



HB439 HD2
RELATING TO LAND USE
Senate Committee on Water and Land
Senate Committee on Housing

March 14, 2019

1:15 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB439 HD2, which may inadvertently allow for the sale or alienation of public and “ceded” lands without the procedural safeguards found in Chapter 171. Accordingly, should the Committees choose to move this measure forward, OHA respectfully requests an amendment to ensure that lands set aside from the Governor to the Hawaii Housing Finance and Development Corporation (HHFDC) remain consistently protected against inappropriate alienation pursuant to HRS § 171-64.7, notwithstanding their proposed exemption from the definition of “public lands” in HRS § 171-2.

OHA appreciates that the HHFDC may benefit from greater flexibility and autonomy over the management and disposition of lands that may fall within its control, particularly given its considerable mission to oversee affordable housing finance and development in Hawai‘i. OHA understands that this measure would accordingly remove lands set aside by the Governor to the HHFDC for the primary purpose of developing affordable housing from Board of Land and Natural Resources’ (BLNR’s) oversight and management under Chapter 171, through an amendment to the definition of “public lands” in HRS §171-2.

However, to ensure that lands set aside to HHFDC are treated consistently with lands HHFDC holds title in and other state lands generally removed from BLNR jurisdiction, OHA requests that this measure expressly reaffirm that current legislative approval requirements for the sale or alienation of any state lands, as found in HRS §171-64.7, also apply to all lands which are set aside to the HHFDC. This statutory requirement is critical to maintaining the “ceded” lands corpus, and its enactment was a condition precedent to the settlement agreement in the OHA v. Housing and Community Development Corporation of Hawai‘i lawsuit, brought in response to the State’s actions to sell and otherwise alienate “ceded” lands. **OHA objects to the sale of “ceded” lands except in limited circumstances, and notes that the legislative approval requirements for the sale of state lands in HRS § 171-64.7 were enacted to ensure a high level of accountability and transparency in any proposed alienation of the state’s limited land base, and to protect “ceded” lands from being sold prior to the resolution of Native Hawaiians’ unrelinquished claims.**

OHA recognizes that under this measure, HHFDC would continue to be required to obtain legislative approval pursuant to HRS § 171-64.7, to sell or otherwise alienate lands to which it holds title. However, the amendments proposed in this bill may create confusion and inconsistency with regards to applicability of HRS § 171-64.7 to the sale or alienation of lands set aside to HHFDC. **Therefore, should the Committees choose to move this measure, OHA respectfully asks that parallel language be inserted into subsection (a)(4) of HRS § 171-64.7, to read as follows:**

"(4) Lands that are set aside by the governor to the Hawaii housing finance and development corporation for the primary purpose of developing affordable housing or lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;"

Accordingly, OHA urges the Committees to **HOLD** HB439 HD2, or otherwise include the above-recommended amendment to ensure consistent safeguards to protect against the alienation of public lands, including the "ceded" lands corpus. Mahalo a nui for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Craig K. Hirai
Hawaii Housing Finance and Development Corporation
Before the

SENATE COMMITTEE ON WATER AND LAND
SENATE COMMITTEE ON HOUSING

March 14, 2019 at 1:15 p.m.
State Capitol, Room 225

In consideration of
H.B. 439, H.D. 2
RELATING TO LAND USE.

The HHFDC supports H.B. 439, H.D. 2, which exempts lands set aside to the HHFDC by Executive Order for the primary purpose of developing affordable housing from the statutory definition of "public lands." Currently, only lands to which HHFDC holds title to in its corporate capacity are exempt from the definition of "public lands." This bill will help HHFDC to expedite housing development on state lands.

HHFDC also concurs that lands set aside by Executive Order for the primary purpose of developing affordable housing should also be subject to the legislative approval requirement set forth in §171-64.7, HRS. Accordingly, we submit for your consideration a proposed S.D. 1 that addresses concerns raised on this issue by the Office of Hawaiian Affairs during House committee hearings on this measure.

Thank you for the opportunity to testify.

