

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2012 5:35 PM
To: HAWtestimony
Cc: info@schha.com
Subject: Testimony for HB2299 on 2/1/2012 8:30:00 AM

LATE TESTIMONY

Testimony for HAW 2/1/2012 8:30:00 AM HB2299

Conference room: 329
Testifier position: Support
Testifier will be present: Yes
Submitted by: Mike Kahikina, Legislation Committee Chair
Organization: Individual
E-mail: Info@schha.com
Submitted on: 1/31/2012

Comments:

**ASSOCIATION OF HAWAIIAN CIVIC CLUBS
TESTIMONY OF PRESIDENT SOULEE STROUD**

LATE TESTIMONY

BEFORE THE HOUSE HAWAIIAN AFFAIRS COMMITTEE

HOUSE BILL 2299 RE: TO THE OFFICE OF HAWAIIAN AFFAIRS

Wed., Feb. 1, 2011; 8:30 a.; Room 329

Aloha Madame Chair Hanohano, vice chair Lee and members of the Committee on Hawaiian Affairs. I am Soulee Stroud, president of the Association of Hawaiian Civic Clubs here to support House Bill 2299 Relating to the Office of Hawaiian Affairs.

The Association I represent is comprised of sixty two component clubs in Hawaii and eleven mainland states. There are twenty six clubs on Oahu alone, as well as clubs on each of the neighbor islands.

This bill is not on the list provided to us by the Office of Hawaiian Affairs, although it looks like it could be helpful to the efforts of the Native Hawaiian Roll Commission and to the verification of the tens of thousands currently on the Kau Inoa list that are not yet verified.

Hopefully, the amount appropriated by the legislature for a salary for the genealogist position will be adequate and approved in the final outcome of this bill. It hardly seems fair for the legislature to impose a position on any agency without providing adequate compensation to accompany the position.

Thank you for the opportunity to testify.

Contact: jalna.keala2@hawaiiantel.net

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2012 8:14 PM
To: HAWtestimony
Cc: info@schha.com
Subject: Testimony for HB2299 on 2/1/2012 8:30:00 AM

LATE TESTIMONY

Testimony for HAW 2/1/2012 8:30:00 AM HB2299

Conference room: 329
Testifier position: Support
Testifier will be present: No
Submitted by: Herbert Hew Len, President
Organization: Waianae Kai Homestead Association
E-mail: info@schha.com
Submitted on: 1/31/2012

Comments:

Submitted testimony in support. Just a Correction on Organization. should say Waianae Kai, not waianae valley. sorry.

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2012 8:06 PM
To: HAWtestimony
Cc: info@schha.com
Subject: Testimony for HB2299 on 2/1/2012 8:30:00 AM

LATE TESTIMONY

Testimony for HAW 2/1/2012 8:30:00 AM HB2299

Conference room: 329
Testifier position: Support
Testifier will be present: No
Submitted by: Chairman Kamaki Kanahale
Organization: SCHHA
E-mail: info@schha.com
Submitted on: 1/31/2012

Comments:

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2012 8:01 PM
To: HAWtestimony
Cc: info@schha.com
Subject: Testimony for HB2299 on 2/1/2012 8:30:00 AM

LATE TESTIMONY

Testimony for HAW 2/1/2012 8:30:00 AM HB2299

Conference room: 329
Testifier position: Support
Testifier will be present: No
Submitted by: Beatrice Hew Len, Secretary
Organization: Sovereign Moku-puni O Oahu
E-mail: info@schha.com
Submitted on: 1/31/2012

Comments:

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2012 7:57 PM
To: HAWtestimony
Cc: info@schha.com
Subject: Testimony for HB2299 on 2/1/2012 8:30:00 AM

LATE TESTIMONY

Testimony for HAW 2/1/2012 8:30:00 AM HB2299

Conference room: 329
Testifier position: Support
Testifier will be present: No
Submitted by: Herbert Hew Len, President
Organization: Waianae Valley Homestead Community Association
E-mail: info@schha.com
Submitted on: 1/31/2012

Comments:

