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DEPARTMENT OF BUDGET AND FINANCE
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
ON
SENATE BILL NO. 2251, S.D. 2, H.D. 1

March 21, 2022
2:00 p.m.
Room 325 and Videoconference

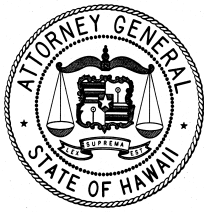
RELATING TO THE PUBLIC HOUSING AUTHORITY

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 2251, S.D. 2, H.D. 1, amends Chapter 356D, HRS, to: 1) expand the Hawai'i Public Housing Authority's (HPHA) statutory authority for property development to include any home, house residence, building, apartment, living quarters, abode, domicile, or dwelling unit that is designed principally for the purposes of sheltering people; and 2) prohibit HPHA from developing or constructing housing projects on ceded lands that are vacant as of January 1, 2022.

B&F recognizes that the intent of the bill is to allow HPHA, which is primarily responsible for developing and managing public housing, to develop mixed-income and mixed-financed housing projects to address the lack of affordable housing in Hawai'i. However, the expanded authority appears to create a duplicative role for HPHA of financing and developing affordable housing, which is already overseen by the Hawai'i Housing Finance and Development Corporation (HHFDC). Currently, HHFDC can and does work with HPHA to help finance redevelopment projects on HPHA's properties using the Rental Housing Revolving Fund and Low-Income Housing Tax Credits, so this expanded authority does not seem necessary.

Thank you for your consideration of our comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 2251, S.D. 2, H.D. 1, RELATING TO THE PUBLIC HOUSING AUTHORITY.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Monday, March 21, 2022 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Jennifer R. Sugita, Deputy Attorney General

Chair Nakashima and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill allows the Hawaii Public Housing Authority (HPHA) to develop mixed-income and mixed financed housing developments that are not limited to only federally assisted housing as defined in 24 C.F.R. section 5.100; prohibits the development or construction of housing projects on ceded land that is vacant on or after January 1, 2022; adds a definition of "housing project" to several sections of chapter 356D, Hawaii Revised Statutes (HRS); and further adds the term "public housing project" to other sections of chapter 356D, HRS. We suggest that the word "public" be deleted from the term "public housing project" added by this bill.

The term "housing project" is used throughout chapter 356D, HRS, to broadly describe housing units for the purpose of sheltering people. This broad usage is also reflected in the amendments to chapter 356D, HRS, made in this bill. See, e.g., page 1, lines 8-11. The term "public housing project," on the other hand, is a narrow term of art used to describe federally assisted housing projects as defined in 24 C.F.R. section 5.100, and not state low income housing projects. See definition of "public housing project" in section 356D-1, HRS, as amended on page 2, line 19, to page 3, line 3.

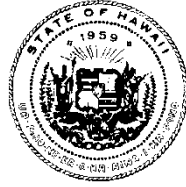
The bill on page 1, line 14, to page 3, line 3, amends the term "elder or elderly housing" in part to be limited to "public" – i.e., federal – housing projects. The bill also amends section 356D-71, HRS, to incorporate the narrow term "public housing projects"

as to the rental of elder housing units. These are not appropriate uses of the term, "public housing projects," however, because elder housing encompasses both federal and state projects. Similarly, the bill on page 2, lines 11-18, amends the term "obligee of the authority" and "obligee" to bondholders or other obligees in connection with "public" housing projects. As with elder housing projects, obligees of HPHA could be connected to both federal and state housing projects.

To address this inconsistency, we suggest deleting the addition of the word "public" from the following portions of the bill: page 2, lines 1 and 16; and page 10, lines 3, 7, 9, and 15.

Thank you for the opportunity to provide these comments.

DAVID Y. IGE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

STATE OF HAWAII

HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
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Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Monday, March 21, 2022
2:00 PM – Video Conference – Room 325, Hawaii State Capitol

In consideration of
SB 2251, SD2, HD1
RELATING TO THE PUBLIC HOUSING AUTHORITY

Honorable Chair Nakashima, and Members of the House Committee on Judiciary & Hawaiian Affairs, thank you for the opportunity to provide testimony concerning Senate Bill (SB) 2251, SD2, HD1, relating to the public housing authority.

