


OFFICE OF HAWAIIAN AFFAIRS
‘Ōlelo Hō‘ike ‘Aha Kau Kānāwai
Legislative Testimony

SB2 SD2 HD1
RELATING TO PUBLIC LANDS
Ke Kōmike Hale o ka ‘Oihana ‘Imi Kālā
House Committee on Finance

‘Apelila 1, 2021

2:30 p.m.

Lumi 308

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB2 SD2 HD1, 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 HD1 draft amendment to this measure, which would provide OHA with three months’ notice prior to any plans to lease “ceded” lands for a period longer than 65 years. Such notice may potentially provide OHA with an opportunity to advocate for terms and conditions in HHFDC development projects that can protect Native Hawaiians’ claims of the “ceded” lands corpus. **However, notice alone does not provide any substantive protection for Native Hawaiian claims, and leaves open the significant risk that Native Hawaiians’ concerns and claims will be rejected, misunderstood, or ignored in the envisioned, century-long encumbrance of “ceded” lands.** This notice provision, as drafted, also relies on HHFDC’s interpretation of what may constitute “ceded” lands, which are often incorrectly and inappropriately conflated with the Public Land Trust and the lands classified under section 5(b) of the Admission Act. **Notably, the lack of substantive protections and the potential for agency misinterpretation will only invite future conflicts in the planning and implementation of HHFDC development projects, which OHA’s suggested amendment below specifically intends to avoid.**

As OHA has testified previously, SB2 SD2 HD1 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

leases, 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 SD2 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 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 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.

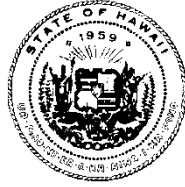
Should the Committee nonetheless choose to move this measure forward, **OHA respectfully urges the inclusion of the following suggested amendment to HRS § 201H-9(c), in order to minimally recognize and protect Native Hawaiian claims to “ceded” lands which may be subject to the broad leasing authorities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

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)).

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 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 SD2 HD1. However, should the Committee 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.



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

HOUSE COMMITTEE ON FINANCE

April 1, 2021 at 2:30 p.m.
State Capitol, Room 308

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

The HHFDC **supports** S.B. 2, S.D. 2, H.D. 1. This measure expands HHFDC's statutory exemption from the definition of "public lands" to include lands set aside to the HHFDC by Executive Order or leased from another State department or agency. Barriers to the development of affordable housing include the lack of sufficient land near major population centers, lack of major off-site infrastructure capacity, high construction costs, and government regulations. This measure is a key part of the strategy to address these barriers to build approximately 8,000 affordable homes over the next 5 years. This measure will minimize the number of approvals from the Department of Land and Natural Resources as projects built on state land move forward from set-aside to the leasing, entitlement, financing, and development phases.

This measure will facilitate the development process to address the housing crisis that we are in. Target projects may be on lands where major infrastructure already exists, or one of the three priority areas identified by the Hawaii Interagency Council for Transit-Oriented Development – a 25-member body of which the Department of Hawaiian Home Lands is a statutory member, and the Office of Hawaiian Affairs is a regular participant.

Affordable housing gives people a place to live in their communities and the stability required to achieve financial independence, a critical component in breaking poverty cycles. In Hawaii, indicators of the lack of affordable housing include:

- The increase in households crowded or doubled-up (from 20.2% in 2016 to 22.2% in 2019);

- Hawaii's high shelter-to-income ratios that are higher than most in the nation. In 2019, 40.3 percent of mortgage holders had housing costs greater than 30 percent of income. Approximately 55.6 percent of renters paid more than 30 percent of income for housing; and
- The increasing number of people leaving the state citing the high cost and limited availability of housing.
(2019 Hawaii Housing Planning Study)

Going back to HHFDC's predecessor agencies, the Housing Finance and Development Corporation and the Housing and Community Development Corporation of Hawaii, we have established the authority under State law to fulfill our mission. In 1998, the Hawaii Supreme Court in Trustees of the Office of Hawaiian Affairs v. Board of Land & Natural Resources of the State of Hawaii validated Attorney General Opinion No. 95-03 (July 17, 1995) that the State may alienate ceded lands so long as such sales are for a public purpose. Article XI, Section 10 of the State Constitution and Section 5(f) of the Admissions Act provide that homeownership is such a public purpose.