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2012 7:57 PM
To: HAWtestimony
Cc: info@schha.com
Subject: Testimony for HB2299 on 2/1/2012 8:30:00 AM

LATE TESTIMONY

Testimony for HAW 2/1/2012 8:30:00 AM HB2299

Conference room: 329
Testifier position: Support
Testifier will be present: No
Submitted by: Herbert Hew Len, President
Organization: SCHHA
E-mail: info@schha.com
Submitted on: 1/31/2012

Comments:

cleel - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2012 7:56 PM
To: HAWtestimony
Cc: info@schha.com
Subject: Testimony for HB2299 on 2/1/2012 8:30:00 AM

LATE TESTIMONY

Testimony for HAW 2/1/2012 8:30:00 AM HB2299

Conference room: 329
Testifier position: Support
Testifier will be present: Yes
Submitted by: Mike Kahikina, Legislation Chair
Organization: SCHHA
E-mail: info@schha.com
Submitted on: 1/31/2012

Comments:
Correction, Just submitted support. forgot to add org. name

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2012 8:19 PM
To: HAWtestimony
Cc: info@schha.com
Subject: Testimony for HB2299 on 2/1/2012 8:30:00 AM

LATE TESTIMONY

Testimony for HAW 2/1/2012 8:30:00 AM HB2299

Conference room: 329
Testifier position: Support
Testifier will be present: No
Submitted by: Annie Au Hoon
Organization: Kewalo Hawaiian Homestead Community Association
E-mail: info@schha.com
Submitted on: 1/31/2012

Comments:

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2012 8:17 PM
To: HAWtestimony
Cc: info@schha.com
Subject: Testimony for HB2299 on 2/1/2012 8:30:00 AM

LATE TESTIMONY

Testimony for HAW 2/1/2012 8:30:00 AM HB2299

Conference room: 329
Testifier position: Support
Testifier will be present: No
Submitted by: Kimo Kelii
Organization: Nanakuli Hawaiian Homestead Community Association
E-mail: info@schha.com
Submitted on: 1/31/2012

Comments:

2/1/12

HB 2299
Relating to the OSc of HAWAIIAN AFFAIRS
Support

Kapua Keiki-Kamai

Re: Bill 2299

February 1, 2012

Aloha Distinguished Members of the Hawaiian Affairs Committee,

Mahalo for hearing this bill, 2299.

I recently learned of some Kuleana Lands that were passed to my Grandmother through her grandfather's probate. Before the Probate court would pass the lands to my Grandmother her and her Grandfather's genealogies were checked and verified by the official Genealogist at the time, that was Mary Pukui. My grandmother was 5 years old when her grandfather died. I don't believe she ever knew that she owned many of the lands. I don't even know if she knew who all her ancestors were.

With this information I went to register myself as the claimant of these Kuleana at the BOC. These lands were escheated into the State inventory and managed by DLNR. I put DLNR on notice and was told by Mr. Ayla himself that if I were to go onto my Great Grandfather's lands (5x times back), I'd be charged with trespassing. Now with all my research, I never found one law that said that DLNR has the right to keep me off my kuleana lands passed down from my grandmother, passed down from her grandfather and passed down to him from the awardees during the Mahele, but in fact I found many laws that were protecting Kuleana Lands and the heirs of the awardees in perpetuity.

Such As:

Article XVI, Section 12 of the Hawai'i Constitution which states: that "[u]pon the demise of an owner of Real Property, said property shall be inherited [sic] by the owners heirs[,] and

HRS 172-11 titled "Land Patents on Land Commission Awards: to whom, for whose benefits [sic]" states,] in pertinent part;

"Every land patent issued upon an award by the Board of Commissioners to Quiet Land Titles, shall be in the name of the persons to whom the original award was made, even though these persons are deceased, or the title to the real estate thereby granted has been alienated; and all land patents so issued shall inure to the benefit of the heirs and assigns of the holders of the original award."

