

HB-1352-HD-1

Submitted on: 2/12/2021 1:09:09 PM

Testimony for WAL on 2/16/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

Support

SO many lands that the feds. and military have appropriated which need to be in the hands of the people who can steward and continue forward with pono for our islands. NO MORE Lease renewals either.

HB-1352-HD-1

Submitted on: 2/13/2021 9:51:37 PM

Testimony for WAL on 2/16/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jolie Wanger	Individual	Support	No

Comments:

I am submitting testimony in strong support of this bill. It is important that the State reclaim surplus lands currently leased to the military when the leases are up and ensure they are cleaned up and protected. Before this happens, a critical first step is knowing what the current environmental condition is. Land, especially ceded land deserves to be stewarded properly.

HB-1352-HD-1

Submitted on: 2/14/2021 4:35:53 PM

Testimony for WAL on 2/16/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sherry Pollack	Individual	Support	No

Comments:

I am writing in STRONG SUPPORT of HB1352 HD1 which is about proper planning for our State land resources. Please pass this important and overdue legislation. Thank you very much for the opportunity to testify on this key issue.

HB-1352-HD-1

Submitted on: 2/14/2021 10:12:14 PM

Testimony for WAL on 2/16/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Bohlen	Individual	Support	No

Comments:

Strong support!



Environmental Caucus of The Democratic Party of Hawai'i

February 14, 2021

To: House Committee on Water and Land
Representative David A. Tarnas, Chair
Representative Patrick Pihana Branco, Vice Chair
Members of the Committee on Water and Land

Re: HB 1352 – RELATING TO SURPLUS MILITARY LAND

Hearing: Friday, February 16, 2021, 8:300 a.m. Room 430, via videoconference

Position: **STRONG SUPPORT**

Aloha, Chair Tarnas, Vice Chair Branco, and Members of the Committee on Water and Land:

The Environmental Caucus of the Democratic Party of Hawai'i and its Human Environmental Impacts Committee are in strong support of HB 1352, which would establish a surplus military land task force to plan for the remediation and restoration of, and alternative uses for, lands currently under federal ownership and control that are anticipated to be returned to the State.

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.

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 Hale o ka Wai a me ka ‘Āina

Pepeluali 16, 2021

8:30 a.m.

Lumi 430

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 for 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 taken 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 State ownership or 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 is 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 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 concerning 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: 2/15/2021 9:42:46 AM

Testimony for WAL on 2/16/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James E Raymond	Individual	Support	No

Comments:

Please take the first step in restoring Bellows to its rightful purpose.

HB-1352-HD-1

Submitted on: 2/15/2021 12:29:19 PM

Testimony for WAL on 2/16/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Clarence Ching	Individual	Support	No

Comments:

I am Clarence ku Ching - and I'm testifying in support of HB1352 HD1.

These so-called "ceded lands" are lands stolen from the Kingdom of Hawai'i by the so-called Provisional Government as a result of The Overthrow in 1893. Converted to the stolen property of the illegal Republic of Hawaii - they were "ceded" to the u.s. federal government. Therefore, the u.s. federal government became the receptacle for these seized and stolen lands.

These lands were transferred "in trust" (to the so-called "State of Hawai'i" as Trustee) basically for the "betterment of Hawaiians" by the 1959 Admission Act.

As the 2019 Hawai'i Supreme Court appeal decision of Ching v Case (<https://law.justia.com/cases/hawaii/supreme-court/2019/scap-18-0000432.html>) holds - the Admission Act trust is like "regular" trusts with beneficiaries - and the beneficiaries must have benefits.

Because the present leases of Makua and Pohakuloa are indeed of these so-called "ceded lands" - there is no doubt that there have been a transfer of benefits - benefits to the u.s. military. As for benefits to the legitimate and legal beneficiaries - there doesn't seem to have been ANY.

On the other hand, the "state".as Trustee) has a duty to "protect the resources (cultural and natural) of the Trust!" That the "state" has leased these "lands" to the u.s. military to conduct explosive and destructive military training exercises is a "gross" violation of its duty to protect trust resources.

It is timely that these politically-based leases revert to "the state" and be utilized for the benefit of the "real" beneficiaries.

Therefor - the intent of this bill is very much in compliance with the "state's" trust duties - and the bill should. be enacted.

HB-1352-HD-1

Submitted on: 2/15/2021 2:02:00 PM

Testimony for WAL on 2/16/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David Smith	Individual	Support	No

Comments:

Improves local land management practices.