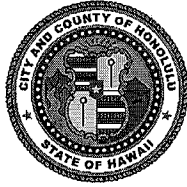
As HHFDC delivers affordable housing units to the market, we are, by virtue of our existing programs, also housing Native Hawaiians. An increasing number of units are being occupied by Native Hawaiians and Other Pacific Islanders. Per 2019 ethnicity data on Hawaii Low-Income Housing Tax Credit-assisted affordable rental projects, Native Hawaiian/Other Pacific Islanders occupied 12,970 of the 34,196 occupied LIHTC units statewide, or 37.9%. This is up from 6,860 of 18,862 occupied units, or 36.3%, in 2015. Similarly, Native Hawaiians/Other Pacific Islands constituted 44% of HOME Investment Partnerships Program assisted households over the last five years. Demographic data establishes that Native Hawaiians will benefit from the Legislature's continued support of affordable housing development.

Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov

RICK BLANGIARDI
MAYOR



DEAN UCHIDA
DIRECTOR

DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

April 1, 2021

The Honorable Sylvia Luke, Chair
and Members of the Committee on Finance
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Committee Members:

**Subject: Senate Bill No. 2, SD 2, HD 1
Relating to Public Lands**

The Department of Planning and Permitting (DPP) is in **strong support** of Senate Bill No. 2, SD 2, HD 1, which would 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.

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 treat all lands under HHFDC's control in a consistent manner and create more opportunities for HHFDC to develop affordable housing on state-owned lands. This action would also remove the requirement of obtaining approval from the Board of Land and Natural Resources for ministerial real estate transactions/approvals (i.e., consents, leases, sub-leases, etc.).

The fee simple interest in the land would still remain with the State as HHFDC would develop these lands using long-term leases. Government housing agencies need a wide range of tools to create more housing units and help us build our way out of our housing crisis. We defer to HHFDC on the additional language in the HD 1.

We are in strong support of Senate Bill No. 2, SD 2, HD 1, and appreciate the opportunity provide comments on the matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Uchida".

Dean Uchida
Director

NO FREEBIES for “UNAFFORDABLE” HOUSING !

STOP SB 2 !

SB 2, SD2, HD1 seeks to amend the HRS § 171-2 definition of “public lands” thereby legalizing the theft of public lands!

Free public land and free taxpayer-funded infrastructure are freebies to developers of “UNAFFORDABLE” housing!

Testimony of Kūpuna for the Mo‘opuna – SB 2, SD2, HD1

STRONG OPPOSITION

COMMITTEE ON FINANCE - Chair Luke & Vice Chair Cullen - 4/1/2021 @ 2:30pm



STOP LEGAL THIEVERY!

*The lands granted to the State of Hawai‘i by Section 5 (b) (f) of the Admission Act and pursuant to Article XVI, Section 7, of the Hawai‘i State Constitution, **shall be held by the State as a public trust for native Hawaiians and the general public.***

1.) Watch “PUBLIC LAND TRUST: JUSTICE DELAYED IS JUSTICE DENIED.”

<https://www.kamakakoi.com/plt>

2.) Read “PUBLIC-PRIVATE PARTNERSHIPS HAVE A TROUBLED HISTORY IN HAWAII.”

<https://www.staradvertiser.com/2021/03/14/hawaii-news/public-private-partnerships-have-a-troubled-history-in-hawaii/>

Ua mau ke ea o ka ‘āina i ka pono!

SB-2-HD-1

Submitted on: 3/31/2021 8:49:09 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laulani Teale	Ho'opae Pono Peace Project	Oppose	No

Comments:

Aloha,

Ho'opae Pono Peace Project, a community peace organization focusing on traditional practices of ho'oponopono and community conflict resolution, strongly opposes this measure, which alienates lands that are still under dispute, as their title goes back to the Hawaiian Kingdom.

this is against the spirit of peace, as there is much to be resolved in this regard.

This measure is simply not pono.

Me ka 'Oia'i'o,

Laulani Teale, MPH

Coordinator, Ho'opae Pono Peace Project

SB-2-HD-1

Submitted on: 3/31/2021 9:27:12 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Vicky Takamine	ʻĀlioʻulaokalani Coalition	Oppose	No

Comments:

Aloha Mai Kā• kou,

ʻĀlioʻulaokalani Coalition is a hui of kumu hula and cultural practitioners who advocate for the protection our Native Hawaiian rights, lands and the cultural and natural resources vital to our cultural practices and existence. We Strongly Oppose SB2 SD2 HD1 which would amend the Hawaiʻi 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 Hawaiʻi Housing Finance and Development Corporation (HHFDC).

We fully recognize the need for public housing, but the State has a fiduciary responsibility to protect our crown and ceded lands. This bill provides no mechanism to protect and preserve Native Hawaiian claims to leased “ceded” lands. We strongly oppose SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 9:39:30 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Carney	EAH Housing	Support	No

Comments:

EAH Housing strongly supports S.B. 2, S.D. 2, H.D. 1. As non-profit developers of low income rental housing serving those most in need at 60% AMI and below we are strong supporters of initiatives to help in providing more development opportunities and in expediting the development process. We believe this Bill will do both and we encourage your strong support.

Kevin R. Carney, (PB)

EAH Housing

Vice President, Hawaii



House Committee on Finance

Hawai'i Alliance for Progressive Action (HAPA) OPPOSES: SB2 SD2 HD1

Thursday, April 1st, 2021 2:30 p.m.

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee,

HAPA strongly opposes SB2 SD2 HD1 which would remove Chapter 171 protections from public lands that were set aside by the governor to the Hawai'i Housing Finance and Development Corporation (HHFDC), or leased to HHFDC by any state department or agency.

We do not support the removal of these protections. Chapter 171 protections include public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources.

These protections ensure that titles aren't loosely transferred and end up in the wrong hands. All of these protections are designed to ensure that public lands are responsibility managed for the benefit of current and future generations.

Without Chapter 171 protections, HHFDC would be able to obtain public lands such as these at little to no cost then turn around and lease them to a developer for 99 years, and then indefinitely extend those leases. These long term leases are equal to selling these lands and in turn foreclosing on Native Hawaiians' despite unrelinquished claims for a century or longer.

Please oppose SB2 SD2 HD1. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Anne Frederick', is written over a light blue horizontal line.

Anne Frederick
Executive Director

KA LĀHUI HAWAI‘I KŌMIKE KALAI‘ĀINA

BEFORE THE HOUSE COMMITTEE ON FINANCE

April 1, 2021

Senate Bill 2, SD2, HD1
Relating to Public Lands

Aloha Chair Luke, Vice Chair Cullen, Members of the Committees,

Ka Lāhui Hawai‘i Kōmike Kalai‘āina submits testimony in **STRONG OPPOSITION** to Senate Bill 2, SD2, HD1 which would take lands given to the Hawai‘i Housing Finance and Development Corporation (HHFDC) by the Governor and leased to HHFDC out of the "Public Lands" definition out from under the purview of Section 171 of the Hawai‘i Revised Statutes. We have submitted written testimony of the State's abuse of the "Ceded Lands" Trust aka "Public Lands" to the US Senate Committee on Indian Affairs and have requested an oversight committee on actions like this measure by the State of Hawai‘i to disintegrate the trust allowing 99 year leases and allowing for uses outside of the five purposes of the Trust.

The majority of the lands held by the State of Hawai‘i are “ceded lands” or Hawaiian Kingdom crown and government lands. The University of Hawai‘i Professor Williamson Chang stated in a lecture given on October 1, 2014 entitled “Hawaii’s ‘Ceded Lands’ and the Ongoing Quest for Justice in Hawai‘i” that the Joint Resolution was incapable of acquiring these Hawaiian Kingdom public lands. Despite this analysis, the former Crown and government lands of the Kingdom of Hawai‘i were illegally transferred to the US and as a condition of Statehood was transferred to the State of Hawai‘i to be held as a public trust for 5 purposes including the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920.

Ka Lahui Hawai‘i Kōmike Kalai‘āina has concerns over the use of these lands outside of the 5 purposes set out in the Hawai‘i State constitution and actions that could be interpreted as land grabbing especially when the claims of the Kanaka Maoli people to 1.8 millions acres of these lands and our sovereignty over them have yet to be settled. The Apology Bill aka US Public Law 103-150, passed by Congress and signed by President Clinton in 1993, recognized that “the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States” and that “the Republic of Hawai‘i also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawai‘i, without the consent of or compensation to the Native Hawaiian people of Hawai‘i or their sovereign government”.

Allowing the Governor to take out lands from this Trust for HHFDC while Kanaka Maoli claims to these lands go unquieted is tantamount to theft and a breach of Trust. Furthermore, HHFDC would be allowed to give out leases beyond the maximum 65 years for Public Lands aka Hawaiian Kingdom Crown and Government lands and would set up lessees as pseudo owners of these lands without public input and oversight setting a bad precedence.

Me ka oiai'o,
M. Healani Sonoda-Pale
Public Affairs Officer, Ka Lāhui Hawai‘i Kōmike Kalai‘āina



MUTUAL HOUSING
ASSOCIATION OF HAWAII

"Building our communities with respect, integrity, and aloha..."

Kekaulike Courtyards ♦ Ko'oloa'ula ♦ Lihu'e Court Townhomes ♦ Palolo Homes

March 31, 2021

The Honorable Sylvia Luke, Chair
and the Members of House Committee on Finance
Hawai'i State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Luke and Committee Members:

Subject: Senate Bill 2, S.D. 2, H.D. 1 - Relating to Public Lands

The Mutual Housing Association of Hawai'i, Inc. ("Mutual Housing") strongly supports the provisions in Senate Bill 2, S.D. 2, H.D. 1, which expands the Hawai'i Housing Finance and Development Corporation's ("HHFDC") statutory exemption from the definition of "public lands" to include lands set aside by HHFDC by Executive Order or leased from another State department or agency.

Mutual Housing is a local non-profit that develops and operates low-income rental projects for families in Hawai'i. We have collaborated with HHFDC and its predecessor on two projects on State-owned lands – Palolo Homes and Ko'oloa'ula. These projects resulted in the preservation and development of 614 affordable rental apartments. The development of these projects took many years to execute as we navigated through the complex maze of regulatory approvals. We can attest that the removal of any barriers and streamlining of approvals would have trimmed off years in our delivery of this much-needed affordable housing.

We understand that S.B. 2 helps minimize the number approvals from the Department of Land and Natural Resources in the development of future affordable housing projects on state lands similar to the projects we successfully completed with HHFDC. Our State faces an ever-growing housing crisis that requires all the tools available to help both HHFDC and the private sector address the shortage of affordable housing. We respectfully ask your support of this bill.

Sincerely,

David M. Nakamura
Executive Director



Native Hawaiian LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813
Phone (808) 521-2302 • Fax (808) 537-4268 • www.nativehawaiianlegalcorp.org



SB2 SD2 HD1

RELATING TO PUBLIC LANDS

HOUSE COMMITTEE ON FINANCE

April 1, 2021

2:30 p.m.

Conference Room 308

Aloha e Chair Luke and Committee Members,

The Native Hawaiian Legal Corporation (“NHLC”) **OPPOSES SB2 SD2 HD1**, which would remove Hawai‘i Revised Statutes (“HRS”) Chapter 171 protections from public “ceded” lands set aside by the governor to the Hawai‘i Housing Finance and Development Corporation (“HHFDC”) or leased to HHFDC by any state department or agency. These protections include, but are not limited to, public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain “ceded” lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases, effectively alienating public and “ceded” lands from a trust established to, among other express purposes, serve Native Hawaiian beneficiaries. SB2 SD2 HD1’s potential to divest Native Hawaiians of historical land claims, drain their land trust inventory, and diminish the revenue otherwise available to better their conditions counsel against supporting this measure.

The State has long been complicit in efforts to transfer certain parcels of “ceded” lands to third parties for the purpose of facilitating private, commercial development, and all too often to the detriment of Native Hawaiians. The trust vested in the Department of Land and Natural Resources (“DLNR”) to manage and administer the “ceded” lands subject to the trust obligations articulated in section 5(f) of the Admission Act—among them, “for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended”—is no less fulsome in 2021 than it was in 1959. The fact that approximately 30,000 native Hawaiians have been languishing on the Department of Hawaiian Home Lands (“DHHL”) waitlist for decades evidence unmet trust obligations deserving of more meaningful consideration with respect to the State’s disposition of “ceded” lands. Which lands (if any) should be alienated and assurance that the revenue such transfers generate maximizes the twenty percent fair market value realized by the Office of Hawaiian Affairs are decisions that should be discharged with reasonable skill and care and should, at minimum, be subject to the public transparency and accountability protections of HRS Chapter 171. Exempting these lands from lease length limitations, lease extension prohibitions, and auction requirements while subjecting them to HHFDC’s broad leasing and dispositions authority 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.

So long as native Hawaiian claims to ownership of the “ceded” lands remain outstanding and unresolved, and so long as there remains manifold evidence of the State’s failure to meet its trust obligations to Native Hawaiians, prudence demands that the State’s management and administration of the “ceded” lands trust inventory manifest, at all times, its fiduciary duties of due diligence and undivided loyalty to its beneficiaries. **SB2 SD2 HD1** fails to accomplish that and underestimates the will and determination of the Native Hawaiian community to preserve, develop, and transmit to future generations their ancestral territory. Indeed, it is well-settled that native Hawaiian beneficiaries of the ceded land trust have a right to bring suit under the Hawai’i Constitution when the terms of the “ceded” lands trust are violated, including failure by the State to adhere to the high fiduciary duties owed by a trustee to its beneficiaries. As trustee of the “ceded” lands trust, the State has charged itself with moral obligations of the highest responsibility and trust. As such, its conduct will be judged by the most exacting fiduciary standards, as is appropriate for a kuleana of this magnitude and consequence for generations of Native Hawaiians.

