

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
HOUSING**

**Thursday, January 23, 2020
1:15 PM
State Capitol, Conference Room 225**

In consideration of

**SENATE BILL 2043
RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND**

Senate Bill 2043 proposes to authorize the Hawaii Housing Finance and Development Corporation (HHFDC) and Hawaii Community Development Authority (HCDA) to sell leasehold units in residential condominiums located on state lands. **The Department of Land and Natural Resources appreciates and supports the intent of this measure and offers the following comments.**

The purpose of this measure appears to be to provide homeownership opportunities to qualified residents, beyond merely rental housing. The bill would remove leasehold units in residential condominiums located on state lands from the definition of "public lands" under Section 171-2, Hawaii Revised Statutes (HRS). If the bill were to become law, HHFDC and HCDA would no longer need to secure approval from the Board of Land and Natural Resources for dispositions relating to such leasehold units and the length of leases for the units would not be subject to the limitations of Chapter 171, HRS.

Thank you for the opportunity to comment on this measure.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

547 Queen Street, Honolulu, Hawaii 96817
Web site: <http://dbedt.hawaii.gov/hcda/>

DAVID Y. IGE
GOVERNOR

JOHN WHALEN
CHAIR

AEDWARD LOS BANOS
EXECUTIVE DIRECTOR

Telephone: (808) 594-0300
Fax: (808) 587-0299

STATEMENT OF
AEDWARD LOS BANOS, EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

Before the
SENATE COMMITTEE ON HOUSING

Thursday, January 23, 2020
1:15 P.M.
State Capitol, Conference Room 225

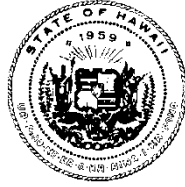
in consideration of

SB 2043 RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND

Chair Chang, Vice Chair Kanuha, and Members of the Committee. The Authority has not yet taken a position on this bill, however, in general the Hawaii Community Development Authority (HCDA) **supports** efforts to increase affordable housing for Hawaii's residents. Developing leasehold condominiums for the people of Hawaii on state lands is a positive step toward addressing the housing shortage, and with long term leases of ninety-nine years this proposed legislation has the potential to aid in creating housing that could be affordable for generations to come.

Thank you for the opportunity to testify in **support of SB 2043**.

DAVID Y. IGE
GOVERNOR



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

SENATE COMMITTEE ON HOUSING

January 23, 2020 at 1:15 p.m.
State Capitol, Room 225

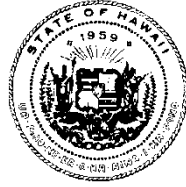
In consideration of
S.B. 2043
RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND.

The HHFDC supports S.B. 2043, a bill authorizing HHFDC to develop and sell leasehold units in condominiums developed on State lands that are set aside to the HHFDC by the Governor and lands leased to the HHFDC by any state department or agency, in addition to lands to which HHFDC holds title, for terms of up to 99 years.

Allowing HHFDC to sell leasehold units in condominiums developed on state land to qualified residents will provide affordable homeownership opportunities to Hawaii residents without necessitating the sale of the state land in fee simple. It is anticipated that the State will have to pay for or finance the infrastructure costs for affordable for sales leasehold housing on state lands both on Oahu and the neighbor islands. If the sales price of a leasehold condominium unit will pay for its construction cost, there is a possibility that most of the unit's allocable share of infrastructure costs may be recovered over the term of a unit's lease.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

STATE OF HAWAII
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
POST OFFICE BOX 17907
HONOLULU, HAWAII 96817

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

SENATE COMMITTEE ON HOUSING

Thursday, January 23, 2020
1:15 PM - Room 225, Hawaii State Capitol

In consideration of
SB 2043

RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND

Honorable Chair Chang and Members of the Senate Committee on Housing, thank you for the opportunity to provide testimony concerning Senate Bill (SB) 2043, relating to leasehold condominiums on state land.

The Hawaii Public Housing Authority (HPHA) supports, with amendments, SB 2043, which authorizes the Hawaii Housing Finance and Development Corporation and Hawaii Community Development Authority to sell leasehold units in residential condominiums located on state lands.

The HPHA is here to assist the Legislature in this endeavor and would appreciate the opportunity to also participate in selling ninety-nine year leasehold condominiums. The HPHA looks at this measure as an opportunity to be a part of the solution towards the creation of 17,000 leasehold units as the Agency is currently involved with several redevelopment projects on its properties.

The HPHA would like to humbly request the following be included as HPHA's suggested amendment:

"§356D- Leasehold condominiums on state land. (a) The authority may sell leasehold units in condominiums created pursuant to chapter 514B and developed under this part on state land to a "qualified resident" as defined in section 201H-32.

(b) The term of the lease shall not exceed ninety-nine years and shall not be extended beyond the initial ninety-nine year term.

(c) The powers conferred upon the authority by this section shall be in addition and supplemental to the powers conferred by any other law, and nothing in this section shall be construed as limiting any powers, rights, privileges, or immunities so conferred."

The HPHA appreciates the opportunity to provide the Committee with the HPHA's testimony regarding SB 2043. We thank you very much for your dedicated support.

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SB2043
RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND
Senate Committee on Housing

January 23, 2020

1:15 p.m.

Room 225

The Administration of the Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB2043, which seeks to address the State’s need for affordable housing by authorizing the sale of long-term leasehold units on certain state lands. OHA appreciates the opportunity to be a meaningful part of the dialogue informing the development of this measure, and respectfully requests the following amendments to be made to: (1) ensure that lease term lengths are reasonably set; (2) clarify that state-owned lands set aside from the Governor or leased to the Hawai’i Housing Finance and Development Corporation (HHFDC) or Hawai’i Community Development Authority (HCDA) remain consistently protected against inappropriate alienation; and (3) more equitably and appropriately reflect the interests of OHA and Department of Hawaiian Home Lands (DHHL) beneficiaries in the lands upon which the leasehold units may be located, as was proposed in similar measures during the last legislative session.

First, consistent with past OHA positions, OHA expresses its concerns over the length of the proposed 99-year leasehold interests in certain state lands that would be authorized for sale under this measure; notably, such state lands may likely include Public Land Trust lands as well as “ceded” lands taken through the illegal overthrow of the Hawaiian Kingdom and to which Native Hawaiians maintain unrelinquished claims. Extremely long-term multi-generational leases, such as those proposed in this measure, may inhibit multiple future generations from ensuring the best use of such lands, and may inadvertently 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. With regards to this latter concern, OHA notes that it 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 diminution of the “ceded” lands corpus.

While OHA understands that certain federal housing financing programs may require leasehold interests of 75 years, the 99-year leasehold interests proposed by this measure exceed this lengthy 75-year lease term timeline. Thus, OHA urges the following amendments to limit any leasehold interest sold under SB2043 to no more than 75 years:

By amending the language on page 1, lines 8-10, to read as follows:

“(b) The term of the lease shall not exceed seventy-five years and shall not be extended beyond the initial seventy-five year term.”

And amending the language on page 2, lines 11-13, to read as follows:

“(b) The term of the lease shall not exceed seventy-five years and shall not be extended beyond the initial seventy-five year term.”

OHA does, however, appreciate concerns raised regarding the potential for kūpuna without family or resources and those with special physical and health needs to outlive a 75-year lease; OHA is open to further discussions regarding whether statutory lease extension language can accommodate such exigent circumstances.

Second, OHA requests that any proposals to exempt state lands from the definition of “public lands” in HRS § 171-2 be paired with amendments to ensure continued compliance with HRS § 171-64.7, a critical mechanism protecting our public lands, including “ceded” lands, from inappropriate alienation. The legislative approval required for the sale or gift of public lands under HRS § 171-64.7 ensures a close level of oversight, accountability, and transparency in the potential alienation of our limited public land base; this statutory requirement is particularly 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. After further review, OHA notes that HRS § 201H-9(c) does in fact authorize the HHFDC, and HRS § 206E-14 similarly authorizes the HCDA, to sell real property. Therefore, even though it is OHA’s understanding that SB2043 does not anticipate fee sales, to the extent that this measure proposes to exempt any HHFDC- or HCDA-controlled state lands from the definition of “public lands” under HRS § 171-2 and the attendant public land disposition provisions of Chapter 171, OHA urges that such lands be expressly included under HRS § 171-64.7, consistent with lands HHFDC holds in title and other state lands excluded from HRS § 171-2.

Accordingly, OHA requests following amendments to ensure the consistent protection of public lands from inappropriate alienation:

By amending the language on page 1, lines 11-15, to read as follows:

“(c) State land set aside by the governor to the corporation and lands leased to the corporation by any department or agency of the State for a condominium described in this section shall be exempt from the definition of “public lands” under section 171-2; except for the provision in section 171-2(6) that subjects corporation lands to the accounting for all receipts for lands subject to section 5(f) of the Admission Act; provided further that any sale, gift, or exchange of real property shall be subject to the terms, conditions, and restrictions applicable to the sale, gift, or exchange of public lands in sections 171-50 and 171-64.7.”

And amending the language on page 2, lines 14-18, to read as follows:

“(c) State land set aside by the governor to the authority and lands leased to the authority by any department or agency of the State for a condominium described in this section shall be exempt from the definition of “public lands” under section 171-2; provided that any sale, gift, or exchange of real property shall be subject to the terms, conditions, and restrictions applicable to the sale, gift, or exchange of public lands in sections 171-50 and 171-64.7.”

Similarly, OHA respectfully urges that this measure include an additional section providing for parallel language to the proposed amendments to HRS § 171-2, to be added to HRS § 171-64.7 via the following amendments:

Amending HRS § 171-64.7(a)(4), to read as follows:

“(4) Land set aside by the governor to the Hawaii housing finance and development corporation, land leased to the Hawaii housing finance and development corporation by any department or agency of the State, or land to which the Hawaii housing finance and development corporation in its corporate capacity holds title;”

And further amending HRS § 171-64.7 by adding a new paragraph, (a)(11), to read as follows:

“(11) Land to which the Hawaii community development authority holds title, land set aside by the governor to the Hawaii community development authority, or land leased to the Hawaii community development authority by any department or agency of the State.”

Lastly, OHA urges the inclusion of language to ensure a set aside of leasehold units for transfer to OHA and/or DHHL, such as that found in an amended ALOHA Homes measure proposed last session. Given the maintained claims of Native Hawaiians in lands that may be developed and leased under this measure, the State’s fiduciary obligation to uphold the interests of Native Hawaiians in Public Land Trust lands that may be developed under this measure, as well as the State’s responsibilities to DHHL and its native Hawaiian beneficiaries, OHA strongly believes that it would be both equitable and appropriate to ensure a percentage of leasehold units contemplated for sale under this measure to be transferred to OHA and/or DHHL. OHA offers for the Committee’s consideration the following amendments that would better ensure that OHA and/or DHHL beneficiaries are able to more appropriately realize the benefits of SB2043. While OHA remains open to continued conversation regarding this matter, OHA proposes that the

Committees consider two potential options for statutory language to add to this measure, as exemplified in the amended 2019 ALOHA Homes bill:

The first option sets in statute the transfer of a specific percentage of SB2043 leasehold units, specifically, at least 20% of units sold (one of five units), by amending the language on page 1, line 7, to read as follows:

"land to a "qualified resident" as defined in section 201H-32; provided that for every four leasehold units sold in any condominium, the corporation shall transfer at least one leasehold unit from the same condominium to the department of Hawaiian home lands or to the Office of Hawaiian Affairs; provided further that, if the transfer of leasehold units from the same condominium would be unfeasible, the corporation shall set aside an equivalent number of leasehold units in a separate condominium project for transfer to the department of Hawaiian home lands or the Office of Hawaiian Affairs."

And amending the language on page 2, line 10, to read as follows:

"land to a "qualified resident" as defined in section 201H-32; provided that for every four leasehold units sold in any condominium, the authority shall transfer at least one leasehold unit from the same condominium to the department of Hawaiian home lands or to the Office of Hawaiian Affairs; provided further that, if the transfer of leasehold units from the same condominium would be unfeasible, the authority shall set aside an equivalent number of leasehold units in a separate condominium project for transfer to the department of Hawaiian home lands or the Office of Hawaiian Affairs."