A BILL FOR AN ACT

RELATING TO LAND USE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 171-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§171-2 Definition of public lands. "Public lands" means
4 all lands or interest therein in the State classed as government
5 or crown lands previous to August 15, 1895, or acquired or
6 reserved by the government upon or subsequent to that date by
7 purchase, exchange, escheat, or the exercise of the right of
8 eminent domain, or in any other manner; including lands accreted
9 after May 20, 2003, and not otherwise awarded, submerged lands,
10 and lands beneath tidal waters that are suitable for
11 reclamation, together with reclaimed lands that have been given
12 the status of public lands under this chapter, except:

13 (1) Lands designated in section 203 of the Hawaiian Homes
14 Commission Act, 1920, as amended;

15 (2) Lands set aside pursuant to law for the use of the
16 United States;

17 (3) Lands being used for roads and streets;

- 1 (4) Lands to which the United States relinquished the
2 absolute fee and ownership under section 91 of the
3 Hawaiian Organic Act prior to the admission of Hawaii
4 as a state of the United States unless subsequently
5 placed under the control of the board of land and
6 natural resources and given the status of public lands
7 in accordance with the state constitution, the
8 Hawaiian Homes Commission Act, 1920, as amended, or
9 other laws;
- 10 (5) Lands to which the University of Hawaii holds title;
- 11 (6) Lands set aside by the governor to the Hawaii housing
12 finance and development corporation for the primary
13 purpose of developing affordable housing, or to which
14 the Hawaii housing finance and development corporation
15 in its corporate capacity holds title;
- 16 (7) Lands to which the Hawaii community development
17 authority in its corporate capacity holds title;
- 18 (8) Lands to which the department of agriculture holds
19 title by way of foreclosure, voluntary surrender, or
20 otherwise, to recover moneys loaned or to recover
21 debts otherwise owed the department under chapter 167;

1 (9) Lands that are set aside by the governor to the Aloha
2 Tower development corporation; lands leased to the
3 Aloha Tower development corporation by any department
4 or agency of the State; or lands to which the Aloha
5 Tower development corporation holds title in its
6 corporate capacity;

7 (10) Lands that are set aside by the governor to the
8 agribusiness development corporation; lands leased to
9 the agribusiness development corporation by any
10 department or agency of the State; or lands to which
11 the agribusiness development corporation in its
12 corporate capacity holds title;

13 (11) Lands to which the Hawaii technology development
14 corporation in its corporate capacity holds title; and

15 (12) Lands to which the department of education holds
16 title;

17 provided that, except as otherwise limited under federal law and
18 except for state land used as an airport as defined in section
19 262-1, public lands shall include the air rights over any
20 portion of state land upon which a county mass transit project
21 is developed after July 11, 2005."

1 SECTION 2. Section 171-64.7, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) This section applies to all lands or interest therein
4 owned or under the control of state departments and agencies
5 classed as government or crown lands previous to August 15,
6 1895, or acquired or reserved by the government upon or
7 subsequent to that date by purchase, exchange, escheat, or the
8 exercise of the right of eminent domain, or any other manner,
9 including accreted lands not otherwise awarded, submerged lands,
10 and lands beneath tidal waters that are suitable for
11 reclamation, together with reclaimed lands that have been given
12 the status of public lands under this chapter, including:

13 (1) Land set aside pursuant to law for the use of the
14 United States;

15 (2) Land to which the United States relinquished the
16 absolute fee and ownership under section 91 of the
17 Organic Act prior to the admission of Hawaii as a
18 state of the United States;

19 (3) Land to which the University of Hawaii holds title;

20 (4) Land set aside by the governor to the Hawaii housing
21 finance and development corporation for the primary
22 purpose of developing affordable housing, or to which

1 the Hawaii housing finance and development corporation
2 in its corporate capacity holds title;

3 (5) Land to which the department of agriculture holds
4 title by way of foreclosure, voluntary surrender, or
5 otherwise, to recover moneys loaned or to recover
6 debts otherwise owed the department under chapter 167;

7 (6) Land that is set aside by the governor to the Aloha
8 Tower development corporation; or land to which the
9 Aloha Tower development corporation holds title in its
10 corporate capacity;

11 (7) Land that is set aside by the governor to the
12 agribusiness development corporation; or land to which
13 the agribusiness development corporation in its
14 corporate capacity holds title;

15 (8) Land to which the Hawaii technology development
16 corporation in its corporate capacity holds title; and

17 (9) Land to which the department of education holds title.

