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**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

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TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON WATER & LAND
HEARING ON FEBRUARY 9, 2021 AT 9:15AM VIA VIDEOCONFERENCE

HB 1124 RELATING TO THE HAWAIIAN HOMES COMMISSION ACT

February 9, 2021

Aloha Chair Tarnas, Vice Chair Branco, 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.

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

Date: February 8, 2021

To: Honorable Members of the Water & Land 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.

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.

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, together with two other legislative reform bills (HB1123 and HB1122) have no real cost impact to the State if enacted, however, they will improve in significant ways, the success of the State in administering our Hawaiian Home Land trust, including the leverage of limited State resources with conventional capital markets.

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 Mokupuni 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.

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