill in section 8, on page 12, lines 21-22, requires that the computerized inventory and information system be completed and operational by December 31, 2013. We note that two years may not be sufficient time for the Department of Land and Natural Resources to complete the system part III contemplates.

¹In addition, the second paragraph of section 1, on page 1, lines 12-16, is incorrect to the extent it asserts that "the State's trust obligation in regards to the land, and the office of Hawaiian affairs, as representative of native Hawaiian beneficiaries' right to receive twenty per cent of the income and proceeds from the public land trust."

In 2006, the Legislature enacted Act 178, which replaced section 10-13.5's "twenty per cent" with the requirement that OHA annually receive \$15,100,000 of the ceded lands receipts. Section 2 of the act provided:

Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, including section 10-13.5, Hawaii Revised Statutes, and until further action is taken by the Legislature for this purpose, the income and proceeds from the pro rata portion of the public land trust under article XII, section 6 of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each fiscal year beginning with fiscal year 2005-2006 shall be \$15,100,000.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
JUDICIARY AND LABOR
and
WAYS AND MEANS**

**Thursday, April 07, 2011
9:00 AM
State Capitol, Conference Room 016**

**In consideration of
HOUSE BILL 922, SENATE DRAFT 1
RELATING TO PUBLIC LANDS**

House Bill 922, Senate Draft 1 combined three separate and previously distinct bills into one, and divides it into three parts. The Department of Land and Natural Resources (Department) discusses each part separately.

PART I, 999-year Homestead Leases

House Bill 922, Senate Draft 1 proposes in PART I to allow 999-year homestead leases to be assigned to land trusts that are created for managing and holding the homestead leasehold estate for the benefit of the lessee and lessee's family members. The Department does not object to this part allowing the leases to be held by a land trust instrument.

PART II, Coconut Island

House Bill 922, Senate Draft 1 proposes in PART II to authorize exemptions from state and county permits for the Hawaii Marine Laboratory Refuge for repair and maintenance of its facilities on Coconut Island. Given the immediate need for repair and maintenance of facilities at Coconut Island, the Department is supportive of a five (5) year exemption period from obtaining permits under the jurisdiction of this Department.

Part III, Land Inventory System

House Bill 922, Senate Draft 1 proposes in PART III to require the Department to initiate and

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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

coordinate all efforts to establish a public lands information system; requires all state agencies to report to the Department each parcel of land to which it holds title, the disposition of each parcel to which the agency holds title or is acquiring title, and any inaccuracies in reports to the Department; requires the Department to submit a progress report to the Legislature; and appropriates funds to create and maintain a comprehensive statewide public land trust inventory database and to provide funding for one staff position for a database and application developer.

The Department is in support of this PART III as long as SECTION 9 is amended to add back the \$300,000 appropriation¹ that is necessary to implement this part bill. The Department offers SECTION 9 to read in its entirety as follows:

"There is appropriated out of the general revenues of the State of Hawaii the sum of \$ 300,000.00 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 for the establishment and maintenance of a computerized, comprehensive statewide public land trust inventory database and funding for one staff position for a database and application developer; provided that no funds appropriated shall be expended unless matched on a dollar-for-dollar basis by the office of Hawaiian affairs and paid to the department. The sums appropriated shall be expended by the department of land and natural resources for the purposes of this part."

¹ The genesis of this PART III on the Land Inventory System is Senate Bill 2, Senate Draft 1, wherein the Senate Water, Land and Housing Committee worked with the Department in crafting language that, although ambitious, is doable by the Department with the minimum required \$300,000 appropriation.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: mspadeken@hotmail.com
Subject: Testimony for HB922 on 4/7/2011 9:00:00 AM
Date: Wednesday, April 06, 2011 4:45:01 AM

Testimony for JDL/WAM 4/7/2011 9:00:00 AM HB922

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Michael Padeken Jr.
Organization: Individual
Address:
Phone:
E-mail: mspadeken@hotmail.com
Submitted on: 4/6/2011

Comments:

It is with the deepest respect and regard to the United States Legislative Process that the Kamalolo family ask for your support in the passing of HB 922 for the benefit of the Hawaiian People and our ancestors. They and our present generation ask for the preservation of our lands in the hands of those who hold it dear to their hearts. With our State Motto in mind, may our Hawaiian lands remain in Hawaiian hands for the sake of righteousness. Imua Kamehameha!

