



OFFICE OF PLANNING STATE OF HAWAII

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DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR
OFFICE OF PLANNING

Statement of
MARY ALICE EVANS
Director, Office of Planning
before the
SENATE COMMITTEE ON WATER AND LAND
and the
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
and the
**SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS**
on
Wednesday, March 17, 2021
1:00 PM
State Capitol, Conference Room 229 & Videoconference

in consideration of
HB 1352 HD 1
RELATING TO SURPLUS MILITARY LAND

Chair Inouye, Vice Chair Keith-Agaran, and Members of the Senate Committee on Water and Land, and Chair Gabbard, Vice Chair Nishihara, and Members of the Senate Committee on Agriculture and Environment, and Chair Nishihara, Vice Chair English, and Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs.

HB 1352 HD 1 requires the Office of Planning (OP) to submit a report to the legislature containing: (1) an inventory of lands within the State that are leased or controlled by the federal government; (2) any known contaminants or environmental hazards associated with the inventoried lands based on past environmental studies; (3) input from executive branch departments and agencies on proposed alternative uses for the lands that would be consistent with their mission should the lands be returned to the State; and (4) its findings and recommendations, including proposed legislation, based on this information.

OP appreciates the intent of HB 1352 HD1 and recognizes the potential impact and significance of such a report. OP offers the following revision for clarity: on page 2, line 3, change “leased **from** the federal government” to “leased **to** the federal government” [emphasis added].

Thank you for the opportunity to testify on this matter.



Environmental Caucus of The Democratic Party of Hawai'i

March 17, 2021

To: Senate Committee on Water and Land
Senator Lorraine R. Inouye, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair, and
Members of the Senate Committee on Water and Land

Senate Committee on Agriculture and Environment
Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair
Members of the Senate Committee on Agriculture and Environment

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator J. Kalani English, Vice Chair
Member of Senate Committee on Public Safety, Intergovernmental and
Military Affairs

Re: HB 1352, HD1 – RELATING TO SURPLUS MILITARY LAND

Hearing: Tuesday, March 17, 2021, 1:00 p.m. Room 229 via videoconference

Position: **STRONG SUPPORT**

Aloha Chairs Inouye, Gabbard, and Nishihara; Vice Chairs Keith-Agaran, Nishihara, English, and Members of the Committees on Water and Land, Agriculture and Environmental, and Public Safety, Intergovernmental and Military Affairs:

The Environmental Caucus of the Democratic Party of Hawai'i and its Human Environmental Impacts Committee are in **strong support** of HB 1352, HD 1 as it requires the office of planning to submit (1) an inventory report to be prepared by the department of land and natural resources on all lands within the State that are leased from the federal government or under federal government control, including information pertaining to lease expiration dates, plans to close any military facilities on those lands, and other relevant information; (2) a report from the department of health, in consultation with the Environmental Protection Agency, that identifies any known contaminants or environmental hazards discovered on the lands identified pursuant to paragraph (1) or associated with past environmental studies performed in connection with those lands; (3) input from all executive branch departments and agencies on proposed alternative uses for the lands identified pursuant to paragraph (1) that would be consistent with their mission should Chair

Chair Inouye, Gabbard, and Nishihara
Vice Chair Gilbert S.C. Keith-Agaran, Nishihara, and English
Committee on Water and Land; Agriculture and Environment; Public Safety, Intergovernmental,
and Military Affairs
HB 1352, HD1
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the land be returned to the State; and (4) its findings and recommendations, including any proposed legislation, based on the information gathered.

For more than one hundred years, the United States Government has established naval and other military bases in Hawai'i without very much in the way of consent from the people of Hawai'i, who were not even organized as a State for a large part of that time. The playing field was anything but level.

The Democratic Party of Hawai'i (Party) has adopted at its 2018 State Convention, clear safeguards to protect the *'āina* against military destruction. At page 22 of the Party Platform, it specifically provides that Democrats "support the protection of our *'āina* against destruction by military use."

Especially with respect to properties that the United States has occupied for military purposes, very serious environmental contamination has taken place. As the United States continues its occupation of these properties and renews these leases, and even as it turns back over a few of these properties to the State, we are not seeing enough environmental remediation taking place as part of the process. We continue to see less than a thorough removal of hazardous substances, pollutants, contaminants and military munitions resulting from active military activities. Inadequate remediation are oftentimes provided, insufficient to protect human health and the environment, thus failing to return military lands to usable condition. Separately, we are not seeing the State taking leading role in pressing the United States to: (1) release properties that it is retaining under its control; and (2) engage in more thorough environmental remediation than it has been willing to do to date. This bill would make great improvements in both of these areas and provide much transparency by requiring detailed annual reporting of these important matters.

