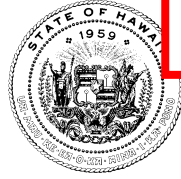


DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

JOSH GREEN  
LT. GOVERNOR  
STATE OF HAWAII



**LATE**

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 FEBRUARY 4, 2020 AT 1:15PM IN CR 016

**SB 2826 RELATING TO THE HAWAIIAN HOMES COMMISSION ACT**

February 3, 2020

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

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill which 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 requires DHHL to develop and implement a loan servicing manual.

Section 1 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 2 of the measure would amend section 216 of the HHCA requiring DHHL to develop and implement a loan servicing manual, subject to commission approval, to standardize loan loss mitigation policies, procedures, and methods. 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 options and financial counseling paid for by the

*Department of Hawaiian Home Lands*  
*SB2826*  
*HWN, 2-4-2020*  
*Page 2*

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@hawaiiicounty.gov](mailto:sue.leeloy@hawaiiicounty.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 30, 2020

Dear Chair Shimabukuro and Committee Members,

I thank you for the opportunity to provide testimony in strong support of SB 2826, 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. It also clarifies that the Department 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.

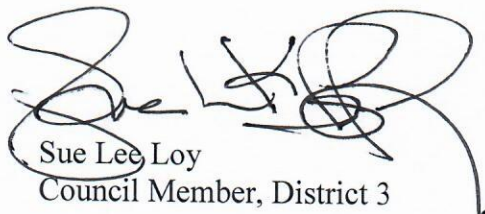
Your Committee previously provided a favorable recommendation for a similar bill, SB 2526. At this time I support the intent of both equally.

Attached is Resolution No. 487-20 that Council Member Ashley Kierkiewicz and I will be introducing for the Hawai'i County Council meeting on February 19. I understand that similar resolutions in support of the intent of this bill have been approved by the Maui County and Kaua'i County councils.

In the centennial year of the HHCA my simple request is that the Legislature approve this bill granting beneficiaries options, as outlined in the loan servicing manual, to avoid default, cure delinquencies, and avoid cancellation or foreclosure. By allowing for equal treatment, this bill is another tool in the toolbox 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 urge its passage through your Committee.

Aloha Piha,



Sue Lee Loy  
Council Member, District 3

RESOLUTION NO. 487 20

**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

**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,

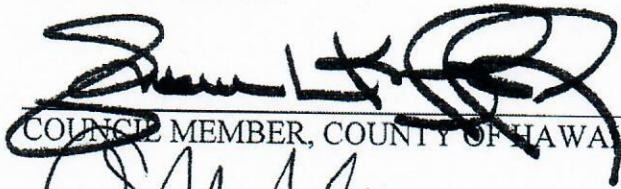
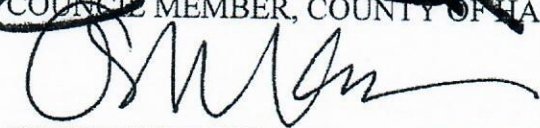
**BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI'I** that it supports the passage of Senate Bill No. 2526, Senate Bill No. 2826, or any other similar legislation that establishes regulations, resources, and opportunities for beneficiaries of the Hawaiian Homes Commission Act to prevent home loan 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: C-740/Waived GREDC  
 RESOLUTION NO. 487 20

**SB-2826**

Submitted on: 1/30/2020 10:26:20 AM

Testimony for HWN on 2/4/2020 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.	Individual	Support	No

Comments:

**SB-2826**

Submitted on: 1/31/2020 9:19:10 AM

Testimony for HWN on 2/4/2020 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Stephanie Lauifi	Individual	Support	No

Comments:



**SB-2826**

Submitted on: 2/3/2020 3:57:07 AM

Testimony for HWN on 2/4/2020 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jennifer Azuma Chrupalyk	Individual	Support	No

Comments:

**LATE**

**SB-2826**

Submitted on: 2/4/2020 6:48:10 AM

Testimony for HWN on 2/4/2020 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Regina	Individual	Support	No

Comments:

I am in support of this bill. The DHHL is suppose to help Hawaiian homesteaders to stay on their land. All means of assistance to help Hawaiian homesteaders remove themselves from delinquency should be granted and implemented before a lease is cancelled.

**LATE**

**SB-2826**

Submitted on: 2/4/2020 9:57:20 AM

Testimony for HWN on 2/4/2020 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kapua Keliikoa-Kamai	Individual	Support	No

Comments:

Aloha Senate Hawaiian Affairs Committee Chair and Committee Members,

SB 2826 RELATING TO THE HAWAIIAN HOMES COMMISSION ACT. 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. Requires DHHL to develop and implement a loan servicing manual.

I SUPPORT SB 2826 because I know of a time when DHHL was not willing to work with lessee's and their situation, thus causing a default and subsequent loss of lease. A loan servicing manual will:

- standardize the "process" for all lessee's
- provides process parity within the state of Hawaii
- ensure DHHL's consistency, regardless of leadership and or supervisor changes
- inform the lessees of all their rights and responsibilities in cases of delinquency
- inform the lessees of all their rights and responsibilities in cases of defaults;

I also want to note that the aforementioned (lease cancellation) "time" was prior to this and the previous Director's leadership. Nonetheless, an all inclusive (state and federal guidelines) updated loan servicing manual will both protect and minimize lessee cancellations. Prince Kuhio provided an avenue for HHL beneficiaries to return and stay on Hawaiian lands and with your help, we will.

Mahalo for this opportunity to support SB 2826 and pass it out of your committee.