The Hawaii Public Housing Authority (HPHA) **supports, with amendments**, the enactment of SB 2251, SD2, HD1, which allows the HPHA to develop mixed-income and mixed-financed housing projects that are not limited to only federally assisted housing as defined in 24 C.F.R. section 5.100, provided that no housing projects shall be constructed on vacant ceded land on or after January 1, 2022.

Concentrating public housing for extremely low-income families in dense urban areas has shown to not be an effective use of scarce affordable housing resources, and a shift has been made to instead create financially viable and socially stable mixed-income housing by the U.S. Department of Housing and Urban Development (HUD).

The Mixed-Income and Mixed-Finance redevelopment model is a proven and successful redevelopment model nationwide and supported and encouraged by the federal government which provide the HPHA with over 87% of its total yearly funding to house our most disadvantaged populations. The model is an attractive option, and beyond the social good that comes with preserving housing units for occupancy by extremely low-income families, it also contributes to the economic and social diversity, deconcentration of poverty, and stability of the overall community.

Households with affordable rents based on Area Median Incomes, and higher income families paying market rate rents not only diversify these Mixed-Income developments economically, but market rate units also support the lower income units while providing a taxpayer benefit by reducing the gap financing needed from the Legislature to underwrite these developments.

Additionally, following the conversion of a federal public housing property into a mixed finance redevelopment, the HPHA is required to execute a Mixed Finance Annual Contributions Contract with HUD. Under this agreement, the HPHA must ensure that sufficient reserves are maintained to support the operation and maintenance of the project units. This component is vital to ensure the affordable housing units in the project remain affordable throughout the life of the Master Development Agreement, and not just for a limited period of time.

This bill clarifies that when HPHA converts its federal public housing project into a Mixed- Income and Mixed-Finance redevelopment, other types of housing units, such as affordable housing, LIHTC, workforce housing, and market rate may also be developed. This bill also allows the HPHA to develop Mixed-Income and Mixed-Finance housing projects that do not have a federally assisted housing component, such as redeveloping its state low-income public housing projects under a mixed-income and mixed-finance redevelopment model.

Moreover, Mixed-Income and Mixed-Financed redevelopment projects are typically executed through public private partnerships, better positioning HPHA properties to access the private capital and financing necessary to revitalize them into vibrant communities for our future generations.

The HPHA has identified several properties within its portfolio located in close proximity to the planned Honolulu Rail System stations currently being developed by The Honolulu Authority for Rapid Transportation (HART), that could immediately benefit from this initiative, as well as identifying additional HPHA properties with the potential for redevelopment on our neighbor islands. Undertaking redevelopment of these assets would not only allow the HPHA to rehabilitate functionally obsolete public housing units but would eliminate expensive repair and maintenance expenses required to maintain these units, while also significantly expanding the inventory of critically needed affordable housing units across the state.

This is not an attempt to build million-dollar condos, but it is a necessary step to not concentrate poverty and give an opportunity to people of all income levels to live side by side in a community that does not isolate the poor. This will have so many positive outcomes for the children, the schools they attend, and create an environment that exemplifies the Aloha Spirit.

The bill also adds a definition of “housing project” to several sections of Chapter 356D, Hawaii Revised Statutes (HRS) and adds the term “public housing project” to other sections of Chapter 356D. The term “housing project” is used throughout Chapter 356D, HRS, to broadly describe housing units for the purpose of sheltering people. The broad use of the term is also shown in the bill's amendments to Chapter 356D, HRS, such as on page 1, lines 8-11. Unlike the term

"housing project," "public housing project" under 356D-1, HRS, is a term that is strictly associated with federally assisted housing under 24 C.F.R. section 5.100 and does not include HPHA's state low-income housing projects

The bill on page 1, line 14 to page 3, line 3, amends the term "elder or elderly housing" in part to be limited to "public" – i.e., federal – housing projects. The bill also amends section 356D-71, HRS, to incorporate the narrow term "public housing projects" as to the rental of elder housing units. These are not appropriate uses of the term, "public housing projects," however, because elder housing encompasses both federal and state projects. Similarly, the bill on page 2, lines 11-18, amends the term "obligee of the authority" and "obligee" to bondholders or other obligees in connection with "public" housing projects. As with elder housing projects, obligees of HPHA could be connected to both federal and state housing projects.

To address this inconsistency, the HPHA requests deleting the addition of the word "public" from the following portions of the bill: page 2, lines 1 and 16; and page 10, lines 3, 7, 9, and 15.

