

STAND. COM. REP. NO.

198

Honolulu, Hawaii

FEB 12 2021

RE: S.B. No. 1318
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Hawaiian Affairs, to which was referred
S.B. No. 1318 entitled:

"A BILL FOR AN ACT RELATING TO KULEANA LANDS,"

begs leave to report as follows:

The purpose and intent of this measure is to require that claimants seeking to quiet title of kuleana land and original land titles that are land commission awards with a royal patent of confirmation which are based on claims to a right to the land before 1848, shall have a good faith claim to more than fifty percent of the land.

Your Committee received testimony in support of this measure from four individuals. Your Committee received comments on this measure from Ka Lāhui Hawai'i Kōmike Kalai'āina and one individual.

Your Committee finds that the State has a constitutional duty to protect the title to kuleana lands granted to native Hawaiians over one hundred fifty years ago, kuleana claims that were approved by the land commission, and land titles with a royal patent of confirmation which are based on claims to a right to land before 1848. Following the Mahele of 1848, several thousand native tenants, or makaainana (common people), pursuant to the Kuleana Act of 1850, filed for and were granted title to lands they occupied and improved. Although these lands were, by law, "subject to the rights of native tenants" there were, initially,



no formal protections in place to guard these rights and nothing to stop the konohiki (chiefs) or the government from selling lands occupied by makaainana. In response to the concerns over the rights of native tenants, the Kuleana Act of August 6, 1850, and the amendment of July 11, 1851, authorized the Kingdom of Hawaii to confirm several resolutions of the Monarch and Privy Council that granted to the makaainana grant fee-simple title to all native tenants for their cultivated lands and house lots, often referred to as kuleana lands.

Your Committee also finds that very few native Hawaiian families live on their ancestral kuleana lands. The rapid escalation of land values in the recent years have resulted in further disenfranchisement, foreclosure, and emotional and financial struggles for native Hawaiian families that are trying to keep kuleana lands in their families. While quiet title actions have been a beneficial legal tool for kuleana awardees to resist adverse possession claims made by large agricultural entities, the current framework of quiet title action leaves kuleana owners vulnerable to dispossession, including through the use of complex and cost-prohibitive legal processes that effectively foreclose quiet title defendants from challenging quiet title actions and adverse possession claims.

Your Committee notes concerns raised by Ka Lāhui Hawai'i Kōmike Kalai'āina that this measure could be strengthened further by limiting actions to quiet title to kuleana land to plaintiffs who own at least a fifty percent interest in the land. This measure will create a more equitable and timelier safeguard to resolve disputes and hardships stemming from quiet title actions filed against owners of kuleana lands.

Your Committee has amended this measure by:

- (1) Requiring that claimants seeking to quiet title of kuleana land shall hold title rather than have a good faith claim, to more than fifty percent of the land;
- (2) Inserting language to require that the plaintiff bear any costs for quiet title actions and may only recover costs, expenses, or attorney's fees from the defendant as the court may deem equitable under the circumstances; and



- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1318, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1318, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Hawaiian Affairs,



MAILE S.L. SHIMABUKURO, Chair



The Senate
 Thirty-First Legislature
 State of Hawai'i

Record of Votes
Committee on Hawaiian Affairs
HWN

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 1318	HWN, JDC	2/9/2021		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
SHIMABUKURO, Maile S.L. (C)	X			
KEOHOKALOLE, Jarrett (VC)	X			
ACASIO, Laura	X			
IHARA, Jr., Les	X			
FEVELLA, Kurt		X		
TOTAL	4	1		
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center; margin-top: 10px;"> </div>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes