



HB 922
RELATING TO PUBLIC LANDS
House Committee on Judiciary

March 2, 2011

2:05 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) supports the intent of HB922. This measure would expand the potential assignees of a 999-year homestead lease to include trustees of land trusts created for the purpose of managing and holding a homestead for the benefit of the lessee and lessee's family members.

The unique structure of the 999-year leases continues to pose challenges for lessees and causes significant conflict in families. Despite past legislative efforts, many homestead families continue to live in substandard conditions and are unable to maintain their homes or otherwise effectively use the land. In 2000, the Legislature amended section 171-99, Hawaii Revised Statutes, to, *inter alia*, make the leases more freely available to members of the lessee's family. Uncertainty regarding this amendment's effect on existing legal rights, however, has made it difficult to identify the rightful leaseholder and hampers the orderly transfer of leases. This uncertainty has exacerbated the problems experienced by lessees and their families and added to the confusion.

OHA supports the intent of HB 922 to provide 999-year homestead lessees and their families the option of utilizing a land trust to collectively and cooperatively share in the responsibilities and benefits. As a majority of the lessees are of Native Hawaiian ancestry, OHA supports the possibility that this measure could provide an appropriate mechanism for these families to keep these lands for future generations.

Mahalo nui for the opportunity to testify.

Aloha Representative Legislative Body of the State of Hawaii,

My name is Michael Padeken, a direct Great Grandson to John Kimoeko 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

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HOUSE JUDICIARY COMMITTEE

ATTN: Gilbert S.C. Keith-Agaran, Chair and Karl Rhoads, Vice-Chair

Testimony of Laulani Teale, MPH
Supporting House Bill 921, Relating to Public Lands
Conference Room 329

March 1, 2011

Aloha e Chair Keith-Agaran, Vice-Chair Rhoads, and Members of the Committee:

I am writing today to strongly request that you pass this bill as-is, with no changes.

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 easily as well. Unfortunately, it was vetoed by Governor Linda Lingle, who seemed to misunderstand it. 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.

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, appearing to read 'Laulani Teale', with a stylized flourish at the end.

Laulani Teale, MPH