

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

SHAN S. TSUTSUI  
LT. GOVERNOR  
STATE OF HAWAII



JOBIE M. K. MASAGATANI  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

WILLIAM J. AILA, JR.  
DEPUTY TO THE CHAIRMAN

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

P. O. BOX 1879  
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**TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE COMMITTEE ON  
HAWAIIAN AFFAIRS**

**SB 2984 RELATING TO THE HAWAIIAN HOMES COMMISSION ACT**

February 6, 2018

Aloha Chair Shimabukuro and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill that excludes from any waiting list maintained by DHHL any lessee or successor who sells or transfers their lease on a tract of Hawaiian home lands.

The Department supports the intent of the bill and agrees with the proposed amendment offered by the Department of the Attorney General. DHHL also has in its administrative rules a provision that states "in making awards, the department shall give preference to an applicant who is not a lessee, or whose spouse is not a lessee."

Although the Hawaiian Homes Commission Act, as amended (HHCA) allows for lessees to transfer their leases to another native Hawaiian or a qualified relative (husband, wife, child, grandchild or sibling) who is at least one quarter Hawaiian; lessees who engage in numerous transactions (for example, a lessee who transfers their lease to purchase another lease that is transferred to a 25 percent Hawaiian child then receives their original lease back) account for a relatively small share of the total lessees that transfer or sell their leases. Typically, the lessee engaged in these multiple transaction transfers or sales of leases are purchasing the lease from another lessee and are not receiving a lease through an award from the Department. Thus, this bill as currently drafted would not eliminate the transfer or sale of leases from one lessee to another lessee.

We appreciate the Committee's efforts to look at addressing lessee activities that beneficiaries have expressed concern over in the past. We look forward to working with you during this session to see what amendments could be considered to either the HHCA or the department's administrative rules to address these concerns while trying to minimize the impact of any unintended consequences.

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. 2984, RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

**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  
Ryan K. P. Kanaka'ole, Deputy Attorney General

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Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General appreciates the intent of the bill and provides the following comments.

This bill amends the Hawaiian Homes Commission Act (HHCA) to prohibit lessees who sell or transfer their interest in a Hawaiian home lands tract from being placed on the waiting list maintained by the Department of Hawaiian Home Lands (DHHL) for another lease.

If the goal is to prohibit former lessees of Hawaiian Home Lands from obtaining future leases, in order to prohibit the practice of “churning” – the obtaining of leases and then selling or conveying them to others for a fee or other personal gain, more than once, we propose that the proposed amendment be placed in section 207 of the HHCA instead of section 208. Section 208 addresses conditions of leases. Once a lease is conveyed to another, the former lessee is no longer a party to the lease and is arguably not bound to those lease conditions. This results in the intended prohibition no longer applying to the former lessee. We believe that placing the proposed amendment in section 207 will accomplish the intended goal. To this end, we suggest deleting the proposed amendments to section 208 contained in section 2 of the bill, and substituting in its place the same proposed language as an amendment to section 207, to be added at the end of paragraph (a), with additional clarifying edits suggested, as follows:

If the lessee sells or transfers the lessee's interest in a lease for any class of land, even in a manner otherwise authorized by this Act, the lessee shall be ineligible ~~[for placement on any subsequent waiting list maintained by the department]~~ to receive a subsequent lease ~~[authorized by section 207.]~~ for the same class of land, except if:

- (1) The lease is acquired pursuant to section 209;
- (2) The only prior lease interest held by the lessee was an interest held with co-lessees; or
- (3) There is another circumstance qualifying as an exception set forth in administrative rules.

A beneficiary may acquire a lease under any one of the foregoing exceptions once only.

Deletion of reference to the waiting list is suggested because the applicant waiting list maintained by the Department of Hawaiian Home Lands (DHHL) is a creature of administrative rule. The HHCA does not mandate the creation and maintenance of a waiting list. In fact, there is no reference to a waiting list in the HHCA. Instead of placing restrictions that refer to an administratively-created waiting list, the Committee might consider directly prohibiting a subsequent lease which we understand is the intended goal.

The addition of exceptions would permit beneficiaries to hold subsequent leases in situations which do not involve the "churning" of leases for profit or other concerted personal gain.

With an amendment to section 207, the amendment to section 209, adding a new subparagraph (f) on page 14, lines 17-21, of the bill should also be deleted, because a successor's interest, as lessee, will have been addressed in section 207.

Thank you for the opportunity to provide these comments.

Council Chair  
Mike White

Vice-Chair  
Robert Carroll

Presiding Officer Pro Tempore  
Stacy Crivello


Councilmembers  
Alika Atay  
Elle Cochran  
Don S. Guzman  
Riki Hokama  
Kelly T. King  
Yuki Lei K. Sugimura



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February 5, 2018

TO: Honorable Maile S. L. Shimabukuro, Chair  
Senate Committee On Hawaiian Affairs

FROM: Stacy Helm Crivello  
Councilmember 

DATE: Tuesday, February 6, 2018

SUBJECT: **SUPPORT OF SB 2984, RELATING TO THE HAWAIIAN HOMES COMMISSION ACT**

Thank you for the opportunity to testify in **support** this important measure. The purpose of this measure is to exclude from any waiting list maintained by the Department of Hawaiian Home Lands. Any lessee or successor who sells or transfers their lease on a tract of Hawaiian home lands.

I **support** this measure for the following reasons:

1. According to the Department of Hawaiian Home Lands website, as of June 30, 2016, the Department of Hawaiian Home Lands applicant waiting list had a grand total of 44,429 names. Oahu had 14,380, Maui had 8,973, Hawaii Island had 14,770, Kauai had 4,187, Molokai had 2,043, and Lanai had 76.
2. The numbers are daunting and the opportunity of signing a lease may not become a reality for some. Many of the applicants have remained on the list for years and still others have passed away while waiting, never realizing their dream of a Hawaiian Homes lease.
3. Part of the problem is the allowable practice of individuals acquiring a lease, then selling or transferring their interest in the lease, then placing their name on the waitlist again for a second lease. This contributes to many eligible native Hawaiians never receiving an offer to lease.

For the foregoing reasons, I **support** this measure.

2018SB2984Support-HawaiianHomesCommissionAct

**SB-2984**

Submitted on: 2/3/2018 4:21:51 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-2984**

Submitted on: 1/31/2018 7:42:06 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:

**SB-2984**

Submitted on: 2/2/2018 11:46:47 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: