

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

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

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
HEARING ON JANUARY 30, 2020 AT 1:17PM IN CR 016

SB 2526 RELATING TO THE HAWAIIAN HOMES COMMISSION ACT

January 29, 2020

Aloha Chair Shimabukuro, Vice Chair Kahele, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill that amends the Hawaiian Homes Commission Act (HHCA) to (1) require appraisals of the “leasehold market value” of homestead leases for mortgages and “other purposes”, conforming with “methods and standards applicable to other leasehold properties across the State . . .”; (2) grant authority to DHHL to authorize second position loans on homestead leases by approved lenders; (3) require DHHL to develop and implement a loan servicing manual, subject to commission approval, to standardize loan loss mitigation policies, procedures, and methods; and to (4) clarify that DHHL shall not cancel a lease solely based on a loan default or delinquency unless all loan loss mitigation procedures are exhausted pursuant to the loan servicing manual.

Sections 1 and 2 of the bill propose to amend sections 208(6) and 209(b) of the HHCA to require appraisals to identify the “leasehold market value” in conformance with “methods and standards applicable to other leasehold properties across the State”. The issue is that DHHL homestead leases (i.e., DHHL leaseholds) are not like other leasehold properties in Hawai‘i. The term “leasehold” is and refers to a lessee’s right to exclusive use and possession of a tract of DHHL land for a term of years. DHHL leaseholds can only be owned by qualified beneficiaries. Consequently, the market for DHHL leaseholds is limited by statute.

This unique limitation affects the availability of private and federally-insured financing for DHHL leaseholds and how DHHL property can be appraised for a lenders’ underwriting. For example, HUD, which implements the FHA-insured Section 247 mortgage program, considers the market for DHHL leaseholds as a “closed market”. Because the leasehold cannot be sold on the open market, it has no comparable value. It therefore underwrites FHA-insured mortgages only on the replacement cost of the leasehold improvements, ascribing no value to the leasehold. Requiring appraisals of DHHL leaseholds like other leaseholds may put private lenders and federal agencies at odd with the requirements of the HHCA and their underwriting requirements.

Requiring the appraisal of the “leasehold” like other leasehold properties in Hawai‘i may also lead to windfalls for some and severe financial burdens to successors of Hawaiian homes leases. For example, under Section 209, when a lessee dies without a designated or qualified successor, the leasehold improvements are appraised, any existing debts deducted, and the balance, known as “net proceeds” must be paid to a qualified recipient. Currently, the qualified recipient receives the equity in the leasehold improvements, which the lessee financed and paid for. Requiring the appraisal of and ascribing value to the leasehold on a 99-year lease, would inflate a qualified recipients net proceeds with “equity” in DHHL’s land, which the lessee had not financed and only paid nominal consideration for (i.e., \$1 per year). The problem is compounded because the department is also required to treat the payment of “net proceeds” as an advance, which the successor or ultimate transferee of the lease must pay back.

Section 3 of the bill would amend section 210 of the HHCA to prohibit lease cancellation based solely on a loan delinquency or default, unless all loan servicing procedures identified in the loan servicing manual have been exhausted. The HHC has asked 33 lessees to leave their homesteads over the last five years which is less than 1 percent of the total number of mortgages on the homelands. A 2013 audit report also criticized the HHC for failure to “collect delinquencies or cancel accompanying leases,” stating that it runs counter to the trustee duty of impartiality by elevating an individual delinquent lessee’s interest above other beneficiaries. If DHHL staff does not find success with curing a lessee’s inability to pay a mortgage, for a myriad of reasons, the case is then referred to the HHC, which has an extensive lease cancellation process. The process includes multiple and ongoing hearings with the Commission on the lessee’s island to prevent travel costs, loan modification options, and additional financial counseling. A lease may only be cancelled by a quorum of five commissioners and a majority vote. Once a lease is cancelled, a lessee can even seek reconsideration or appeal under HRS Chapter 91.

Section 4 of the measure would amend section 216 of the HHCA permitting DHHL to authorize second position loans on homestead leases by approved lenders and requiring DHHL to develop and implement a loan servicing manual, subject to commission approval, to standardize loan loss mitigation policies, procedures, and methods. DHHL already has over 4700 loans totaling over \$600 million. Authorizing second position loans could require additional sources of loan financing to existing lessees while nearly three times that number are awaiting a lease and financing for their homestead award. DHHL has written loan servicing guidelines and Department staff work one-on-one with lessees who are experiencing challenges in paying their mortgages. These challenges may include, but are not limited to, job loss, a medical emergency, or a family crisis. In addition, loan officers with DHHL provide payment

*Department of Hawaiian Home Lands
SB2526
HWN, 1-30-2020
Page 3*

options and financial counseling paid for by the Department. To ensure the availability of adequate assistance, lessees are contacted by postal mail, phone, e-mail, and through in-person visits, if necessary.

Thank you for your consideration of our testimony.

From the office of -
Council Member
District 3



Office: (808) 961-8396
Fax: (808) 961-8912
Email: sue.leeloy@hawaiicounty.gov

SUSAN L.K. LEE LOY
25 Aupuni Street, Hilo, Hawai'i 96720

The Honorable Senator Maile S.L. Shimabukuro, Chair
And members of the Committee on Hawaiian Affairs

January 29, 2020

Dear Chair Shimabukuro and Committee Members,

I thank you for the opportunity to provide testimony in strong support of SB 2526, which among other things amends the Hawaiian Homes Commission Act to require the Department of Hawaiian Home Lands to develop and implement a loan servicing manual, subject to commission approval, to standardize loan loss mitigation policies, procedures, and methods.

Attached is a resolution that my fellow Council Member Ashley L. Kierkiewicz and I will be introducing for a Council meeting on February 19. I understand that similar resolutions in support of this bill are advancing through the Maui County and Kauai County councils.

In the centennial year of the HHCA my simple request is that the Legislature approve a bill granting beneficiaries options, as outlined in a loan servicing manual, in order to avoid default, cure delinquencies, and avoid cancellation or foreclosure. By allowing for equal treatment, this bill is another tool in the tool belt to fulfill Prince Kūhiō's mission of keeping people on the land for the duration of their leases.

Again, I thank you for hearing this bill and I respectfully urge its passage through your Committee.

Aloha Piha,

A handwritten signature in black ink, appearing to read "Sue Lee Loy".

Sue Lee Loy
Hawai'i County Council Member, District 3

COUNTY OF HAWAI‘I



STATE OF HAWAI‘I

RESOLUTION NO. _____

A RESOLUTION SUPPORTING SENATE BILL NO. 2526, SENATE BILL NO. 2826, OR OTHER LEGISLATION WITH THE PURPOSE OF PROVIDING ADEQUATE FORECLOSURE PROTECTION FOR BENEFICIARIES OF THE HAWAIIAN HOMES COMMISSION ACT OF 1920.

WHEREAS, Section 4 of United States Public Law No. 86-3, An Act to Provide for the Admission of the State of Hawai‘i into the Union, includes the condition that the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund of the Hawaiian Homes Commission Act of 1920 (HHCA) “shall not be reduced or impaired by any (State) amendment ... except with the consent of the United States”; and

WHEREAS, the Department of Hawaiian Home Lands (DHHL) is the lead state agency designated to fulfill the compact enumerated in the Admission Act; and

WHEREAS, trust lands as defined under the HHCA are located within each County in the State; and

WHEREAS, DHHL operates a loan fund and loan servicing program for home loans on these trust lands, which are required to comply with the HHCA to prohibit non-beneficiaries such as banks from taking ownership of beneficiary homes in a foreclosure action and instead should allow for such foreclosures to result in the asset being serviced and held by DHHL; and

WHEREAS, the Legislature can approve legislation requiring that the same level of protections and procedures mandated in Chapter 667 of Hawai‘i Revised Statutes, relating to foreclosures, be made available to HHCA beneficiaries; and

WHEREAS, the only protection and review of a foreclosure action taken by DHHL on behalf of its direct loan program or on behalf of banks, is through Hawai‘i Revised Statutes Chapter 91, the administrative review process followed by State commissions and agencies; and

03/21/21

A handwritten signature in blue ink is located in the bottom right corner of the page. The signature is cursive and appears to be "D. J. ...".

WHEREAS, DHHL loan policies and procedures do not provide parity for native Hawaiian families to access common loan loss mitigations available for all other citizens of Hawai‘i, including opportunities to apply for a permanent loan modification, a loan assumption, or reasonable opportunities to sell a home prior to foreclosure; and

WHEREAS, Senate Bill No. 2526, introduced in the 2020 session of the Hawai‘i State Legislature, amends the Hawaiian Homes Commission Act to require appraisals of improvements to identify the replacement cost or the leasehold market value, grants authority to DHHL to authorize second position loans on homestead leases by approved lenders, requires DHHL to develop and implement a loan servicing manual, subject to commission approval, to standardize loan loss mitigation policies, procedures, and methods, and clarifies that DHHL shall not cancel a lease solely based on a loan default or delinquency unless all loan loss mitigation procedures are exhausted pursuant to the loan servicing manual; and

WHEREAS, Senate Bill No. 2826, introduced in the 2020 session of the Hawai‘i State Legislature, requires DHHL to develop and implement a loan servicing manual and clarifies that DHHL shall not cancel a lease solely based on a loan default or delinquency unless all loan loss mitigation procedures are exhausted pursuant to the loan servicing manual; now, therefore,

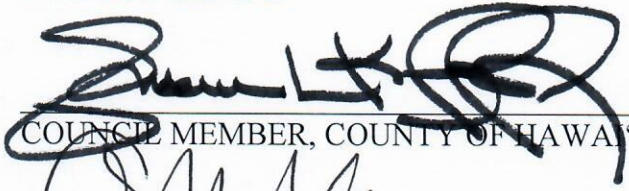
BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I that it supports the passage of Senate Bill No. 2526, Senate Bill No. 2826, or any other similar legislation that establishes regulations, resources, and opportunities for beneficiaries of the Hawaiian Homes Commission Act to prevent home loan default, such as a written loan servicing manual that includes ensuring federal protections of native Hawaiian active military service members, opportunities to apply for loan loss mitigations such as a permanent loan modification, a loan assumption, and other industry standard loan default cures.


BE IT FURTHER RESOLVED that Senate Bill No. 2526 and Senate Bill No. 2826 support native Hawaiian beneficiaries as full and equal citizens who are on par with all other County citizens.

BE IT FINALLY RESOLVED that the County Clerk shall transmit a copy of this resolution to the Honorable David Y. Ige, Governor; the Honorable Ronald D. Kouchi, President of the Senate; the Honorable Maile S.L. Shimabukuro, Chair of the Senate Committee on Hawaiian Affairs; the Honorable Donovan M. Dela Cruz, Chair of the Senate Committee on Ways and Means; the Honorable Karl Rhoads, Chair of the Senate Committee on Judiciary; the Honorable Scott K. Saiki, Speaker of the House of Representatives; the Honorable Ryan I. Yamane, Chair of the House Committee on Water, Land, and Hawaiian Affairs; the Honorable Chris Lee, Chair of the House Committee on Judiciary; the Honorable Sylvia Luke, Chair of the House Committee on Finance; and the Hawai'i Island legislative delegation.

Dated at _____, Hawai'i, this _____ day of _____, 20__.

INTRODUCED BY:



 COUNCIL MEMBER, COUNTY OF HAWAI'I


 COUNCIL MEMBER, COUNTY OF HAWAI'I

COUNTY COUNCIL
 County of Hawai'i
 Hilo, Hawai'i

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on _____.

ATTEST:

COUNTY CLERK CHAIRPERSON & PRESIDING OFFICER

ROLL CALL VOTE

| | AYES | NOES | ABS | EX |
|-----------------------|------|------|-----|----|
| CHUNG | | | | |
| DAVID | | | | |
| EOFF | | | | |
| KANEALI'I-KLEINFELDER | | | | |
| KIERKIEWICZ | | | | |
| LEE LOY | | | | |
| POINDEXTER | | | | |
| RICHARDS | | | | |
| VILLEGAS | | | | |
| | | | | |

Reference: _____

RESOLUTION NO. _____

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Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
Alice L. Lee
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Maria E. Zielinski

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

January 29, 2020

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

FROM: Tasha Kama
Presiding Officer Pro Tempore

A handwritten signature in black ink, appearing to read "Tasha Kama", is written over the printed name and title.

SUBJECT: **Hearing of January 30, 2020; Testimony in SUPPORT of SB 2526,
Relating to the Hawaiian Homes Commission Act**

Thank you for the opportunity to testify in support of this Senate measure. The purpose of this measure is to provide parity between Hawaiians living in their Hawaiian Homesteads and those living in their homes elsewhere in our State with respect to addressing mortgage deficiencies.

The Maui County Council has not had the opportunity to take a formal position on this particular measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

Maui County Council, at its January 10, 2020 meeting, adopted by an unanimous vote of members present Resolution 20-2, certified copy attached, which urges the State of Hawaii Legislature to address the lack of parity in mortgage servicing matters for Native Hawaiian Beneficiaries of the Hawaiian Homes Commission Act of 1920.

I support this measure because it will address the concerns raised by the Maui County Council in Resolution 20-2 by providing that the Department of Hawaiian Home Lands shall take a similar approach to mortgage delinquencies as used for homeowners who are not beneficiaries of the Hawaiian Homes Commission Act of 1920. By requiring the Department to use that similar approach, the lack of parity between these groups – those residing on Home Lands and those who do not – will be addressed.

Resolution

No. 20-2

URGING THE STATE OF HAWAII LEGISLATURE TO PROVIDE PARITY FOR NATIVE HAWAIIAN BENEFICIARIES OF THE HAWAIIAN HOMES COMMISSION ACT OF 1920 WITH ALL OTHER CITIZENS OF THE STATE OF HAWAII IN FORECLOSURE ACTIONS

WHEREAS, the 1959 Hawaii Admissions Act included a condition of statehood, that our new State of Hawaii Government would administer and be faithful to the tenets of the Hawaiian Homes Commission Act (HHCA) of 1920 dedicated to native Hawaiians defined in the HHCA; and

WHEREAS, the State of Hawaii created the state agency, the Department of Hawaiian Home Lands (DHHL) to be the lead state agency to fulfill the compact enumerated in the Admissions Act; and

WHEREAS, trust lands as defined under the HHCA are located within every County in the State of Hawaii; and

WHEREAS, the state agency of DHHL, operates a loan fund and loan servicing program for home loans on these trust lands to comply with the HHCA to prohibit non-Beneficiaries such as banks from taking ownership of beneficiary homes in a foreclosure and instead for such foreclosures to result in the asset being serviced and held by DHHL; and

WHEREAS, the state agency of DHHL exempts itself from the letter and spirit of the 2011 Foreclosure Protections law enacted by the Legislature and signed into law by Governor Abercrombie to protect the citizens of Hawaii by requiring foreclosures to be achieved either through a judicial foreclosure or non-judicial foreclosure process, leaving native Hawaiian citizens with neither process available to them; and

WHEREAS, the only protection and review of a foreclosure action taken by the state agency of DHHL on behalf of its direct loan program or on behalf of banks, is through HRS 91, the Administrative Review process of actions by state commissions and agencies; and

Resolution No. 20-2

WHEREAS, the state agency of DHHL loan policies and procedures, that govern the actions of its agency and Hawaiian Homes Commission, do not provide parity for native Hawaiian families to access common loan loss mitigations available for all other citizens of Hawaii, including opportunities to apply for a permanent loan modification, a loan assumption, or reasonable opportunities to sell a home prior to foreclosure; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it embraces its native Hawaiian citizens as full and equal citizens deserving of parity with all other county citizens; and
2. That it urges the State Legislature to implement technical amendments to the HHCA to provide immediate and direct guidance to its state agency DHHL, to implement on par home default options available to all other citizens of the County, namely a written loan servicing manual that includes but is not limited to ensuring federal protections of native Hawaiian active military service members, opportunities to apply for loan loss mitigation such as a permanent loan modification, a loan assumption and other industry standard loan default cures; and
3. That certified copies of this resolution be transmitted to the Honorable David Ige, Senators Gilbert Keith-Agaran, Rosalyn H. Baker, Kalani J. English, Representatives Lynn DeCoite, Troy N. Hashimoto, Angus L.K. McKelvey, Tina Wildberger, Justin H. Woodson, Kyle T. Yamashita, Sovereign Council of Hawaiian Homestead Associations Chairman Robin Puanani Danner, the Mayor and County Clerk.


COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 20-2 was adopted by the Council of the County of Maui, State of Hawaii, on the 10th day of January, 2020, by the following vote:

| | | | | | | | | | |
|------------------|-------------------------------|---|-----------------------|------------------------|----------------------|--------------------------|----------------------------|-------------------------|-----------------------------|
| MEMBERS | Alice L. LEE Chair | Keari N. W. RAWLINS-FERNANDEZ Vice-Chair | G. Riki HOKAMA | Natalie A. KAMA | Kelly T. KING | Michael J. MOLINA | Tamara A. M. PALTIN | Shane M. SINENCI | Yuki Lei K. SUGIMURA |
| ROLL CALL | Aye | Aye | Aye | Aye | Excused | Aye | Aye | Aye | Aye |



COUNTY CLERK

SB-2526

Submitted on: 1/29/2020 4:56:14 PM

Testimony for HWN on 1/30/2020 1:17:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---|---------------------------|---------------------------|
| SYBIL LOPEZ | Testifying for Kalama'ula Mauka Homestead Association | Support | No |

Comments:

As the President of our Kalama'ula Mauka Homestead Association, I am in full SUPPORT to amend the Hawaiian Homes Act to require appraisals of improvements to identify the replacement cost or the leasehold market value; how the state of Hawaii administers loans to families on homesteads; and to ask the legislature to exercise its authority to establish minimum standards for the state agency of DHHL to follow before displacing Hawaiian families; and to pursue the creation and implementation of the loan servicing manual.

Molokai has a population of 7400 people. Department of Hawaiian Homelands are the 2nd largest landowner on the island in which native Hawaiians make up 62.1% of the population. Kalama'ula Mauka Homestead Association is one of 8 HA on the island of Molokai and one of two within the Kalama'ula Ahupua'a where the first lease awards were given after the Act was passed. Kalama'ula Mauka is the most newest subdivision DHHL created back in the early 90's.

Thirty years later, Its 2020! Currently, Molokai has a total of 387 existing residential leases. Of the 387 residential leases, Kalama'ula has 160, Ho'olehua has 153, Kapa'akea has 45, and One Ali'i has 29. Within the Molokai Island Plan, DHHL has a total of 742 acres of land designated as Residential. The 327 proposed residential homestead lots would be located in 'Ualapu'e, Kapa'akea, and Kalama'ula. Of the 2,043 people on the waitlist for Molokai, 771 awaits residential lots. 327 proposed lots are not even half of fulfilling those on the waitlist, but its something. Urgency is needed now to even protect those who wait for these awards.

Statewide, there are over 200 families with a loan delinquency today — that's 900 human beings on average that are at risk of lease cancellation and displacement.

Statewide, there have been 33 evictions in the last 5 years. That's 6 families a year on average being evicted over the last 5 years. That's huge. 33 evictions, on average is 148 moms, dads, and kids that have lost their home in the last 5 years which adds to the homeless population!

We have the full support of our Maui County Council, and now urge the State Legislature to implement technical amendments now, it will stave off unnecessary suffering and home displacements for our families now and future residential lessees. Their best chance is to remain in their homes and to continue working. We know this is good for Hawaii too.

WE NEED YOUR SUPPORT!!

Mahalo;

Sybil K Lopez



Robin Puanani Danner, Chairman
Sybil Lopez, Vice Chairman
1451 South King Street, Suite 448
Honolulu, HI 96814
info@hawaiianhomesteads.org

Date: January 29, 2020
To: Honorable Members of the Senate Committee on Hawaiian Affairs
Fr: Robin Puanani Danner, SCHHA Chairman, HHCA Beneficiary
Re: Strong Support on SB2526

Founded in 1987, SCHHA is the oldest and largest coalition of Hawaiian Homestead Associations, and native Hawaiian beneficiaries eligible for lands under the Hawaiian Homes Commission Act of 1920 (HHCA). We serve and represent the interests of native Hawaiians on the waitlist, as well as on the land via leases for homes, farms, ranches or mercantile under the HHCA.

In short, SB2526 does something quite simple – it embraces the Legislature’s power, and kuleana, to set policy for its state agency, the Department of Hawaiian Home Lands (DHHL), in the area of management of a loan portfolio where loans are originated and serviced by its state agency. Moreover, it acts upon the authority granted under the 1959 Hawaii Admissions Act, for state government to amend the HHCA administratively without Congressional review, or where the federal Department of Interior finds that the amendment may inhibit the rights of native Hawaiians, or other reasons, may require Congressional review. 43 CFR 47/48, regulations adopted under the Obama Administration, sets out a specific process by which the DOI is to review revisions to the HHCA made by state government.

SB2526 simply states:

- 1. Home Valuations.** Adds access by native Hawaiian citizens to “market-based leasehold valuations” over the current limitation to “replacement cost valuation” methodologies requested by DHHL for HUD to agree to in the 1990s. This gives **parity** to native Hawaiian citizens of Hawaii with all other fellow citizens, and with all other Native peoples in 30+ other states where federal land trusts exist, to appraisals using comparable sales data on homes native Hawaiian citizens own.
- 2. Method of Service of Lease Cancellation Notices.** Requires DHHL to notify native Hawaiians of any action by the Hawaiian Homes Commission to cancel a trust land lease, by certified mail or an in-person service. Currently, regular mail is the standard, which leaves too much uncertainty on a notice of an action with the magnitude of a lease cancellation. This is especially common-sense policy, when native Hawaiian citizens are not privy to the due process described in Act 48, a State of Hawaii ground breaking law in the aftermath of the national mortgage crisis to help all other Hawaii citizens to remain in their homes to work out mitigations with local and national lenders. Instead, native Hawaiians have one and only one opportunity to challenge a lease cancellation outside of DHHL – to the circuit court under the Administrative Review Act. This 1- chance, has a strict 30-day time table, making the notice important to be made beyond “regular mail”.
- 3. Second Equity Loans.** Authorizes native Hawaiian citizens to obtain second position equity loans from DHHL approved lenders, for a variety of reasons that all other citizens have access to. For example, a second loan to send kids to college, to make an improvement for elderly ADA accessibility, to consolidate consumer debt to ride out a downturn in the economy, or to decrease federal income tax liability by deducting home loan equity interest costs.
- 4. Loan Servicing Manual.** Requires DHHL to maintain a loan servicing manual, that is required to be vetted and adopted by the governing body, the Hawaiian Homes Commission. Currently, and for 61 years, the changing staff and leadership of DHHL develop policies and procedures on the management of loans, without any oversight of the Commission, nor without any Beneficiary Consultation to ensure good policies and

Founded in 1987, SCHHA is the oldest and largest coalition of Hawaiian Homestead Associations and native Hawaiians exercising sovereignty on the trust lands enacted by Congress under the Hawaiian Homes Commission Act of 1920

procedures are adopted. The Loan Servicing Manual is also required to include common loan loss mitigations available to all other citizens, including, and especially, the protection of military service members as required under federal law, which violators can be assessed fines and jail time.

Parity for Native Hawaiian Citizens

DHHL’s current loan manual is completely absent any description or guidance on standard loan loss mitigations common and available to all other citizens. SCHHA makes a simple request to our legislature, to correct this disservice to native Hawaiian citizens, and frankly, to state government employees that come and go, to administer our loan fund at DHHL on par to other citizens.

SCHHA puts into the record, the following:

- A. A summary of standard loan loss mitigations in practice by lenders when faced with a loan delinquency where a citizen’s primary asset, their home, is at risk.
- B. The actual 3 pages in the current DHHL loan servicing section of its manual on the management of non-performing loans, wherein standard loan loss mitigations are completely absent, including the federally protected mitigation for active military personnel.

