CONVENE: 1:31 p.m.

PRESENT: Councilmember Joseph Pontanilla, Chair
Councilmember Danny A. Mateo, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Jo Anne Johnson, Member (arr. at 1:39 p.m. and excused from
2:28 p.m. to 2:43 p.m.)
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael J. Molina, Member
Councilmember Wayne K. Nishiki, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Sol P. Kaho’ohalahala, Member

STAFF: Gayle Revels, Legislative Analyst
Pauline Martins, Substitute Committee Secretary
Lei Kihm, Executive Assistant to Councilmember Medeiros

ADMIN.: Frederick Pablo, Budget Director, Office of the Mayor
Scott Teruya, Acting Administrator, Real Property Tax Division,
Department of Finance
Traci Fujita Villarosa, First Deputy Corporation Counsel, Department of
the Corporation Counsel
Brian Moto, Corporation Counsel, Department of the Corporation
Counsel

OTHERS: Boyd Mossman, Maui Trustee, Office of Hawaiian Affairs
Jim McMahon, Staff Attorney, Office of Hawaiian Affairs
Lani English
Hokuwai English
Keeumoku Kapu
Uilani Kapu
Kai Nishiki
Johanna Kamaunu
Kaniloa Kamaunu
BF-16  REAL PROPERTY TAX EXEMPTION FOR KULEANA LAND  (C.C. No. 09-60)

CHAIR PONTANILLA: ... (gavel) ... The Budget and Finance Committee meeting for August 3, 2009 is now in session. The Chair, I would like to thank the Members that are here this afternoon. I'd like to introduce the Members that are in this Chambers at this time. We do have Member Molina.

COUNCILMEMBER MOLINA: Good afternoon, Chairman.

CHAIR PONTANILLA: Member Baisa.

COUNCILMEMBER BAISA: Good afternoon.

CHAIR PONTANILLA: Member Medeiros.

COUNCILMEMBER MEDEIROS: Aloha.

CHAIR PONTANILLA: Member Nishiki, Member Mateo.

VICE-CHAIR MATEO: Aloha.

CHAIR PONTANILLA: And Member Victorino. Aloha, guys.

COUNCILMEMBER VICTORINO: Good afternoon, Chair.

CHAIR PONTANILLA: Excused at this time are Members Johnson and Kaho`ohalahala. Members, we do have only one item on the agenda this afternoon, BF-16. And this is the real property tax exemption for kuleana land. But before go, we, we dive into that and take public testimony, Chair would like to complete the introduction. Upfront we do have personnel from the Administration. We do have our First Deputy Corporation Counsel, Tracy Fujita Villarosa; our Budget Director, Mr. Fred Pablo; and from the Real Property Tax, the Administrator, Scott Teruya. Supporting the Committee this afternoon, we do have Gayle Revels, as well as Pauline Martins. Members, we do have some people that have signed up for public testimony. But before we go into public testimony, I'd like to remind everyone in this Chamber to, either put your cell phone on the silent mode or if you can turn it off so that we can proceed with our deliberations with no interruptions Chair would really appreciate that. Okay. For those that are
providing testimony, this is the ground rules. The Chair will accept three minutes of your testimony, one minute to conclude. If you can identify yourself and the organization that you also represent. So, first person that signed up for public testimony is Judge Boyd Mossman, Judge.

...BEGIN PUBLIC TESTIMONY...

MR. MOSSMAN: Chairman Pontanilla, and Members of the County Counsel, we have submitted oral, written testimony from myself, the Office of Hawaiian Affairs which I am representing. Again, my name is Boyd Mossman and Trustee Rowena Akana. I am also a Trustee for the Office of Hawaiian Affairs, and I am here to speak on behalf of BF-16, I believe it is, an ordinance amending Chapter 3.48, Maui County Code, pertaining to real property tax exemption for kuleana land. If, if, you have any questions, I’d be happy to answer them about our testimony. Basically kuleana lands probably comprise if, if, that much no more than one percent of all the land in Hawaii, a total of 28,000 acres. Much of that has been sold off already and is no longer in existence as uh, the, the types of lands that we're talking here. And I just wanna make that distinction. One is that the lands we’re talking about are lands that are owned by descendants of the original owners. These are not kuleana lands that have been sold off or, or parceled off or in any way lost from the family. The reason for that is these days with taxes and so forth it’s very difficult for Hawaiians who are lineal descendants of original owners of this kuleana lands, which are only a tiny, tiny parcel or a tiny recognition of, of their involvement in the land, the aina, from 1848. It’s very difficult for them to keep up with their taxes. The other three counties have passed ordinances which support this concept and they have, they’re all a little bit different. We recommend just two changes in the ordinance that is before you, and we have indicated what they are in, in our written comments; but briefly, we don’t think it’s necessary to limit tax exemption on kuleana lands to only Agricultural and Residential. We think whatever, where, wherever the land is whether it be in hotel, or business, or commercial, wherever it is. Because there’s so few involved, that, and the fact, the whole principle that I'm trying to present to you of justifying and, and recognizing these, these families who have held on to this land this long, it's surprising they have it. But wherever it is, we, we suggest that you allow this exemption to take place. The other thing is we are, OHA is not a, an agency that is able to do title searches. We can do genealogy, but we don’t want to be compelled by an ordinance such as this, to be responsible for establishing title in anybody. All we can do is help those families establish their lineal descendancy, and that we can do. And so those were the only two changes that we would recommend--

MS. REVELS: Three minutes.

MR. MOSSMAN: --that you consider. Thank you.
CHAIR PONTANILLA: Thank you, Judge Mossman. Members, do you have any questions for Judge Mossman at this time? Member Molina?

COUNCILMEMBER MOLINA: Thank you, Chair. Good afternoon, Judge, and thank you for your testimony. Just to follow up to clarify your last comments with regards to the genealogy issue. So basically, you want OHA to not be responsible for doing the additional research I guess on some...

MR. MOSSMAN: Well, we don’t want a legal responsibility to establish the legal title. We are not a court. And we are not a law firm that goes out and does research and establishes quiet title et cetera, et cetera. All we are, is an agency has one person, that, that does genealogy work. And she can assist anybody to establish their lineal descendancy from 1848 to today on that particular parcel of land.

COUNCILMEMBER MOLINA: Uh-huh.

MR. MOSSMAN: Now, if they sold it in the meantime, then they wouldn’t even qualify. If they sold it and got it back, they wouldn’t qualify. They need to have established a lineal descendancy --

COUNCILMEMBER MOLINA: Uh-huh.

MR. MOSSMAN: --unbroken chain.

COUNCILMEMBER MOLINA: Uh-huh.

MR. MOSSMAN: And that’s what we can do.

COUNCILMEMBER MOLINA: Okay. So the, the, the families would then have to turn, who would they have to turn to?

MR. MOSSMAN: They’d have to...

COUNCILMEMBER MOLINA: I guess they would have to have their own counsel.

MR. MOSSMAN: They’d have to get a court order. That’s the only safe way to establish title. OHA is not in the, we don’t have the authority and we don’t have the means of establishing title.

COUNCILMEMBER MOLINA: Okay, thank you. Thank you, Chair.

CHAIR PONTANILLA: Thank you. Members, any more questions for Judge Mossman? Member Medeiros?
COUNCILMEMBER MEDEIROS: Mahalo, Chair, and Mahalo, Judge Mossman, for being here. Aloha. Give me a definition of Allodial Titles?

MR. MOSSMAN: Okay. If you’re going to get into legal issues, I’m not gonna get into it because I don’t practice law anymore; but our Legal Counsel—who is also on the, on the sign-in form—is here with me, Councilman Medeiros, and I would prefer if he would answer the, the, the, legal issues for you.

COUNCILMEMBER MEDEIROS: Okay. And we’ll ask our Committee Chair.

MR. MOSSMAN: And then he’s right here. He can, he can answer it.

COUNCILMEMBER MEDEIROS: Yeah, that would, but it’s up to the Committee Chair.

CHAIR PONTANILLA: Yup, at, at, this time, I’ll, I’ll, just receive public testimony --

COUNCILMEMBER MEDEIROS: Right.

CHAIR PONTANILLA: --and when it becomes necessary for further clarification, then I’ll call both you and, as well as Mr. McMahon to the podium to answer those questions.

MR. MOSSMAN: Okay. All right.

COUNCILMEMBER MEDEIROS: Yeah. My second question is, towards the end of your testimony, you referred to possibly even considering this to open it up to all kuleana lands, no matter what kind of zoning it was in.

MR. MOSSMAN: Right.

COUNCILMEMBER MEDEIROS: Does this, kuleana lands, the exempt of real property taxes, require the descendant owner to live on the land?

MR. MOSSMAN: No.

COUNCILMEMBER MEDEIROS: No? So, that would allow them to lease the land to a commercial entity?

MR. MOSSMAN: No.

COUNCILMEMBER MEDEIROS: No?

MR. MOSSMAN: There is a restriction against any commercial use of the property.
COUNCILMEMBER MEDEIROS: Okay. Okay. But they, they do not have to live on the property?

MR. MOSSMAN: This bill does not require that.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Judge. I appreciate it.

CHAIR PONTANILLA: Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair.

CHAIR PONTANILLA: Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I'd like to follow up on that question too. Member Medeiros and I, I think, are on the same track. In your testimony, originally, you said you didn't want us to limit this to agricultural and residential use. And you made some, a very quick reference to maybe even hotel use. Now I'm trying to follow that through.

MR. MOSSMAN: Uh-huh.

COUNCILMEMBER BAISA: If I am a lineal descendant, and I have my kuleana lands, and that land is being used to have a hotel, would I have to be the owner and operator of that hotel? Or could it be somebody else, even though I'm the legal owner of it, and that would be then exempt from taxes?

MR. MOSSMAN: It would not be exempt because it's in commercial use, okay.

COUNCILMEMBER BAISA: So it's, so then we are going to eliminate commercial?

MR. MOSSMAN: No, no, no, no.

COUNCILMEMBER BAISA: I, I, . . .

MR. MOSSMAN: What we're . . .

COUNCILMEMBER BAISA: I'm having trouble following.

MR. MOSSMAN: Yeah. What we're, what the ordinance says right now is Residential and Agricultural zoned.

COUNCILMEMBER BAISA: Right.
MR. MOSSMAN: That’s it.

COUNCILMEMBER BAISA: Right.

MR. MOSSMAN: Now, any other zoning --

COUNCILMEMBER BAISA: Right.

MR. MOSSMAN: --if you have a kuleana parcel which qualifies --

COUNCILMEMBER BAISA: Right.

MR. MOSSMAN: --and it’s not being used for commercial use, would, would, would not be included.

COUNCILMEMBER BAISA: So the commercial use is the, is the, is the exception?

MR. MOSSMAN: That, at least in our mind, that precludes anybody from taking advantage of a bill such as this.