Fundamentally, this bill intends to shift the responsibility for the lead from the federal government to the State, and pushes State officials to do what they need to do: require the federal government to turn back the lands to the State in an environmentally clean condition.

Please pass this important and overdue legislation. Thank you very much for the opportunity to testify on this key issue.

Chair Inouye, Gabbard, and Nishihara
Vice Chair Gilbert S.C. Keith-Agaran, Nishihara, and English
Committee on Water and Land; Agriculture and Environment; Public Safety, Intergovernmental,
and Military Affairs
HB 1352, HD1
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Respectfully yours,
Alan Burdick and
Melodie Aduja
Co-Chairs, Environmental Caucus
Co-Chairs, Human Environmental Impacts Committee
Democratic Party of Hawai`i
Email: burdick808@gmail.com and
legislativepriorities@gmail.com

HB1352 HD1
RELATING TO SURPLUS MILITARY LAND
Ke Kōmike ‘Aha Kenekoa o ka Wai a me ka ‘Āina
Senate Committee on Water and Land
Ke Kōmike ‘Aha Kenekoa o ka ‘Oihana Mahi‘ai a me ke Ao Kūlohelohe
Senate Committee on Agriculture and Environment
Ke Kōmike ‘Aha Kenekoa o ka Palekana Lehulehu, ka Pilina O Nā Aupuni,
a me ke Kuleana Pū‘ali Koa
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Malaki 17, 2021

1:00 p.m.

Lumi 229

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB1352 HD1, which would gather data and input on federally owned and leased lands, which are primarily “ceded” lands, in anticipation of their potential transfer to the State, or their potential return to State control. **By initiating proactive discussions on the remediation, restoration, and potential alternative uses of these lands, this measure takes a critical step towards better protecting invaluable public trust resources and the public’s interest in the State’s current and prospective future land holdings, while also potentially furthering the State’s and federal government’s commitment to restorative justice for the Native Hawaiian people, from whom much of these lands were illegally taken and without consent or compensation.** In order to more fully realize the benefits of this measure, OHA respectfully suggests a friendly amendment to this bill as currently drafted, to allow the Office of Planning to include OHA in these important discussions.

Native Hawaiians have a heightened interest in the substantial acreage of federal lands that may be at issue under this measure. In addition to the estimated 114,499.67 acres of federal lands that are eligible for transfer to the State under Public Law 88-233, another 30,176.18 acres of state are controlled by the federal government under leases set to expire in 2029. **These lands are overwhelmingly part of the 1.8 million acres of former Government and Crown Lands that were taken as a result of the unlawful overthrow of the Hawaiian Kingdom in 1893,ⁱ and that were “ceded” to the United States’ federal government upon annexation – despite strong opposition from and without any consent by, or compensation to, Queen Lili‘uokalani or the Native Hawaiian people.ⁱⁱ** While the Admission Act of 1959 conveyed to the newly formed State of Hawai‘i nearly 1.13 million acres of “ceded” lands that were held by the federal government, and envisioned the additional transfer of federally held “ceded” lands not needed for federal government use,ⁱⁱⁱ by 1964 it was estimated that the federal government had still retained for itself 373,719.58 acres of “ceded” lands, the vast majority of which

remain under federal ownership today – including the 114,499.67 acres which are eligible for transfer to the State under P.L. 88-233.^{iv} **Native Hawaiians continue to maintain unrelinquished claims to the entire “ceded” lands corpus, including those lands held or controlled by the federal government, and therefore have a particularly heightened interest in whether and how federally-owned or -controlled “ceded” lands will be transferred to the State or returned to its control.^v**