Essentially, these 3 pages say DHHL can “arrange for repayment of the debt” and once a loan is 120 days past due, DHHL can schedule a “contested case hearing” to cancel the lease. No where in the manual does it describe successful methodologies of repayment of the debt, which are known in the lending industry as “loan loss mitigations”. For example, a permanent loan modification, a loan assumption by a family member, an opportunity to lease transfer (and sale of the vertical home), etc.

All that SCHHA is seeking in passage of SB2526, is parity. For the legislative body to correct the woefully inadequate loan servicing section of the DHHL manual, to establish written processes and procedures for both DHHL staff, and native Hawaiian citizens to follow, that includes the lessons of the country in successful loan loss mitigations.

The fact that even the most notable federal prohibition known by lenders in the field, on the prohibitions on foreclosure on active military personnel, which carries individual fines and imprisonment to lenders that violate it, is completely absent from the State’s loan manual, reveals the woeful inadequacy of the State’s policies and procedures. It can be fixed. Our native Hawaiian veterans in this example must have the same protections as all others.

Loan Portfolio Executive Management

In addition to ensuring that our native Hawaiian citizens and DHHL line staff have transparent, written loan loss mitigation policies and procedures to remain in their homes, to avoid generational trauma to our children when unnecessary evictions are executed, SB2526 would improve the loan portfolio executive level management of your state agency at DHHL.

The average loan portfolio delinquency according to the **Mortgage Bankers Association is 4.5%**. For insured conventional loans in **2019 in Hawaii, it is 3%**. According to DHHL reports its loan portfolio is broken down as follows:

| | DHHL Direct | DHHL Guaranteed | Conventional Insured Loans | Combined Portfolio |
|---------------------------------|------------------------|----------------------------|---------------------------------------|-------------------------------|
| Total Loans in Portfolio | 966 / \$84M | 406 / \$39M | 3,135 / \$493M | 4,507 / \$616M |
| Total Delinquent | 260 / \$22M | 89 / \$7.2M | 334 / \$45M | 683 / \$74.2M |
| Delinquency Rate | 27% | 22% | 11% | 15% Overall |

These numbers are incredibly stark, and worrisome. They say, that upwards of **683** loans impacting 683 local families have the potential for foreclosure, eviction and displacement. Equally as stark, these numbers represent **\$74.2M** in potential loan losses, IF these mortgage assets are underwater on value or DHHL is ill-equipped to quickly turn homes it holds through lease cancellation, to resale and re-award. We know there are so many homes that DHHL has been holding for more than 5 years, destroying value of the home asset, and worsening the financial risk.

Founded in 1987, SCHHA is the oldest and largest coalition of Hawaiian Homestead Associations and native Hawaiians exercising sovereignty on the trust lands enacted by Congress under the Hawaiian Homes Commission Act of 1920

Executive loan portfolio management is a function of the criteria set to originate or make a loan (**front end**), AND it is a function of the practices to service a loan, to keep it performing (**back end**). The latter, loan servicing, is where executive level management, manages delinquency rates as high as we are seeing at DHHL, through loan loss mitigation techniques - to move delinquent loans into the performing category, thereby reducing the number of loans that are delinquent, and thereby the delinquency rate. DHHL's loan servicing manual is wholly inadequate to accomplish this needed back end management.

This delinquency data cannot be attributed to a portfolio of low-quality borrowers, or low-quality loan assets placed there on the **front end**. A cursory review of DHHL's origination criteria for its Direct Loans is not much different than other *Lenders of Last Resort* type lenders, with much lower loan delinquency rates. For example, the criteria setting debt ratios, credit scores, and the like are quite similar.

Nor can this delinquency data be attributed to low-quality borrowers, or low-quality loan assets being serviced now on the **back end**. Said simply, these numbers cannot be attributed to families that just refuse to pay or even can't pay. Aole. The SCHHA spent the better part of a year, identifying and working with native Hawaiian delinquent borrowers, to ascertain cause, and easy access to knowledge of standard loan loss mitigations. We found the following average demographic data on 9 families in the DHHL system of lease cancellation:

Findings Based on Average Financial Assessment Data

| | | |
|--|----------------|---------------------------------|
| Number of Years Employed Consecutively | 11.5 Years | stable employment |
| Annual Income | \$60,474 | low to moderate income levels |
| Within 80% HUD AMI | 89% of clients | |
| Total Consumer Debt | \$3,113 | extremely low consumer debt |
| Debt to Income Ratio | 37% to 58% | too high due to "event" |
| Net Worth Strength | \$-2,314 | underwater on mortgage balances |
| Credit Score | 629 | very good given circumstances |
| Number in Household | 6 Persons | majority are children |

Most Common Cause of Original Loan Delinquency

| | | |
|------|-----------------------------------|---|
| 100% | A loss of income greater than 20% | Layoff, Health, Accident, Second Income Reduction |
|------|-----------------------------------|---|

All families, suffered an **event** significant enough to cause a loss of income for an extended period, rendering forbearance at original terms difficult, even impossible. Housing counseling becomes irrelevant when the loan delinquency is caused by an event, versus a habit.

Most Common Loan Loss Mitigation Alternatives to Lease Cancellation to Achieve Performing Loans

| | |
|-----|--|
| 0% | Forbearance at Original Payment (Chance to Catch Up – DHHL's primary practice) |
| 44% | Forbearance with a Payment Reduction Based on New Income |
| 33% | Permanent Loan Modification Based on Financial Assessment/New Income Level |
| 23% | Transfer or Loan Assumption |

None of the families, based on a thorough financial assessment, can engage in a conforming forbearance at the original payment of the original loan offered by DHHL. 44% have a non-conforming debt ratio that requires a reduced payment until a more permanent mitigation can be realized. 56% have non-conforming debt ratio or an event that will require a permanent loan modification and re-amortization, or a sale through transfer or loan assumption, all of which were determined to have beneficiary family members available to engage in such transactions.

The delinquency data of the DHHL loan portfolio, can indeed be attributed to insufficient loan servicing on the **back end**, where the lender, in this case, DHHL, is not functioning with the full scale of loan loss mitigations to move loans in its portfolio from delinquent to performing. This is obvious to see, when a review of 3 short pages of DHHL's loan fund manual is reviewed, and specific loan loss mitigations are absent from the manual.