§1-1 Common law of the State; exceptions. The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by **Hawaiian judicial precedent**, or established by **Hawaiian usage**; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State. [L 1892, c 57, §5; am L 1903, c 32, §2; RL 1925, §1; RL 1935, §1; RL 1945, §1; RL 1955, §1-1; HRS §1-1]

NATURE OF LAND COMMISSION AWARDS

The Commissioners were not authorized to grant patents for land or to receive commutation. Their duty was to ascertain the nature and extent of each claimant's rights in land, *and to issue an Award for the same which is prima facie evidence of title "and shall furnish as good and sufficient a ground upon which to maintain an action for trespass, ejectment or other real action against any other person or persons whatsoever, as if the claimant, his heirs or assigns had received a Royal Patent for the same," by Act approved July 20th, 1854*

Some of the Properties describe herein are Konohiki and Alii lands/LCA's/Royal Patents, the rest are Kuleana Land Awards. These lands awarded by King

Kamehameha under the Great Mahele protected his lands and that of his heirs and successors forever as :

Therefore, We Kamehameha III., King of the Hawaiian Islands and His Chiefs, in Privy Council Assembled, do solemnly resolve that we will be guided in such division by the following rules:

1. ***—His Majesty, our Most Gracious Lord and King, shall in accordance with the Constitution and Laws of the Land, retain all his private lands, as his own individual property, subject only to the rights of the Tenants, to have and to hold to Him, His heirs and successors forever.***

Any laws made by the Provisional Government or that of the United States of America that are in conflict of the Act approved on July 20th, 1854 or the Mahele Rules are null and void as it pertains to International Laws and Rulings made by the ***International Courts at the Hague which ruled in 2001 that the Sovereign Hawaii Kingdom still exists*** supports the continued unbroken Sovereignty of the Hawaiian Kingdom and which states any Government currently in place of the Hawaii Kingdom Government has the duty to uphold the Laws of the Kingdom, rather than their own until such Government can reinstate itself.

For Lands escheated by the State until such heirs could be found:

HRS 560:2-105.5 Escheat of kuleana lands "Any provision of law to the contrary notwithstanding, if the owner of an inheritable interest in kuleana lands dies intestate, or dies partially intestate and that partial intestacy includes the descendant's interest in the kuleana land, and if there is no taker under Article II, such inheritable interest shall pass to the department of land and natural resources to be held in trust))

HRS_183C-2: RELATING TO DEFINITION OF KULEANA

[§183C-2] Definitions. As used in this chapter, unless the context otherwise requires:

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

"Conservation district" means those lands within the various counties of the State bounded by the conservation district line, as established under provisions of Act 187, Session Laws of Hawaii 1961, and Act 205, Session Laws of Hawaii 1963, or future amendments thereto.

"Department" means the department of land and natural resources.

"Kuleana" means those lands granted to native tenants pursuant to L. 1850, p. 202 entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges", as originally enacted and as amended.

"Land" means all real property, fast or submerged, and all interests therein, including fauna, flora, minerals, and all such natural resources, unless otherwise expressly provided.

"Landowner" means an owner of land or any estate or interest in that land.

"Land use" means:

- (1) The placement or erection of any solid material on land;
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

"Nonconforming" use means the lawful use of any building, premises or land for any trade, industry, residence or other purposes which is the same as and no greater than that established prior to October 1, 1964, or prior to the inclusion of

the building, premises, or land within the conservation district. [L 1994, c 270, pt of §1]

HRS 560:2-105.5: RELATING TO ESCHEAT OF KULEANA LANDS

§560:2-105.5 Escheat of kuleana lands. Any provision of law to the contrary notwithstanding, if the owner of an inheritable interest in kuleana land dies intestate, or dies partially intestate and that partial intestacy includes the decedent's interest in the kuleana land, and if there is no taker under article II, such inheritable interest shall pass to the department of land and natural resources to be held in trust until the office of Hawaiian affairs develops a land management plan for the use and management of such kuleana properties, and such plan is approved by the department of land and natural resources. Upon approval, the department of land and natural resources shall transfer such kuleana properties to the office of Hawaiian affairs. For the purposes of this section, "**kuleana lands**" means those lands granted to native tenants pursuant to L. 1850, p. 202, entitled "An Act Confirming Certain Resolutions of the King and Privy Council Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges", as originally enacted and as amended. [L 1996, c 288, pt of §1]

