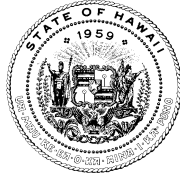


DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

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

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON FINANCE
HEARING ON MARCH 2, 2021 AT 12:00PM VIA VIDEOCONFERENCE

HB 1124, HD1, RELATING TO THE HAWAIIAN HOMES COMMISSION ACT

March 2, 2021

Aloha Chair Luke, Vice Chair Cullen, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill that amends the Hawaiian Homes Commission Act (HHCA) to (1) require appraisals of improvements to identify the replacement cost or the leasehold market value; (2) grant authority to DHHL to authorize second position loans on homestead leases by approved lenders; (3) require DHHL to develop and implement a loan servicing manual, subject to commission approval, to standardize loan loss mitigation policies, procedures, and methods; and to (4) clarify that DHHL shall not cancel a lease solely based on a loan default or delinquency unless all loan loss mitigation procedures are exhausted pursuant to the loan services manual.

Sections 1 and 2 of the bill propose to amend sections 208(6) and 209(b) of the HHCA to require appraisals to identify the leasehold market value in conformance with methods and standards applicable to other leasehold properties across the State. The issue is that DHHL homestead leases (i.e., DHHL leaseholds) are not like other leasehold properties in Hawai'i. The term leasehold is and refers to a lessee's right to exclusive use and possession of a tract of DHHL land for a term of years. DHHL leaseholds can only be owned by qualified beneficiaries. Consequently, the market for DHHL leaseholds is limited by statute.

This unique limitation affects the availability of private and federally-insured financing for DHHL leaseholds and how DHHL property can be appraised for a lenders' underwriting. For example, HUD, which implements the FHA-insured Section 247 mortgage program, considers the market for DHHL leaseholds as a closed market. Because the leasehold cannot be sold on the open market, it has no comparable value. It therefore underwrites FHA-insured mortgages only on the replacement cost of the leasehold improvements, ascribing no value to the leasehold. Requiring appraisals of DHHL leaseholds like other leaseholds may put private lenders and federal agencies at odd with the requirements of the HHCA and their underwriting requirements.

Requiring the appraisal of the leasehold like other leasehold properties in Hawai'i may also lead to windfalls for some and severe financial burdens to successors of Hawaiian homes leases. For example, under Section 209, when a lessee dies without a designated or qualified successor, the leasehold improvements are appraised, any existing debts deducted, and the balance, known as "net proceeds" must be paid to a qualified recipient. Currently, the qualified recipient receives the equity in the leasehold improvements, which the lessee financed and paid for. Requiring the appraisal of and ascribing value to the leasehold on a 99-year lease, would inflate a qualified recipients net proceeds with "equity" in DHHL's land, which the lessee had not financed and only paid nominal consideration for (i.e., \$1 per year). The problem is compounded because the department is also required to treat the payment of "net proceeds" as an advance, which the successor or ultimate transferee of the lease must pay back.

Section 3 of the bill would amend section 210 of the HHCA to prohibit lease cancellation based solely on a loan delinquency or default, unless all loan servicing procedures identified in the loan servicing manual have been exhausted. The HHC has asked 33 lessees to leave their homesteads over the last five years which is less than 1 percent of the total number of mortgages on the homelands. A 2013 audit report also criticized the HHC for failure to "collect delinquencies or cancel accompanying leases," stating that it runs counter to the trustee duty of impartiality by elevating an individual delinquent lessee's interest above other beneficiaries. If DHHL staff does not find success with curing a lessee's inability to pay a mortgage, for a myriad of reasons, the case is then referred to the HHC, which has an extensive lease cancellation process. The process includes multiple and ongoing hearings with the Commission on the lessee's island to prevent travel costs, loan modification options, and additional financial counseling. A lease may only be cancelled by a quorum of five commissioners and a majority vote. Once a lease is cancelled, a lessee can even seek reconsideration or appeal under HRS Chapter 91.

Section 4 of the measure would amend section 216 of the HHCA permitting DHHL to authorize second position loans on homestead leases by approved lenders and requiring DHHL to develop and implement a loan servicing manual, subject to commission approval, to standardize loan loss mitigation policies, procedures, and methods. DHHL already has over 4700 loans totaling over \$600 million. Authorizing second position loans could require additional sources of loan financing to existing lessees while nearly three times that number are awaiting a lease and financing for their homestead award. DHHL has written loan servicing guidelines and Department staff work one-on-one with lessees who are experiencing challenges in paying their mortgages. These challenges may include, but are not limited to, job loss, a medical emergency, or a family crisis. In addition, loan officers with DHHL provide payment options and financial counseling paid for by the Department. To ensure the availability

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of adequate assistance, lessees are contacted by postal mail, phone, e-mail, and through in-person visits, if necessary.

Thank you for your consideration of our testimony.

1481 South King St #448
Honolulu, HI 96814

151 North Carolina Ave SE
Washington DC 20020
info@hawaiianhomesteads.org



Robin Puanani Danner, Chairwoman, Kauai
Sybil Lopez, Vice Chairwoman, Molokai
Kekoa Enomoto, Councilwoman, Maui/Lanai
Richard Soo, Councilman, Oahu
Ron Kodani, Councilman, Hawaii Island
Faisha Solomon, Administrator

Date: March 1, 2021

To: Honorable Chair & Members of the Finance Committee

Fr: Robin Puanani Danner, SCHHA Chairwoman

Re: Testimony in Support of HB1124 – Parity on Access to Capital, Loan Mitigations, Asset Valuations

Mahalo to Representative Eli and others in the House of Representatives for introducing HB1124. This legislation makes technical amendments to the Hawaiian Homes Commission Act of 1920 (HHCA) to ensure native Hawaiian families and citizens of Hawaii, are on par with all other citizens through the following:

1. **Parity on Asset Valuations.** Ensures Hawaii families with leasehold land through the HHCA have access to fair market valuations of all vertical assets owned by families on par with all other citizens of the State of Hawaii and the country, including other Native Americans on their trust lands.

HB1124 removes a barrier not stated nor intended in the statute and clarifies for the State's agency and lenders that native Hawaiian families are not to be limited to "replacement cost appraisals" to determine value of any vertical asset owned by families. Replacement cost valuations are typically last resort appraisal methods and used when comparable market sales are not available.

The effect of this clarification is parity to all other citizens including other Native peoples with vertical assets on federally established trust lands, wherein asset valuation, particularly home asset valuations are a foundational financial tool in citizen prosperity. This clarification does not provide any additional benefit to native Hawaiians – it creates common sense parity.

2. **Parity on Access to 2nd Position Equity Capital.** Ensures Hawaii families with leasehold land through the HHCA have access to 2nd equity loan products based on vertical assets owned by families, on par with all other citizens of the State of Hawaii and the country including other Native Americans.

HB1124 removes a barrier not stated nor intended in the statute and clarifies for the State's agency and lenders that families have access to capital through second equity loans or lines of credits to start businesses, to make home renovations, home additions, farm or ranch business expansions, send kids to college and other common practices by fellow citizens in accessing short term equity financial products.

The effect of this clarification is parity to all other citizens, wherein access to capital from owned equity in an owned asset is available to native Hawaiian families, a foundational financial tool in citizen prosperity. This clarification does not provide any additional benefit to native Hawaiians – it creates common sense parity.

Moreover, the effect addresses the hundreds of millions of dollars in trapped equity, facilitating the flow of conventional financial institutional capital into every county, directly into the economy, based on conventional loan criteria applied to every other citizen.

3. **Parity on Loan Servicing Best Practices.** Ensures Hawaii families with leasehold land through the HHCA have access to transparent and fully vetted written loan policy manuals, that describe all loan loss mitigations available, along with clear processes to apply for mitigations, on par with other citizens of the State of Hawaii and the country, particularly for citizens with federally guaranteed loans and/or private loans on federally established trust lands.

Founded in 1987, the Sovereign Council of Hawaiian Homestead Associations (SCHHA) is the oldest and largest governing homestead association registered with the Department of Interior, exercising sovereignty on the trust lands established under the Hawaiian Homes Commission Act of 1920.

HB1124 provides common sense law-making to ensure that native Hawaiian citizens of the State, have parity through:

- a. The State Agency charged with administering the federal HHCA land trust since 1959 when Hawaii became a state, to have a transparent and readily accessible loan servicing manual that is publicly vetted and adopted by the State's Hawaiian Homes Commission.
- b. Requires the loan servicing manual to include and describe common and available loan loss mitigations such as opportunities for forbearance, refinancing, assumptions, sale of home assets, prohibitions on foreclosure of active military personnel via federal law, and other best practices, and most importantly, a servicing manual that fully describes the processes a family needs to know to implement them, to ultimately avoid lease cancellation and eviction.
- c. Requires the loan servicing manual to include a dedicated section requiring oversight of conventional lenders filing claims on federally guaranteed loans, to ensure loan loss mitigations required by the federal government have been met by the lender.
- d. Prohibits lease cancellation unless notification is either made in person or by certified mail, and all loan loss mitigations described in the loan servicing manual have been exhausted.

The effect of this clarification is parity to all other citizens, wherein access to financial information to avoid detrimental impacts is readily available to native Hawaiian families, a foundational financial tool in citizen prosperity. This clarification does not provide any additional benefit to native Hawaiians – it creates common sense parity.

Moreover, the effect addresses the reality that access to financial information is a must, to avoid creating unnecessary homelessness of families and their children, to assisting families to retain home and even business assets, based on common, conventional loan loss mitigations provided to every other citizen. These clarifications will also absolutely ensure that native Hawaiian active military are protected and do not fall through the cracks due to a poorly vetted loan policy manual.

Honorable Representatives, “redlining” is a term that describes a community that is systematically denied access to capital or access to financial information. It is a practice that at times in our great country was quite deliberate and even lawful by our federal government, until major governmental reforms and civil rights were enacted. In recent decades, redlining is often a function of unintended bias, or ignorance, which still, results in redlining, still results in a blight on our democracy whether local or national.

SCHHA does not purport that redlining has been directed with intention on native Hawaiians, however, the practices of denying access to capital and financial information on par with all other citizens, certainly exists. HB1124 simply clarifies and lays out common-sense practices that end practices detrimental to native Hawaiian families, and indeed the economic prosperity of our State.

HB1124 has no real cost impact to the State if enacted, however, it will improve in significant ways, the success of the State in administering our Hawaiian Home Land trust, including the flow of conventional capital by financial institutions to thousands of new clients, native Hawaiian families on trust lands, engages contractors, service providers, consumer spending, and HB1124 advances the vital goal of homeownership retention – all of which supports the economic recovery of our State.

About SCHHA. The *Sovereign Council of Hawaiian Homestead Associations* (SCHHA), founded in 1987, is the oldest and largest HHCA Beneficiary Organization, representing the interests of nearly 10,000 native Hawaiian lessees and 28,000 families on the waitlist. SCHHA is governed by a council elected to 4-year terms serving over 42 homestead areas in the Moku-puni of Kauai, Oahu, Molokai, Maui/Lanai and Hawaii Island. SCHHA leaders are experts on the HHCA, federal land trust management, finance, affordable housing, economic development and job creation.

Founded in 1987, the Sovereign Council of Hawaiian Homestead Associations (SCHHA) is the oldest and largest governing homestead association registered with the Department of Interior, exercising sovereignty on the trust lands established under the Hawaiian Homes Commission Act of 1920

HB-1124-HD-1

Submitted on: 3/1/2021 7:26:25 PM

Testimony for FIN on 3/2/2021 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
SYBIL LOPEZ	Kalama'ula Mauka Homestead Association	Support	No

Comments:

On behalf of Kalama'ula Mauka Homestead Association who is an active member of the Sovereign Council of Hawaiian Homestead Associations. We are in **STRONG SUPPORT** of this bill as it will provide parity, parity, and parity! Parity on asset valuation, on second position equity capital, and on loan servicing best practices.