Na'u,

Kapua Keliikoa-Kamai

Wai'anae HHLs lessee



February 4, 2020

**LATE**

Senate Committee On Hawaiian Affairs  
Chair Maile S.L. Shimabukuro,  
Vice Chair Kaiali'i Kahele  
Members of the Committee

**Re: SB 2826 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. Requires DHHL to develop and implement a loan servicing manual.**

Aloha Chair Shimabukuro, Vice Chair Kahele and Members of the Committee,

I'm Homelani Schaedel, a beneficiary residing at Malu'ōhai in Kapolei for the past 19 years, a homestead leader in the Kapolei region, and an advocate for the Hawaiian Home Lands Trust, and a loan servicer/quality control auditor with over 30 years of experience in Mortgage Banking, both here and on the mainland.

Hawaiian Homes Commission Act of 1920, as amended (HHCA)  
Section 214-4 & 5 Purposes of loans; authorized actions of the

(4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of these loans; provided that upon receipt of notice of default in the payment of the assured loans, the department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights:

- (A) The right of succession to the lessee's interest and assumption of the contract of loan;
- (B) The right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and
- (C) Any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;

(5) Secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and pay the interim interest or advances required for loans; *provided that the State's liability, contingent or otherwise, either on moneys borrowed by the department or on departmental guarantees of loans made to lessees under this paragraph and paragraphs (2), (3), and (4) of this subsection, shall at no time exceed \$100,000,000*; the department's guarantee of repayment shall be adequate security for a loan under any state law prescribing the nature, amount, or form of security or requiring security upon which loans may be made;

Lets' say I live on Maui and default on my FHA loan with Bank of Hawaii (BOH) starting January 2019. BOH loan servicing staff is required to follow FHA collection procedures to assist me in curing my default. For whatever reasons I fail to comply with the arrangement or to make payments. After 180 days, if I was not a lessee, my loan would go into foreclosure. However, because I am a lessee, BOH will file a claim with FHA on my outstanding principal, interest, late charges, inspection and other fees totaling to \$130,000.00.

FHA will review and process BOH's insurance claim then pay BOH \$130,000.00 from the "Insurance Pool". They will review, process, and proceed to re-assign my loan of \$130,000.00 to DHHL. Upon receipt, DHHL will use Trust Funds to pay FHA \$130,000.00 to reimburse the Insurance Pool.

If it were following the normal course of re-payment, my loan payment would now be due for October 2019 (*300 days delinquent*). Because of the flexibility Section 214.4 allows; Department of Hawaiian Home Lands – Homestead Services Division (DHHL-HSD) loan servicing staff begin their 120 days internal loan recovery process. During this time they do everything that is mentioned in this bill. More importantly, they don't cancel my lease 60 days after FHA re-assigned my loan to them.

Now its' January 2020 a 120 days after my loan was re-assigned (*420 days delinquent*) all attempts to cure the default fail. DHHL-HSD staff prepare a referral packet including documentation from BOH, FHA, and DHHL of the loan recovery process. The referral packet is submitted to the Hearings Officer who is an impartial third party contracted by the Commission. The Hearings Officer reviews the packet and makes recommendation to the Commission.

Now its' February 2020 DHHL-HSD places my loan on the March 2020 HHC meeting agenda (*450 days delinquent*). In March the Commission meets in Kapolei and approves a Contested Case Hearing. Since I live in Maui and to accommodate me, the Contested Case Hearing is scheduled for October 2020 (*660 days delinquent*) where the Commission will meet. DHHL cannot cancel a lease, only the Commission has that authority.

If I show up and plead my case with supporting funds, the Commission has been known to delay lease cancellation; providing I adhere to a repayment plan. (Which account for the number of loans that are in severe default in DHHL's Trust Portfolio and why the State Auditor criticizes DHHL).

The other part to remember in all of this is Subsection 5 limits the State's liability to 100,000,000.00 the *on moneys borrowed by the department or on departmental guarantees of loans made to lessees*. While the limit change in Act 114 on July 1, 2011 did not require consent from Congress, the Department of Interior cautions that the next increase request may.

I've tried to compress this process from beginning to end because it is complicated with many variables. With my background and experience, I can with absolute certainty tell you that DHHL-HSD staff go beyond the limits that conventional lenders have in loan recovery. I can also say HSD staff and the Commissioners **don't want to cancel leases**. Unfortunately, they have no control over decisions and choices lessees make.

I spoke with two lessees who had come to me years ago, afraid that they would lose their home, wanting me to speak to HSD-Staff.

**Lessee A:** Hurt is back on the job, collecting Workman's Comp, bills piled up, alcohol abuse, and martial problems. I told him he needed to contact HSD staff, work with them and do everything they asked of him. He moved in with his parents, while his wife and children remained in the home. Using his Workman's Comp toward his repayment plan, doing odd jobs and medical recovery, it took him 2 years to get current. Now he and his children reside in their home, recovered from his back injury he has a different job, and grateful to DHHL for helping him keep his home.

**Lessee B:** He lost his job because of his drug addiction, with a child who was going through an undiagnosed medical problem, with his wife as the sole provider. This went on for about 3-4 years. I told him the same thing I told Lessee A. In the past 4 years, he and his wife followed the plan they worked out with HSD staff. Their loan is current, he is a recovering addict, has a great job, his daughter gave him a granddaughter last year, and he's never been happier. In his words, he credits DHHL for helping him save his home and family by giving him the chance to make his wrongs right.

I cannot support this bill because the process in place already favors our lessees to the point that it places DHHL and the Commission in conflict with the HHCA, and may have unintended consequences that could inadvertently impact our lessees adversely, and bring DHHL under greater scrutiny.PP

Mahalo for listening to my voice and allowing me to share my mana'o with you today.