COUNCILMEMBER BAISA: I can see that’s really necessary, because if you had a big hotel and you’re, have a big enterprise, you know, you can be exempt from property tax.

MR. MOSSMAN: Yeah.

COUNCILMEMBER BAISA: Or you could be but, you know, it’s this law we’re trying to deal with. Who are we trying to help with this law?

MR. MOSSMAN: You, you know, it’s a small. It’s a handful of people, but we don’t know. We don’t know how many there are or who they are. We do know--well I don’t know. I, I, walked to my office one day, couple years ago, and I remember my secretary on the telephone. She just hung up, and I said, well who was that? And she said that it was somebody who was calling her to ask if OHA would pay her taxes for her kuleana land. And I said, why? And then she said something--and, and as I understood it was like--she’s in an area that she’s surrounded by all these condos; and the tax on her property is so high she cannot pay it; and if we didn’t help her with something like a $140,000 or something like that, that she would lose her land. And I thought, wow. That seems kind of wrong. In the meantime, all the other counties went and passed their bills, and so this kind of just sticks in my mind. That’s why I’m saying, if it’s hotel zoned; it’s not being used commercially; it’s just a family plot; and then they’re living there or whatever they’re doing; but they’re not making money off of it. Why shouldn’t they get an exemption just as well as a person who lives on the Ag or the Residential?
COUNCILMEMBER BAISA: Thank you for clarifying that. That makes it a lot clearer as to what your intent was. Thank you.

MR. MOSSMAN: Thank you.

CHAIR PONTANILLA: Thank you. Members, any more questions for Mr. Judge Mossman? If not, thank you.

MR. MOSSMAN: All right. Thank you.

CHAIR PONTANILLA: At this time, the Chair would like to recognize the presence of Member Johnson.

COUNCILMEMBER JOHNSON: Aloha.

CHAIR PONTANILLA: Aloha. Next testifier is Lani English.

MS. ENGLISH: Aloha, Chairman and Members of the County Council. I am Lani Hokoana English. To my right, is my moopuna, Hokuala English. Kinda gave her instructions of what would be happening and so she’s being very compliant. And it’s a wonderful thing I think for our youngens to be part of this process. But I am here on behalf of our family. And I’m not sure if I’m gonna get six minutes ‘cause I’m representing two different families but I’m gonna try my best with the three. I’m here on behalf of the Lui Hokoana family, LLC. Also in the audience is my Aunty Joy Bissen. And also, the Hokoana land trust. These two parcels are parcels that have been in our family for five, that I know, that we can trace, generations for the LLC, and seven, that we know, that we can trace, with the land trust. And we are definitely in support of this bill. We, it’s, it’s been very difficult for us to keep our land in our, in, within our family because of the continued escalating land taxes. These two properties are located in the Hamakua district. One is makai, oceanfront. It’s actually the Hokoana family trust. It’s between the Mantokuji Church Cemetery, the Chinese cemetery, and we have our family cemetery. Escalating land taxes, we do not do any commercial business. We do not make any kind of income off that property. We are there. We fought almost ten years to clear title for that property. That was a very expensive venture for our family, but we have clear title of that property. So that’s that one. And then, and I speak of the LLC and the trust, because I, I’m not sure if I should explain that these are the two vehicles that we were advised by attorneys in which we can maintain the title to the property--the cemetery, the land trust. Like I said, we spent years trying to clear that title. And in, in our effort to prevent that from happening to the other property, which my aunty, my two auntsies--they’re both retired--live on that property. We were advised to put it in an LLC. So those properties are held by a trust fund, a trust, no more funds.

MS. REVELS: Three minutes.
MS. ENGLISH: It’s just a trust and an LLC. And they are primarily vehicles to hold title to the property. And, it’s been very difficult. Land taxes continue to escalate. My aunty used the words “depressed” when she saw her last tax bill. And it is very depressing when you’re on a fixed income. So we are in support and we appreciate your attention to this matter.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier? Member Johnson?

COUNCILMEMBER JOHNSON: Thank you very much for coming to testify. You know, if you don’t wanna say—I totally understand and respect your confidence—but about what are the taxes that you’re paying right now?

MS. ENGLISH: I can tell you that the, they’re pretty much the same on both of them. They’re 5,000—well, the one that my aunty folks live on is $5,305; aAnd the other one is pretty much the same. I know that because I’m the person who gotta figure out how that happens, but they’re pretty much comparable.

COUNCILMEMBER JOHNSON: Okay. and, and, what is the zoning currently?

MS. ENGLISH: Both are R3 Residential.

COUNCILMEMBER JOHNSON: Okay. Residential, so they would be qualified?

MS. ENGLISH: Yes.

COUNCILMEMBER JOHNSON: Or, you know, I guess what we have to do is we have to define. Because, right now I’m not, you know, I, as far as limited liability corporation, you know or some kind of a trust, I think we have to make certain that as long as you, you know, someone from the family is a lineal descendant, as long as you’re on that trust.

MS. ENGLISH: All right.

COUNCILMEMBER JOHNSON: But there should be some kind of verbiage in there that would at least allow that. But I really appreciate it, and I know it’s not easy.

MS. ENGLISH: Yes, thank you.

COUNCILMEMBER JOHNSON: Thank you.

CHAIR PONTANILLA: Thank you. Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, and aloha.
MS. ENGLISH: Aloha.

COUNCILMEMBER MEDEIROS: Thank you for being here and for your testimony. Can you tell me about how much property this involves in acres?

MS. ENGLISH: The one by Mantokuji is about two point something, it's not quite three acres.

COUNCILMEMBER MEDEIROS: Okay.

MS. ENGLISH: And it goes, it's a flag lot. So it goes from Hana Highway down to the ocean.

COUNCILMEMBER MEDEIROS: Okay.

MS. ENGLISH: And on that property there's a dwelling. We have a relative living there. He has lineage. He shares the same lineage and our family cemetery. On the one on 18 Ale Drive, --

MS. BISSEN: (NOTE: Speaking from the gallery.) Kaulua.

MS. ENGLISH: Oh, Kaulua. It's about 10,000 square feet.

MS. BISSEN: (NOTE: Speaking from the gallery.) Three-fourth acres.

MS. ENGLISH: Three-fourth acres.

COUNCILMEMBER MEDEIROS: Okay. And, your family, your ohana, has established that lineage to the original owners from 1848?

MS. ENGLISH: Yes.

COUNCILMEMBER MEDEIROS: Okay. Thank you for your testimony. Mahalo, Mr. Chairman.

CHAIR PONTANILLA: Thank you. Members, any more questions for the testifier? I, I get one fast one. So none of the set cemetery plots are located on your property?

MS. ENGLISH: They are.

COUNCILMEMBER MEDEIROS: Yeah.

CHAIR PONTANILLA: They are?

COUNCILMEMBER MEDEIROS: Family.
MS. ENGLISH: Yes. And that’s our family.

CHAIR PONTANILLA: Just your family plots?

MS. ENGLISH: Correct.

CHAIR PONTANILLA: Okay, thank you. Members, any more questions for the testifier? Seeing none, thank you very much.

MS. ENGLISH: Mahalo.

CHAIR PONTANILLA: The next testifier is Keeaumoku Kapu, followed by Uilani Kapu.

MR. KAPU: Good morning, ladies and gentleman of the Council. My name is Keeaumoku Kapu, from Lahaina. I too support the bill, but there’s a lot of questions. And I hope you consider these little questions before, I guess, you deal with the issue of the creation of this. I just sorta scribbled some things down pertaining to the educating people based upon what kuleana lands basically is. I think look, looking at the room right now on how much people is present, I no think anybody was, or hardly anybody was informed of this meeting probably taking place right now. I think it’s a good thing because a lot of families that I know, even in Oahu right now, and I’m glad that Oahu went through this extreme process by creating exemptions for kuleana there. A family that we are very closely tied to was forced to subdivide portions of their property because they couldn’t afford the escalating taxes that were encumbered upon them. I too, myself, am a kuleana landowner for the past 12 years. I’m still dealing with, dealing with quiet title, adverse possession claims upon my lands, lands that were encumbered by mill companies. When you have say--I give you one perfect example--20 land commission awards within one area. If the adjoining properties are owned by a mill company that’s when the tax map key came to play. Then once the tax map key is applied to the map, it also includes these land commission awards which forces them to be landlocked. Those are the kind of issues we face. I sat on the Cultural Resources Commission for the past five years. I no longer sit on the Commission right now. And I review applications that are 50 years of historic properties criteria to see whether or not these, you know, there’s a process. If you wanna remodel or, or, or demo, demolition permits and these kinds of things, sort of goes into a different spin. When I look at kuleana lands, and I look at these 50 year historic properties, there’s a big difference. On the kuleana lands, I think it’s even more historic, that these lands should be also given the dignity because of the families that have been living in these, these, properties for many, many generations, and, you know, the fact that they’ve been subjected by laws of a new order, without consent, without agreement. There’s a lot of clouded issues that we need to understand when we look at the creation of the bill on exemptions. Commercial use is another one for me. I mean if families are living in an area that was in taro cultivation and,
and something just to provide money to, to support their families by those monies being raised
to put their families in colleges and things like that what would happen --

MS. REVELS: Three minutes.

MR. KAPU: --you know, when you talking about commercial? Well the only thing I can say is I hope
the education of this issue really goes out there so people really understand what kuleana
landowners are. And, and hopefully that these kuleana landowners won’t get subjected by new
changes within legislation. And I hope that the County Council can really narrow down
something that would put a lot of uneasiness from the kuleanas at rest finally. Thank you.

CHAIR PONTANILLA: Thank you. Members, any other questions for Mr. Kapu? Seeing none,
thank you again for your testimony. The next testifier is Uilani Kapu.

MS. KAPU: Good afternoon, Council. Thank you for bringing this up. This is a hard one for us. We
just got back from Canada Saturday. My son broke this out in the newspaper and here’s
something for you for Monday. And I was like, oh my god, okay, this is how we’re gonna start
our week off? Great. It’s wonderful. But, kuleana lands. We have so much families. I mean I
wish I had time to call them all. They’d be here ‘cause they are struggling. I mean you have
Kupuna that still live on their lands, and are paying high taxes. They live within commercial
land areas. They didn’t ask to live there. They didn’t ask for people around them to rezone, but
they’re suffering with all these taxes. I’m in favor of this bill. And, like I said, I wish I had the
time to call people. Because these are the Kupunas that have been struggling and have been
asking their families that have ties to the properties to help pay their land taxes. A lot of our
kuleana lands are RPs, or Royal Patents, which are broken down to land commission awards
and now our tax map key numbers. We didn’t ask to be divided into that. But when everyone
came here, our laws changed before us.