Aloha Representative Legislative Body of the State of Hawaii,

My name is Michael Padeken, a direct Great Grandson to John Kimokeo Kamalolo from Hauula, Oahu, located on the Windward side of the island. I am an educated Hawaiian with a Master's degree in the field of Education and have been a teacher of Special Education students for the past 27 years. I am a graduate of the Kamehameha Schools (Class of '67) and received my Bachelor's and Master's degrees from Brigham University in Provo, Utah.

Our family has lived on the old Homestead farm in Hauula for generations and are appealing to your 'mana' to help our family maintain our right reserved through the 999 Year Lease action instituted for the benefit of the Hawaiian people. As the aboriginal people of Hawaii, who no longer own their 'aina' because of the laws that have been instituted by the State Government through the legislative process over the succeeding years since being annexed by the United States of America, we have seen our Hawaiian people lose their 'aina' in piece meal portions over the years through illegal and legal means that were not understood by our ancestors. I, for one, realize that we cannot bring back the old ways and have no desires to do so. However, I would want to preserve that which is good of the past generations and look forward to a blending of that which was good in the olden days with that which is good for our people's future. I feel that every determined effort should be exercised so as to not lose what we presently have with regards to our land and will work through whatever level of governmental policy making body who maybe understanding and sympathetic to our cause to save what we have for the good of the Hawaiian People.

It is the opinion and expressed desire of most of our Kamalolo Ohana, that holding our 999 Year Lease in a Trust would be the best way to preserve our ancestral land so as not to lose our land over family squabbles where family members become ugly, unsupportive, greedy, or vindictive towards one another because of the land lease and not pay the taxes due. We feel that by holding the Lease in a Trust would resolve most of the issues that could occur between family members because there will be an organized body of likeminded family members interested in preserving the land and lease rights in a cooperative way where all share in the responsibility for the upkeep of the land and the expenses. 'The Farm', as we affectionately call it, is where we have had opportunities to gather, as we and previous generations have gathered for years, to celebrate the family events that binds our families together from the past and on into the future.

For this underlying reason, the Kamalolo family members who wish to preserve our right to this land lease, wish to solicit your support in the PASSING of House Bill 922 with regards to the 999 Year Leases that were given out to our people back in the early 1900s. We respectfully ask for your support in preserving the rights of the Hawaiian people who have lost so much by way of land rights. We are only asking for your help to preserve what we already have and desire with great concern not to lose more to the sometimes uncaring attitudes of government powers who lose sight of those who do not know how to defend for themselves what they already have due to ignorance of the processes involved.

Please support our cause to preserve our rights as now constituted in the 999 Year Lease in the form of a Land Lease Trust.

Sincerely and with as much 'ho'ō pono pono' as we can send your way, may you continue to bless the Hawaiian people who need and desire good, caring legislators who will campaign for the rights of our people. If you would like to talk to me personally, about my feelings, please contact me anytime.

Mahalo,

Michael Padeken

Phone # 801-592-2054

Email: mspadeken@hotmail.com

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair,
Senator Maile S.L. Shimabukuro, Vice Chair

COMMITTEE ON WAYS AND MEANS

Senator David Y. Ige, Chair
Senator Michelle Kidani, Vice Chair

**Testimony of Laulani Teale, MPH
Supporting House Bill 922, Relating to Public Lands
Room 16**

April 6, 2011

Aloha e Chairs Hee and Ige, Vice-Chairs Shimabukuro and Kidani, and
Members of the Committees:

I am writing today to strongly request that you pass this measure. I also request that the measure please be returned to its original language, in order to assure its passage by the full legislature.

My name is Laulani Teale. I am a peacemaker and facilitator specializing in community development, who has worked with Hawaiian families in matters concerning the sharing of family lands. I have (for approximately four years) been 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 HB922, because it offers a realistic, legal, and affordable 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 legal option for families -- one that has the potential to help families to cooperatively address some very serious problems that currently exist in these leaseholds. It also provides an important tool to programs, agencies and community attorneys who are trying to help lessee families. And it has the potential to relieve a great and tiresome burden on the court system, by preventing unwinnable legal battles that drain the resources of all involved, including the State.

As you may know, this bill passed the House unanimously last year, and passed the Senate nearly unanimously as well. Unfortunately, it was vetoed by Governor Linda Lingle, apparently due to a misunderstanding of its intent. I am hoping that the families who were hoping for its passage will have another chance.

