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JOBIE M. K. MASAGATANI  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

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DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

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**TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE COMMITTEE ON  
HAWAIIAN AFFAIRS**

**SB 2557 RELATING TO HAWAIIAN HOME LAND BENEFICIARIES**

February 6, 2018

Aloha Chair Shimabukuro and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill that allows Hawaiian homestead lessees who meet the minimum Hawaiian blood quantum who have adopted children to pass their homestead lease to their adopted children.

This bill may be unnecessary if the intent of the measure is to treat an adopted child like a child who can succeed to a lease under section 209 of the Hawaiian Homes Commission Act (HHCA). Currently, a child who is legally adopted by a lessee is treated like a child for purposes of successorship under the HHCA as long as the blood quantum requirements are established by the biological parents. Currently, a child must be at least one-quarter Hawaiian.

Last year, the legislature passed a measure to lower the required blood quantum from one-quarter to one thirty-second Hawaiian for the lessee's relatives currently eligible to succeed to a lease, including the lessee's children. Act 80, 2017 Session Laws of Hawaii, requires the consent of Congress. When Congress consents to the amendment, then an adopted child who is one thirty-second Hawaiian as established again by the biological parents, could succeed to a lease.

If the intent of this measure is to allow a non-Hawaiian adopted child to be designated as a successor under section 209 of the HHCA, then DHHL would be opposed to this measure and instead would apply the provisions of the HHCA that would allow for the surrender of the lease and payment of net proceeds.

Thank you for your consideration of our testimony.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2557, RELATING TO HAWAIIAN HOME LAND BENEFICIARIES.

**BEFORE THE:**

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

**DATE:** Tuesday, February 6, 2018 **TIME:** 1:15 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Russell A. Suzuki, Acting Attorney General, or  
Craig Y. Iha, Deputy Attorney General

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Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General offers comments on this bill.

This bill amends the Hawaiian Homes Commission Act (HHCA) to allow adopted children who do not meet the Hawaiian blood quantum requirements under section 209, HHCA, to succeed to a Department of Hawaiian Home Lands (DHHL) homestead lease upon the death of the lessee.

First, with respect to the findings contained in section 1 of the bill, we note that the State owes fiduciary obligations to native Hawaiians, defined in the HHCA as those with at least 50 percent Hawaiian blood, with respect to the State's management and use of certain resources. The State must, for example, manage the Hawaiian home lands in the sole interest of native Hawaiian beneficiaries. Ahuna v. Dept. of Hawaiian Home Lands, 64 Haw. 327, 340, 640 P.2d 1161, 1169 (1982). Also, the Office of Hawaiian Affairs must manage a pro rata portion of funds derived from the public land trust as a public trust for "the betterment of the conditions of native Hawaiians." Section 10-3(1), HRS. At present, however, there is no fiduciary obligation for the State to use public resources in general to rehabilitate all Hawaiians or those adopted into Hawaiian families.

Second, the wording on page 3, line 3, of the bill, which adds adoptive children as beneficiaries, is unclear in its reference to "the minimum Hawaiian blood requirement." Section 209, HHCA, sets forth two separate Hawaiian blood quantum

requirements (50% and 25%), depending on the relationship between the deceased lessee and the successor. To place adopted children on par with biological children, we suggest amending lines 2 and 3 as follows:

or (3) adopted children who are not at least one-quarter Hawaiian;  
provided that at least one adoptive parent is native Hawaiian, or the  
average Hawaiian blood quantum of both adoptive parents [meet the  
minimum Hawaiian blood requirement set forth in this section] is at least  
one-quarter Hawaiian . . .

Third, we suggest amending section 3 of the bill as follows for clarity:

This Act shall apply to all valid, future leases issued pursuant to section 207 of the Hawaiian Homes Commission Act, 1920, as amended, ~~[and all valid leases issued pursuant to section 207 of the Hawaiian Homes Commission Act, 1920, as amended,]~~ on or before the effective date of this Act.

We are available to assist with revisions if a different meaning is intended.

Fourth, with respect to section 4, regarding severability and the effective date of the provisions of this bill, we note that consent of the United States Congress will be required for the entire act to take effect, because the bill changes the qualifications to be a DHHL homestead lessee. See section 4, Hawaii Admission Act (“...the qualifications of lessees shall not be changed except with the consent of the United States...”).

Lastly, we note that this bill would also allow adopted children to bring claims against the State under section 673-2, HRS, which waives the State’s sovereign immunity for certain breach of trust claims by native Hawaiians and those eligible to succeed to DHHL homestead leases, among others.

Thank you for the opportunity to provide these comments.

**SB-2557**

Submitted on: 1/31/2018 2:10:37 PM

Testimony for HWN on 2/6/2018 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Maui Police Department	Support	No

Comments:

He mana'o maika'i keia.

**SB-2557**

Submitted on: 2/3/2018 4:21:23 PM

Testimony for HWN on 2/6/2018 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:

**SB-2557**

Submitted on: 1/31/2018 7:40:31 PM

Testimony for HWN on 2/6/2018 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We are in STRONG SUPPORT of this bill.

**SB-2557**

Submitted on: 2/1/2018 4:45:28 PM

Testimony for HWN on 2/6/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Frank Ka'ano'ani	n/a	Support	No

Comments:

Aloha Hawaiian Committee members, I'm very glad you've scheduled a hearing on proposed bill SB-2557. As a current Hawaiian Homelands beneficiary, who was required to wait nearly 27 years to obtain the opportunity to select a lot at the Kanehili Hawaiian homesteads, I realize that in the Hawaiian tradition, to hanai or adopt a child in the ohana, that child is accepted equally as if he or she is the blood keiki of those parents, enjoying all the same benefits, love and prosperity of their siblings.

However, under the current DHHL eligibility rules, those adopted children that don't have the required minimum Hawaiian blood quantum, **would not qualify** to inherit the lease of their Hawaiian parents or even have the opportunity to apply and be added to the DHHL list of eligibles in order to obtain a future lease.

This bill would keep the ohana intact for future generations and not break up that family, or pit one sibling against another for not having the minimum blood quantum.

If this bill is passed by this committee I would also like to recommend that in addition to allowing adopted children of parents who hold a current DHHL lease that meet the minimum blood quantum requirement of DHHL, that it also include the same rule to apply to those adopted children of Hawaiian parents that meet the minimum blood quantum that are currently **not on the DHHL list or lessee** to allow those adopted children to apply to be placed on the DHHL list to obtain a future lease.

Your thoughtful consideration regarding this bill and proposed amendments would be greatly appreciated.

a hui hou, Frank





**SB-2557**

Submitted on: 2/2/2018 11:43:22 AM

Testimony for HWN on 2/6/2018 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Debra Koonohiokala Norenberg		Support	No

Comments: