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

*Ka 'Oihana 'Āina Ho'opulapula Hawaii'i*

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**TESTIMONY OF KALI WATSON, CHAIRMAN**  
**HAWAIIAN HOMES COMMISSION**  
**BEFORE THE HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**  
**HEARING ON MARCH 12, 2024 AT 2:00PM IN CR 325**

**SB 2397, SD2, RELATING TO THE HAWAIIAN HOMES COMMISSION ACT**

March 12, 2024

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill which 1) excludes from any waiting list maintained by the DHHL any lessee or successor who sells or transfers their lease on a tract of Hawaiian Home Lands (HHL) for personal gain; 2) establishes that the Hawaiian Homes Commission (HHC) shall have a right of first refusal for the sale or transfer of a lessee's interest in the lease when the sale or transfer is for personal gain; and 3) takes effect 4/14/2112.

Act 179 (SLH 2018) required DHHL to conduct a study on the issue of HHL lessees selling or transferring their HHL lease to another native Hawaiian for a fee or for personal gain and then applying for a subsequent HHL lease. The study can be accessed here: [DHHL-Report-to-the-2020-Legislature-Relating-to-Act-179-2018.pdf \(hawaii.gov\)](#). The findings from this study indicated that less than half of 1% of pastoral and agricultural applications and 4% of residential applications have a prior lease. The vast majority of the transfers ranging from 68-93% were made to a family member without remuneration. The recommendation from the study was that legislative action was not needed given the small number of applicants (176) that transferred their lease for a fee or other personal gain and then applied for a subsequent HHL lease. Enacting legislation for such a small number could have unintended consequences for other beneficiaries.

Furthermore, DHHL's existing administrative rules already provide a priority and preference for award of leases. HAR Section 10-3-7 states that "in making awards, the department shall give preference to an applicant who is not a lessee, or whose spouse is not a lessee." DHHL's administrative rules were also amended in 2017 to stipulate that "leases for vacant or undeveloped lots and undivided interests, or any interest therein, shall not be sold but may be transferred for no consideration or by succession" (HAR Section 10-3-36(a)). The rules provide that "lease transfers to qualified relatives of

a lessee or to beneficiaries on a waitlist shall have priority for processing over transfers to beneficiaries not on a waitlist” (HAR Section 10-3-36(b)).

In addition to the study, a permitted interaction group (P.I.G.) committee was established in March 2023 to study and recommend strategies related to fairness in lease transfers. The minutes from the September 18 – 19, 2023 Hawaiian Homes Commission regular meeting, for Item C-1 (pages 5-6), documents the recommendation of the P.I.G., which was to collect more data on the issue (the PIG will reconvene in May 2024); it can be accessed here: <https://dttl.hawaii.gov/wp-content/uploads/2023/10/09-SEPTEMBER-18-19-2023-HHC-Approved-Minutes.pdf>. It is the practice of the DHTL to bring all decision-making related to lease transfers to the HHC for approval. The committee discussed several specific aspects of lease transfers, including when a buyer is a previous lessee, the lease transfer transaction is for cash, and the lease sale/transfer is to a non-familial relation.

It appears lease transfers that implicate questions of fairness tend to have common characteristics. Three characteristics were considered as being key to identifying unfairness in lessee transactions: 1. Buyer is a previous lessee; 2. Transaction is a sale; 3. Buyer is not a qualified family member under Hawaiian Homes Commission Act, 1920, as amended, section 209. The committee believes that using these criteria to establish an internal process whereby transactions meeting all three criteria would be considered by the HHC as an individual agenda item rather than part of the consent agenda may lead to the development of an administrative rule that can curb unfair lessee transactions. The final recommendation was that the DHTL report findings to the HHC by May 2024.

Although this measure has been previously introduced, any action by the Legislature is still premature as a final recommendation to the HHC isn't expected until May 2024 so this measure should be deferred until such report is considered by the HHC.

Thank you for your consideration of our testimony.

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Unity, Equality, Aloha for all



To: HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

For hearing Tuesday, March 12, 2024

Re: SB 2397, SD2 RELATING TO THE HAWAIIAN HOMES COMMISSION ACT. Excludes 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 for personal gain. Establishes that the Hawaiian Homes Commission shall have a right of first refusal for the sale or transfer of a lessee's interest in the lease when the sale or transfer is for personal gain. Takes effect 4/14/2112. (SD2)

TESTIMONY IN OPPOSITION

This bill contains a mixture of the good, the bad, and the ugly. But the bad and ugly greatly outweigh the good; therefore this bill should be defeated.

What's good is "to prohibit lessees who sell or transfer their interest in a Hawaiian home lands tract for personal gain from being placed on any subsequent waiting list maintained by the department of Hawaiian home lands for an additional lease." The waitlist is already too long, so it's good to delete wannabe double-dippers to avoid further lengthening the waitlist, further burdening the citizenry of the State of Hawaii, and to ensure "that all department of Hawaiian home lands beneficiaries should be able to enter the Hawaiian Homes Commission Act program with a reasonable expectation of eventually receiving a lease."

What's bad is the whole concept of the Hawaiian Homes Commission Act which was unconstitutional under the 14th Amendment equal protection clause when HHCA was introduced in Congress in 1920 and enacted in 1921; and which has drained billions of dollars from the State's fisc since it was incorporated into the State's Constitution under terms of the Statehood Act of 1959 -- money which otherwise could be used for the benefit of all Hawaii's people regardless of race, including native Hawaiians. The bad is not solely about money. The worst element of the bad is violating a fundamental moral principle of diversity, equity, and inclusiveness -- The lands and people of Hawaii should not be divided along racial lines.

What's ugly is the trojan horse in this bill -- the attempt to greatly expand the scope of HHCA to allow a mere 1/32 native blood quantum to qualify a person to inherit a lease. When HHCA was enacted in 1921 an applicant was required to have at least 50% native blood in order to be granted a lease. Decades later HHCA was amended to allow lessee's children with only 25% native blood to inherit the lease. In recent years there have been repeated attempts by this legislature, as in the present bill, to persuade Congress to amend HHCA to allow

inheritance of a lease by a descendant with as little as 1/32 native blood. Exactly how far into the pit of racism are we prepared to descend? A one-drop rule seems to be the goal. Archie Bunker would be proud [TV show "It's All in the Family"].

This bill contains a mixture of the good, the bad, and the ugly. But the bad and ugly greatly outweigh the good; therefore this bill should be defeated.

**SB-2397-SD-2**

Submitted on: 3/8/2024 9:50:59 AM

Testimony for JHA on 3/12/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Lu Ann Mahiki Lankford-Faborito	Individual	Support	Written Testimony Only

Comments:

Absolute strong support.