Environmental Caucus of The Democratic Party of Hawai'i

Tuesday, February 16, 2021, 8:30 am

House Committee on Water and Land

HOUSE BILL 1352 – RELATING TO SURPLUS MILITARY LAND

Position: Support

Me ke Aloha, Chair David Tarnas, Vice-Chair Patrick Branco, and Members of the Committee on Water and Land:

HB 1352 HD1 calls for DLNR to identify State lands leased to military control and set to be released, to identify contaminants and hazards for remediation, and identify potential uses once these lands are returned.

The Environmental Caucus regards these functions as vital, and strongly supports this bill. The list of such properties is long, and unfortunately, the outcome of such a study is undermined by the long-standing disinclination for the military to respect the integrity of these lands, treating them as disposable as they are often viewed in a large continental setting. Hawaii's lands are quite minimal by comparison, adjacent to inhabited areas and desired for productive use. Military use is widely spread to all sections of the islands, and the contamination and hazards unfortunately famously permissive. While we must rely on DLNR to do this job, the lease conditions were often fixed long ago, even before Statehood, when the military commanded its own tune. Finding a path to proper remediation appears mired in intransigence, as witness by the Navy's stonewalling of the Red Hill contamination of a precious water aquifer.

The Caucus also regards this issue as part of a much larger issue of the public trust and the capacity for the State to serve it. We have recently witnessed an uprising of citizen assumption of responsibility for upholding the public trust, in the form of kapu aloha embraced by protectors of Mauna a Wakea. This rising movement calls us to respond from a deeper consciousness about the value of the life of the land and the proximity of military activities to human habitation. It is a question of environmental justice of the first order. The State is still struggling to grasp the import of this issue with native Hawaiians and kama'aina alike. The Caucus encourages the broadest participation of citizens committed to aloha 'aina.

Mahalo for this opportunity to address an important issue.

/s/ Charley Ice, Co-Chair, Energy and Climate Action Committee, Environmental Caucus of the Democratic Party

HB-1352-HD-1

Submitted on: 2/15/2021 3:08:26 PM

Testimony for WAL on 2/16/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Lacques	Individual	Support	No

Comments:

Testimony in strong SUPPORT of HB 1352. This bill represents a first step to ensure that the U.S. military provides the public with annual reports and participation in comprehensive remediation of occupied lands.

HB-1352-HD-1

Submitted on: 2/13/2021 11:31:29 PM

Testimony for WAL on 2/16/2021 8:30:00 AM

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

Comments:

Support. Please restore Bellows!

HB-1352-HD-1

Submitted on: 2/15/2021 7:48:04 PM

Testimony for WAL on 2/16/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melissa Lawrence	Individual	Support	No

Comments:

I support house bill 1352 with regards to surplus military land and would expect the military to be responsible for and clean up any waste or ordinances which may impact the environment prior to returning this land to state.

HB-1352-HD-1

Submitted on: 2/15/2021 9:19:09 PM

Testimony for WAL on 2/16/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kimeona Kane	Individual	Support	No

Comments:

Aloha,

I, Kimeona Kane, strongly support HB1352 which creates a task force to plan for the remediation and restoration of surplus military impacted lands, many of which were once prime spaces for multitudes of resources and utilized for generations of Kanaka prior to the military occupation. In many places, access is not permitted, however native gathering is imperative. Some reasons for this denied access is because the military is perhaps the worst when it comes to caring for the land, water, etc. These issues are and have been ignored for decades and is well overdue for correction. Once abused land SHOULD BE CLEANED UP and FULL SCALE restoration work SHOULD NOT BE VOLUNTARY or WHEN THEY FEEL LIKE IT for the Federal Government. In my community, the largest fresh water river source goes unused and quality of it and the remaining areas it feeds into, remains in questions, as "would have" "could have" "long term destruction" continues to happen. It will take generations to get the land back into a healthy state of providing food for communities, if at all, and if this bill does what it says it will do, the conversation NEEDED to happen immediately. In my humble opinion, I may die before I see the water source and mud be turned back to taro fields in Waimānalo, and I am deeply saddened by that thought. Generations to come will never know the potential of this 'Āina, if action is not taken NOW. Create the change, pass the bill, WORK FOR THE PEOPLE AND THEIR LAND.

Mahalo nui loa,

Kimeona Kane