18 provided that, except as otherwise limited under federal law and
19 except for state land used as an airport as defined in section
20 262-1, public lands shall include the air rights over any
21 portion of state land upon which a county mass transit project
22 is developed after July 11, 2005."

H.B. NO. 439 H.D. 2
Proposed
S.D. 1

1 SECTION 3. New statutory material is underscored.

2 SECTION 4. This bill shall take effect on July 1, 2050.

Report Title:

Public Land; Hawaii Housing Finance and Development Corporation

Description:

Exempts lands set aside by the Governor to the Hawaii Housing Finance and Development Corporation for the primary purpose of developing affordable housing from classification as public land subject to DLNR management. Clarifies that such lands remain subject to legislative approval under §171-64.7, HRS. (HB439 HD2 Proposed SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committees on Water and Land, and Housing
Thursday, March 14, 2019 at 1:15 P.M.
Conference Room 225, State Capitol**

LATE

RE: HOUSE BILL NO. 439 HD 2, RELATED TO LAND USE

Chairs Kahele and Chang, Vice Chairs Keith-Agaran and Kanuha, and Members of the Committee:

The Chamber of Commerce Hawaii (“The Chamber”) **supports** HB 439 HD 2, which proposes to exempt lands set aside by the Governor to the Hawaii Housing Finance and Development Corporation (HHFDC) from classification as “public land” subject to management by the Department of Land and Natural Resources.

The Chamber is Hawaii’s leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the “Voice of Business” in Hawaii, the organization works on behalf of members and the entire business community to improve the state’s economic climate and to foster positive action on issues of common concern.

We understand that Chapter 171, HRS already exempts lands that HHFDC holds title to from the definition of “Public Lands.” Exempting lands set aside to HHFDC would create more opportunities for HHFDC to develop affordable housing on state owned lands, without having to obtain approval from the Board of Land and Natural Resources for ministerial real estate transactions and approvals (i.e. consents, leases, sub-leases, etc.).

For the reasons above we are in support of HB 439 HD 2, and appreciate the opportunity provide testimony.



March 8, 2019

Senator Kaiali'i Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Water and Land

Senator Stanley Chang, Chair
Senator Dru Mamo Kanuha, Vice Chair
Senate Committee on Housing

Comments in Support of HB 439, HD2, Relating to Land Use (Exempts lands set aside by the Governor to the Hawaii Housing Finance and Development Corporation [HHFDC] for the primary purpose of developing affordable housing from classification as “public land” subject to DLNR management.)

Thursday, March 14, 2019 at 1:15 p.m. in Conference Room 225

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF’s mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii’s significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to provide comments in **strong support of HB 439, HD2.**

HB 439, HD2. The purpose of this bill is to exempt lands set aside by the Governor to the HHFDC for the primary purpose of developing affordable housing from classification as “public land.” The proposed exemption would streamline the process and procedures required to be followed to develop housing projects on state lands which have been set aside to HHFDC, thereby appreciably expediting the development of such projects.

LURF's Position. Despite the approval of the Board of Land and Natural Resources (BLNR) and issuance of the Executive Order by the Governor to effectuate the set aside of these lands, HHFDC must currently go back before the BLNR to obtain other approvals necessary for housing development, including rights of entry for planning purposes; Condominium Property Regime processing; ground leases to developers; and subleases to limited partnerships or limited liability corporations created specifically for the housing project and/or for mortgage financing.

LURF believes allowing the exemption of lands set aside to HHFDC from the definition of "public land" would greatly assist in accelerating development of much-needed and anticipated housing projects.

The lack of affordable housing remains a significant problem affecting Hawaii and finding ways to provide sufficient housing for Hawaii's residents has continued to be a major objective for the Legislature, state and county agencies, and members of the housing industry and business community.