Our
taxes went up. A lot of us that live on lands had
three parcels. We didn’t have to pay all three because one was used as a combination, where it
would pay for our other two properties, back then. A lot of them have had to sell parcels,
portions of it just to keep their lands. So I am deeply in favor of this ‘cause I have heard the
cries of Kupuna that had to sell portions of their lands just to have something to pass on to their
families. So mahalo, and I hope you folks pass this. Aloha.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier? Seeing none, thank
you again. The last testifier that signed up prior to the meeting is Kai Nishiki. And if there are
anyone out there that would like to provide public testimony, if you could come up and sign up.

MS. NISHIKI: Good afternoon. I’m here to testify in favor of the real property tax exemption for
kuleana lands. I, I think that this bill would support farmers and allow families the opportunity
to continue to own their own land without the burden of a large tax payment. I also believe that
it should be taken a little further and that we should be making an exemption for all Hawaiians
who own land, because a lot of them have lost access to their original family lands. So
hopefully, this is a beginning for something that can be done for all of the Hawaiians who are fortunate enough to own land now but have, have lost that access that they originally had. Thank you.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier at this time? Seeing none, thank you very much.

MS. NISHIKI: Thank you.

CHAIR PONTANILLA: Okay, the last person to testify that signed up after everyone else had signed up prior to the meeting is Johanna Kamaunu.

MS. KAMAUNU: Yes. *(NOTE: Speaking from the gallery)* Aloha, I'm Johanna Kamaunu. I'm from Waihee. And I have to admit that when I read the paper the other day and saw this notice on this bill coming forward, I was really interested in it. I guess what I need to do is explain a little bit of how this might be affecting us. Yes, we do have kuleana lands. Yes, we are able to trace our lands back to a time before the Mahele. So, we have concerns because not all of the lands came down to us, so we have some lands in adverse possessions. I would believe that over the years, the family has fallen out of taro farming and had leased the lands as the kupuna got older and their children moved away. However, we're back there, and we'd like to continue this. But we are running into issues with economics today. So that meeting the property tax bill is difficult, to say the least. We have all this wonderful land, but barely enough time to work it 'cause we have to work full time jobs. And now with the economy going south, and State workers faced with losing a day, or couple days every month. You know, I don't know what that's gonna be like. But my husband has been in a position more than once, where their jobs were put on hold for years. In other words, they had contracts that was supposed to be completed in a timely manner that went on for years. So we never got, you know what I'm saying? Basically, it comes down to, there's been a lot of stuff happening to us, and unfortunately the land gets to be a problem. What I'm more concerned at today is that I would hope that you would take into consideration the definitions of these words that you use. Because I'm finding more and more today that the words are starting to change. The meanings are starting to change. Prime example is Native Hawaiians. Before you could just say Hawaiians, now you have to say Native Hawaiians. And I think, I think, there's even more clarification to that. I hear about people using kuleana. And I know a landowner who's claiming kuleana, but he doesn't have it. But he thinks because he had land that belonged to a kuleana owner that he carries kuleana. So a lot of things need to be clarified. I would support this. I think it's a good idea. I think it's just the beginning though. Thank you.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier at this time? Seeing none, thank you very much. Okay. Ms. Kamaunu was the last person to sign up for public testimony. Is there anyone in the Chamber that hasn't signed up that prior to the meeting or after the first group of testifiers that signed up earlier testified, please come forward and
provide your testimony at this time. And if you can provide us your name, organization that you represent, Chair would appreciate that. After you’re done testifying, please sign up with ...(end of tape, start 1B at 2:02 p.m.)...the Secretary up front.

MR. KAMAUNU: Aloha Council. My name is Kaniloa Kamaunu. I come from Waihee valley. As I look at what’s proposed here, I’m not of the surety of everything that’s, that’s going to happen. I can see, right now I’m just kinda waiting and seeing what the possibilities are. At this time, what I’d like to talk about of course, you know, you talked—as my wife was saying earlier, kuleana. You know, kuleana was a term that they gave to the land when it was changed from the monarchy over to their people, their chiefs, when they were allowed to take parcels. So in actuality, the ones who have the authority, to, to, question or do things with that, would be the kuleana owners. The other thing that has to be realized too, as I look at this, is the jurisdiction of certain things. We have vested rights as kuleana owners. Through the deeds from, from Kauikeouli or Kamehameha III, when he deeded his, his lands to his chiefs and his people he vested their right to their properties. So in actuality, the ones who have the authority, to, to, question or do things with that, would be the kuleana owners. They would have to be consulted because of their ownership and because of the authority that is given to them directly from their lineage. That comes into question, comes into jurisdiction. So this kinds of actions you looking at taking has to be considered by what our rights is as vested, as vested people. Those things were never given up. And if we look at the, the, the State versus, or the ceded land issues as they would refer to. The U.S. Supreme Court had already ruled that even though, 103-150 is in question, that they still, at the end, say that they have no jurisdiction over Hawaiian laws. So they make a statement right there stating that they recognize that the kanawai or the Hawaiian laws are still in effect so that those things have to be looked at. We also get the Hawaii Supreme Court’s ruling that until settlements are made or mitigation is made upon the, the lands that are in question, the land will remain owned by the Kanaka. And that’s who the estate is entrusted to. They’re entrusted to care for the lands of the Kanaka Maoli. So a lot of the things you looking at, you talking about, you know, and I’ve done, I’m still doing study on a lot of the terminologies. Interesting to find out how things changed and why they change according to the status of the lands.

MS. REVELS: Three minutes.

MR. KAMAUNU: So, okay. So we have to kind of, you know, I have to see where this, where this leads first. But as a kuleana owner, I would like to be consulted due to my vested rights.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier at this time? Seeing none, thank you very much. Chair, one, one last time, is there anybody out there that wanna provide public testimony? If you could come up forward. Seeing none, Members, if there is no objections the Chair would like to close public testimony.

COUNCIL MEMBERS: No objections.
COUNCIL MEMBERS VOICED NO OBJECTIONS. (DM, JJ, BM, WN, JP, MV, MM, GB)

CHAIR PONTANILLA: Thank you.

... END OF PUBLIC TESTIMONY ...

CHAIR PONTANILLA: Okay, Members, we do have that one item this, this afternoon, BF-16, real property tax exemption for kuleana lands. The purpose of the proposed bill is to provide real property tax exemption for those portions of real property zoned Residential or Agricultural and designated as kuleana land where the portion of property is not used for commercial purposes. Some time back late last year, Mr. Mossman gave me a visit in regards to helping the Hawaiian community, especially those that are on kuleana land. So what he presented me was a draft bill from OHA in regards to the other bills that were introduced on Kauai, Big Island, as well City and County of Honolulu. I just wanna thank Mr. Mossman for bringing that recommendation to the Budget and Finance Committee. Members, you all received from the Office of Hawaiian Affairs, a copy that was sent to us for public testimony. And I’d just like to read the background in regards to this particular item. Taking up this item will help the Hawaiian community. I, I, just like to read, and I quote, “To Hawaiian families, kuleana lands represent the lasting legacy of their monarchy and their ohana. For over 100 years, the Hawaiian people have seen the loss of their traditional family kuleana, to the point that there are very few Hawaiian families living on kuleana lands. It is essential to give those remaining families the best opportunity to retain, in their ohana, the lands that were granted to their ancestors by their king. In most recent times, with rapid escalation of land values due to investors, speculators, and wealthy purchasers of Hawaii lands, kuleana owners, as well as our working class residents, cannot afford the real property taxes assessed against their lands; and therefore, many have had to sell their kuleana lands or allow tax foreclosure sales.” Members, that is a brief background that was provided by OHA in their testimony. And again, you know, this Chairman is taking up this item, you know, based on the conversation that I had with former Judge Boyd Mossman in trying to help those Hawaiian families keep their land. So at this time, the Chairman would like to call on Mr. Teruya for some comments.

MR. TERUYA: Good afternoon, Chair and Members of the Committee. Director Young could not be here today. He had a prior arrangement. I’m here to basically state that Administration’s been working with Chair over the past year and is jointly supportive of the measure from the real property tax standpoint. However, there are some concerns about the details as to how to administer the program. Kuleana lands, as you know, may or may not have a parcel number. It also may be part of a parcel. It also may be part of several parcels. So I’m here today to ask for the intent of the bill, whether it is that portions of the kuleanas pay minimum tax? Or when it’s part of a parcel, it becomes difficult unless we either give it a temporary key to assign it to its own, to receive its own tax bill of minimum tax. So, I’m just here to get the intent of the bill.
and understand what the Council so desires. In respects to Judge Mossman’s amendment to remove the category of just Residential, Agricultural, I think the intent is, I think we would be supportive of, of that intent. The question will be, as far as commercial, what is the definition or the intent of the Corp. Counsel to determine what is commercial purposes. Because as you know, on Page 3, in D2, it talks about commercial purposes, but it doesn’t include whether or not--I just wanna be clear, whether or not renting of the premises would be allowed. The other part is, it, it mentions that as long as there’s no transient vacation rental or bed and breakfast operation. Now if we amend to allow in hotel districts, you do not need a permit to operate a transient vacation rental or a B&B, so I’m just trying to be clear as to what is the intent that is being here to be passed today. Thank you.

CHAIR PONTANILLA: Thank you. Members, any questions for the Administration at this time? Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair. I have a question for Corp. Counsel first--

CHAIR PONTANILLA: Sure.

COUNCILMEMBER MEDEIROS: --if you wanna allow that. Thank you. Corp. Counsel, so can you define for me Allodial Lands?

MS. VILLAROSA: I looked it up. It’s not a term that is used really anymore, so I had to look this up in the Black’s law dictionary, and basically it means held in absolute ownership.

COUNCILMEMBER MEDEIROS: And this being incorporated in the bill, is that the--maybe for you, Mr. Chairman--is that the recommendation of OHA, that the term Allodial be incorporated in the bill?

CHAIR PONTANILLA: We can have Mr. Mossman or Mr. McMahon come forward.

MS. VILLAROSA: Mr. Chair?

CHAIR PONTANILLA: I believe so.

MS. VILLAROSA: Mr. Chair, I can.

CHAIR PONTANILLA: Corporation Counsel?

MS. VILLAROSA: The, the term, let me just check and see. The term, are you looking at it under Item D3 for the definition of kuleana land? Is that…

COUNCILMEMBER MEDEIROS: D3, on what page?
MS. VILLAROSA: Page 3.

COUNCILMEMBER VICTORINO: Yeah.

COUNCILMEMBER MEDEIROS: Uh-huh.

MS. VILLAROSA: Okay. So that, what that’s referring to is you can see the quotes, an act confirming certain resolutions. So basically, that’s the name of this old law. So it’s, the reason why it’s being referenced here, it’s just the title of that old law.

COUNCILMEMBER MEDEIROS: It, it’s a title or, or it’s just how the description of those lands were described then?

MS. VILLAROSA: Right. That’s both, it’s both. It’s the title and the reason why we’re referring to the title is because that’s how we’re...

COUNCILMEMBER MEDEIROS: They described it.

MS. VILLAROSA: That’s how we’re, that’s how we’re defining what kuleana land is.

COUNCILMEMBER MEDEIROS: Okay. And then, Mr. Chairman, I, I, think it’s important for us to understand better as Mr. Kamaunu had testified about the vested rights that come with the kuleana lands. Because if we don’t incorporate that in the bill, then it may have a different kind of impact if not a detrimental impact on the kuleana landowners. So, Corp. Counsel, once again, is it, the vested rights described by Mr. Kamaunu should that be further described or at least incorporated in the bill? Because I, I, I don’t see anything, unless I missed it, about vested rights that come along with kuleana lands.

MS. VILLAROSA: I’m not sure. I, I, know that we do have provisions in the proposed bill that talk about qualifying to receive the real property tax exemption. And, and part of that is, I’m, I’m not sure if this is what your referring to; but they have to show that they are a lineal descendant in order to qualify.

COUNCILMEMBER MEDEIROS: My impression from Mr. Kamaunu’s testimony, even though he didn’t have to expand on it, was that possibly it’s more than just the vested ownership, ancestral lineage connected to it, that there may be some other vested rights in, in receiving kuleana lands. And so I, I’m just thinking you know if, Mr. Chairman, that we should investigate that more if that’s really important in incorporating in the bill or not. And, and I’m not sure who the source of information would be on that.
CHAIR PONTANILLA: Maybe if I can have Mr. McMahon and Mr. Mossman come up here because I, I, I don’t think, or—I better not say I don’t think—in regards to vested rights have been brought up by the City and County of Honolulu, as well as the County of Kauai as well as, and the County of Hawaii. Very interesting question. Mr. Mossman.

MR. MOSSMAN: Yeah, Mr. Chair, Mr. McMahon has worked on all four bills for all the counties for the whole State of Hawaii and he’s very familiar with kuleana rights and, and interest and so forth. And I might just add that this particular bill focuses on a fiscal financial matter that is tax exemptions. We, it doesn’t go any further.

CHAIR PONTANILLA: Yeah.

MR. MOSSMAN: But Mr. McMahon can explain.

MR. McMAHON: Yes, I’m Jim McMahon, I’m the Staff Attorney at OHA. First of all, it is, it is correct that the issue of vested rights has not come up in the other counties so I really haven’t had a chance to look at it. But I think what the testifier may have been referring to is deed provisions that in some way govern the use of the land or restrictions on the land. And our effort at OHA has been to keep this bill as simple as possible and simply say if the owner is a lineal descendant and if the parcel was originally a kuleana parcel then it is entitled to the exemption. But as far as vested rights, that’s kind of a complicated area that I haven’t had a chance to look at.

CHAIR PONTANILLA: Thank you. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And, and thank you for explaining as far as, you know, what your knowledge is of it. I, I appreciate that. I, I just have a question on commercial use. If the other Members have questions for the men up here they can have them answer that.

CHAIR PONTANILLA: Okay. Members, do you have any questions for either Mr. McMahon or Mr. Mossman, at this time? Member Molina?

COUNCILMEMBER MOLINA: Thank you very much, Mr. Chairman. Good afternoon, Mr. McMahon. Today we heard in some of the testimony we got, the amount of taxation some families are suffering from. And, you know, we’ve all heard the horror stories. I, I was just wondering the nexus for this bill. Basically, you’re looking at providing an exemption for all Hawaiians whether well-to-do and not, those not, who don’t have the financial resources. Was there any consideration of maybe looking at giving a higher priority to those who really need the help versus those who have the resources?
MR. McMAHON: No, that was not a consideration. We just, as I said, we wanted to keep it simple. And I think the key issue is the land—the nature of the land; the sacredness of the land; the original purpose of kuleana lands—and the fact that over a 100 or 150 years, the, the spirit and life of those lands is being lost. That was the consideration. It wasn’t a matter of the income of the owner. It was the land itself. Now, an impetus clearly was that people of limited means are the ones that are having the biggest problem.

COUNCILMEMBER MOLINA: Uh-huh. All right. Thank you.

MR. McMAHON: Yeah.

COUNCILMEMBER MOLINA: Thank you, Chair.

CHAIR PONTANILLA: Thank you.

MS. KAMAUNU: Excuse me, the gallery can’t hear him.

CHAIR PONTANILLA: I’m sorry. Mr. McMahon, if you can talk into the mic the next time.

MR. McMAHON: Sure. My apologies.

CHAIR PONTANILLA: Member Johnson.

MR. McMAHON: Yeah.

COUNCILMEMBER JOHNSON: Yes, I, I, just wanted to find out because the, and there were a couple different points that were made by testifiers and of course our tax department is also inquiring. In the other jurisdictions where these ordinances were enacted, do they pay a minimum tax or did they pay no tax?

MR. McMAHON: They pay whatever the minimum tax is for that jurisdiction. So for example, in the City, in the City and County of Honolulu, it would be $100. Can you hear? (NOTE: He’s inquiring with the gallery.) I’m sorry.

COUNCILMEMBER JOHNSON: So, so what you’re saying is that...now we just raised--I, I’m not sure if you’re aware—that we just raised our minimum tax to $150. And yesterday, I was visiting with someone who has ten kuleana parcels, so his tax bill would still, you know, I mean, based on his limited income. Have you had experience with people owning, ‘cause there’s many little parcels sometimes that are within a family. Do they have any kind of approach that they use when there are many, many parcels?
BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

August 3, 2009

MR. McMAHON: No. We, we have had experience with multiple, with ownership of several different parcels, but we would’ve, we would view the law as requiring that they pay the minimum tax on each parcel. That’s an interesting issue that has not been presented to us.

COUNCILMEMBER JOHNSON: Yeah. ‘Cause I, I mean, I’m looking at, you know, if an exemption exists, then why pay a minimum tax if you’re exempt from paying it? That’s my, you know, own, and I’ll try and get that from the tax department.

MR. McMAHON: I, I think we were, I think we were modeling it a little bit on, for example, nonprofits. They’re, they’re essentially exempt, but they’re not totally exempt. They pay a minimum tax. I think that was the model we were looking at.

COUNCILMEMBER JOHNSON: Okay. All right. Thank you very much.

CHAIR PONTANILLA: Thank you. Members, any more questions for Mr. Mossman or Mr. McMahon at this time?

MR. MOSSMAN: Mr. Chair, I just wanted to add one more thing to Councilmember Johnson’s comment, question. I, I asked that question when we wrote the bill. But I was told that all the other counties have just done a minimum. I wanted to completely exempt them. But we didn’t want to put a pressure on, on, on the County of Maui because all the others have, have already laid out their, their positions. So we figured, well, we’ll get what we can get right now. So that’s, that’s where it is.

COUNCILMEMBER JOHNSON: If I might?

MR. MOSSMAN: Member Johnson.

COUNCILMEMBER JOHNSON: Yes, Judge Mossman. With regard to the actual numbers that we’re speaking of. Would you have any information in the County of Maui as to the actual numbers that we would be dealing with?

MR. MOSSMAN: Not the County of Maui, but I think Mr. McMahon knows about the, about the results of the other counties.

COUNCILMEMBER JOHNSON: Yeah. Any information you could give us as to what anticipated drop in revenues might be or, you know, what we’re talking about.

MR. MOSSMAN: I was asked that by, by the Administration many times. And we, we actually, frankly we don’t have any idea. We don’t have access to the tax records. We don’t know. I’m happy to hear that there are people here today. I was surprised that there’s this many. But like I
said, when I first began my testimony if you take it from 1850, 1 percent was kuleana. And so you know it's a lot less today, and that's Statewide.

COUNCILMEMBER JOHNSON: Okay, thank you. And, Mr. Chair, if I might hear if he has any idea, Mr. McMahon?

CHAIR PONTANILLA: Mr. McMahon.

MR. McMAHON: Yes, just to give you a couple of examples. To date, in, in the City and County of Honolulu, there have been 22 applicants who have been granted a kuleana tax exemption. We don't have the amount of the exemption. But I can tell you that usually the type, the amounts that we usually see in terms of tax bills range from maybe 1,000 or 2,000 to about 10,000. So that might be able to give you a little bit of an idea of what might occur in Maui. In the County of Hawaii, seven exemptions have been granted.

COUNCILMEMBER JOHNSON: That, that really helps because then --

MR. McMAHON: Yeah.

COUNCILMEMBER JOHNSON: --we're dealing with a limited number --

MR. McMAHON: It's very limited.

COUNCILMEMBER JOHNSON: --of people who qualify.

MR. McMAHON: It's very limited. Yes.

COUNCILMEMBER JOHNSON: All right. Thank you very much.

CHAIR PONTANILLA: Thank you. Member Nishiki followed by Member Medeiros.

COUNCILMEMBER NISHIKI: Question, maybe the amount is low because we don't have a process of locating these kuleana families and notifying them. Did you ever think about that as a reason? Right now --

MR. McMAHON: Yeah.

COUNCILMEMBER NISHIKI: --if I were to ask you, how do you suggest that we can maximize and get and help all kuleana families, what would your answer be? Is there any tracking, any records?
MR. McMAHON: The records that we have, and these are maintained by the Department of Land and Natural Resources, can tell us where the original kuleana parcels were located on all of the islands. What we, what we do not have access to is whether the current owner of each of those parcels would be entitled to the exemption. So it’s a difficult public relations or communications task because we don’t really know, for example, who could we send a letter to, or who could the city send a letter to, or the County? I don’t have any suggestions off the top of my head for how best to maximize the use of this exemption. Certainly, OHA informs people at every opportunity that this, these laws have been enacted. We do our best, but we don’t send letters out to all homeowners or anything like that.

COUNCILMEMBER NISHIKI: I, I, I guess the, the question is if we’re going to pass something out, and we wanna maximize and help them, then there should at least be an idea floating out there that on how to contact these people; otherwise, it’s not sincere. Maybe Mr. Judge Mossman has an idea.

MR. McMAHON: I, I had neglected to mention that we do have an announcement frequently in Ka Wai Ola—which is the OHA publication that goes out to I think 60 or at least 60 or 70,000 subscribers, maybe more—which has a little notice that we’re looking for people who have kuleana land. It, it doesn’t specifically say, it, it doesn’t, it, it doesn’t specifically say, this is the law that’s been passed on the Big Island; this is the law that’s been passed in Honolulu; but it, it, it solicits information from people who may be interested and who may wanna learn more. So there is, Ka Wai Ola is a tool that is being used to some extent already to get the word out.

COUNCILMEMBER NISHIKI: In, in your expertise of looking at other counties--the Big Island, Kauai, Oahu, that have passed this law--do you know of any counties that are making an aggressive move to notify and help people?

MR. McMAHON: No.