The second option would alternatively provide for the transfer of an unspecified amount or percentage of units, to be determined through administrative rules, by amending the language on page 1, line 7, to read as follows:

"land to a "qualified resident" as defined in section 201H-32; provided that, prior to the sale of any leasehold unit in any condominium, the corporation shall establish rules pursuant to chapter 91 that provide for the transfer of a certain percentage or number of leasehold units within the same condominium to the department of Hawaiian home lands or to the Office of Hawaiian Affairs."

And amending the language on page 2, line 10, to read as follows

"land to a "qualified resident" as defined in section 201H-3; provided that, prior to the sale of any leasehold unit

in any condominium, the authority shall establish rules pursuant to chapter 91 that provide for the transfer of a certain percentage or number of leasehold units within the same condominium to the department of Hawaiian home lands or to the Office of Hawaiian Affairs.”

As highlighted in OHA’s testimonies in past legislative sessions, **Native Hawaiians have significant and unique housing needs, and are particularly affected by the ongoing lack of affordable housing.** For example, data show that Native Hawaiians are less likely to own a home;¹ Native Hawaiian households are also much more likely to be “doubled up,” with multigenerational or unrelated individuals living together in single households.² Furthermore, Native Hawaiian households are more than three times more likely to have a ‘hidden homeless’ family member than all state households.³ Recent research has further shown that state and Native Hawaiian housing rental housing demand is almost entirely for increasingly rare “affordable” units, rather than for market-rate or other ‘gap’-rate units.⁴ **Sixty-three percent of the Native Hawaiian demand for rental units is for those priced at 60% of the Area Median Income (AMI) and below.**⁵ This data demonstrates the dire need for housing among the Native Hawaiian community and the potential of SB2043 to respond to that need, particularly if the above concerns are appropriately addressed.

Mahalo piha for the opportunity to testify on this measure.

¹ See Office of Hawaiian Affairs, Native Hawaiian Homeownership Ho’okahua Waiwai Fact Sheet Vol. 2016, No. 1, page 3, available at <http://www.oha.org/wp-content/uploads/NH-Homeownership-Fact-Sheet-2016.pdf>. This figure includes 8,329 DHHL residential lease “owner-occupied” property units. DHHL Annual Report 2014, at 47, available at <https://dttl.hawaii.gov/wp-content/uploads/2011/11/DHHL-Annual-Report-2014-Web.pdf>. For non-DHHL properties, the Native Hawaiian homeownership rate is therefore 41.2%, 15.5 percentage points below the statewide rate.

² 24.8 of Native Hawaiian households, compared to 9.6% of state households include more than two generations or unrelated individuals. SMS, Hawai’i Housing Planning Study, at 70 (2016), available at https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf.

³ 14.1% of Native Hawaiian households, compared to 4.2% of state households have a hidden homeless family member. *Id.*

⁴ See SMS, *supra* note 2, at 34.

⁵ 77 percent of the Native Hawaiian demand for rental units is for units affordable to those at 80% AMI. See SMS, *supra* note 2, at 72.



**SENATE COMMITTEE ON HOUSING
State Capitol, Conference Room 225
415 South Beretania Street
1:15 PM**

January 23, 2020

RE: SENATE BILL NO. 2043, RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND

Chair Chang, Vice Chair Kanuha, and members of the committee:

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 S.B. 2043**, which proposes to authorize Hawaii Housing Finance and Development Corporation to enter into ninety-nine (99) year leases of units in residential condominiums located on state lands.

Most residential developments on leasehold lands require extended lease terms to make projects economically feasible. As a major landowner at several rail stations along the transit corridor, the proposed bill would provide the state flexibility in negotiating with investors who would be building residential condominiums on the state owned lands. We believe the bill would broaden the interest among private developers to consider developments on State owned lands.

Additionally, a longer lease term would ensure that the unit would remain with one family for at least one generation. Requiring elderly owners to move at the end of a 75 year lease is something the state should want to avoid.

We are in strong support of S.B. 2043, and appreciate the opportunity to express our views on this matter.