HRS 7-1: RELATING TO ALLODIAL TITLE; BUILDING MATERIALS; WATER RIGHTS;
TENANTS USE

§7-1 Building materials, water, etc.; landlords' titles subject to tenants' use. Where the landlords have obtained, or may hereafter obtain, **allodial titles** to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which

they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use. [CC 1859, §1477; RL 1925, §576; RL 1935, §1694; RL 1945, §12901; RL 1955, §14-1; HRS §7-1]

HRS_174C-101: RELATING TO NATIVE HAWAIIAN WATER RIGHTS

PART IX. NATIVE HAWAIIAN WATER RIGHTS

§174C-101 Native Hawaiian water rights. (a) Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapters 167 and 168, relating to the Molokai irrigation system. Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act.

(b) No provision of this chapter shall diminish or extinguish trust revenues derived from existing water licenses unless compensation is made.

(c) Traditional and customary rights of ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such traditional and customary rights shall include, but not be limited to, the cultivation or propagation of taro on one's own kuleana and the gathering of hihiwai, opae, o'opu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes.

(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter. [L 1987, c 45, pt of §2; am L 1991, c 325, §8]

Cross References

Hand-pounded poi, see §321-4.7.

Law Journals and Reviews

Native Hawaiian Homestead Water Reservation Rights: Providing Good Living Conditions for Native Hawaiian Homesteaders. 25 UH L. Rev. 85.

Case Notes

Although the Hawaii administrative rules denominate aquifer-specific reservations of water to the department of Hawaiian home lands, such a limitation for purposes of water resource management does not divest the department of its right to protect its reservation interests from interfering water uses in adjacent aquifers. 103 H. 401, 83 P.3d 664.

Insofar as the commission on water resource management, as the agency authorized to administer the state water code, determines the contents of the Hawaii water plan, which includes the designation of hydrologic units and sustainable yields, and the commission's "interpretation of its own rules is entitled to deference unless it is plainly erroneous or inconsistent with the underlying legislative purpose", it is within the commission's authority to limit reservations of water to specific aquifers. 103 H. 401, 83 P.3d 664.

Pursuant to article XI, §§1 and 7 of the Hawaii constitution, §220(d) of the Hawaiian Homes Commission Act, and subsection (a), a reservation of water constitutes a public trust purpose. 103 H. 401, 83 P.3d 664.

Where commission on water resource management failed to render the requisite findings of fact and conclusions of law with respect to whether applicant had satisfied its burden as mandated by the state water code, it violated its public trust duty to protect the department of Hawaiian home lands' reservation rights under the Hawaiian Homes Commission Act, the state water code, the state

constitution, and the public trust doctrine in balancing the various competing interests in the state water resources trust. 103 H. 401, 83 P.3d 664.

Where commission on water resource management refused to permit cross examination of water use applicant's oceanography expert regarding the limu population along the shoreline, in effect precluding the commission from effectively balancing the applicant's proposed private commercial use of water against an enumerated public trust purpose, the commission failed adequately to discharge its public trust duty to protect native Hawaiians' traditional and customary gathering rights, as guaranteed by the Hawaiian Homes Commission Act, §220, article XII, §7 of the Hawaii constitution, and this section. 103 H. 401, 83 P.3d 664.

Commission on water resource management's conclusion that "no evidence was presented" to suggest that the rights of native Hawaiians would be adversely affected by permit applicant's proposed use erroneously shifted the burden of proof to complainants; thus, commission failed to adhere to the proper burden of proof standard to maintain the protection of native Hawaiians' traditional and customary gathering rights in discharging its public trust obligations. 116 H. 481, 174 P.3d 320.