COUNCILMEMBER NISHIKI: The other area that, Mr. Chairman, I don’t know if, or what we’re doing with it. On the page 2348.425, it talks about disqualification report and penalty. Is it my understanding that if you have kuleana land, and you, I think one member that testified today said that they lease their land out. I think it’s maybe the taro lois. They may lease their land out. Does this mean that they don’t get to get the benefit?

MR. McMAHON: I think the, the benefit is going to go to anybody who your County tax code includes within the definition of “owner”. And, I, maybe some of the County people could help with that; but in other words, this bill says the “owner”, you know, is entitled. And however you define owner would be what would apply.
COUNCILMEMBER NISHIKI: So, in the other counties, was there a problem? Or did they have anything like this in the disqualification area?

MR. McMAHON: Oh yeah. You know, if you make, if you make a false report or do not keep the County up-to-date on your, on your status. For example, if something changes that would lead the County to withdraw the exemption and you don’t keep them informed, there can be penalties. There’s a pretty standard provision in County tax ordinances to make sure that they have the information they need to make a correct decision.

COUNCILMEMBER NISHIKI: Okay. So no counties allowed an exemption to be taken if they were leasing the property?

MR. McMAHON: Well, again, I think it’s gonna depend on what their definition of ownership is, and, I, I don’t think I can answer for each county at the moment. But I can get you that information if you --

COUNCILMEMBER NISHIKI: Thank you.

CHAIR PONTANILLA: Done?

COUNCILMEMBER NISHIKI: Yeah.

CHAIR PONTANILLA: Thank you.

COUNCILMEMBER NISHIKI: I, I, yeah, for them. I got a question with property tax ...(inaudible)...

CHAIR PONTANILLA: Okay. Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, and some of my questions were asked by other Members. But in the low numbers of qualified applications, in the counties that now have the ordinance, do you think that part of it and part of the cause is in being unaware of the process and, or is it also has been unable to prove ancestral lineage to qualify?

MR. McMAHON: I think it’s both. I think we, we know that some people may not be aware of the exemption, or they may be overwhelmed by the process of applying for it. But we also know that people come to us all the time, who think they’re entitled to the exemption, or they think they might be entitled to the exemption, but when we do the genealogy work, it turns out, “no they’re not”. So I think the reason that more people are not getting the exemption is probably from lack of knowledge; probably, maybe dealing with the bureaucracy; apparently because they were under a misunderstanding that they might be entitled to the exemption.
COUNCILMEMBER MEDEIROS: Okay. And, and being that, my understanding is that you were part of crafting the bills for City and County of Honolulu and for County of Hawaii. Is that correct?

MR. McMAHON: Actually, I was part of the process for, for developing the bills for all three.

COUNCILMEMBER MEDEIROS: All three counties.

MR. McMAHON: Trustee Rowena Akana was the one that got the whole effort going. And then we started with the State, and then of course because real property tax is a county matter, we started branching out to the counties. And we assisted, in some cases our original proposals were changed quite a bit.

COUNCILMEMBER MEDEIROS: Okay

MR. McMAHON: But we’re part of the process.

COUNCILMEMBER MEDEIROS: So, so which county was the first to establish this ordinance, and for how many years have they been in that ordinance?

MR. McMAHON: Okay. The first County was the County of Honolulu, City and County of Honolulu.

COUNCILMEMBER MEDEIROS: How many, and what, how many years?

MR. McMAHON: Yeah. The bill was approved by Mayor Hannemann in April of 2007.

COUNCILMEMBER MEDEIROS: Okay.

MR. McMAHON: Okay.

COUNCILMEMBER MEDEIROS: So it’s, it’s been in the books for just about two years. And so, in trying to craft one for Maui County and in suggesting your recommendations to our Chair to consider, how much of it did you go back and track the counties already established and to see what kind of deficiencies were in their ordinance?

MR. McMAHON: I’m not sure I…

COUNCILMEMBER MEDEIROS: Okay. You have three counties that have this ordinance already. In helping Maui County craft our bill for our ordinance, how much tracking or work did you do
in looking at the other three counties to find out what presented problems for them, and what presented deficiencies for them in their ordinance?

MR. McMAHON: I don’t think that we attempted to identify problems or deficiencies. Our impression was that the process was going fairly smoothly, even though the ordinances were somewhat different in each county, and so we just proceeded on the Maui proposal, you know, based on what seemed to be best from a policy point of view.

COUNCILMEMBER MEDEIROS: And, my final question, Mr. Chairman, thank you for the time, is for both Mr. McMahon and Judge Mossman is, in crafting the bills for the ordinances for the three counties, and . . . (end of tape, start 2A at 2:33 p.m.) . . . now Maui County, was there an inclusion of kuleana landowners to come to the table and discuss how to craft this, and, and what would be the definitions and descriptions and so forth? Or this was done strictly by the legislative body and by the representatives of OHA?

MR. McMAHON: The contacts I think with people who might benefit from the exemption who are in the community initially were conducted by Trustee Akana, and she talked to some people who are having problems. Okay. Now whether she said to them what kind of a law is going to work best for you, I don’t quite know. Because when I got involved, she had a pretty well formulated proposal. But, so I have not personally, other than what I hear--Judge Mossman may wanna say something about that.

MR. MOSSMAN: This bill, or this proposal has been in OHA ever since I got there, which is, in fact, before I got there, and I got there seven years ago, or six and a half, right around there. When I came in, this bill was floating around. I guess it was in the Legislature, as I recall, first. And Trustee Akana was trying to get it through, trying to get it through, and in the process of, of having year-after-year go by, it wasn’t until 2007 that we finally got Honolulu to accept it. At those hearings--and they were lengthily hearings in Honolulu--they had many, many people come to testify, mostly for. And then the same thing with the Big Island and with Kauai. In those cases, kuleana landowners were present and they did give their input on those three county bills. So in this particular bill, we’re basically looking at their bills and saying how can this one be better for our Hawaiian people?

COUNCILMEMBER MEDEIROS: Okay. Good.

MR. MOSSMAN: And that’s why our two amendments were suggested, ‘cause that would be better than what the other counties have, as far as we’re concerned.

COUNCILMEMBER MEDEIROS: Thank you, Judge Mossman. I appreciate that because that was the direction I was going in. And, and I think you said it all by describing it that way. Mahalo. Mahalo, Mr. Chairman.
MR. MOSSMAN: Thank you.

CHAIR PONTANILLA: Thank you. So, Mr. Mossman, before you leave. So none of the other counties had broaden their language as far as the definition in regards to, you know, all zoned land use areas.

MR. MOSSMAN: The other counties allow for Ag. and Residential.

CHAIR PONTANILLA: So this is the only County that we broaden the thing to...

MR. MOSSMAN: Well, right, right now it’s back to Ag and Residential, and we’re recommending it be, it be --

CHAIR PONTANILLA: Yeah. Right, right.

MR. MOSSMAN: --opened up a little further.

CHAIR PONTANILLA: Okay. That’s your, the amendment that is recommended.

MR. MOSSMAN: Right.

CHAIR PONTANILLA: Okay. Members, any more questions for Mr. Mossman or Mr. McMahon at this time? Okay. Thank you again.

MR. MOSSMAN: Thank you.

CHAIR PONTANILLA: Okay. Members, question for--Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. My questions were not for them. I’ve tried to get some information prior to this afternoon meeting ’cause I had a couple of questions. And of course the first question was about how many parcels of land were involved. And secondly, I was interested in the tax, real property tax ramifications of providing the exemption. And I wasn’t able to get any information, so those still remain questions for me, but I did wanna share with the Committee. You know, I wanna say that, you know, I certainly can support this idea because we do wanna support our Native Hawaiians, and we know how hard it is for everybody that’s trying to hold on to family land. I can tell you that personally. It gets very difficult to try to hold onto family land that becomes more and more valuable and the property taxes keep getting higher and higher; and you wonder, at some point, if you’re gonna lose it all because you cannot pay. Coincidentally, I got a call this morning from someone who had seen this who is not Native Hawaiian but who also has property land, family land Upcountry. And this gentleman was really upset because he says, you know, we’re struggling and struggling to pay for our property taxes; and we have had this land in our, in our family for
generations from the 1870s; and if you’re gonna consider an exemption for kuleana lands, then what about the rest of us who aren’t making any profit out of our land? Many of us Upcountry who are unable to do anything with our land because we cannot get water meters. So what are you gonna do for us? And he kind of floored me because I didn’t know how to answer him. So I just wanted to mention it because, you know, sometimes we get so excited about doing something good that we don’t realize the impact it might have in other people coming back and saying okay what are you gonna do for me now that you took care of that person? So I just wanted to mention that and I am curious still to know, because I heard two kind of conflicting things since we started this meeting. We started with one of the testifiers mentioning that he thought it would be very few. And then we had a testifier later saying there probably are many of us, but we didn’t know about this meeting or we would’ve been here. So I think we need maybe a little bit more clarification as to what exactly what, you know, the numbers that we’re dealing with here. And I agree that there is some concern about people not knowing. You know it’s amazing we sit here and because we’re immersed in all of this stuff, it’s on our radar screen. But the average person, who’s going on with their life and trying to earn a living and deal with children and problems and the economy and whatever else we’re all dealing with, many don’t receive the paper anymore. In my own family now I know a lot of people don’t read *The Maui News*. In fact, we share ours with our kids because the subscriptions have become expensive. And I don’t know who else is in that category, so it, it’s possible that people don’t know. Even though my son gets that *Ka Wai Ola Newspaper* because he’s Native Hawaiian and it comes to our house; but it’s, you know, it doesn’t go to everybody unless you’re on that list. So I think notification is an issue. So I just wanted to say that. But I would like to have that information if we can get it, you know, what is the possible real property tax ramification of us doing this? Thank you.

CHAIR PONTANILLA: Thank you. I, I don’t know if Mr. Teruya got that answer at this time. Mr. Teruya.

MR. TERUYA: There’s, for the Real Property Tax office, there’s no way that we can determine the tax revenue change at, at this time. We have no idea how much is out there; how much are gonna apply; how much qualify, you know, that, that meet their criteria of the ordinance. So at this time, we wouldn’t have any comment other than to reference two other counties that, that I know of, that have applicants. As Mr. McMahon mentioned, there is 22 active applications within the City that amounts to $16,588,000 in assessed value. There’s seven on the Big Island that equates to $1,182,000 in, in exemption. There, it is, it appears to be relatively minimal. However, at this time, we still wouldn’t know until the actual applications or applicants come forward.

CHAIR PONTANILLA: So even based on the designations on the tax map key in regards to the number of kuleana lands for Maui County, you cannot make that determination?
MR. TERUYA: It would be difficult. Obviously by opening it up to the rural, hotel, and other classifications, obviously, you’ll bring in a bigger pool of people; and, and in our recent talks with Title Guaranty, they would, they would, say that Maui County would have the lion’s share of kuleanas in comparison to the other counties. Still, but that number could not be quantified.