Notably, historical and ongoing examples of the treatment of “ceded” lands under federal ownership or control raise particular concerns regarding the potential remediation and restoration actions that should take place prior to their transition to State ownership or control. For example, the island of Kaho‘olawe was taken for U.S. military use in 1953, with assurances that it would be restored to a “habitable condition”; to this day, only 9% of the island has been cleared beyond the surface level.^{vi} Ironically, Kaho‘olawe accounts for most of the federal “ceded” lands relinquished to the State,^{vii} and it was only released from federal control in 1993 after years of protests and lawsuits.^{viii} Additionally, there are still ongoing concerns about the remediation of Mākua Valley in Wai‘anae, O‘ahu, which has also been used for live-fire training, and which will also need substantial remediation and restoration as a result of such activities.^{ix} The Hawai‘i Supreme Court has also recently called attention to the potential for irreparable harm to 22,971 acres of state “ceded” lands leased to the federal government at Pōhakuloa, Hawai‘i Island, which the court found were not adequately cared for as required under the public trust doctrine.^x **These historical and recent examples counsel the need for proactive and carefully informed discussions and consensus-building, in order to ensure that the transfer of ownership or control of “ceded” lands from the federal government to the State includes appropriate remediation and restoration measures – a critical component of restorative justice for Native Hawaiians who maintain claims to these lands.**

Accordingly, **OHA supports HB1352 HD1 as a vehicle for proactive discussions and information-gathering that can support the potential and appropriate transition of “ceded” lands from federal ownership or control to that of the State.**

In order to ensure that Native Hawaiian claims and concerns, including those regarding the need for remediation and restoration of “ceded” lands currently under federal ownership and control, are appropriately reflected and considered in the discussions contemplated by this measure, OHA does respectfully suggest amending the language found on page 2, line 16, to read as follows:

“agencies and the Office of Hawaiian Affairs on remediation and restoration needs and on proposed alternative uses for the lands”

Therefore, OHA urges the Committee to **PASS** HB1352 HD1. Mahalo nui for the opportunity to testify on this important issue.

ⁱ MELODY MACKENZIE ET AL., NATIVE HAWAIIAN LAW TREATISE 27 (2015).

ⁱⁱ The state of Hawai‘i and the United States have both acknowledged this injustice, as well as the role of the U.S. military in the unlawful overthrow of the Hawaiian Kingdom. See, e.g., The Apology Resolution, Pub. Law No. 103-150, 107 Stat. 1510 (1993); Act 359 (Reg. Sess. 1993).

ⁱⁱⁱ At this point in time, just before statehood, the United States had set aside 287,078.44 acres of “ceded” lands for federal government use. The federal government also held permits and licenses for 117,412.74 acres of land and had also acquired 28,374.73 acres of fee interest land through either purchase or condemnation. MACKENZIE, *SUPRA* NOTE 1, AT 32.

^{iv} THE DEPARTMENT OF THE INTERIOR & THE DEPARTMENT OF JUSTICE, FROM MAUKA TO MAKAI: THE RIVER OF JUSTICE MUST FLOW FREELY, 37 (2000).

^v Section 5(e) of the Admission Act provided a five-year window for the federal government to convey back to the State of Hawai‘i lands it no longer needed; after this five-year period, title to those lands would have vested permanently in the United States. However, Public Law (P.L.) 88-233, abolished the five-year deadline so that the federal government could relinquish control of “ceded” lands at any time. Notably, P.L. 88-233 was a double-edged sword: in exchange for removing the deadline for the federal government to relinquish lands, nearly 228,000 acres of “ceded” lands set aside for national parks, monuments, and reservations became the fee-simple property of the federal government. These lands are now ineligible for transfer under P.L. 88-233. In any case, the federal government has continued to maintain control over the vast majority of the lands it retained upon statehood notwithstanding the lack of any significant federal use, such as Bellows Air Force Base in East O‘ahu. It is estimated that roughly 114,499.67 acres are currently eligible for return under P.L. 88-233. MELODY MACKENZIE, *SUPRA* NOTE 1, AT 84-85.

^{vi} MELODY MACKENZIE, *supra* note 3 at 39; DAVIANNA MCGREGOR, KANALOA KAHO‘OLAWE, *in* Detours: A DECOLONIAL GUIDE TO HAWAI‘I 261, 264 (HÖKŪLANI K. AIKAU ET. AL, ED.) 2019.

^{vii} According to a 2012 inventory of public lands, 31,247.49 acres have been transferred to the state pursuant to P.L. 88-233, of which Kaho‘olawe comprises 28,776.70 acres. *Id.* at 84.

^{viii} *Id.* at 39-40.

^{ix} *Id.* at 8.

^x See *Ching v. Case*, 449 P.3d 1146, 1160-62, 1174-80 (Haw. 2019).