Page 2, line 1: (1) A ~~[public]~~ housing project intended for and occupied by...

Page 2, line 16: ~~[public]~~ housing project, or any assignee or assignees of the...

Page 10, line 3: in the ~~[public]~~ housing projects;...

Page 10, line 7: dwelling unit or in any ~~[public]~~ housing project, in the...

Page 10, line 9: a resident in the dwelling unit or in the ~~[public]~~...

Page 10, line 15: of, or removal from the ~~[public]~~ housing project of, the...

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



OFFICE OF HAWAIIAN AFFAIRS

‘Ōlelo Hō‘ike ‘Aha Kau Kānāwai
Legislative Testimony

SB2251 SD2 HD1

RELATING TO THE PUBLIC HOUSING AUTHORITY
Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i
House Committee on Judiciary & Hawaiian Affairs

Malaki 21, 2022

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB2251 SD2 HD1, which seeks to amend Hawai‘i Revised Statutes (HRS) § 356D by authorizing the Hawai‘i Public Housing Authority (HPHA) to build market-rate or above market-rate “housing” not subject to any affordability or income restrictions. OHA notes this measure, even with language that eliminates development on “ceded” lands vacant on or after January 2022, may result in the foreclosure of Native Hawaiian interests by the redevelopment of currently developed “ceded” lands which may also result in the foreclosure of Native Hawaiian claims to potentially large swaths of “ceded” lands for a century or longer. The issuance of long-term leases for the development of any housing is 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 whether currently vacant or developed, that were unlawfully taken under extreme duress and without consent by or compensation to the Native Hawaiian people.**

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 irrevocable 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

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)).

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, even with the contemplated exclusion of “undeveloped” ceded lands.**

Moreover, OHA notes that this measure contradicts HPHA’s own stated purpose to “provide Hawai‘i residents with affordable housing,” by focusing on developing affordable rental, supportive, and public housing and services.² Currently, under HRS § 356D-11, HPHA may develop “public housing projects,” pursuant to federal regulations and guidelines, to assist states with addressing “the shortage of housing affordable to low- income families” (emphasis added). SB2251 SD2 HD1 would delete the definition of “public housing projects” and authorize HPHA to work with “eligible developers” to construct “housing” projects explicitly defined in this bill as any type of housing, without restrictions as to affordability or income levels of occupants. **The development of high-end residential and associated commercial projects may result in significant impacts to the public’s wide-ranging interests in agricultural and other public lands that are developed for housing units unaffordable to most local residents. SB2251 SD2 HD1 contemplates a significant expansion of HPHA’s authority,** by enabling it to plan, develop, construct, and finance the development of any type of housing, including market- and above market-rate and non-income restricted units. The Department of Budget and Finances has indicated that the expanded authority provided by this measure appears to create a duplicative role for HPHA of financing and developing affordable housing, which is already overseen by the Hawai‘i Housing Finance and Development Corporation (HHFDC). Currently, HHFDC can and does work with HPHA to help finance redevelopment projects on HPHA’s properties using the Rental Housing Revolving Fund and Low-Income Housing Tax Credits, so this expanded authority does not seem necessary. **Combined with HPHA’s extremely liberal leasing authority for lands leased or set aside to the agency, this measure may result in significant pressure to set aside or lease large swaths of public and “ceded” lands to the HPHA, to be disposed of for mixed-use and market- or above market-rate developments under multi-generational, long-term leases far exceeding the limits generally applicable to public land leases.³ Allowing HPHA to develop market- or above market-rate housing would not only foreclose the use of our limited land base for affordable housing purposes, but could also result in an increase in demand for affordable and workforce housing.³** Accordingly, this bill would not only distract from HPHA’s primary purpose to facilitate the development of housing for low-income local residents, but it may also hinder the ability of lower income families, including Native Hawaiian families, to secure affordable housing in our increasingly

² Hawai‘i Public Housing Authority Official Website, available at <http://www.hpha.hawaii.gov/> (last accessed March 15, 2022).

³ Hawai‘i Public Housing Authority Official Website, available at <https://www.hphaofficesredevelopment.org/> (last accessed March 15, 2022).

expensive state.⁴

While this measure intends for HPHA to fulfill its mission, it will have the unintended consequence of reducing the availability of affordable housing. Moreover, the risk to the effective erosion of our limited public and “ceded” lands corpus further erodes the public’s and especially Native Hawaiian’s confidence in our State’s ability to fairly control the development of projects on Public Land Trust’s “ceded” lands. Accordingly, OHA respectfully urges the Committee to **HOLD** SB2251 SD2 HD1. Mahalo for the opportunity to provide written testimony on this measure.

⁴See [KEYSER MARSTON ASSOCIATES, RESIDENTIAL NEXUS ANALYSIS](#), p.6 (SEPTEMBER 2015) (every 100 new market-rate housing units generate an additional demand for an 20 affordable units, 15 (i.e. 75%) of which are needed to be at 100% AMI or below.



House Committee on Judiciary & Hawaiian Affairs

Hawai'i Alliance for Progressive Action (HAPA) Opposes: SB2251 SD2 HD1

Monday, March 21st, 2022 2 p.m. Conference Room 325

Aloha Chair Nakashima, Vice Chair Matayoshi and Members of the Committee,

HAPA opposes SB2251 SD2 HD1, which may lead to the effective privatization of our public and “ceded” lands, by allowing lands leased or set aside to the Hawai'i Public Housing Authority (“HPHA”) to be used for market - and above market-rate housing as well as associated commercial and mixed-use projects.

The HPHA has the important task of housing the needs of our islands' most financially insecure. The HPHA is also granted liberal leasing authorities, with lands leased or set aside to the HPHA exempted from the lease length and public land disposition protections otherwise applicable to lands held by the state.¹

If the HPHA are given these powers this measure will lead to pressure from private developers to have large amounts of public lands allocated to the HPHA, for the development of residential and commercial projects that are not affordable to residents. This may result in significant impacts to the public's interests. Development agreements are likely to incorporate the use of long-term leases that would encumber public and “ceded” lands for a century at a time. Long-term leases such as these would effectively privatize these lands, resulting in the displacement of future generations, and preventing these lands from being used to fulfill commitments made to Native Hawaiians.

We ask that you please defer SB2251 SD2 HD1. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Anne Frederick', written in a cursive style.

Anne Frederick
Executive Director

[1] See HRS §171-2.

March 21, 2022

The Honorable Mark M. Nakashima, Chair
House Committee on Judiciary & Hawaiian Affairs
Via Videoconference

RE: Senate Bill 2251, SD2, Relating to the Public Housing Authority

HEARING: Monday, March 21, 2022, at 2:00 p.m.

Aloha Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 11,000 members. HAR **supports** Senate Bill 2251, SD2, which allows the Hawai'i Public Housing Authority to develop mixed-income and mixed-financed housing projects. Prohibits the development or construction of housing projects on ceded land that is vacant on or after January 1, 2022.

A mixed-income housing development is a proven model that works. These developments are comprised of housing units with differing levels of affordability, typically with some market-rate housing and some housing that is available to low-income occupants below market-rate.

"Most housing professionals agree that concentrating assisted-housing for low- and very low-income Americans in dense, urban areas is not an effective use of scarce affordable housing resources. Over the past decade, professionals in the affordable housing industry have turned increasingly to mixed-income housing as an alternative to traditional assisted-housing initiatives. Mixed-income housing is an attractive option because, in addition to creating housing units for occupancy by low-income households, it also contributes to the diversity and stability of American communities."¹

According to the Department of Business Economic Development and Tourism's 2019 report on Housing Demand in Hawai'i, the State needs up to 46,000 housing units to meet demand in Hawai'i by 2030. Ultimately, we have a housing supply problem, and this measure would help address our State's housing challenges, including the need for more affordable rentals for low-income occupants.

Mahalo for the opportunity to testify.

¹ [Mixed-Income Housing and the Home Program](#)

U.S. Department of Housing and Urban Development, Community Planning and Development

SB 2251 SD 2 HD 1 TESTIMONY

To: House Committee on Judiciary & Hawaiian Affairs
Hearing on March 21, 2022 at 2:00 p.m.

From: John Kawamoto

Position: Support

Hawaii suffers from a shortage of 50,000 homes, many of which are needed by low- and moderate-income families. The shortage has grown for decades because existing efforts to build affordable housing are not enough. Much more must be done to alleviate the shortage. In creating a new mechanism for the development of affordable housing, this bill represents a step in the right direction.