CHAIR PONTANILLA: Thank you. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman. For Mr. Teruya, you mentioned earlier the difficulty of trying to administer this proposed legislation. And first of all, Mr. Chair, I do support the exemption as well. I think in this case, government may have a moral obligation to our host culture and the, the difficulties many of the Hawaiian families are, are having with just trying to pay the real property tax and keep the land in their families. Mr. Teruya, so the difficulty you speak of, is this, the need for more personnel? What has been shared with you from the other counties with regards to administering this?

MR. TERUYA: Well, first of all, I haven’t spoken to the other counties as far as what is their difficulty in, in administering the program. For me, when I read the bill, I know what problems we’re gonna come in to, into play already. Kuleana lands, as I mentioned, if it’s a single parcel and the kuleana is the entire parcel, we would have absolutely no trouble in trying to exempt that because we just exempt the parcel. Now when the kuleana is, you know, generally they’re one-, two-acre parcels, or tracts of land, I would say. But if they’re part of a 1,000-acre parcel, how do we give the exemption to that portion? Now because the ordinance, I mean the draft is written that it shall pay minimum tax; but if it’s not its own parcel, how are they gonna pay minimum tax? The bill goes to the whole, whole pie, the whole entire parcel. Now when kuleanas run across several parcels of land, how are we gonna handle those situations? Yeah.

COUNCILMEMBER MOLINA: So it’s just --

MR. TERUYA: Basically, . . .

COUNCILMEMBER MOLINA: --yeah, so go ahead. I guess the difficulty is just determining what tax to pay, a formula, I guess, so to speak, to come up with?

MR. TERUYA: Well, it’s different that you say minimum tax. It would be simpler for us--I’m not suggesting it--but if you said the kuleana portion would be assessed $1,000, that’s different ‘cause then we can clearly identify a value. But when you say a minimum tax and it’s not the entire parcel, then we have question, then I have concerns as to how to administer it. As we mentioned before, we are supportive of the measure; but it’s just, how do I administer, or to carry out the program are the problems that I, that I know we’re gonna come across on.

COUNCILMEMBER MOLINA: So you’re basically saying that we need to add more clarity into the bill then?
MR. TERUYA: Yeah.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Mr. Chair.

CHAIR PONTANILLA: Thank you. Member Victorino.

COUNCILMEMBER VICTORINO: Yes, thank you. Again, for Mr. Teruya, and I also state that we need to do something, because this is lineage, this is lands prior to the white man coming to these islands, and we go beyond. And so I, I think there’s a difference between someone who bought land or got land in the 1870 and someone whose ancestry stretches back hundreds if not thousands of years. There’s a difference, and I see the clear difference. Sorry. And I also get the OHA newspaper because my wife is Hawaiian and she gets that. So, I know that comes to our house. And it’s very interesting reading at times. But, Mr. Teruya, my question to you is, you’re, you’re saying that you’re gonna have a difficult time, because if a parcel is 1,000 acres, a parcel is one acre, a parcel is two acres, and if they’re not quote, quote, parceled out, TMK, da da da, now how do you set a minimum tax on that? Is that your response?

MR. TERUYA: Yes.

COUNCILMEMBER VICTORINO: Okay. And so it would behoove us then somewhere along the line, once and if we decide to do this, then put in some kind of criteria so that you could then follow that criteria like we do for other establishments. And we do that for Ag. We do that for other establishments. Isn’t that correct, Mr. Teruya?

MR. TERUYA: Yes.

COUNCILMEMBER VICTORINO: Okay. So it’s not impossible. It’s difficult. The word “difficult” sometimes gets kind of tossed up in the fact of impossibility. It’s not impossible, but difficult. But it would behoove us to then once we get this--if and when we do it, Mr. Chair--to then put up whatever other necessities are put in so that we can describe these kuleana lands. And the people that are here that are paying exorbitant prices like that one lady said $5,000 for her property, and I know, and this is the other part that really bothers me for many years. Makena, Wailea, Kihei, North, West Maui, especially Kaanapali, Kapalua, a lot of families have been squeezed because of development around them. And so that’s the other issue, Mr. Chair, we gotta really watch is this, this Commercial zoning. You know sometimes people live right smack in Honokowai. Hotels, hotels and one small house right between, or condo, condo. And so we gotta make sure that these people and some of them are Hawaiians that have lived there for many generations that somehow we protect them. Because all in all what we’re trying to do--and I agree the intent--is to give these people, our Native Hawaiians, the kuleana rights that they pay the minimum tax, which we give others if they fall below our threshold, $300,000, and
all the other things. Right? So I don’t see why we can’t do it. But, Mr. Teruya, again, you’re saying it would be difficult but not impossible?

MR. TERUYA: Yes. And all I was trying to bring out the point is I just wanted to know what is the intent, so I can administer what we’re trying to get at. And when, when it wasn’t clear as to how to handle certain situations, I just wanted to be clear. Is it a minimum tax for all? Or is it, when it’s not an entire parcel, it’s not as simple as it may seem.

COUNCILMEMBER VICTORINO: Yeah.

MR. TERUYA: And especially when it runs across multiple parcels, then how do I handle those situations? Yeah.

COUNCILMEMBER VICTORINO: I think, I think we’ll cross that bridge when we get there. I think you, you know, before we cross that bridge, we gotta have what we need, and the intent, And I think, Mr. Chair, under your guidance, we’ll be able to achieve that. So thank you, Mr. Chair.

CHAIR PONTANILLA: Thank you.

COUNCILMEMBER VICTORINO: Thank you, Mr. Teruya.

CHAIR PONTANILLA: Member Johnson.

COUNCILMEMBER JOHNSON: Yes, this would be for Mr. Teruya. When you’re looking at a limited liability corporation and some of these other--you know, like the family trust--would you, Scott, have some kind of record that, you know, when you send out your tax bill, do you have an identification that actually sets apart that kuleana parcel and then is it owned, if it’s owned by an LLC or family trust?

MR. TERUYA: First of all, every parcel has ownership records as far as where’s the mailing bills going out to.

COUNCILMEMBER JOHNSON: Uh-huh.

MR. TERUYA: That does not necessarily mean that they are the owner of record. They could be a care of person for the estate. It can be owned by an LLC, but the bills can still go to either the owners or whoever is the representative for the estate. So we have mailing addresses on file, but I couldn’t tell you that whether or not they are the owner or not.

COUNCILMEMBER JOHNSON: Okay.
MR. TERUYA: And not every owner of a hui would, would request the notice; and sometimes they do. So it’s nothing I could tell you for, for sure. I can tell you all the owners of record, that we have all of their mailing addresses. But it’s just whatever we have on record is what we’ve gathered over the years.

COUNCILMEMBER JOHNSON: Okay. And, and as far as--and you may have answered this while I was out of the room--but as far as the number of kuleana parcels that are actually involved, do you have, through your tax map key or through reporting, do you have a record, a listing of those individuals that would fall on TMKs that are kuleana or a portion are kuleana?

MR. TERUYA: No. We have parcels that we could possibly assume that they are kuleanas because of the land commission award; and we have reference to look through, probably archives to identify what years they were awarded, whether it was through the 1850 and 1855s that would most likely make them a kuleana. But as far as ownership and whether or not those owners have lineage, it would be, I mean if, if Judge Mossman doesn’t know, I probably, I wouldn’t wanna ...(inaudible...)

COUNCILMEMBER JOHNSON: Yeah. I wouldn’t be so concerned about the lineage but if a notice, for example, were to go out from your Department to those people who were on TMKs that were more than likely kuleana, whether they were or were not entitled. You know, if some type of a notice were to go out just simply making them aware of, if they are a lineal descendant, you may be entitled to XYZ. And then send them either to the County’s website or refer them to your Department. Would that be possible?

MR. TERUYA: It would be possible. I would tell you that we do not have any record to know which ones would be kuleanas though.

COUNCILMEMBER JOHNSON: Uh-huh.

MR. TERUYA: You would literally have to be searching through a map. If somebody knew the TMK numbers offhand, all of our data is on our website. And they can easily track down all the mailing addresses for all the TMKs that they wanna reference. But as far as the Real Property Tax office doing a, almost like a job to find out --

COUNCILMEMBER JOHNSON: Yeah.

MR. TERUYA: --all those, it would, it would take up a lot of resource.

COUNCILMEMBER JOHNSON: Okay. And as far as, I know when we, or when you send out the notices for example for Circuit Breaker, that goes out to everyone. It’s just a little notation on the tax bill. Is that correct?
MR. TERUYA: No. The notices for the Circuit Breaker is an administrative decision that we send it out to all those who have received one in the previous year. We’re doing it as a courtesy. It’s not a requirement by law --

COUNCILMEMBER JOHNSON: Okay.

MR. TERUYA: --that we notify people. But there’s no notice to the general public as to the Circuit Breaker itself. The only thing that we do, we do information, or we do some postings to let everyone know that December 31st is the deadline for all exemptions.

COUNCILMEMBER JOHNSON: Uh-huh.

MR. TERUYA: Yeah, including the Circuit Breaker.

COUNCILMEMBER JOHNSON: Would there be some way that we could include, or you could include, you know, just a small slip or something of that sort to the individuals with all of these various bits of information, because people still keep saying, I don’t know about the Circuit Breaker. I don’t understand it. You know, and even if it’s just listing the exemptions, just to say list, “for more information, go to website”, whatever it is, “to find out if you may be eligible for any of these”. Is that possible?

MR. TERUYA: Yes. We can do an insert in our mailings on either our tax bills or assessment notices.

COUNCILMEMBER JOHNSON: Okay. And, and, Mr. Chair, I think--just from an educational perspective--I think that may be useful to send out some type, just, you know, just denoting all the different exemptions that we have. The other question--and, and actually this is not so much a question as to, well I guess it is to the Members. I did visit with somebody yesterday who has ten kuleana parcels, but he acquired them from Pioneer Mill. In fact, I spoke with him yesterday. It’s Hans Michel, and his tax bill on each one of those kuleanas was, it used to be $60, so that would be $600 for ten. Now when we increased to the minimum tax, its $150 for each one of those kuleana parcels. He, because he’s not a lineal descendant, but he is married to a Native Hawaiian, he’s kind of looking at that and going “well I’m farming”. I’m letting the Water Department cross across my property. I’m not, you know, really getting compensated for that; and you know, he’s kind of looking. When he read about this bill, he was wondering if there was any way that where it serves a clear public purpose; where you’re doing legitimate agriculture; or you’re, you know, you’re somehow married to a Native Hawaiian; that he felt there were other farmers who may not necessarily be lineal descendants but who would certainly be appreciative because they’re making, they’re barely eking by. And with ten of these parcels, his tax bill will now go to $1,500. He’s barely making an existence with his goats and, you know, all the other aggravation with the water. The other thing he mentioned was that most of the kuleana parcels do not have running water. They don’t really are, they’re not provided any County services. They are, are many times landlocked. So, you know, there’s
an access issue. So his thought was, you know, look at the bigger picture. So I just put that out there because he was not able. He’s working today, which I’m sure many of the other people that do have kuleana entitlements, they’re also working. So I just wanted to put that out there for the Members. Thank you.