HB-1352-HD-1

Submitted on: 3/16/2021 12:49:51 PM

Testimony for WTL on 3/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Bohlen	Testifying for Hawaii Reef and Ocean Coalition	Support	No

Comments:

TO: Honorable Chairs Inouye, Gabbard and Nishihara, Honorable Vice Chairs Nishihara, Keith-Agaran, and English, and Members of Senate Committees on Water and Land, Agriculture & Environmental Protection, and Public Safety, Intergovernmental, and Military Affairs:

From Hawai'i Reef and Ocean Coalition (by Ted Bohlen)

*RE: STRONG SUPPORT for HB1352 HD1 **Relating to Surplus Military Land***

Hearing Wednesday March 17, 2021 1:00 pm

Aloha Chairs, Vice Chairs, and members of the committees:

Position: The Hawai'i Reef and Ocean Coalition STRONGLY SUPPORTS HB1352 SD2!

The HAWAI'I REEF AND OCEAN COALITION – HIROC – was formed in 2017 by coral reef scientists, educators, local Hawai'i environmental organizations, elected officials, and others to address the crisis facing Hawaii's coral reefs, other marine life, and ocean. In order to protect Hawaii's environment, **the Hawai'i Reef and Ocean Coalition STRONGLY SUPPORTS HB1352 SD2!**

The United States government, especially the military, has occupied substantial parts of Hawaii for over a century. Sometimes this occupation has inflicted serious environmental harm to the land and ocean that needs to be remediated in order to return the land and ocean to safe and productive use. The people of Hawai'i should not be subjected to continued environmental harm and staggering remediation costs. The reefs, other aquatic species and the ocean should not be subjected to the legacy of toxic dumping and runoff.

Especially with respect to properties that the United States has occupied for military purposes, very serious environmental contamination has taken place, including dumping munitions at sea. As the United States continues its occupation of these

properties and renews these leases, and even as it turns back over a few of these properties to the State, we are not seeing enough environmental remediation taking place as part of the process. We continue to see less than a thorough removal of hazardous substances, pollutants, contaminants and military munitions resulting from active military activities. Adequate remediation is often not provided, insufficient to protect human health and the environment, thus failing to return military lands to usable condition. Separately, we are not seeing the State taking leading role in pressing the United States to: (1) release properties that it is retaining under its control; and (2) engage in more thorough environmental remediation than it has been willing to do to date. This bill would make great improvements in both of these areas and provide much transparency by requiring detailed annual reporting of these important matters. Fundamentally, this bill intends to shift the responsibility for the lead from the federal government to the State, and pushes State officials to do what they need to do: require the federal government to turn back the lands to the State in an environmentally clean condition. Thank you very much for the opportunity to testify on this key issue.

Please pass this important and overdue bill to protect the land, the environment, and the people of Hawai'i!

Hawai'i Reef and Ocean Coalition (by Ted Bohlen)



SIERRA CLUB OF HAWAI'I

SENATE COMMITTEE ON WATER AND LAND

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

March 17, 2021 1:00 PM

In **SUPPORT** of **HB1352 HD2**: Relating to Surplus Military Land

Aloha Chair Inouye, Chair Gabbard, Chair Nishihara, and members of the committees,

On behalf of our 27,000 members and supporters, the Sierra Club of Hawai'i **supports HB1352 HD2**.

This bill would collect data relating to military lands currently under federal government control throughout the state, creating an inventory of where these lands are located and compiling information relating to contaminants and other environmental hazards that are known to be present. It encourages discussion by our state departments on potential remediation and alternative uses for the lands and any proposed legislation that would be necessary to potentially transfer these lands back to the state.

From Mākua Valley to Pōhakuloa, or the entire island of Kaho'olawe, we know that the U.S. military has seriously and adversely impacted Hawai'i's natural environment due to the occupation and desecration of these lands. HB1352 provides a mechanism to review and disclose the historical degradation and harm caused to Hawai'i's environment and Native Hawaiian communities from military use.

We see this bill as a welcome measure relating to data collection and transparency and encourage our state agencies to take this proactive step. Further, we encourage our state leaders to work together with our federal delegation to not only ensure that these lands are cleaned up, but that the burden falls on the polluters, the U.S. military, to pay for the adequate remediation and restoration of these areas.

Thank you very much for this opportunity to provide testimony in **support of HB1352 HD1**.



COMMITTEE ON WATER AND LAND
COMMITTEE ON AGRICULTURE AND ENVIRONMENT
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
Wednesday, March 17, 2021 @ 1pm

Testimony of Kūpuna for the Mo'opuna

HB 1352, HD 1 – RELATING TO SURPLUS MILITARY LAND.
SUPPORT, WITH AMENDMENTS

Aloha,

We, Kūpuna for the Mo'opuna, a group of kūpuna Hawaiian homestead farmers committed to the well-being of Hawai'i for the next generations to come, **support HB 1352, HD 1 WITH AMENDMENTS.**

HB 1352, HD 1 seeks to gather data and input on federally owned and leased lands, which are primarily “ceded” lands, in anticipation of their potential transfer to State control.

