



**SB2 SD1
RELATING TO PUBLIC LANDS**

Ke Kōmike ‘Aha Kenekoa o ke Ki‘ina Hana a me nā Kumuwaiwai

Pepeluali 26, 2021

9:30 a.m.

Lumi 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB2 SD1, which seeks to amend the Hawai‘i Revised Statutes (HRS) § 171-2 definition of “public lands,” removing certain procedural safeguards found in HRS Chapter 171 for public lands set aside from the Governor or leased by other State departments or agencies to the Hawai‘i Housing Finance and Development Corporation (HHFDC). OHA notes that the long-term leases contemplated for public lands under this measure may foreclose Native Hawaiian claims to potentially large swaths of “ceded” lands for a century or longer, and have long been considered tantamount to a fee sale of lands in other contexts, such as those involving the leasing of tribal lands. **OHA opposes the foreclosure of Native Hawaiian claims to “ceded” lands that were unlawfully taken under extreme duress and without consent by or compensation to the Native Hawaiian people, and urges the inclusion of language provided below that would provide some recognition of and protection for these claims.**

OHA appreciates the inclusion in this bill that lands set aside by the Governor or leased to HHFDC by any state agency or department remain consistently protected against inappropriate alienation pursuant to HRS § 171-64.7. OHA is also appreciative of the additional provision added to HRS § 201H-9, requiring that any lands leased to HHFDC by any state department or agency be returned to that department or agency when no longer needed by HHFDC for housing, finance, or development purposes. These safeguards would help to ensure the appropriate use and disposition of our public lands, including “ceded” lands, and further ensure clear and consistent oversight, accountability, and transparency in the potential sale or alienation of our limited public and “ceded” land base.

However, SB2 contemplates a significant expansion of the public lands that could be leased under HHFDC’s very flexible and liberal land disposition authorities. Currently, HHFDC can give out extremely long-term, including 99-year leases, on the limited lands that HHFDC holds in fee; HHFDC may also lease or otherwise dispose of such lands for far less than fair market value, and without the auction or other requirements generally applicable to the disposition of public lands. **SB2 would allow a vast amount of public lands—which are overwhelmingly “ceded” lands to which Native Hawaiians maintain unrelinquished claims, and which are also largely Public Land Trust lands, held for the benefit of native Hawaiians and the general public—to be leased or otherwise disposed of under HHFDC’s broad leasing and disposition authorities.** These lands are currently subject to the public transparency and accountability protections of HRS Chapter 171,

which include lease length limitations (i.e. maximum aggregate lease period of 65 years), lease extensions prohibitions, and auction requirements; allowing these lands to be exempted from HRS Chapter 171 and instead subjecting them only to HHFDC's broad leasing and dispositions authorities may foreclose, for a century or more, opportunities for Native Hawaiians to fully and directly realize the benefits from lands to which they have specific legal and moral claims.

As OHA has repeatedly asserted, extremely long-term, multi-generational leases on "ceded" lands create a sense of entitlement on the part of lessees that has led to, and may continue to lead to, the alienation of public and "ceded" lands. Notably, long-term leases such as the 99-year leases contemplated in this and related measures have also been considered tantamount to the sale of a fee interest in tribal lands, as **"the land base is effectively lost for generations to come,"** and **"the property expectation born of those leases, combined with the infrastructure development and capital investment made in reliance on them, may render those leases essentially irretractable as a political matter."**¹ OHA strongly objects to the sale or alienation of "ceded" lands except in limited circumstances, and has significant concerns over any proposal that may facilitate the effective diminution of the "ceded" lands corpus. Accordingly, OHA cannot support any proposal that may subject a significant amount of "ceded" lands to extremely long-term, multigenerational leases, including the instant measure, unless there is a mechanism in place to protect and preserve Native Hawaiian claims to leased "ceded" lands.

Should the Committees nonetheless move this measure forward, **OHA respectfully urges the inclusion of the following suggested amendment to HRS § 201H-9(c), in order to minimally recognize and protect Native Hawaiian claims to "ceded" lands which may be subject to the broad leasing authorities of HHFDC.**

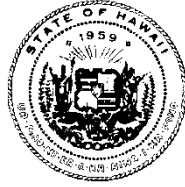
"(c) The corporation may lease or rent all or a portion of any housing project and establish and revise the rents or charges therefor. The corporation may sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein to any person or government. With regards to real property set aside or leased to the corporation that was classed as government or crown lands prior to August 15, 1895, or exchanged for such lands, any lease, sublease, rental, exchange, transfer, assignment, or pledge of such property or interests in such property by the corporation for an aggregate period of longer than 65 years shall be made subject

¹ Mary Christina Wood, *Protecting the Attributes of Native Sovereignty: A New Paradigm for Federal Actions Affecting Tribal Resources*, 1995 UTAH L. REV. 109, 145-46 (1995); see also Reid Peyton Chambers & Monroe E. Price, *Regulating Sovereignty: Secretarial Discretion and the Leasing of Indian Lands*, 26 STANFORD L. REV. 1061, 1078 (1974) ("Through the lease instrument—often for 99 years—the fiction of Indian retention is retained, but the impact on the tribe is often inconsistent with the form. In this context, 99-year leases are tantamount to the sale of the fee" (emphasis added)).

to terms and conditions approved by the board of trustees of the Office of Hawaiian Affairs. Such terms and conditions shall include provisions that reflect the maintained claims of native Hawaiians in the "ceded" lands corpus, such as provisions requiring rights of first refusal, transfers or commitments of resources for programs serving native Hawaiian interests, affordability requirements based on native Hawaiian housing demand data, a reservation of the rights and interests of a native Hawaiian self-governing entity in such lands, or any other relevant provision."

Accordingly, OHA respectfully urges the Committee to **HOLD** SB2 SD1. However, should the Committees choose to move this measure forward, OHA minimally urges the inclusion of the suggested amendment offered above. Mahalo nui loa for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



LATE

DENISE ISERI-MATSUBARA
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
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IN REPLY REFER TO:

Statement of
DENISE ISERI-MATSUBARA
Hawaii Housing Finance and Development Corporation
Before the

SENATE COMMITTEE ON WAYS AND MEANS

February 26, 2021 at 9:30 a.m.
State Capitol, Room 211

In consideration of
S.B. 2, S.D. 1
RELATING TO PUBLIC LANDS.

The HHFDC supports S.B. 2, S.D. 1, which amends the definition of "public lands" in Section 171-2, HRS, to exclude lands set aside by the governor to HHFDC and lands leased to HHFDC by other State department or agency. The bill will extend HHFDC's statutory exemption for the limited lands it holds in its corporate capacity and will help to streamline the development of affordable housing on state lands.

This exemption will help streamline the development of affordable housing on State lands by minimizing the number of approvals from the Department of Land and Natural Resources as projects move forward from set-aside to the leasing, entitlement, financing, and development phases. Housing development will be subject to all conditions imposed by the Board of Land and Natural Resources and as set forth in the Executive Order. This includes the return of state land if it is no longer needed for housing.

Thank you for the opportunity to provide written comments on this measure.

Kūpuna for the Mo‘opuna
committed to the well-being of Hawai‘i for the next generations to come
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STOP LEGAL THIEVERY!

COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Date: Friday, February 26, 2021

Senator Gilbert S.C. Keith-Agaran, Vice Chair
Time 9:30AM

Testimony of Kūpuna for the Mo‘opuna

SB 2, SD 1 - RELATING TO PUBLIC LANDS. **STRONG OPPOSITION**

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, are in **strong opposition to SB 2, SD 1.**

SB 2, SD 1 seeks to amend the Hawai‘i Revised Statutes 171-2 definition of “public lands.”

Mahalo to the teachers who taught us, *“Just because you wrote your name on a pencil you stole from a classmate, that doesn’t make it yours. Give it back, apologize, and don’t do it again.”*

Vote NO on SB 2, SD 1.

Ua mau ke ea o ka ‘āina i ka pono!