

September 22, 2021

MEMO TO: BFED-78 File

F R O M: Keani N.W. Rawlins-Fernandez, Chair 
Budget, Finance, and Economic Development Committee

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO
'ĀINA KŪPUNA LANDS** (BFED-78)

The attached legislative proposal pertains to Item 78 on the Committee's agenda

bfed:ltr:078afile02:ljam

Attachment

2021 SEP 22 PM 5:53
OFFICE OF THE
COUNTY COUNCIL

RECEIVED

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE RELATING TO 'ĀINA KŪPUNA LANDS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Chapter 3.48, "Real Property Tax," Maui County Code, is amended by adding a section to read as follows:

"3.48.361 Parcels dedicated as 'āina kūpuna. A. For use in this section, the following definitions apply:

1. "Agriculture" means the production of plant and animal life for food and fiber, and for raw materials for processed products, and includes: fruit, vegetable, and flower growing; forestry; aquaculture; beekeeping; grazing and dairying; and their accompanying services and facilities.

2. "Āina kūpuna" means those portions of real property that are owned in whole or in part by a lineal descendent of the person who held title to the property as of June 30, 1931. 'Āina kūpuna may be considered owned by a lineal descendent when such owner is a trust, nonprofit organization, or similar entity where the majority of its trustees or board of directors are lineal descendants of the person who held title to the property as of June 30, 19231. 'Āina kupuna does not include real property owned by a corporation where the stock is sold to or owned by the general public.

3. "Commercial purposes" means the production, processing, manufacturing, warehousing, distribution, or sale of goods, or the provision of services for consideration and profit, including the operation of transient vacation rentals and bed and breakfast homes, but excludes agriculture.

4. "Owner" means a fee simple owner of 'āina kūpuna.

B. A special reserve is established to enable the owner of any parcel within any tax class to dedicate their parcel as 'āina kūpuna and to have their parcel so dedicated to be subject to the minimum tax; provided, that:

1. The portions of real property to be dedicated qualify as 'āina kūpuna;

2. The parcel dedicated must not be conveyed to a non-lineal descendent for a period of no less than ten years; and

3. The land dedicated must be limited to a parcel not used for commercial purposes.

C. If any owner desires to dedicate their land as 'āina kupuna, they must petition the director and declare in the application that if the application is approved, no portion of the parcel will be conveyed to a non-lineal descendent or used for commercial purposes for no less than ten years following the approval of the application. The owner is responsible for the cost of obtaining evidence in support of the application. If the applicant is not identified as an owner of the property in the records of the director, the director will require the applicant, at applicant's expense, to obtain a deed or court order to verify ownership of the property. For purposes of determining whether the lineal descendency requirement in section 3.48.361(B) has been satisfied, genealogy verification by the Office of Hawaiian Affairs or by court order will be deemed sufficient.

D. Upon receipt of an application described in subsection C, the director must make a finding of fact as to whether the parcel described in the application qualifies. If the finding is favorable to the owner, the director must approve the application and declare the parcel to be dedicated.

E. The applicant must apply for a renewal for additional periods of no less than ten years subject to cancellation in each ninth year by the owner.

F. Failure to comply with the restrictions on the use of the parcel or the conveyance of the property to a non-lineal descendant will cancel the special minimum tax privilege retroactive to the date of the dedication, or the latest renewal period; and all differences in the amount of taxes that were paid and those that would have been due from assessment without the minimum tax privilege are payable with a ten percent penalty from the respective dates that these payments would have been due. The additional taxes and penalties, due and owing as a result of a breach of the dedication, constitute a paramount lien upon the property as provided for by this chapter.

1. Failure to observe the restrictions on the use means any conveyance of the property to a non-lineal descendent or the use of the property for commercial activity beyond a period of two weeks after a notice and warning to the owner by the director. Nothing in this subsection precludes the County from pursuing any other remedy to enforce the covenant on the use of the parcel.

G. The application must be filed with the director by December 31st of any calendar year, in a form prescribed by the director. If the applicant does not qualify for the 'āina kupuna dedication, the director must notify the applicant on or before March 1 preceding the tax year. If approved, the minimum tax takes effect the succeeding tax year.

H. The applicant owner may appeal any disapproved application as in the case of an appeal from an assessment.

I. To place prospective buyers on notice of the roll back liability, the applicant must, within thirty days of notice of approval, record the dedication in accordance with the procedures of the bureau of conveyances or land court. The director will prescribe the form of the dedication.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This ordinance takes effect upon its approval.

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