CHAIR PONTANILLA: Thank you. Members, any more questions? Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. You know, briefly I’d just like to say I support this bill. It, it seems like we, we, we tend to dissect things too much. And I think with three counties already have an ordinance, I’m hoping that we’re not going to delay this deserving ordinance for Hawaiians. In talking to colleagues from the other counties, in my tenure here, they look at Maui County as being the leading edge of things, coming up with legislation that they follow an example. But we’re the last county to do this one, and so I’m hoping that we’re not looking for reasons not to go ahead and go forth with this. Because I’m confident in OHA, Judge Mossman, and Mr. McMahon in their description of how they have helped the other three counties. What they have learned from the implementation of the other three county ordinance that their intent here is to try and craft, along with us, the best possible bill for an ordinance that would make it something that we can work with and live with. So Mr. Chairman, I, I’d like to see this move forward and, and that we not delay this in any way that would take it longer to complete because I think we all know that, no matter what legislation we craft and pass, that there’s somebody going say that it, it wasn’t perfect, and it isn’t. But I think if we don’t do anything, I think that’s even more detrimental than saying that something was passed that, you know, should’ve had this and that. So, Mr. Chairman, I, I support this bill, and I urge my colleagues to let’s move this forward. And as we know, no matter what we craft, it can always be revised if we find things that we could improve on. So thank you for this second opportunity, Mr. Chairman.

CHAIR PONTANILLA: Thank you, Mr. Medeiros. And, you know, Judge Mossman said it all when, you know, this is, you know, looking at the, you know, those people that are, are living on kuleana lands, you know, to help ’em financially, and to keep their property. You know too many times that we hear of, you know, families losing their properties because they couldn’t pay the property tax; and basically, this is what this bill is all about. But I do have a question for Corporation Counsel in regards to that second amendment that is being requested about the amending Section C by eliminating the last on A. When you look at Section C, the second to the last line, or third to the last line, starting from that location, removing the “comma, genealogy verification by the Office of Hawaiian Affairs or”, and you know, removing that portion, and according to Mr. Mossman, the OHA doesn’t have the resources to, to do that. You see any problems in doing that, by amending in the removal of that one particular section?

MS. VILLAROSA: Mr. Chair, if we did, if we remove that language, basically, it would, all that would be left is that the applicant would have to go to court to verify ownership of the property. So that would be the procedure for the applicant. And then as, I think the testimony pointed out
that the section with regards to the genealogy verification would still apply for the purposes of, I think it’s Section A, A1.

CHAIR PONTANILLA: A1, yeah.

MS. VILLAROSA: Yeah.

CHAIR PONTANILLA: Would, would that be a problem for the County if we did just that?

MS. VILLAROSA: No. It wouldn’t be a problem for the County.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Administration in regards to this proposed bill at this time? Member Johnson.

COUNCILMEMBER JOHNSON: Yes. I just wanted to find out, probably from Traci. Is there any problem if we just simply don’t charge them? You know, like let’s say, ‘cause if you add up, you know, if there’s 20 people that qualify based on what our definition is here, I can tell you probably why there are so few because nobody has any money to go to court. And if OHA doesn’t have it so that’s why there’s so few numbers; but if you’re looking at $150 and there’s even 10, you know what, that’s $1,500. Can we just exempt them altogether? Is there anything that would prohibit that from doing that, from even paying the minimum tax?

MS. VILLAROSA: We would need to revise another section of the Code, that, the section with regards to the minimum tax to create an exemption [sic] there.

COUNCILMEMBER JOHNSON: Okay. Thank you. And, Mr. Chair, because we’re talking about so little money, that would be my preference because where they do have numbers of parcels, and they may qualify for them all, you know, it’s an inconsequential amount of money. But I, but to some people, you know, who have marginal incomes, it’s a great deal. So I would be in favor of just exempting it altogether, paying zero tax. Thank you.

COUNCILMEMBER JOHNSON: Okay. Thank you. And, Mr. Chair, because we’re talking about so little money, that would be my preference because where they do have numbers of parcels, and they may qualify for them all, you know, it’s an inconsequential amount of money. But I, but to some people, you know, who have marginal incomes, it’s a great deal. So I would be in favor of just exempting it altogether, paying zero tax. Thank you.

CHAIR PONTANILLA: Thank you. Mr. Mossman, I have a question for you if you could come forward. You know, looking at the different counties--Kauai, Hawaii, and City and County of Honolulu--have you folks ever come across with kuleana parcel owners that own more than one parcel?

MR. MOSSMAN: Yes. And if you want further clarification on that, Mr. McMahon --
CHAIR PONTANILLA: Yes.

MR. MOSSMAN: --has had experience.

CHAIR PONTANILLA: Oh, Mr. McMahon.

MR. McMAHON: Chair, the answer is “yes, we have”. There are people that own a number of kuleana parcels.

CHAIR PONTANILLA: And they all pay the minimum tax?

MR. McMAHON: Right. If they’re lineal descendants.

CHAIR PONTANILLA: Thank you. Members, any more questions? If not, the Chair would like to make his recommendation if there is no objections.

COUNCIL MEMBERS: Recommendation.

VICE-CHAIR MATEO: Chairman, brief recess before your recommendation.

CHAIR PONTANILLA: Thank you. Recess, we’ll recess up to 10 minutes after 3. Thank you.
   ...(gavel)...

RECESS: 3:02 p.m.

RECONVENE: 3:16 p.m.

CHAIR PONTANILLA: ...(gavel)... The Budget and Finance Committee meeting is now reconvened. Members, thank you for that recess. So at this time, if there’s no objections, the Chair would like to make his recommendation.

COUNCILMEMBER BAISA: Recommendation?

COUNCILMEMBER MOLINA: Recommendation?

VICE-CHAIR MATEO: Recommendations, Chair?

CHAIR PONTANILLA: Thank you. The Chair recommends that, the adoption of the proposed bill, “A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, PERTAINING TO REAL PROPERTY TAX EXEMPTION FOR KULEANA LAND”.

- 35 -
VICE-CHAIR MATEO: Chairman? Chairman, I move for the adoption of the bill, entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, PERTAINING TO REAL PROPERTY TAX EXEMPTION FOR KULEANA LAND”.

CHAIR PONTANILLA: Thank you. Any second?

COUNCILMEMBER NISHIKI: Second.

CHAIR PONTANILLA: Second by Member Nishiki. Members, discussion?

VICE-CHAIR MATEO: Chairman?

CHAIR PONTANILLA: Member Mateo.

VICE-CHAIR MATEO: Chairman, I move to amend the bill. I, I, as all the Members heard earlier, one of the, one of the amendments that was recommended by Judge --

CHAIR PONTANILLA: Judge Mossman.

VICE-CHAIR MATEO: --Mossman, the second item, the second amendment that he had recommended. If you look on Page 2, under 3.48.554, this is item--excuse me, Page 3. The second amendment had to do with Page 3, under Subsection C. The request was to delete from the word “genealogy”, and that area to be deleted reads, “genealogy verification by the Office of Hawaiian Affairs or”. That line should be deleted. And it still, it does reference the fact that it can be verified through the court-ordered verification process . . . (end of tape, start 2B at 3:18 p.m.). . . would be to delete that line, Mr. Chairman.

COUNCILMEMBER NISHIKI: Second.

CHAIR PONTANILLA: Thank you. It’s been moved by Member Mateo, second by Member Nishiki, that we delete, on Subsection C, the third from the, the third line from the bottom of that subsection. Delete “comma, genealogy verification by the Office of Hawaiian Affairs or”. All of those would be deleted. So for that particular sentence, the sentence would be, “For purposes of determining whether Subsection A.1 has been satisfied by court order shall be deemed sufficient.”

VICE-CHAIR MATEO: Correct.

CHAIR PONTANILLA: Is that it?

VICE-CHAIR MATEO: Correct.
CHAIR PONTANILLA: Thank you. Any more discussion? Member Johnson?

COUNCILMEMBER JOHNSON: I, I just wanted to understand--and, and I don’t know if Corporation Counsel would know approximately what the costs are when a person has to go into the court system and then actually go through the expense of establishing that genealogy or that title? Do you have any idea what the costs involved are?

MS. VILLAROSA: Mr. Chair, it really varies. There’s no average I could give you. It, it really just depends on how complicated it is to quiet title.

COUNCILMEMBER JOHNSON: So, you know, is it like, smaller than a breadbasket? I don’t know. You know, I just wanna have some kind of ballpark figure. If this is like $5,000 or $10,000 to save a 100, you know, well, I guess, you know, if it’s, it’s in some cases, it’s way more than that. But, you know, that’s the only thing that bothers me, Mr. Chair, is now we’re forcing them to go to court, and, you know, I don’t know. I just think there should be a simpler mechanism whereby, you know, we do all kinds of other things through affidavit, you know, where they, where they prepare an affidavit, and they actually certify and verify and, you know, that they are a lineal descendant and provide some kind of, I guess, you know, evidence, even if they provided it to Real Property Tax or, you know, even the Board of Review of Real Property Tax. I just don’t think it should be so complicated for them to go to court. Anyway, it’s just my two cents but I understand what the purpose is, but I just don’t like the outcome.

CHAIR PONTANILLA: Thank you.

COUNCILMEMBER JOHNSON: Thank you.

CHAIR PONTANILLA: Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I, I like the fact, the way it was worded, that there was a choice of how to do it. And I, I think what Member Johnson said is going the route of the court could involve a lot of money, which many of these kuleana landowners do not have. So if I could ask a question of the maker of the amendment. Mr. Chairman, I’d just like to know the rationale or, or the purpose to removing genealogy verification by Office of Hawaiian Affairs and making it just through the court order.

VICE-CHAIR MATEO: Uh-huh, yeah.

CHAIR PONTANILLA: Thank you.

VICE-CHAIR MATEO: Yeah. Mr. Chairman, thank you. And I think it was made real evident by Judge Mossman when, when he and the attorney came up to the podium and they indicated that OHA does not have the resources available to do the exact tracking and verification of such.
COUNCILMEMBER MEDEIROS: Mr. Chairman.

CHAIR PONTANILLA: Thank you. Mr. Medeiros.

COUNCILMEMBER MEDEIROS: I understood Mr. Mossman's, Judge Mossman's testimony a little different. In, in that regard, he was referring to determining ownership, not genealogy lineage. So if we can get that clarified, that will help me understand this.