In short, DHHL needs the policy making standard of the legislature as described under SB2526, to improve its executive loan portfolio management, especially of its direct loan portfolio of 966 total loans at \$84M in balances, where 260 are not performing to the original terms, totaling \$22M.

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Closing Comment

Honorable members, we ask for your action on SB2526, to bring a long-standing injustice of **simple parity** to native Hawaiian citizens. We do not believe the State or its DHHL agency has malice or ill-intent, we believe it is unaware of the lessons learned by policy makers, lenders and servicers, and citizens from the national 2008 mortgage crisis, as is evident in its current loan servicing manual.

SB2526 provides the right legislative guidance to not only bring parity to native Hawaiian families with all other families that face a one-time financial event, but it also improves a vitally important function of multi-million dollar loan portfolio management – the use of loan loss mitigations to move delinquent loans to performing loan status.

Attachment: 2-pages describing common loan loss mitigation functions
3-pages of the DHHL loan servicing manual – handed out at hearing

About Loss Mitigation

In the mortgage and home loan industry, delinquencies and the potential for loan default and foreclosure is an ever-present reality. What is also ever-present, is a loan servicing or collections approach, called “Loss Mitigation”.

Loss Mitigation is the function of a lender working with a borrower, to avoid default, to cure delinquencies and ultimately, to avoid foreclosure. For native Hawaiians on trust lands set-aside in 1920 for residential, farming, ranching and mercantile, this function is powerfully important to understand, to exercise and participate in when necessary.

DHHL is a *Lender of Last Resort* as opposed to an *Investment Lender* like a conventional financial institution or bank. This means that DHHL does not have the pressure of shareholders or investors on its loan capital to generate income to investors. It also means that DHHL loan capital is an entirely more “patient capital”. This is especially true, given the collateral of DHHL loans are highly desirable homestead properties located on all islands in the State of Hawaii.

Regardless, all types of lenders are interested in advancing loan capital, **receiving repayment timely** based on the original terms of a loan, and **having collateral occupied** and **well maintained** to protect value. It is not uncommon, that lending shops experience delinquency fatigue, and skip over the work of contemplating Loss Mitigation. Expertise, written systems and policies are key to avoiding this dilemma in lending shops.

The **HCDC Foreclosure Prevention TAP** pursues reasonable Loss Mitigation activities between HHCA beneficiary families and the State Department of Hawaiian Home Lands (DHHL), to work to keep families on their trust lands, and to assist DHHL in maintaining a performing loan portfolio. TAP consists of completing a full financial assessment, conducting high touch engagement with delinquent borrowers, to present reasonable loss mitigation options with actual data points for DHHL and the HHC to consider to avoid foreclosure and lease cancellations.

Common Processes & Vocabulary to Consider Loss Mitigation

Loss Mitigation is a component of loan servicing and loan delinquency servicing that includes the following:

1. Live Contact

Lender is to connect with a “live” contact either by phone or in person.

2. Mandatory Notice

Lender must provide loss mitigation options & a list of HUD counseling firms or Mitigation nonprofits.

3. Debt Resolution Application Opportunity

Lender must give a borrower an opportunity to apply for a type of Loss Mitigation or Debt Resolution as well as an appeal process if denied.

4. Inspection of Collateral

Lender should inspect collateral, to ascertain occupancy (preferred over vacancy), to assess condition and ability of borrower to meet debt obligations in addition to serious repair needs.

5. Assess Financial Capability

Lender must assess borrower financial capability upon delinquency, identify an event out of the control of the borrower, and ability to repay, to consider a loss mitigation component or strategy based on whether the event is short term in nature or requires a more permanent strategy like revising the loan terms.

6. Determine Action to Cure Delinquency via Loss Mitigation or Foreclosure

Based on the above data points, lender determines whether to deploy a Loss Mitigation strategy or move to foreclosure.

These 6 steps are intended to advise a lender on whether to pursue foreclosure or to pursue a loss mitigation strategy.

Loss Mitigation Strategies are too often assumed to be a function of Counseling Borrowers into Being Better Money Managers. Loss Mitigations are deliberate functions to match a financial event to the new reality of a family.

Common Loss Mitigation Components & Strategies

The ultimate goals for any Lender, especially a *Lender of Last Resort* is loan performance, AND an occupied and well-maintained property. The following Loss Mitigation Options are the most common strategies to achieve these goals.

Informal Forbearance – 90 Day Fixed

This is typically a verbal agreement between lender and borrower, that a payment or up to 3 months of payments will not be as scheduled, may be less, may be delayed, but eventually caught up within 90 days, and return to normal.

Formal Forbearance – 12 Months Fixed

This is typically a written agreement or letter between lender and borrower, that payments of up to 12 months will not be as scheduled but will be cured via higher payments over the course of 12 months and return to normal.

Special Forbearance – Suspension or Reduced Payments with Action Plan

This is typically a more serious delinquency caused by an event out of the control of the borrower, where the lender provides a suspension or reduced payments for a year, may decrease interest during the year, and includes a plan to revisit to either increase payments to catch up then return to normal, or to pursue a more permanent solution such as a loan modification that pushes delinquent balance to the end of the loan.

Military Forbearance – Suspension of Payments or Interest Only Payments

This is typically for a borrower in active military service, where normal payments are suspended for the duration of the active duty service plus 3 months to instead be interest only. Upon return from active duty, loan is typically re-amortized within original maturity or a more permanent solution is pursued such as a loan modification. Lender postpones any foreclosure action while borrower is on active duty.

External Cure

This is typically a full payment to the lender of delinquent balance from an external source, including family members, or nonprofit financial assistance and loan fund agencies.

Loan Modification

Loan modifications are permanent changes to the original terms of a loan, that results in a payment the borrower can afford given current financial circumstances; cures all arrearage; is a fully amortized fixed rate loan within current maturity; interest rate may be reduced; the principal loan balance may exceed the original loan and may exceed 100% loan to value depending on the restructure; and the current term can be extended by 10 years.

A loan modification is similar to a refinance, but enables the lender to modify an existing loan, instead of originating a new loan which usually requires new appraisals and such, and of course the borrower likely would not qualify for a refinance given the delinquency challenges (credit score criteria). An additional strategy with a loan modification, is for the lender to add obligors (typically family members) to the debt with the existing borrower.

Loan Assumption

Lender qualifies someone to assume the existing terms of the borrower's loan, with the arrearage cured. The primary difference between a loan assumption and a loan modification is that the original borrower is released from the obligation, with the new borrower taking ownership of the property.

Short Sale ~ Deed in Lieu ~ Lease Transfer

A Short Sale is essentially an agreement between the lender and the borrower, to suspend all payments due and to stay any foreclosure action while the property is put up for sale with sale proceeds paying off the outstanding debt. A Deed in Lieu is the voluntary transfer of ownership of the property to the lender. These options avoid foreclosure, provide an organized approach for a family to sell or transfer the home and prepare for vacating the property.

Loss Mitigation Direct Financial Assistance

It is quite common nationally, for state and local governments, and financial institutions to work directly with nonprofit agencies, to dedicate funding to further ensure success of a family in avoiding foreclosure. Governments recognize the blight that can result, and the economic impact that displaced families can have on local economies. Many states operate with state and federal funding, direct financial investments including buy downs of principal loan balances and interest rates, to facilitate citizen success in remaining in the home.

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SB-2526

Submitted on: 1/29/2020 8:58:46 PM

Testimony for HWN on 1/30/2020 1:17:00 PM

LATE

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Lorilani | Individual | Support | No |

Comments:

Aloha mai,

My name is Lorilani Keohokalole, and I am a current waitlister. My Father, Emil Lani Keohokalole, was a lessee in the Wai'anae Valley Homestead prior to his passing in 2000. I currently live on the island of Kaua'i and wanted to support this Bill because I believe that our people need equal opportunities when it comes to home ownership; maintenance of loans and mitigation if they run into challenges.

We need your support. Please pass this Bill.

Mahalo nui,

Lorilani Keohokalole

LATE

From: "Keliikoa-Pua,Kana-FICOH" <Kana.Keliikoa-Pua@ficoh.com>
Date: January 29, 2020 at 1:21:59 PM HST
To: "'senshimabukuro@capitol.hawaii.gov'" <senshimabukuro@capitol.hawaii.gov>
Cc: Lokana Keliikoa-Pua <jlokana@gmail.com>
Subject: PLEASE PASS SB2526 - FORECLOSURE PREVENTION ON HOMESTEADS

Aloha Senator Maile Shimabukuro,

We, my ohana and I along with all beneficiaries in homes/on their God given lands to include those on the Wait List urgently request you SUPPORT SB2526.

I have also include Robin Danner's, SCHHA Chairman, Foreclosure Prevention Report for your easy referenced. This reort was directed to Interim DHHL Director, William Aila and Deputy Director Tyler Gomes and cc'd to all our HHC too.

Mahalo nui

Kana Keliikoa-Pua (Jocelyn Lokana Keliikoa-Pua)

Wai'anae Valley Homestead Beneficiary

(808)796-7178



Foreclosure Prevention Report

Robin Puanani Danner, Chairman
Sybil Lopez, Vice Chairman
1451 South King Street, Suite 448
Honolulu, HI 96814
info@hawaiianhomesteads.org

Date: January 27, 2020
To: Interim DHHL Director, William Aila
Deputy Director, Tyler Gomes
Fr: Robin Puanani Danner, SCHHA Chairman
Re: Report on Foreclosure Prevention Activities of the SCHHA to Assist DHHL

For the record, I am here today in my elected capacity of SCHHA chair, serving a 4-year term. My fellow elected leaders to the SCHHA governing council are **Sybil Lopez** from Molokai, **Ron Kodani** from Hawaii Island, **Richard Soo** from Oahu, and **Kekoa Enomoto** from Maui. **Kamaki Kanahele** is our Chair Emeritus. The SCHHA, encouraged to be founded in 1987, by then HHC Chairwoman & DHHL Director Drake, is now nearly 33 years old. We are the oldest and largest coalition of HHCA beneficiaries and homestead associations in existence.

In October of 2019, SCHHA informed DHHL leadership and Commission members that it would bring forward a report on the work of its autonomous nonprofit, the Homestead Community Development Corporation (HCDC) to support DHHL's loan servicing workload and the needs of HHCA beneficiary families.

SCHHA Work Plan Report

2018

- The SCHHA received a priority request from member homestead association leaders in 2018, to review the situation with HHCA beneficiary families in loan delinquency or facing lease cancellation or home ejection.
- HCDC engaged with a beneficiary family directly, that was notified of a lease cancellation by the HHC in December 2018, to apply for a reconsideration, and then to identify pro-bono legal representation to meet the filing deadline under Chapter 91.

2019

- HCDC reached out to the DHHL Loan Team to notify of the potential of formalizing a service to assist DHHL and Beneficiary families. We met directly with all the members of the DHHL loan team, reviewed process, statistics and discussed most common areas that would be helpful to DHHL.

A full copy of the DHHL Loan Manual was not made available, however, it was an excellent meeting to put functions and workload into context. In short, the DHHL entire lending operation, consists of 5 FTE, for both originating loans and servicing loans, with approximately 1,000 direct loans where 25% are in one form of delinquency, plus another 4,500 loans insured/guaranteed, and capable of transitioning into the direct loan portfolio upon delinquency. Determined DHHL is woefully under-resourced, and can improve operations by:

1. Increasing lending staff and/or;
2. Adding a contracted loan servicing agent common with lenders to deal with labor-intensive aspects of non-performing loans;
3. Upgrading DHHL's loan software to current technology and tracking systems, and to incorporate a coupon booklet system for direct loan payments;
4. Adding to its "housing counseling" service provider pool of 1 contracted person, organizations with specific skills in loan loss mitigation, which requires loan origination and underwriting experience in line with "financial analysts".

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As a result of the informative meeting, HCDC took steps to analyze the best approach to bring a financial analyst and loan loss mitigation service to support DHHL's small team, and whether it should include direct service, educational workshops for borrowers, and other tools to help borrowers help themselves.