March 1, 2021

REGULAR SESSION OF 2021

COMMITTEE ON FINANCE

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Rep. Ty J.K. Cullen, Vice Chair

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HB 1124 RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

Amends the Hawaiian Homes Commission Act to require appraisals of improvements to identify the replacement cost or the leasehold market value. Grants authority to DHHL, to authorize second position loans on homestead leases by approved lenders. Requires DHHL to develop and implement a loan servicing manual, subject to commission approval, to standardize loan loss mitigation policies, procedures, and methods. Clarifies that DHHL shall not cancel a lease solely based on a loan default or delinquency unless all loan loss mitigation procedures are exhausted pursuant to the loan services manual. Effective 1/1/2050.

Aloha Chair Luke, Vice Chair Cullen, and members of the Committee,

I am Homelani Schaedel, a Hawaiian Homes Commission Act (HHCA) beneficiary, an advocate for the Hawaiian Home Lands Trust, and a loan servicer/quality control auditor with over 30 years of experience in Mortgage Banking, both here and on the mainland.

1. To require appraisals of improvements to identify the replacement cost or the leasehold market value.

Section 208.6 of the HHCA ... “provided the loan secured by a mortgage on the lessee’s leasehold interest **is insured or guaranteed** by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans, or any acceptable private mortgage insurance as approved by the commission”.

It is the **insurer or guarantor;** Federal Housing Administration (FHA), Department of Veterans Affairs (VA), any other federal agency, or a Private Mortgage Insurance (PMI) company who sets underwriting polices including appraisal guidelines for lenders. **Therefore amending the HHCA will not effect this change.** I am strongly opposed to using the HHCA as a vehicle to circumvent federal agencies and private mortgage insurance companies underwriting guidelines.

2. The department shall have the authority to authorize second position loans on homestead leases by approved lenders and United States Treasury-certified community development financial institutions.

Section 208.6 Notwithstanding the provisions of paragraph (5), the lessee, **with the consent and approval of the commission**, may mortgage or pledge the lessee's interest in the tract or improvements thereon...

For clarity, it is the Commission who has the authority to consent to a mortgage; not the Department of Hawaiian Home Lands (DHHL).

Due to the nature of the HHCA, lending options are limited to applicants and lessees because they do not “own” the land, and lenders cannot exercise the “right to foreclose”.

1. Is there documentation that this has been vetted through HUD/FHA/VA to determine if they would authorize these second mortgages and what conditions/requirements they would establish?
2. Is there a study on how many lenders and CDFI's have experience, are knowledgeable, hold and will continue to make unsecured second mortgages on Hawaiian homeland leases?
3. Are these second position loans intended to be secured or unsecured?
4. If secured, how and by whom?
5. What are the benefits to applicants vs. lessees should this bill pass?
6. Is this bill putting the cart before the horse?

Please do not move this bill forward, answers to the above are critical to ensure this is in the best interest of all beneficiaries and will not adversely impact the future of the HHCA.

3. Requires DHHL to develop and implement a loan servicing manual, subject to commission approval, to standardize loan loss mitigation policies, procedures, and methods.

The question should be directly posed to DHHL, whether or not they have a loan servicing manual to address the above. However, instead of using the HHCA to effect this change, **Title 10 Administrative Rules would be the more appropriate vehicle to implement this request.**

4. The loan servicing manual shall contain a section regarding the oversight of lenders that file claims on federally guaranteed or insured loans or other approved lenders where the department has authorized a mortgage, to ascertain compliance with minimum loan loss mitigation procedures.

DHHL cannot have oversight of a lender's loan. A lender may retain servicing of their loans or enter into a Loan Servicing Agreement with a loan servicer to service their loans. DHHL does not step into the picture until FHA assigns the loan to DHHL. DHHL has one (1) year to cancel the lease from date of assignment.

Mahalo for allowing me to voice my mana'o. I sincerely hope you will consider my concerns.