HRS_183C-5: RELATING TO USE OF KULEANA LAND

[§183C-5] Nonconforming uses. Neither this chapter nor any rules adopted hereunder shall prohibit the continuance of the lawful use of any building, premises, or land for any trade, industrial, residential, or other purpose for which the building, premises, or land was used on October 1, 1964, or at the time any rule adopted under authority of this part takes effect. All such existing uses shall be nonconforming uses. **Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on the particular lot including, if applicable, the construction of a single family residence.** Any structures may be subject to conditions to

ensure they are consistent with the surrounding environment. [L 1994, c 270, pt of §1]

In :

RS 669-2: RELATING TO KULEANA LAND

§669-2 Defendants; unknown persons. (a) Any person may be made a defendant in the action who has or claims, or may claim, an interest in the property adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the issues involved therein.

(b) Unknown persons may be made parties as provided by the rules of court, if:

(1) It shall be shown by the complaint that there are or may be persons unknown, claiming by, through, or under any named person; or

(2) Other facts shall be shown by the complaint giving rise to an actual controversy between plaintiff and persons unidentified or whose names are unknown.

(c) In any action brought under section 669-1(b):

(1) There shall be joined as defendants, in addition to persons known to have an adverse interest, the adjoining owners and occupants so far as known.

(2) If all persons interested who are known or can be joined as provided by subsection (b) have been made parties, the summons in addition to being directed to such parties, may be directed to unknown persons generally and in such case, after service upon the persons summoned, known and unknown, the court shall have jurisdiction to proceed as though all persons interested were in being and personally served, but any adjudication shall, as regards a defendant served pursuant to section 669-3, affect only the

property which is the subject of the action except as provided by section 634-23.

(d) In any action brought under section 669-1, the State may be joined as a defendant only when:

- (1) It is an adjoining property owner and the same is alleged by the plaintiff; or
- (2) The party asserting the claim can demonstrate, by a title search prepared at the party's own expense by an abstractor, that the State has a clear and specific interest in the subject matter of the suit which is adverse to the plaintiff's claim, and a copy of the title search is furnished to the State without cost, together with the complaint.

(e) In any action brought under section 669-1, the **office of Hawaiian affairs** shall be joined as a defendant, by service upon the office of Hawaiian affairs, when:

- (1) The land claimed by the plaintiff is kuleana land; and
- (2) The plaintiff has reason to believe that an owner of an inheritable interest in the kuleana land died intestate or died partially intestate and there is or was no taker under article II of the Hawaii uniform probate code.

For purposes of this subsection, "kuleana land" means that land granted to native tenants pursuant to L 1850, p. 202, entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges", as originally enacted and as amended. [L 1890, c 18, §2; RL 1925, §2758; RL 1935, §4391; RL 1945, §10452; am L Sp 1949, c 46, §1(b); RL 1955, §242-2; HRS §669-2; am L 1972, c 90, §12(b); am L 1977, c 154, §1; gen ch 1985; am L 1987, c 283, §63; am L 1991, c 177, §2]

Case Notes

Prior to Hawaii Rules of Civil Procedure.

Not essential to make parties all persons who claim interest. 10 H. 507. All necessary parties may be defendants and have jury trial. 28 H. 1. See also, 4 H. 131. Cross-complaint against codefendants is doubtful pleading where defendant sets up defendant's own title and fails to ask affirmative relief against them. 25 H. 246, 250.

My Grandmother fought long and hard for the creation and implementation of the Office of Hawaiian affairs as an agency that would be a voice and legal arm for the Kanaka Maoli. Sadly she did just before OHA came into being.

RS 669-2: RELATING TO KULEANA LAND

§669-2 and other laws gives OHA authority to work on our behalf. Bill 2299, is a mandate to create a position in OHA specifically for defending and putting Kuleana Lands back into the possession and care of the Awardees Heirs. This Bill simply ask the legislature to help OHA remember and implement a position to fulfill one of their responsibilities they were created for and fought for by many of our Kupuna who believed OHA was being created for the Kanaka Maoli and protecting our interest where the State has failed to.

Madam Chairperson, distinguished members, I ask you to please pass Bill 2299.

With Deep Appreciation,

Routh Bolomet

P.O. Box 37371

Honolulu, Hawaii 96837