

**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 741, S.D. 1, RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Friday, February 24, 2023

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Alyssa-Marie Y. Kau,
Deputy Attorney General, at (808) 587-2978)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill amends sections 208 and 209 of the Hawaiian Homes Commission Act, 1920, as amended (HHCA), to prohibit a lessee of, or successor to, a Department of Hawaiian Home Lands (DHHL) homestead lease who has sold or transferred their interest in the homestead lease for personal gain, from being placed on any waiting list maintained by DHHL for an award of a homestead lease under section 207, HHCA. The bill also grants DHHL a right of first refusal for the sale or transfer of a homestead lease when the sale or transfer is for personal gain.

DHHL does not purchase homestead leases under a right of first refusal in the traditional sense. Instead, DHHL may re-acquire a homestead lot through cancellation or surrender of a lease. Upon the cancellation or surrender of a homestead lease, DHHL pays the lessee the appraised value of the improvements on the lot minus any debt owed to DHHL, debt owed for property taxes, or any debt guaranteed by DHHL. See Section 209, HHCA. To conform with DHHL's existing authority and practice, we recommend amending page 7, lines 5-12, of the bill as follows:

- (8) Notwithstanding any law to the contrary, the commission shall have the right of first refusal ~~[for the sale or transfer of a]~~ by requiring the lessee to surrender the lease to the department, whenever the

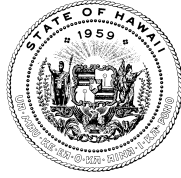
lessee seeks to sell or transfer the lessee's interest in the lease
[~~when the sale or transfer is~~] for personal gain; provided that if the
commission does not exercise the right of first refusal, the
respective lessee may proceed in the sale or transfer in accordance
with the law;.

To clarify the intent of the bill, we also recommend adding a definition of the term,
"personal gain" as it is used on page 7, lines 8 and 14, and page 15, line 12, of the bill.

Thank you for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ke Kia'āina o ka Moku'āina 'o
Hawai'i*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Hope Kia'āina o ka Moku'āina
'o Hawai'i*



IKAIKA ANDERSON
CHAIRMAN DESIGNATE, HHC
Ka Luna Ho'okele

KATIE L. DUCATT
DEPUTY DESIGNATE TO THE
CHAIRMAN
Ka Hope Luna Ho'okele

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
Ka 'Oihana 'Āina Ho'opulapula Hawai'i

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF IKAIKA ANDERSON, CHAIRMAN-DESIGNATE
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON JUDICIARY
DECISION MAKING ON FEBRUARY 24, 2023 AT 9:30AM IN CR 016

SB 741, SD1, RELATING TO THE HAWAIIAN HOMES COMMISSION ACT

February 24, 2023

Aloha Chair Rhoads, Vice Chair Gabbard, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits comments on this measure 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 for personal gain and establishes that the Hawaiian Homes Commission (HHC) shall have the 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.

Act 179 (SLH 2018) required DHHL to conduct a study on the issue of Hawaiian Home Lands lessees selling or transferring their Hawaiian Home Lands lease to another native Hawaiian for a fee or for personal gain, and then applying for a subsequent Hawaiian Home Lands lease. The findings from the study attached indicated that less than half of 1% of pastoral and agricultural applications and 4% of residential applications had a prior lease. Most lease transfers, ranging from 68-93% were transferred to a family member without remuneration. The recommendation from the study noted that legislative action was not needed given the small number of applicants (176 applicants) that transferred their lease for a fee or other personal gain, and then applied for a subsequent Hawaiian home lands lease. Enacting legislation for such a small number of applicants could have unintended consequences for other beneficiaries. Furthermore, DHHL's existing administrative rules already provide a priority and preference for award of leases. HAR § 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 § 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 § 10-3-36(b)).

The HHC briefly discussed this issue at the February 2023 HHC meeting and intends to have further discussion on the matter at the March 2023 HHC meeting. The HHC also intends to establish a Permitted Interaction Group to address this issue.

Thank you for your consideration of our testimony.

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

December 26, 2019

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki,
Speaker and Members of the House of
Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

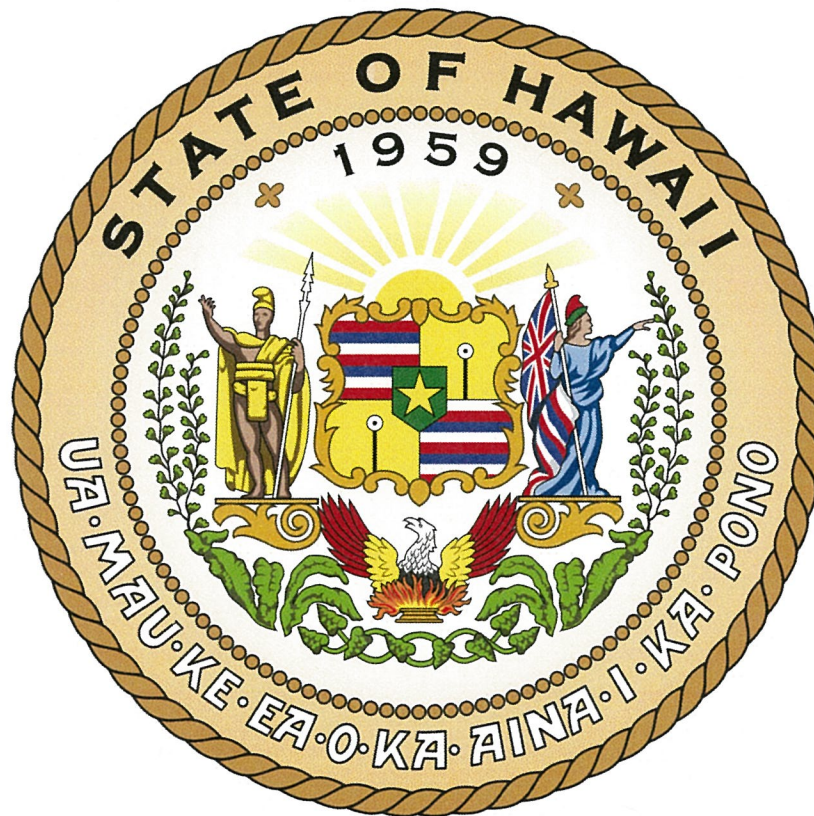
For your information and consideration, I am transmitting a copy of the Report to the 2020 Legislature as required by Act 179 (2018). In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at <http://dhhl.hawaii.gov/legislative-briefings/>.

Sincerely,

William J. Aila, Jr., Chairman
Hawaiian Homes Commission

REPORT TO THE 2020 LEGISLATURE

RELATING TO ACT 179 (2018)



Prepared by

State of Hawaii
Department of Hawaiian Home Lands

December 2019

REPORT TO THE 2020 LEGISLATURE

RELATING TO ACT 179 (2018) REQUIRING THE DEPARTMENT OF HAWAIIAN HOME LANDS TO CONDUCT A STUDY ON THE ISSUE OF HAWAIIAN HOME LANDS LESSEES SELLING OR TRANSFERRING THEIR HAWAIIAN HOME LANDS LEASE TO ANOTHER NATIVE HAWAIIAN FOR A FEE OR PERSONAL GAIN AND THEN APPLYING FOR A SUBSEQUENT HAWAIIAN HOME LANDS LEASE

BACKGROUND:

Act 179 (2018) states that the “legislature finds that certain native Hawaiians who are eligible for a lease pursuant to the Hawaiian Homes Commission Act, 1920, as amended, have acquired a lease, sold or transferred their interest in the lease, and then placed their name on the waitlist for a second lease of Hawaiian home lands.” Although the bill as originally introduced would “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 for an additional lease,” the legislature ultimately passed a measure requiring the Department of Hawaiian Home Lands (DHHL) to conduct a study on the issue of Hawaiian home lands lessees selling or transferring their Hawaiian home lands lease to another native Hawaiian for a fee or other personal gain and then applying for a subsequent Hawaiian home lands lease.

FINDINGS:

DHHL identified applicants on the waiting list who were previously awarded a pastoral, agriculture, or residential lease. The following findings are identified by category:

I. Pastoral

3,057 Pastoral Applications as of October 31, 2019.

Of that number, 15 applicants had a prior pastoral lease or less than half of 1%.

None of the 15 applicants sold or transferred their lease for a fee or other personal gain and then applied for a subsequent Hawaiian home lands lease.

#	Disposition	%
14	Land disposition not for fee of which 11 (79%) transferred to a family member	93%
1	Transfer lease for fee but application pre-dated transfer	7%

II. Agricultural

18,963 Agricultural Applications as of October 31, 2019.

