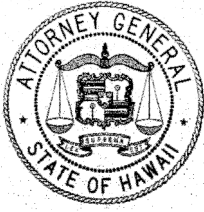


SB 3104

**LATE
TESTIMONY**



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

S.B. NO. 3104, RELATING TO PUBLIC LANDS.

BEFORE THE:

SENATE COMMITTEES ON WATER AND LAND AND HAWAIIAN AFFAIRS

DATE: Monday, February 3, 2014

TIME: 1:15 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): David M. Louie, Attorney General, or
Cindy Young, Deputy Attorney General

Chairs Solomon and Shimabukuro and Members of the Committees:

The Department of the Attorney General opposes this bill.

The bill proposes to require all existing certificates of occupation and homestead leases, or fractional interests thereof, be held in joint tenancy with right of survivorship. This bill may affect the vested rights of homestead lessees who hold their leasehold interest in a manner other than joint tenancy with right of survivorship. Currently, homestead leases may be transferred or assigned by conveyances, devise, bequest, or intestate succession to members of the lessee's family or to any persons designated as trustees of a land trust for the homestead lease property, so it is almost certain that there are homestead leases that are held in manner other than joint tenancy with right of survivorship. The bill does not address disposition of a homestead lease interest that is held in a manner other than joint tenancy with right of survivorship. The bill as currently drafted may potentially impair contractual rights of homestead lessees, in a manner that is prohibited by Article 1, section 10, of the United States Constitution.¹

The bill also does not address what happens to the lease when the last lessee passes away.

We respectfully request that this bill be held. Thank you for the opportunity to provide these comments.

¹ Article 1, section 7 of the United States Constitution states, in relevant part, that "[n]o State shall ... pass any ... Law impairing the Obligation of Contracts[.]



SB3104
RELATING TO PUBLIC LANDS
Senate Committee on Water and Land
Senate Committee on Hawaiian Affairs

February 3, 2014

1:15 p.m.

Room 225

The Administration of the Office of Hawaiian Affairs (OHA) will recommend to the Board of Trustees a position of **OPPOSE** for SB3104, which would prevent assignments of certificates of occupation and homestead leases and require all existing certificates and leases or fractional interests to be held in joint tenancy with the right of survivorship. SB3104 appears to repeal Act 236 (2013), Act 166 (2000), and other important statutory provisions, which provide 999-year leaseholders the flexibility in assigning interest of their ancestral lands to family members, and ultimately increases the likelihood of these families maintaining ownership of their ancestral lands.

The unique structure of the 999-year homestead leases continues to pose challenges for lessees and causes significant conflict in successor families. Historically, many homesteads have succeeded to many family members through several generations, diluting each successor's interest and complicating the maintenance of the property. Despite past legislative efforts, families continue to struggle with maintaining responsibility for these lands as, many times, only one or a few successors cares for the land while title and ownership interests are never entirely clear. Many of the families maintaining these lands live in substandard conditions and are unable to maintain their homes, pay their property taxes, and otherwise effectively use the land.

Moreover, many of these families have endured substantial costs and expended a lot of energy in conflicts with other successors due to disagreements or even, in some cases, the inability of successors to quitclaim their responsibilities to the property when the law superseded the will of these family members and required a particular system of succession. In 2000, Act 166 amended HRS § 171-99, to allow rightful successors to select future successors, seemingly simplifying the transfer of these lands between generations. However, uncertainty regarding the rightful successorship under the previous statutory provisions has nevertheless hampered the orderly transfer of leases. This uncertainty has exacerbated the problems experienced by lessees and their families and added to the confusion.

As a result of these difficulties, many of these ancestral lands have been lost and the few that are left remain under constant threat unless the families are offered an alternative solution. In 2013, Act 236 provided another alternative by allowing homestead leases to be assigned to trustees of land trusts that are created for managing and holding the homestead leasehold estate for the benefit of the lessee and lessee's family members. OHA supported the passage of Act 236 because it would provide homestead lessees and their families an additional option of utilizing a land trust to collectively and cooperatively share in the responsibilities and benefits of the land. In addition, Act 236 bared no additional cost to the state.

SB3104 appears to repeal Act 236 and Act 166, which allows flexibility in assigning leases to family members of homestead leases as well as preventing all assignments already allowed in HRS §171-99. Currently, HRS § 171-99 allows for the transfer or assignment of the certificate of occupancy or homestead lease via conveyance, devise, bequest, or intestate succession to the member or members of the occupier's or lessee's family with prior approval of the Board of Land and Natural Resources.

Furthermore, SB3014 requires all existing certifications of occupation or existing homestead leases to be held in joint tenancy with rights of survivorship. Joint tenancy with rights of survivorship allows two or more tenants to have equal access to the property. When one tenant dies, that tenant's share passes to the other tenant or tenants without going through probate. However, when the last tenant with all the interest dies, the interest will still be required to go through probate, which is complex and costly. HRS § 171-99 sought to avoid this problem by creating alternatives to avoid the problems facing homestead lessees.

Therefore, OHA urges the Committees to **HOLD** SB3104. Mahalo nui for the opportunity to testify.