However, because these lands are primarily “ceded” lands, **HB 1352, HD 1 must be amended to specifically include the Office of Hawaiian Affairs in these important discussions by adding appropriate language on Page 2, line 16, to read:**

“...agencies and the Office of Hawaiian Affairs on remediation and restoration needs and on proposed alternative uses for the lands...”

We urge these Committees to PASS HB 1352, HD 1, WITH AMENDMENTS. Mahalo.

Ua mau ke ea o ka 'āina i ka pono!

HB-1352-HD-1

Submitted on: 3/15/2021 9:47:12 PM

Testimony for WTL on 3/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Klaus Radtke	Testifying for alohahawaiiionipaa.org	Support	No

Comments:

We understand that the leases on many such ceded properties are expiring within the next ten years. Now is the time to plan ahead so that, where feasible, such lands be returned to DHHL ASAP for truly (!) affordable housing. The needs are great!

We are depending on you,

Klaus Radtke,
Ph.D.
tal Scientist
a,org

Environmen
alohahawaiiionipp

HB-1352-HD-1

Submitted on: 3/12/2021 12:53:10 PM

Testimony for WTL on 3/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaikea K. Blakemore	Individual	Support	No

Comments:

I support returning lands to benefit the public. Military use also directly harms ecosystems. Any efforts to restore and return lands damaged by military use should be supported.

HB-1352-HD-1

Submitted on: 3/13/2021 9:43:26 AM

Testimony for WTL on 3/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Regina Gregory	Individual	Support	No

Comments:

This bill needs a provision that the federal government is responsible for clean-up of lands it has contaminated, and the state can sue the federal government for failure to clean up, and demand the amount of money it will take to clean up the lands.

HB-1352-HD-1

Submitted on: 3/13/2021 2:23:25 PM

Testimony for WTL on 3/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Keawe	Individual	Support	No

Comments:

I support hb1352 hd1

HB-1352-HD-1

Submitted on: 3/15/2021 6:13:47 PM

Testimony for WTL on 3/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lois Crozer	Individual	Support	No

Comments:

Let's take inventory of the ceded lands being returned and prepare for the transition by having a checklist of what needs to be done with them to ensure they are safe to start using productively.

HB-1352-HD-1

Submitted on: 3/15/2021 7:19:15 PM

Testimony for WTL on 3/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
jeanne lindgren	Individual	Support	No

Comments:

"Dear committee members, I am writing to support the inventory of lands within the State that are leased or controlled by the federal government and the reporting of any known contaminants or environmental hazards associated with the inventoried lands based on past environmental studies. Furthermore, I find it important to get input from executive branch departments and agencies on proposed alternative uses for the lands that would be consistent with their mission should the lands be returned to the State. Mahalo for you time and consideration, Jeanne Lindgren jlmilkyway@gmail.com 96817"

HB-1352-HD-1

Submitted on: 3/15/2021 8:13:34 PM

Testimony for WTL on 3/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

Strong support.

HB-1352-HD-1

Submitted on: 3/16/2021 7:19:45 AM

Testimony for WTL on 3/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
James F Moonier	Individual	Support	No

Comments:

Bellows should be restored to a safe condition to provide broader recreational spaces for HI citizens and tourists.

HB-1352-HD-1

Submitted on: 3/16/2021 9:57:33 AM

Testimony for WTL on 3/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
tlaloc tokuda	Individual	Support	No

Comments:

Dear WTL/AEN/PSM Committee members,

- The Bill takes a proactive approach to reviewing military lands, environmental issues that need to be addressed and uses for those lands by our State.
- Many Ceded lands have leases expiring in 2029, and we need to plan before to make sure the land is safe to use and that we have development plans and resources lined up.
- Kalaeloa was returned decades ago, but the State still has not accepted some part of it because of lack of funds to care for it.

"This is a very good bill. We need to know what contaminants or environmental hazards associated with the inventoried lands (though i would prefer to see the State being reimbursed for this investigation). We need to also create a data base of these lands and the proposed alternative uses for these lands

Mahalo for your consideration,

Tlaloc Tokuda

Kailua Kona, HI 96740"