Of that number, 79 applicants had a prior agricultural lease or less than half of 1%.

The dispositions are as follows:

#	Disposition	%
65	Land disposition not for fee of which 47 (72%) transferred to a family member	82%
1	Transfer lease for fee to a family member and subsequently applied	1%
10	Transfer lease for fee to a non-family member and 6 subsequently applied	13%
3	Additional information needed	4%

III. Residential

23,047 Residential Applications as of October 31, 2019.

Of that number, 956 applicants had a prior residential lease or 4%.

The dispositions are as follows:

#	Disposition	%
654	Land disposition not for fee of which 416 (64%) transferred to a family member	68%
46	Transfer lease for fee to a family member and 37 subsequently applied	5%
136	Transfer lease for fee to a non-family member and 132 subsequently applied	14%
103	Unknown if property transferred for fee of which 89 transferred to a family member	11%
17	Additional information needed	2%

RECOMMENDATIONS:

Given the small number of applicants (176) that transferred their lease for a fee or other personal gain and then applied for a subsequent Hawaiian home lands lease, DHHL recommends the following:

1. Legislative action is not needed to address the issue of applicants transferring their lease for a fee or other personal gain and then applying for a subsequent Hawaiian home lands lease.
2. DHHL's existing administrative rules already provide a priority and preference for award of leases. HAR §10-3-7(b) 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."
3. DHHL's administrative rules were amended on March 31, 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 §10-3-36(a)]. The rules further 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 §10-3-36(b)].

SB-741-SD-1

Submitted on: 2/21/2023 4:39:16 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Kenneth R. Conklin, Ph.D.	Testifying for Center for Hawaiian Sovereignty Studies	Support	Written Testimony Only

Comments:

Support. This is a good way to shorten the waiting list by removing anyone who chooses not to make use of a gift they have already received and apparently do not need. OHA/DHHL love to say the purpose of the Hawaiian Homes Commission Act was to "put Hawaiians back on the land." Nobody says the purpose of HHCA is to enable Hawaiians to become land speculators or to put money into Hawaiians' bank accounts

SB-741-SD-1

Submitted on: 2/22/2023 1:32:39 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Rosie F Davis	Individual	Support	Written Testimony Only

Comments:

Aloha I support SB741

Mahalo nui

SB-741-SD-1

Submitted on: 2/22/2023 1:42:15 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Gene Ross K. Davis	Individual	Support	Written Testimony Only

Comments:

I support bill SB 741.

Aloha Gene Ross

SB-741-SD-1

Submitted on: 2/23/2023 2:13:37 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dayle K. Turner	Individual	Support	Written Testimony Only

Comments:

I am in support of the proposed legislation related to the Hawaiian Homes Commission Act. This legislation would ensure that any lessee or successor who sells or transfers their lease on a tract of Hawaiian home lands for personal gain is excluded from the waiting list maintained by the Department of Hawaiian Home Lands. This measure would protect the interests of Hawaiian Home Lands by allowing the Hawaiian Homes Commission to 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.

This measure is important because it will help to protect Hawaiian Home Lands from exploitation and ensure that Hawaiian Home Lands are managed in a manner that is in the best interests of the Hawaiian people. By establishing a right of first refusal for the Hawaiian Homes Commission, this will ensure that Hawaiian Home Lands are used for the purpose of providing housing for native Hawaiians and not for personal gain. It will also ensure that the Hawaiian people are able to benefit from the resources of Hawaiian Home Lands and that those resources are not taken advantage of by those looking to make a profit.

I strongly support this measure and believe it is necessary to ensure that Hawaiian Home Lands are used for the benefit of the Hawaiian people and not taken advantage of by those looking to make a profit. Thank you for considering my testimony.

SB-741-SD-1

Submitted on: 2/23/2023 10:06:19 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Johnnie-Mae L. Perry	Individual	Oppose	Written Testimony Only

Comments:

I, Johnnie-Mae L. Perry OPPOSE SB 741 RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

The lessee is a homeowner like any other homeowner, and have the right to sell his/her home for a profit, they own the home and lease the land. Transferring the home to his/her child (1 out of 4) with less than 50% blood quartum, is a kakou thing to help his/her children. The parent(s) with 50% or more Hawaiian than can reapply to a new lease and wait in line like a new lessee.