



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2010**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2525, S.D. 1, RELATING TO LANDS CONTROLLED BY THE STATE.

**BEFORE THE:**

SENATE COMMITTEE ON EDUCATION AND HOUSING

**DATE:** Wednesday, February 17, 2010      **TIME:** 1:30 p.m.

**LOCATION:** State Capitol, Room 225

**TESTIFIER(S):** Mark J. Bennett, Attorney General, or  
Charleen M. Aina, Deputy Attorney General

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Chair Sakamoto and Members of the Committee:

This bill would fundamentally alter the leasehold homestead program Congress established by passing Hawaiian Homes Commission Act of 1920, and has the potential to seriously reduce both the lands and the cash assets of the Hawaiian Home Lands trust.

Without detailing how this is to be accomplished, this bill authorizes the Department of Hawaiian Home Lands (DHHL) to grant fee simple title to what would presumably be "available lands," to Hawaiian Home Lands lessees, provided that DHHL has "the right of first refusal to reacquire the fee simple title to the land on the same terms and conditions as contained in a bona fide offer for the sale of the land." The bill is problematic for several reasons.

First, in order to exercise the option, DHHL would have to divert cash that it would otherwise use to develop additional homestead areas, to reacquire the land it had previously conveyed to a lessee.

Second, land in Hawaii rarely loses value. Thus, even assuming lessees paid DHHL for the fee simple title this bill authorizes DHHL to convey, DHHL would very likely have to pay

more to later reacquire that fee simple title than it received from the lessees. In effect, lessees would receive cash for occupying the land for a period of time, rent free.

More importantly, if DHHL lacked sufficient cash to exercise the right of first refusal to reacquire land earlier conveyed to lessees as this bill provides, there would be fewer acres of available land to use for the benefit of other HHCA beneficiaries. From that point forward, the corpus of the Hawaiian Home Lands trust would be diminished by the amount of land DHHL was unable to "buy back" for the trust.

**From:** Momi Clark [mclark@cades.com]  
**Sent:** Wednesday, February 17, 2010 5:57 PM  
**To:** EDH Testimony  
**Subject:** SB2525, SD1

Relating to Lands Controlled by the State  
SB 2525, SD1  
February 17, 2010, 6:00 p.m.

To the Chair and Members of the EDH and WTL Committees

My name is Leimomi Clark. I am a Native Hawaiian and am testifying AGAINST this bill. Lands currently available to DHHL are limited and located in less than optimal areas of the islands and if you pass this bill, it will further and forever deplete lands expressly set aside for Hawaiians. History will show that most of these lands will end up in the hands of those who do not qualify for DHHL leases.

Before we consider such a measure, please consider the following questions:

1. Is the pool of qualified (by blood quantum) residents so small that DHHL cannot find lessees on that long list of applicants? (or those who might apply if they knew that the "wait" is now less than the 30-40 year "waits" of their kupuna)?
2. If DHHL is having trouble finding qualified (by blood quantum) lessees, might that be because the costs of homes have inched up beyond \$200,000, \$250,000 for homes that may be far from work, family and familiar community connections?
3. If DHHL had access to more prime real estate, in areas where people actually live and work, would they be more able to build affordable homes to accommodate our people?
4. If we cannot fulfill the intent of Prince Kuhio to improve the quality of life of our native Hawaiians, please spend more time developing innovative solutions and involve Hawaiians in those discussions, that actually work rather than changing the rules to take away even more of our lands and opportunities.

Mahalo for the opportunity to share my mana'o. Trust lands are trust lands and should remain so, in perpetuity.

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LATE TESTIMONY

## KO`OLAUPOKO HAWAIIAN CIVIC CLUB

February 19, 2010

TO: Senator Norman Sakamoto, Chair  
And Members  
Committee on Education and Housing

FROM: Mahealani Cypher, President  
Ko`olaupoko Hawaiian Civic Club

SUBJECT: S.B. 2525, S.D.1, RELATING TO LANDS CONTROLLED BY THE STATE

The Ko`olaupoko Hawaiian Civic Club strongly objects to the passage of Senate Bill 2525, in any form, which would facilitate the conveyance, in fee simple, of lands developed by the Hawaiian Homes Commission for native Hawaiian lessees.

We see this measure as opening up a new avenue that has dire consequences for the future of native Hawaiians and their connection with the lands of Hawai`i nei. Even though there appears to be language that would give DHHL “first right of refusal” to purchase back homestead lands made available for sale, it is clear that this will lead to enormous negative consequences for the Hawaiian land trust set up by Prince Kuhio with the passage of the Hawaiian Homes Act of 1920.

We know – and you must know, as well – that it will be inevitable that indigent native Hawaiians living on homestead lands will be induced to sell their property when they face economic hardship. If this mechanism were available to them today, who knows how many homesteaders would jump at the chance to sell their land to meet their financial needs – and DHHL would hardly be in a position to re-purchase these lands if made available to them.

It is deeply disturbing to many native Hawaiians here in Ko`olaupoko to learn that this is being pursued by the Hawai`i State Legislature and by legislators who purport to advocate in our best interest. While there may be some narrow rationale that could weakly justify this legislation, it is our view that the ends do not justify the means, and that the unforeseen consequences of this action by the State of Hawai`i would, ultimately, not be in the best interests of our native Hawaiian people.

We urge your committee to fill this bill.

Mahalo for this opportunity to offer our mana`o.

P. O. Box 664  
Kaneohe, HI 96744  
Ph. (808) 235-8111 / 226-4195  
koolaupokohcc.org