The 999-year lease program is rather complex, and can be difficult to understand. Here is some background information that may be helpful:

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. It is not known how many are now left, but the number seems to be between 40 and 50. The majority of these are 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 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 opined (about two years ago) 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 the legal implications of this issue.

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.** From what I have seen “in the field”, many of these belong to kupuna who are in need of help.

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** is often created or exacerbated by the financial pressure involved.

6) **Taxes** are charged at the same rate as surrounding properties, at full market value. In many cases, high-value properties now surround the leasehold, in areas that were formerly agricultural.

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. At almost no cost to the State, 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 Hawaiian programs 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 HB922 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,

A handwritten signature in black ink that reads "Laulani". The signature is written in a cursive style with a large initial "L" and a decorative flourish at the end.

Laulani Teale, MPH

JEANNINE JOHNSON

5648 Pia Street, Honolulu, Hawai'i 96821

Phone: 373-2874 (h) / 537-7261 (w)

April 4, 2011

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

COMMITTEE ON WAYS AND MEANS

Senator David Y. Ige, Chair

Senator Michelle Kidani, Vice Chair

RE: [HB 922, SD1](#) - Relating to Public Lands (Part 1 only)

Hearing: Thursday, April 7, 2011 at 9 a.m. in Conf. Room 016

Aloha mai kākou:

Although my grandmother was pure Hawaiian and my grandfather was at least three quarters Hawaiian, I do not qualify for a Department of Hawaiian Home Lands' homestead. However, I am related to and know many people who meet the blood quantum requirement but have spent many years on the DHHL's homestead waiting list. Therefore, I oppose all 999-year (essentially forever) homestead leases.

In case you weren't aware, according to "Who Owns The Crown Lands of Hawai'i" by Jon M. Van Dyke, the leaders of the Republic of Hawaii, and its president, Sanford Ballard Dole, wanted to break up the Crown and Government Lands into homesteads for small farmers. So they enacted the Land Act of 1895, which repealed the 1865 Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable, thus allowing the Crown Lands to be sold. The 1895 Land Act formally merged the Crown Lands with the Government Lands, declared that these "Public Lands" would now be "alienable," and thus **led directly to a reduction in the Crown Lands inventory**. A 999-year homestead lease was available to **any** citizen by birth or naturalization and **any** person who had received letters of denization, and **any** person who had received special rights of citizenship, over 18 years of age. I believe the real reason the 999-year homestead lease program was created, was to take away ceded lands from Kānaka Maoli and the Department of Hawaiian Home Lands **forever**.

The Department of Hawaiian Home Lands provides direct benefits to native Hawaiians in the form of 99-year homestead leases at an annual rental of \$1. Why is the State of Hawai'i still supporting 999-year homestead leases, run by the Department of Land and Natural Resources? No one at the DHHL could tell me. Why would the State of Hawai'i allow **non-Hawaiians** to continue to occupy Crown Lands to the detriment of Hawaiians who have been waiting years for a home?

In 1907, Territorial Gov. George R. Carter approved the trade of 40,000 acres of excellent agricultural land from the Public Lands on Lāna'i to the rancher Charles Gay in exchange for

COMMITTEE ON JUDICIARY AND LABOR

COMMITTEE ON WAYS AND MEANS

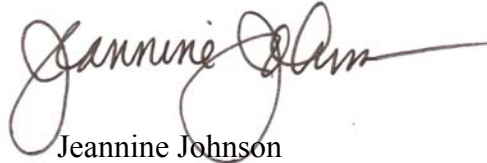
April 4, 2011

Page 2

293.5 acres of forest reserve land in the Tantalus area above Honolulu plus 3 acres for school sites in Honolulu in what can only be described as a “dubious deal.” Why does the State of Hawai‘i sanction this dubious deal by still allowing millionaires 999-year homestead leases on Tantalus?

I am appalled that this travesty was allowed to happen, perpetrated by the overthrowers of the Hawaiian Monarchy. Please **do not** perpetuate this injustice to native Hawaiians. I respectfully ask that you do what is pono and return these ceded lands to the DHHL so that Hawaiians can finally have homes.

‘O au nō me ka ‘oia‘i‘o,

A handwritten signature in cursive script, appearing to read "Jeannine Johnson", with a long horizontal flourish extending to the right.

Jeannine Johnson