

Honolulu, Hawaii

APR 05 2018

RE: H.B. No. 860
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 860, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO ACTIONS FOR QUIET TITLE,"

begs leave to report as follows:

The purpose and intent of this measure is to establish quiet title action procedures for kuleana lands, including:

- (1) At the request of a defendant, court-ordered mandatory mediation to resolve the action;
- (2) At the request of defendants, court-ordered consolidation of separate actions under specified conditions;
- (3) Prohibiting the extinguishment or alienation of the defendant's access to the land for native Hawaiian cultural and traditional practices; and
- (4) Prohibiting a plaintiff from recovering costs, expenses, and attorney's fees from a defendant.

Your Committee received testimony in support of this measure from the Office of Hawaiian Affairs, Ka Lāhui Hawai'i Political Action Committee, O'ahu County Committee on Legislative Priorities



of the Democratic Party of Hawai'i, and three individuals. Your Committee received testimony in opposition to this measure from the Land Use Research Foundation of Hawaii and one individual.

Your Committee finds that kuleana land parcels, many of which have been passed down from original awardees through multiple generations of heirs, represent a vital legal recognition of native Hawaiian families' traditional tenure of ancestral lands. Although quiet title actions have been a beneficial legal tool for native Hawaiian kuleana awardees to resist adverse possession claims made by large agricultural landowners, the current framework of quiet title action leaves kuleana owners vulnerable to dispossession, including through the use of complex and cost-prohibitive legal processes that effectively foreclose quiet title defendants from challenging quiet title actions and adverse possession claims. This measure will create a more equitable and timely process to resolve disputes and hardships stemming from quiet title actions filed against owners of kuleana lands.

Your Committee notes a need for native Hawaiian stakeholders to continue to work with advocacy groups and legal experts in addressing the specific circumstances relating to quiet title actions that particularly affect kuleana lands that are inhabited or actively utilized by one individual or a small group of persons. Accordingly, your Committee suggests that your Committee on Conference, if it considers this measure, examine the feasibility of establishing a working group consisting of various stakeholders to examine the complex issues associated with quiet title actions relating to kuleana lands. Your Committee further suggests that your Committee on Conference, if it examines this measure, or a future working group, consider requiring that a plaintiff in a quiet title action have a significant ownership interest in the kuleana land in question in order to bring such an action.

Your Committee has amended this measure by:

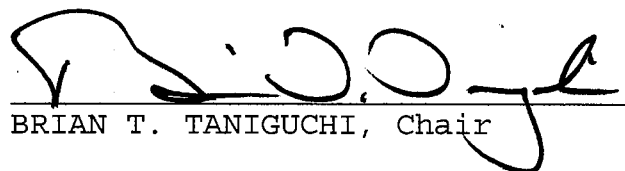
- (1) Inserting legislative findings and expressing that the intent of the Legislature is to prohibit any interpretation that would diminish or restrict native Hawaiian rights under article XII, section 7, of the Hawaii State Constitution;



- (2) Specifying that a court-ordered mandatory mediation requested by a defendant may focus on resolving the quiet title action in addition to any other preliminary issues that may need to be established as part of a partition action under chapter 668A, Hawaii Revised Statutes;
- (3) Specifying that the plaintiff in a quiet title action shall bear the costs of mediation and may only recover costs, expenses, or attorney's fees from the defendant as deemed equitable by the court;
- (4) Removing language providing that plaintiffs in quiet title actions shall neither seek nor be awarded the extinguishment or alienation of a defendant's access to lands for native Hawaiian cultural and traditional practices;
- (5) Inserting an effective date of July 1, 2035, to encourage further discussion; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 860, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 860, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,




BRIAN T. TANIGUCHI, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 860, HD 1	JDC	4/2/18		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
THIELEN, Laura H.	✓			
TOTAL	5	0	0	0
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

*Only one measure per Record of Votes