



**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, RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

**BEFORE THE:**

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

**DATE:** Tuesday, January 30, 2024      **TIME:** 1:00 p.m.

**LOCATION:** State Capitol, Room 224 & Videoconference

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Jordan A. K. Ching, Deputy Attorney General

---

Chair Shimabukuro and Members of the Committee:

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.

We recommend amending section 2 on page 2, lines 1-7, of the bill to avoid inadvertently creating new liabilities for the State, including DHHL, as follows:

**§                    Cash award to beneficiaries.** At the sole discretion of the Hawaiian homes commission, the department of Hawaiian home lands may expend funds to provide a cash award of \$                    to a beneficiary on the waitlist for the purchase of a residential lot in fee simple located outside of the department's trust lands, or to pay the beneficiary's existing mortgage note or rent. The department shall remove from the waitlist any beneficiary that accepts a cash award. This section shall not create any entitlement to a cash award. The failure of the commission to

authorize cash awards under this section shall not give rise to breach of trust or fiduciary duty claims under chapter 673, Hawaii Revised Statutes.

Further, while the bill on page 2, lines 6-7, requires DHHL to remove cash recipients from its waiting list, it is unclear whether the recipients continue to be eligible for other benefits under the HHCA. These include succeeding to a qualified relative's lease under section 209, receiving a lease transfer under section 208, and reapplying for the waiting list in the future. We therefore recommend amending the bill to clarify which rights under the HHCA a recipient must relinquish in exchange for a cash award.

We also suggest amending the bill to specify the source of funds for the cash award program, such as the Hawaiian Home Loan Fund or other funds established under section 213, HHCA.

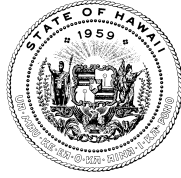
We also note that this bill will likely require consent from the United States to be effective. Section 4 of the Admission Act requires consent to any amendment to the HHCA that changes the qualifications of lessees. This bill arguably changes the qualifications of lessees to the extent it makes cash recipients ineligible to receive a DHHL lease. To address this, we recommend amending section 5 on page 2, line 18, as follows:

Section 5. This Act, upon its approval by the governor, shall take effect ~~[upon its approval.]~~ on either the date of the Secretary of the Interior's notification letter to the Congressional Committee Chairmen that this Act meets none of the criteria in title 43 Code of Federal Regulations section 48.20 necessitating Congressional approval, or on the date that the United States Congress's approval becomes law.

We respectfully ask the Committee to consider our comments. 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  
Hawaii*

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



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 Hawaii'i*

P. O. BOX 1879  
HONOLULU, HAWAII 96805

**TESTIMONY OF KALI WATSON, CHAIRMAN**  
**HAWAIIAN HOMES COMMISSION**  
**BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS**  
**HEARING ON JANUARY 30, 2024 AT 1:00PM IN CR 224**

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

January 30, 2024

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

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill which would 1) amend the Hawaiian Homes Commission Act to authorize the DHHL to provide cash awards to beneficiaries on the waitlist in lieu of a lease and 2) requires the DHHL to remove those beneficiaries from the waitlist.

Before passage of the Hawaiian Homes Commission Act, 1920, as amended, (HHCA), Delegate Jonah Kūhiō Kalaniana'ole wrote to U.S. Senators stating 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 208 of the HHCA and HAR 10-3-21 – not to provide cash awards in lieu of a lease award.

Thank you for your consideration of our testimony.

**SB-2640**

Submitted on: 1/28/2024 4:17:39 PM

Testimony for HWN on 1/30/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kenneth Faborito	Individual	Support	Written Testimony Only

Comments:

Kako'o

**SB-2640**

Submitted on: 1/29/2024 2:54:15 PM

Testimony for HWN on 1/30/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Earl S. Tenn	Individual	Support	Written Testimony Only

Comments:

Thank ypo for allowing me to testify. I support the intent of this Bill SB 2640.

**SB-2640**

Submitted on: 1/28/2024 6:44:49 PM

Testimony for HWN on 1/30/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Julia Estigoy-Kahoonei	Individual	Comments	Written Testimony Only

Comments:

Awarding cash to beneficiaries sounds like a pay off to Hawaiians to get them off the list. A better solution is the cash award go towards a down payment of a home here in Hawaii, and give them more options in housing, be more competitive in the bidding for a home so they can remain here. If the intent of "paying them off" is for more Hawaiians to leave Hawai'i then I oppose this bill. Language needs to be included so that funds offered would go to helping Hawaiians remain here in on this 'aina.

Center for Hawaiian Sovereignty Studies  
46-255 Kahuhipa St. Suite 1205  
Kane'ohe, HI 96744  
(808) 247-7942  
Kenneth R. Conklin, Ph.D. Executive Director  
e-mail [Ken\\_Conklin@yahoo.com](mailto:Ken_Conklin@yahoo.com)  
Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS

For hearing Tuesday, January 30, 2024

Re: SB 2640 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.

#### 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://dttl.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.

**SB-2640**

Submitted on: 1/29/2024 5:03:50 PM

Testimony for HWN on 1/30/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
De MONT Kalai Manaole	Testifying for Ho'omana Pono, LLC	Support	In Person

Comments:

We support this bill, as it may provide an alternative solution that some waitlisters may desire.