- HCDC met with numerous lenders and loan servicing operators, industry experts, and inventoried best practices of *Lenders of Last Resort* as opposed to Conventional Investor Lenders. HCDC reviewed similar loan program operations of "government lenders", most similar to DHHL as a "state government agency" (i.e., USDA, VA, etc.).
- In August of 2019, one of many priorities shared by SCHHA Beneficiary leaders at the Annual Homestead Summit included the need to assist families to stay in their homes, avoid lease cancellations that would essentially, put them back on the DHHL Waitlist.
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 2. Raise capital and **achieve certification in loan delinquency mitigation services of 2 additional team** members, bringing HCDC total on staff, to 4, available to support DHHL and beneficiary families.
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| | | |
|--|----------------|---------------------------------|
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| Within 80% HUD AMI | 89% of clients | |
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| Credit Score | 629 | reasonable given circumstances |
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100% A loss of income greater than 20% Layoff, Health, Accident, Second Income Reduction

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- cc: Commissioner David Kaapu (West Hawaii)
 Commissioner Patty Kahanamoku Teruya (Oahu)
 Commissioner Pauline Namuo (Oahu)
 Commissioner Zachary Helm (Molokai)
 Commissioner Randy Awo (Maui)
 Commissioner Dennis Neves (Kauai)
 Commissioner Mike Kaleikini (East Hawaii - newly appointed)
 Commissioner Russell Kaupu (Oahu - newly appointed)

SB-2526

Submitted on: 1/27/2020 8:01:30 PM

Testimony for HWN on 1/30/2020 1:17:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|------------------------------|---------------------|---------------------------|---------------------------|
| Benton Kealii Pang, Ph.D. | Individual | Support | No |

Comments:



Foreclosure Prevention Report

Robin Puanani Danner, Chairman
Sybil Lopez, Vice Chairman
1451 South King Street, Suite 448
Honolulu, HI 96814
info@hawaiianhomesteads.org

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 Commissioner Russell Kaupu (Oahu - newly appointed)

shimabukuro2 - Richard

From: Sen. Maile Shimabukuro
Sent: Wednesday, January 29, 2020 9:37 AM
To: Diamond Garcia
Cc: shimabukuro2 - Richard
Subject: Re: Request to pass SB 2526 out of Committee

Aloha Diamond!

Mahalo for your testimony, I am cc-ing my Committee Clerk.

Aloha 🌺,

Senator Maile Shimabukuro
District 21
(Kalaeloa, Honokai Hale, Ko Olina, Nanakuli, Ma`ili, Wai`anae, Makaha, Makua)
State Capitol, Room 222
[415 South Beretania Street](#)
[Honolulu, HI 96813](#)
[808-586-7793](#) phone
[808-586-7797](#) facsimile
maileshimabukuro@yahoo.com
Facebook: [Like Me](#)
Twitter: [@SenMaile](#)
Blog: <http://21maile.com>
Sent from my iPhone

On Jan 28, 2020, at 11:23 AM, Diamond Garcia <d.garcia@capitol.hawaii.gov> wrote:

Aloha Maile,

I humbly request that you allow SB 2526 to pass our of your committee.

Mahalo,
Diamond

shimabukuro2 - Richard

From: Sen. Maile Shimabukuro
Sent: Wednesday, January 29, 2020 9:36 AM
To: Iwalani Kadowaki
Cc: shimabukuro2 - Richard
Subject: Re: Support

Mahalo for your testimony, I am cc-ing my Committee Clerk.

Aloha 🌺,

Senator Maile Shimabukuro
District 21
(Kalaeloa, Honokai Hale, Ko Olina, Nanakuli, Ma`ili, Wai`anae, Makaha, Makua)
State Capitol, Room 222
[415 South Beretania Street](#)
[Honolulu, HI 96813](#)
[808-586-7793](#) phone
[808-586-7797](#) facsimile
maileshimabukuro@yahoo.com
Facebook: [Like Me](#)
Twitter: [@SenMaile](#)
Blog: <http://21maile.com>
Sent from my iPhone

On Jan 28, 2020, at 12:56 PM, Iwalani Kadowaki <ivkadowaki1949@gmail.com> wrote:

I Iwalani Kadowaki, Heir/ beneficiary of Hawaiian lands of all of Pai Aina o Hawaii, as prescribe in the Hawaiian Kingdom 1840 Constitution.

I declare and establish no weapon formed against me and my family shall prosper and every lying tongue is silenced in Jesus Name Amen. I say to senator Shimabukuru to support SB 2526 in support to help Hawaiians of their forecloses. We declare Hawaiian's voice be heard and we break away from the corrupt political forces of The of state of Hawaii, in Jesus Name Amen.

Sent from my iPhone

shimabukuro2 - Richard

From: Sen. Maile Shimabukuro
Sent: Wednesday, January 29, 2020 9:38 AM
To: Rosanne Goo
Cc: shimabukuro2 - Richard
Subject: Re: SB2526

Mahalo for your testimony, I am cc-ing my Committee Clerk.

Aloha 🌺,

Senator Maile Shimabukuro
District 21
(Kalaeloa, Honokai Hale, Ko Olina, Nanakuli, Ma`ili, Wai`anae, Makaha, Makua)
State Capitol, Room 222
[415 South Beretania Street](#)
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Facebook: [Like Me](#)
Twitter: [@SenMaile](#)
Blog: <http://21maile.com>
Sent from my iPhone

On Jan 28, 2020, at 1:42 PM, Rosanne Goo <rosannekgoo@outlook.com> wrote:

Aloha Senator Shimabukuro – a quick message to ask for your support in passing this bill out of your committee. Any discussion that results in providing guidance and procedures for DHHL to better fulfill its mandate and serve its lessees would seem to be in the best interest of both DHHL and lessees. Thank you for your consideration and work on this bill. And mahalo for your continued work on behalf of our community. Aloha, Rosie Goo

Rosanne K. Goo
44-662 Kuono Place
Kaneohe, Hawaii 96744
(808) 349-5344

Sent from [Mail](#) for Windows 10