Logical changes to existing laws such as the exemption proposed by this bill are therefore significant and necessary and should be welcomed as a method to assist with addressing the diminished supply of affordable housing in Hawaii. Such seemingly small measures have the potential to result in substantial and positive impacts on housing, as well as invigorating the local construction industry and advancing the State's economy and general welfare.

For these reasons, LURF **supports HB 439, HD2**, and respectfully urges your favorable consideration.

Thank you for the opportunity to provide comments in strong support of this matter.



**TESTIMONY TO THE SENATE COMMITTEES ON WATER AND LAND, AND HOUSING
State Capitol, Conference Room 225
415 South Beretania Street
1:15 PM**

March 14, 2019

RE: HOUSE BILL NO. 439 HD 2, RELATING TO LAND USE

Chairs Kahele and Chang, Vice Chairs Keith-Agaran and Kanuha, and members of the committees:

My name is Gladys Quinto Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii is in **strong support** of H.B. 439 HD 2, which proposes to exempt lands set aside by the Governor to the Hawaii Housing Finance and Development Corporation (HHFDC) from classification as "public lands" subject to management by the Department of Land and Natural Resources.

We understand that Chapter 171, HRS already exempts HHFDC lands from the definition of "public lands". Exempting lands set aside to HHFDC would create more opportunities for HHFDC to develop affordable housing on state-owned lands, without having to obtain approval from the Board of Land and Natural Resources for ministerial real estate transactions/approvals (i.e. consents, leases, sub-leases, etc.).

We are in strong support of H.B. 439 HD 2, and appreciate the opportunity provide comments on this matter.

Democratic Party of Hawaii
HAWAIIAN AFFAIRS CAUCUS

TESTIMONY WITH COMMENTS ON HB439, HD2
Relating to Land Use

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii provides the below comments on HB439, HD2 that exempts lands set aside by the Governor to the Hawaii Housing Finance and Development Corporation for the primary purpose of developing affordable housing from classification as public land subject to DLNR management.

We note in this legislative session at least 12 bills that propose to remove/exempt lands from the Public Land Trust or extend leases to 99 years. We are concerned with the erosion of that trust and the impact that it will have on the pro rata share of PLT revenues to the Office of Hawaiian Affairs, and subsequently on the impact such actions will have on funding programs and services necessary to enhance the well-being of Native Hawaiians. Further, leasing public land for 99 years is a clear give-away of public land in that it is highly unlikely that a lessee would turn over property they have held and developed over 99 years. Also, such long leases tie the hands of the State in having the flexibility to address new and ever changing needs of this state.

We understand and appreciate bills such as this one that has as its main objective development of affordable housing on state owned lands. While we don't object to it, we are concerned about what appears to be unlimited authority to the Governor to exempt public lands from the definition of "public lands" for the purpose of developing affordable housing on state owned lands. The question is, how much land is involved, 5 acres, 100 acres, 1000 acres? Further, the bill has language that exempts "Lands set aside by the governor to the Hawaii housing finance and development corporation for the **primary** purpose of developing affordable housing". The use of the word "primary" leads us to wonder if there are other purposes.

We ask the legislature to please assure that any measures passed that exempts lands from the Public Land Trust affirm that current legislative approval requirements for the sale or alienation of any state lands, as found in HRS §171-64.7, also apply to all lands which may be set aside, such as to the HHFDC. This statutory requirement is critical to maintaining the "ceded" lands corpus. The Hawaiian Affairs Caucus objects to the sale of "ceded" lands except in limited circumstances, and notes that the legislative approval requirements for the sale of state lands in HRS § 171-64.7 were enacted to ensure a high level of accountability and transparency in any proposed alienation of the state's limited land base, and to protect "ceded" lands from being sold prior to the resolution of Native Hawaiians' unrelinquished claims.

Mahalo for your consideration of our comments.

HB-439-HD-2

Submitted on: 3/9/2019 11:38:29 AM

Testimony for WTL on 3/14/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Oppose	No

Comments: