

**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 2640, S.D. 1, RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

BEFORE THE:

SENATE COMMITTEES ON WAYS AND MEANS AND ON JUDICIARY

DATE: Thursday, February 22, 2024 **TIME:** 9:46 a.m.

LOCATION: State Capitol, Room 211 & Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Jordan A.K. Ching,
Deputy Attorney General, at (808) 587-2978)

Chairs Dela Cruz and Rhoads and Members of the Committees:

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

The bill proposes to amend the Hawaiian Homes Commission Act, 1920, as amended (HHCA), to allow the Department of Hawaiian Home Lands (DHHL) to provide an unspecified cash award to a beneficiary on the Hawaiian Home Lands waitlist to purchase a residential lot outside of DHHL trust lands or to pay the beneficiary's existing mortgage note or rent in lieu of awarding the beneficiary a lease in an effort to shorten the waitlist.

Among other changes, Senate Draft 1 of the bill clarifies that if beneficiaries receive cash awards, they only relinquish the ability to reapply to the DHHL homestead waiting list and do not waive any other rights under the HHCA. See page 2, lines 9-12. DHHL's waiting lists are created by administrative rule to set the order in which DHHL awards new homestead leases directly to beneficiaries. There are no waiting lists for lease transfers between beneficiaries or for successors when a lessee dies. It therefore appears that the bill intends to only ban cash recipients from receiving future lease awards directly from DHHL. If this is the case, we suggest further amending page 2, lines 9-12, of the bill as follows:

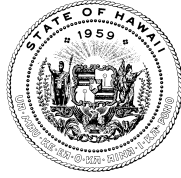
(b) Any beneficiary that accepts a cash award shall only relinquish their right to ~~[reapply to the waitlist]~~ receive a lease award directly from the department of Hawaiian home lands under section 207 of this Act and shall remain entitled to other rights provided ~~[by the Hawaiian Homes Commission Act, 1920, as amended.]~~ in this Act.

Also, DHHL keeps waiting lists for three types of lease awards: residential, pastoral, and agricultural – which are the three types of lots that DHHL is authorized to lease to Native Hawaiians under section 207, HHCA. The bill does not specify whether a cash recipient would be banned from the waiting lists and from receiving direct lease awards for all three types of lots or only a certain type, e.g., residential lots only. We recommend amending the bill to clarify this ambiguity.

Thank you for the opportunity to testify on this measure.

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*



KALI WATSON
CHAIRMAN, HHC
Ka Luna Ho'okele

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

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

Ka 'Oihana 'Āina Ho'opulapula Hawai'i

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TESTIMONY OF KALI WATSON, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS AND
THE SENATE COMMITTEE ON JUDICIARY
HEARING ON FEBRUARY 22, 2024 AT 9:46AM IN CR 211

SB 2640, SD1, RELATING TO THE HAWAIIAN HOMES COMMISSION ACT

February 22, 2024

Aloha Chairs Dela Cruz and Rhoads, Vice Chairs Moriwaki and Gabbard, and Members of the Committees:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill which 1) amends the Hawaiian Homes Commission Act to authorize the DHHL to provide cash awards to beneficiaries on the waitlist in lieu of a lease; 2) requires the DHHL to remove those beneficiaries from the waitlist; 3) specifies that beneficiaries that accept a cash reward shall lose their right to return to the waitlist, but they remain entitled to other rights provided by the Hawaiian Homes Commission Act (for example, to receive a lease by way of transfer or through successorship); and 4) takes effect on either the date of the Secretary of the Interior's notification that congressional approval of this Act is unnecessary, or on the date of consent by the United States congress.

Before passage of the Hawaiian Homes Commission Act, 1920, as amended, (HHCA), Delegate Jonah Kūhiō Kalaniana'ole wrote to U.S. Senators and stated that "After extensive investigation and survey on the part of various organizations organized to rehabilitate the Hawaiian race, it was found that the only method in which to rehabilitate the race was to place them back upon the soil." While the DHHL appreciates the intent of this bill, there are some concerns. The purpose of the HHCA is to return native Hawaiians to the land while encouraging them to become self-sufficient homesteaders on leased parcels of trust land through residential, agricultural, and pastoral lots pursuant to section 207 of the HHCA – not to provide cash awards in lieu of a lease award.

Furthermore, the waitlist is not part of the HHCA. Rather, section 222 of the HHCA requires that DHHL adopt administrative rules as are necessary for the efficient execution of the functions vested in the department by this Act. Thus, the waitlist exists and operates by way of administrative rule.

Department of Hawaiian Home Lands
February 22, 2024
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Thank you for your consideration of our testimony.

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON WAYS AND MEANS and COMMITTEE ON JUDICIARY

For hearing Thursday, February 22, 2024

Re: SB 2640, SD1 RELATING TO THE HAWAIIAN HOMES COMMISSION ACT. Amends the Hawaiian Homes Commission Act to authorize the Department of Hawaiian Home Lands to provide cash awards to beneficiaries on the waitlist in lieu of a lease. Requires the Department of Hawaiian Home Lands to remove those beneficiaries from the waitlist. Specifies that beneficiaries that accept a cash reward shall lose their right to return to the waitlist, but they remain entitled to other rights provided by the Hawaiian Homes Commission Act. Takes effect on either the date of the Secretary of the Interior's notification that congressional approval of this Act is unnecessary, or on the date of consent by the United States congress. (SD1)

TESTIMONY IN OPPOSITION

The slogan most frequently heard about the purpose of the Hawaiian Homelands is "to put Hawaiians back on the land." We might ask: Where else would they be? If they are not on the land, then are they up in the air? Some might say that people who have been waiting for a lease for decades are indeed up in the air about their future, including thousands who have gone so high in the air they are now in heaven! (they "died on the waitlist") The concept of "putting Hawaiians on the land" is clearly a metaphor related to engaging in the occupation of farming, it is not simply a way of identifying the fact that gravity makes everything on Earth rest upon the ground.

This bill's description says "Amends the Hawaiian Homes Commission Act to authorize the Department of Hawaiian Home Lands to provide cash awards to beneficiaries on the waitlist in lieu of a lease. Requires the Department of Hawaiian Home Lands to remove those beneficiaries from the waitlist."

But HHCA (the Hawaiian Homes Commission Act) had a very clear purpose which was NOT to provide housing -- its purpose was to provide LAND which people could lease longterm for farming of vegetables or animals, and where they might also build a farmhouse for their families. The purpose of HHCA was especially NOT to provide money as a bribe for people to give up their spot on a waitlist for a lease on farmland. Indeed, the recent settlement of the class-action lawsuit *Kalima v. State of Hawaii* should be regarded as the already-completed payment of a bribe such that anyone who accepted such a payment has thereby waived any legal demand or moral claim for alleged damages arising from past or future time on the waitlist.

State of Hawaii Department of Hawaiian Homelands prominently displays on its website a page devoted to Prince Jonah Kūhiō Kalanianaʻole, Delegate to Congress for the Territory of Hawaii, who introduced the bill that became the Hawaiian Homes Commission Act of 1920.

<https://dhlh.hawaii.gov/kuhio/>

The webpage begins with the following description of the purpose of HHCA (Webpage retrieved on January 26, 2024):

"Through its passage, the United States set aside approximately 200,000 acres of land to establish a permanent homeland for native Hawaiians, who were identified as a "landless and dying" people as the result of disease, intermarriage, and loss of lands. After extensive investigation and survey on the part of various organizations organized to rehabilitate the Hawaiian race, it was found that the only method in which to rehabilitate the race was to place them back upon the soil," Kūhiō wrote to U.S. Senators before the passage of the Act. The Hawaiian Homes Commission Act intended to return native Hawaiians to the land while encouraging them to become self-sufficient homesteaders on the leased parcels of trust land." By the way, Native Hawaiians are clearly no longer a dying race facing extinction as portrayed in HHCA: following decades of devastating depopulation under the Kingdom, the population of Native Hawaiians increased tenfold during the first century of U.S. sovereignty, from fewer than 40,000 in Census 1900 to more than 400,000 in Census 2000; and then further exploding to 527,000 in Census 2010, then 780,000 in Census 2020, and simple extrapolation would indicate now more than 850,000.

Notice that the purpose of HHCA was NOT to provide houses or apartments, roads, water pipes, electricity, or other conveniences of urban life -- the clearly-stated purpose, repeated several times, was to provide LAND for native Hawaiians "to place them back upon the soil ... to return native Hawaiians to the land while encouraging them to become self-sufficient homesteaders on the leased parcels of trust land." It was envisioned that the leaseholders would become farmers, growing vegetables, cattle, chickens, etc. to feed their own families or to barter or sell to be self-sufficient.

But most leaseholders under the Department of Hawaiian Homelands live in urban-style houses on tiny parcels of land with hundreds of

neighbors living so close nearby they can see and hear each other at all hours. They grow more ornamental bushes and flowers than vegetables. They have pet dogs but no cows or pigs. This urban use of "homestead" lands got started in the very first "Hawaiian homeland" of Papakolea on a hill overlooking Honolulu, and continues in the more recently developed nearby "Kalawahine" hillside area on steeply-sloping streets with closely-packed upscale houses owned by native Hawaiians who are business owners, police detectives and fire captains. The houses on leased land in the middle-class Waimanalo Hawaiian homestead look exactly the same as the houses across the street owned in fee simple by people with no native blood, while native and non-native children mingle in their classrooms at the state-run Blanche Pope Elementary School; and the Department of Hawaiian Homelands decided to build a rental apartment-building nearby, across the street from the public beach (no farm animals allowed in those apartments!).

Prince Kuhio's Hawaiian Homes Commission Act has been twisted far out of line from his intention of rehabilitating a dying race by putting Hawaiians back on the land. This bribery bill would add insult to injury. It also is a slap in the face to the kind-hearted legislators who in 2022-2023 already sent an extra \$600 Million to the Department of Hawaiian Homelands in their misguided desire to provide funding for urban-style development of lands intended for farming.

This bill further expands the growth of a line of legislation that rips money away from the needs of the 95% of Hawaii's people who lack the 50% native blood quantum needed to qualify for the list of bribe-eligible people.

Section 1, sentence 3 of this bill explicitly says "the purpose of this Act is to shorten the waitlist" by paying a bribe to anyone who removes his name. But in recent years this committee has forwarded legislation asking Congress to approve lowering the blood quantum requirement for issuance of a HHCA lease from 1/2 all the way down to 1/32, which is for all practical purposes the same as a "one-drop" rule. According to recent Census data there are now about 700,000 people

in the U.S. who identify themselves as being "Native Hawaiian" and could thereby be added to the waitlist for a DHHL lease. Combining the current bill to bribe people for removing themselves from the waitlist, together with the previous bills to lower the blood quantum to one drop and thereby hugely increase the size of the waitlist, looks very much like a scam. Sell the scam to the public and its legislature by claiming to reduce the waitlist, while actually increasing it vastly, thereby setting the stage for the next round of Kalima v. State of Hawaii whose settlement could very well bankrupt the State. The committee members conspiring in this scam deserve a "lifetime achievement" award if they succeed.

LATE

SB-2640-SD-1

Submitted on: 2/21/2024 11:02:46 AM

Testimony for WAM on 2/22/2024 9:46:00 AM

Submitted By	Organization	Testifier Position	Testify
Lu Ann Faborito	Testifying for Makaha Hawaiian Civic Club	Support	Written Testimony Only

Comments:

Strong support for our members who continue to sit on the waitlist.

SB-2640-SD-1

Submitted on: 2/20/2024 1:07:45 PM

Testimony for WAM on 2/22/2024 9:46:00 AM

Submitted By	Organization	Testifier Position	Testify
Nancy Jones	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Dela Cruz, Chair Rhoads, Vice-Chair Moriwaki, Vice-Chair Gabbard, and Honorable Committee Members:

I respectfully present this testimony to SUPPORT SB 2640, SD1 – which would amend the Hawaiian Homes Commission Act to authorize the Department of Hawaiian Home Lands (DHHL) to provide cash awards to beneficiaries in place of a lease award. Upon receipt of a cash award, the DHHL would remove beneficiaries from the Wait List, but would ensure that beneficiaries remain entitled to all other rights provided by the Hawaiian Homes Commission Act.

The DHHL “Wait List” totaled approximately 27,000 beneficiaries in 1995 – and that figure has only decreased by 3,000 names to approximately 24,000 beneficiaries waiting for residential, agricultural, or pastoral leases to become available. The intent of bill is – in my belief -- to ultimately shrink the Wait List even further rather than some grand “pay off” to the Native Hawaiian community. If beneficiaries can receive cash awards in place of agricultural, pastoral or home lots, but somehow ensure that those funds can make it possible to “keep Hawaiian lands in Hawaiian hands,” AND retain the right to retain all other benefits available under the Hawaiian Homes Commission Act, that would be ideal. It is my hope that this bill would effectively give Waitlisted beneficiaries more housing options as well as shrink that Wait List. As my family and I have ALWAYS maintained, providing housing options for our Native Hawaiian community makes sense not only from a humanitarian standpoint and to partially rectify the injustices committed against Hawaiians, but also frees up housing options for all other Hawai`i residents..

For these key reasons and in the interest of reducing Hawai`i’s DHHL Waiting List AND our state’s houseless population, we urge your Committee to please pass SB 2640, HD1 and allow it to move forward during this Session.

Mahalo for this opportunity to present this testimony supporting SB 2640, HD 1.

Nancy A. Jones

PO Box 1462, Wai`anae, HI 96792 / Email: nancyhydroalt@gmail.com

SB-2640-SD-1

Submitted on: 2/20/2024 1:08:38 PM

Testimony for WAM on 2/22/2024 9:46:00 AM

Submitted By	Organization	Testifier Position	Testify
Zeb Jones	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Dela Cruz, Chair Rhoads, Vice-Chair Moriwaki, Vice-Chair Gabbard and Honorable Committee Members:

I present this testimony to respectfully SUPPORT SB 2640, SD1 – which amends the Hawaiian Homes Commission Act to authorize the Department of Hawaiian Home Lands (DHHL) to provide cash awards to beneficiaries in lieu of lease awards. Upon issuing a cash award, the DHHL would remove a beneficiary’s name from the Wait List, but would ensure that all other rights provided by the Hawaiian Homes Commission Act remain available to this/these beneficiary(ies).

As of 1995, the DHHL “Wait List” totaled approximately 27,000 beneficiaries. Yet, that figure has only decreased by 3,000 names to now about 24,000 beneficiaries waiting for residential, agricultural or pastoral leases to become available. I believe that the intent of bill is to ultimately shrink the Wait List even further rather than some grand “pay off” to the Native Hawaiian community. If – with passage of this Bill -- beneficiaries can receive cash awards in place of agricultural, pastoral, or home lots, and the DHHL somehow ensures that those funds can make it possible to “keep Hawaiian lands in Hawaiian hands,” AND make available all other benefits available under the Hawaiian Homes Commission Act to beneficiaries, that would be ideal. It is my hope that this bill would effectively give wait-listed beneficiaries more housing options as well as shrink that Wait List. As my family and I have ALWAYS maintained, providing housing options for our Native Hawaiian community makes sense not only from a humanitarian standpoint and to partially rectify the injustices committed against Hawaiians, but also frees up housing options for all other Hawai`i residents..

For these key reasons and in the interest of reducing Hawai`i’s DHHL Waiting List AND our state’s houseless population, we urge your Committee to please pass SB 2640, HD1 and allow it to move forward during this Session.

Mahalo for this opportunity to present this testimony supporting SB 2640, HD 1.

Zebuel “Zeb” C. Jones

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LATE

SB-2640-SD-1

Submitted on: 2/21/2024 10:43:44 AM

Testimony for WAM on 2/22/2024 9:46:00 AM

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

Comments:

Strong support, As the daughter of a 78 yr old waitlister this needs to happen now.

LATE

SB-2640-SD-1

Submitted on: 2/21/2024 10:44:52 AM

Testimony for WAM on 2/22/2024 9:46:00 AM

Submitted By	Organization	Testifier Position	Testify
Kenneth Faborito	Individual	Support	Written Testimony Only

Comments:

Strong support, As the son in-law of a 78 yr old waitlister this needs to happen now.

LATE

SB-2640-SD-1

Submitted on: 2/21/2024 10:56:26 AM

Testimony for WAM on 2/22/2024 9:46:00 AM

Submitted By	Organization	Testifier Position	Testify
Mahiki Lankford	Individual	Support	Written Testimony Only

Comments:

STRONG STRONG SUPPORT. As a 78 year old waitlister this needs to happen now. I don't know how much longer I have to see this come to fruition.

LATE

SB-2640-SD-1

Submitted on: 2/21/2024 7:37:15 PM

Testimony for WAM on 2/22/2024 9:46:00 AM

Submitted By	Organization	Testifier Position	Testify
John P Begg	Individual	Comments	Written Testimony Only

Comments:

Protect the fund's value and don't allot more cash than if everyone opted out of the list would get for their fair share of a buy-out. The thought I have comes to mind because of the Polaroid company who allowed pensions to be cashed out by departing employees, when the company began to fail, and in the end there was nothing left for those who remained behind to the end. It is a colossal failure on the part of actuaries who gave too much cash from a retirement fund that didn't have the capital for everyone on equal footing.