CHAIR PONTANILLA: Thank you. Mr. Mossman, if you could?

VICE-CHAIR MATEO: Chairman, also before, as Mr. Mossman comes down, I believe if the Members can also refer to Judge Mossman's communication to us. Under his second proposed amendment, he also reiterated the need for his proposed recommendation --

CHAIR PONTANILLA: Thank you.

VICE-CHAIR MATEO: --as well. Thank you.

MR. MOSSMAN: And, Mr. Chairman --

CHAIR PONTANILLA: Mr. Mossman.

MR. MOSSMAN: --that is correct. We, we have indicated in our written recommendation amendments, the purpose. But basically, Mr. Medeiros is, is pretty, pretty right. I mean, we can, we can verify lineal descendency; but we cannot, there is no, no way under heaven, without us creating a whole brand-new department, to verify ownership.

CHAIR PONTANILLA: Thank you.

COUNCILMEMBER MEDEIROS: Thank you.

MR. MOSSMAN: And, and, . . .

CHAIR PONTANILLA: Mr. Mossman.

MR. MOSSMAN: And I might just add that the bill as it has been amended allows for us to continue to verify genealogy. We'll still be doing that, which is what we do right now for the other counties; but we do not go and establish clear title to the land. And before a person can come in and claim a tax exemption, the person has to own that parcel. But that's not, that's out of our kuleana, so to speak.
COUNCIL MEMBERS: . . . (chuckled) . . .

COUNCILMEMBER MEDEIROS: But, Judge Mossman, so I, I think my focus is just on verifying genealogy lineage, nothing else. And why would you think by removing it, it, it would put some kind of additional burden on OHA --

MR. MOSSMAN: Well --

COUNCILMEMBER MEDEIROS: --to have it there?

MR. MOSSMAN: --just as you said earlier it, it, the, the way the current bill, well, the current bill is, it offers an option. Either you can go to court --

COUNCILMEMBER MEDEIROS: Right.

MR. MOSSMAN: --and prove your ownership. Or you can go to OHA and have OHA prove it for you. We're not gonna do that. We cannot do that.

COUNCILMEMBER MEDEIROS: Okay. Thank you for that clarification.

MR. MOSSMAN: Mahalo.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR PONTANILLA: Thank you. Members, any more discussion? Member Johnson.

COUNCILMEMBER JOHNSON: Yeah. And, and the whole issue comes down to ownership. I agree with Member Medeiros. It's not an issue. If you take out the ownership portion of it, we, we let people file affidavits all the time affirming that they get, they're entitled to the Homeowner Exemption. Why are we treating Hawaiian people differently? You know, you can do it in an affidavit. If somebody challenges it, then I think the burden could be that they go to court. They, they know if they're not telling the truth, they could be challenged in a court of law. So for me, I, you know, I, I say it should either be by some kind of affirmation, you know, an affidavit of some sort. I have no problem with the genealogy being verified; and then if they're challenged on the actual ownership of the land, well then they could face, you know, court hearing. But if we make it that simple for people to qualify for other exemptions, I, I just think we should, you know, be very liberal in this regard too. Thank you.

CHAIR PONTANILLA: Thank you. Any more discussion, Members? All in favor of the amendment as proposed by Member Mateo, say "aye".

COUNCIL MEMBERS VOICED AYE.
CHAIR PONTANILLA: Any opposed?

COUNCILMEMBER BAISA: No.

COUNCILMEMBER JOHNSON: No.

COUNCILMEMBER MEDEIROS: No.

COUNCILMEMBER VICTORINO: No.

CHAIR PONTANILLA: The motion is carried with seven “ayes”; one “no”.

COUNCILMEMBER JOHNSON: No, with two [sic] “noes”.

COUNCILMEMBER MOLINA: Roll call.

CHAIR PONTANILLA: Oh, roll call?

COUNCILMEMBER JOHNSON: Yeah, I voted “no”.

CHAIR PONTANILLA: Okay. Member Molina?

COUNCILMEMBER MOLINA: Aye.

CHAIR PONTANILLA: Member Baisa?

COUNCILMEMBER BAISA: No.

CHAIR PONTANILLA: Member Johnson?

COUNCILMEMBER JOHNSON: No.

CHAIR PONTANILLA: Member Medeiros?

COUNCILMEMBER MEDEIROS: No.

CHAIR PONTANILLA: Member Nishiki?

COUNCILMEMBER NISHIKI: Aye.

CHAIR PONTANILLA: Member Mateo?
VICE-CHAIR MATEO: Aye.

CHAIR PONTANILLA: Member Victorino?

COUNCILMEMBER VICTORINO: No.

CHAIR PONTANILLA: And Chairman votes “aye”.

VOTE: AYES: Councilmembers Molina and Nishiki, Vice-Chair Mateo, and Chair Pontanilla.

NOES: Councilmembers Baisa, Johnson, Medeiros, and Victorino.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kahoʻohalahala.

AMENDMENT FAILED.

CHAIR PONTANILLA: So motion dies. Okay.

COUNCILMEMBER JOHNSON: Yeah.

CHAIR PONTANILLA: Coming back to the main motion.

VICE-CHAIR MATEO: Chairman?

CHAIR PONTANILLA: Member Mateo.

VICE-CHAIR MATEO: Chairman, perhaps Corporation Counsel can help me in this particular recommendation, and that would be the addition of a sunset clause on this particular ordinance, the sunset clause to end June 30, 2011. This one year will provide us the opportunity to take a look at the consistency of the bill, and as we have heard, there has been many recommendations that have come forward from both the Committee Members as well as those who have come to testify. And a year will give us the kind of time that the Department will need: 1. to know exactly how to administer the bill; and 2. for us to take a look at other recommendations and proposals we would like to add to the bill as it moves forward. But the one year would give us
that window to simply allow the bill to be engaged at this point and us meeting the December 30th deadline.

CHAIR PONTANILLA: Is there any second to the motion?

COUNCILMEMBER VICTORINO: Second.

CHAIR PONTANILLA: Second by Member Victorino. Members, any more discussion? All in favor of--Member Baisa.

COUNCILMEMBER BAISA: Chair, could you please answer--when will this take effect?

CHAIR PONTANILLA: This will take effect, according to the resolution, July 1, 2010.


CHAIR PONTANILLA: Thank you. Members, any more discussion?

COUNCILMEMBER BAISA: No.

CHAIR PONTANILLA: All in favor of the motion, please say "aye".

COUNCIL MEMBERS VOICED AYE.

VOTE: AYES: Councilmembers Baisa, Johnson, Medeiros, Molina, Nishiki, and Victorino, Vice-Chair Mateo, and Chair Pontanilla.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kaho’ohalahala.

AMENDMENT CARRIED.

ACTION: INSERT A SUNSET CLAUSE OF JUNE 30, 2011.

CHAIR PONTANILLA: Okay. Back to the main motion, any more discussion? Member Johnson?
COUNCILMEMBER JOHNSON: Yes, and I know Corporation Counsel answered me, but I don’t think the bill that’s before us today because it doesn’t specifically address total exemption, Corporation Counsel mentioned that there was another section that we would have to amend. But I would like to amend—even if it’s the verbiage in here—so that when it comes forward that we would amend the section to totally exempt, you know, any payment of even a minimum tax. So I just need guidance as to whether I can make such a motion with, within this, the context of this bill? Or if I have to make a request or do an amendment myself, and can I do that because the other section is not posted today? So within the Sunshine Law, I don’t wanna violate that, but I do wanna make an amendment to totally exempt.

CHAIR PONTANILLA: Corporation Counsel?

MS. VILLAROSA: Yeah. You can propose the amendment—well, did we take a vote on the?

COUNCILMEMBER JOHNSON: We have not taken a final--

MS. VILLAROSA: Oh.

COUNCILMEMBER JOHNSON: --vote on this.

MS. VILLAROSA: No, no, no. On the sunset, we didn’t.

COUNCILMEMBER JOHNSON: Yeah, we did.

CHAIR PONTANILLA: Yes, we did.

COUNCILMEMBER JOHNSON: We did.

MS. VILLAROSA: Oh, okay.

COUNCILMEMBER JOHNSON: It passed.

MS. VILLAROSA: Okay. So, yeah. You can make another motion to amend the bill. I would, I would have it be general--

COUNCILMEMBER JOHNSON: Okay.

MS. VILLAROSA: --that we would need to amend the bill to--

COUNCILMEMBER JOHNSON: Like by adding…
MS. VILLAROSA: --revise, yeah, revise the bill to allow for a exception, I guess, to the minimum tax --

COUNCILMEMBER JOHNSON: Okay.

MS. VILLAROSA: --and then we can draft the --

COUNCILMEMBER JOHNSON: Okay.

MS. VILLAROSA: --revised bill for first reading.

COUNCILMEMBER JOHNSON: All right. Mr. Chair, then, at this point, I move to amend to add an additional section that completely exempts from minimum tax any individual that qualifies under this bill.

COUNCILMEMBER MEDEIROS: Second.

CHAIR PONTANILLA: Okay. Moved by Member Johnson, seconded by Member Medeiros. Members, discussion? Okay. All in favor of the motion, please say “aye”.

COUNCIL MEMBERS VOICED AYE.

CHAIR PONTANILLA: Any opposed? Chair opposed.

VOTE: AYES: Councilmembers Baisa, Johnson, Medeiros, Molina, Nishiki, and Victorino, Vice-Chair Mateo.

NOES: Chair Pontanilla.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kahoʻohalahala.

AMENDMENT CARRIED.

ACTION: COMPLETELY EXEMPT QUALIFIED INDIVIDUALS FROM PAYING REAL PROPERTY TAXES.
CHAIR PONTANILLA: Okay. Motion is carried. Two, three, four, five, seven “ayes”; one “opposed”; one “excused”--Member Kahoʻolahala. Thank you. Back to the main motion, as amended. Any more discussion? All in favor of the motion, please say “aye”.

COUNCIL MEMBERS VOICED AYE.

CHAIR PONTANILLA: Any opposed?

VOTE: AYES: Councilmembers Baisa, Johnson, Medeiros, Molina, Nishiki, and Victorino, Vice-Chair Mateo, and Chair Pontanilla.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC: Councilmember Kahoʻolahala.

MOTION CARRIED.

ACTION: FIRST READING OF REVISED BILL AND FILING OF COMMUNICATION.

CHAIR PONTANILLA: Seeing none, motion is carried. Thank you, Members, for that vote. That’s all we have on the agenda this afternoon. Any announcements, Members? If not, this meeting is adjourned. . .(gavel). . .

ADJOURN: 3:32 p.m.

APPROVED BY:

JOSEPH PONTANILLA, Chair
Budget and Finance Committee

Transcribed by: Joy Tesoro
CERTIFICATE

I, Joy Tesoro, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 24th day of August 2009, in Kahului, Hawaii.

Joy Tesoro