In closing, it is worth revisiting and re-remembering the importance of land to Native Hawaiians and to their continued cultural and spiritual identity and practices:

The [n]ative Hawaiian [p]eople continue to be a unique and distinct people with their own language, social system, ancestral and national lands, customs, practices and institutions. “The health and well-being of the [n]ative [H]awaiian people is intrinsically tied to their deep feelings and attachment to the land.” [‘Ā]ina, or land, is of crucial importance to the [n]ative Hawaiian [p]eople -- to their culture, their religion, their economic self-sufficiency and their sense of personal and community well-being. [‘Ā]ina is a living and vital part of the [n]ative Hawaiian cosmology, and is irreplaceable. The natural elements -- land, air, water, ocean -- are interconnected and interdependent. To [n]ative Hawaiians, land is not a commodity; it is the foundation of their cultural and spiritual identity as Hawaiians. The aina is part of their ohana, and they care for it as they do for other members of their families. For them, the land and the natural environment is alive, respected, treasured, praised, and even worshiped.”

Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp., 117 Hawai’i 174, 214, 177 P.3d 884, 924 (2008) (footnotes and internal citations omitted) (emphases in original).

For all the above-stated reasons, **NHLC OPPOSES SB2 SD2 HD1**. Mahalo for the opportunity both to submit written testimony as well as to testify live by videoconference during the hearing.

Summer L.H. Sylva



Executive Director
Native Hawaiian Legal Corporation

David Kauila Kopper



Director of Litigation
Native Hawaiian Legal Corporation

Ashley K. Obrey



Staff Attorney
Native Hawaiian Legal Corporation

SB-2-HD-1

Submitted on: 3/31/2021 1:12:02 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kristen Alice	HOPE Services Hawai'i	Oppose	No

Comments:

Hope Service Hawai'i, Hawai'i Island's largest homeless services provider, **strongly opposes** this bill.



STANFORD CARR DEVELOPMENT, LLC

▪ April 1, 2021

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
and Members of the House Committee on Finance

**RE: Testimony In Support Of SB2, SD2, HD1 Relating To Public Lands
April 1, 2021, 2:30PM; Conference Room 308 Via Videoconference**

Dear Chair Luke, Vice Chair Cullen and Committee Members,

My name is Stanford S.C. Carr and I am the President of Stanford Carr Development, LLC. We are a local development firm that has worked to provide the community with affordable housing opportunities. I would like to testify in support of SB2, SD2, HD1 which, among its key provisions, clarifies that lands set aside by the Governor to the HHFDC or leased to the corporation by other State departments or agencies are exempt from the definition of "public lands". I would also respectfully ask this committee to delete the delayed effective date from this important measure.

As an affordable housing developer, one impediment that I have had to deal with in attempting to build more affordable housing projects is the time that it takes to obtain necessary permits and approvals from the appropriate government agencies. By reducing the number of required approvals from the DLNR once lands have been set aside to HHFDC, this measure will help to mitigate delays in the approval process and thereby facilitate the development of much needed affordable housing on State land. Making greater use of State land for affordable housing production must be an important component in an overall strategy to address the housing needs of our residents.

For all of these reasons, I ask that you pass SB2, SD2, HD1. Thank you for the opportunity to submit this testimony.

A handwritten signature in black ink, appearing to read 'Stanford S. Carr', written over a horizontal line.

Stanford S. Carr



LATE

March 31, 2021

Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice-Chair
House Finance Committee

Strong Support of SB 2, SD2, HD1, RELATING TO PUBLIC LANDS (Clarifies that lands set aside by the governor to the Hawaii housing finance and development corporation [HHFDC] or leased to HHFDC by other state departments or agencies are exempt from the definition of "public lands." Clarifies that lands set aside by the governor or leased to HHFDC from other state departments or agencies are subject to legislative approval prior to the sale or gift of those lands. Requires the HHFDC to return any land leased to it by other state departments or agencies if the land is no longer needed for HHFDC. Requires HHFDC to submit certain documentation to the Office of Hawaiian Affairs regarding government or crown lands set aside or leased to HHFDC prior to HHFDC developing or financing an affordable housing development on those lands. Effective 7/1/2050.)

FIN: Thursday, April 1, 2021, 2:30 p.m. Conference Room 308 & Videoconference

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 utility companies. LURF's mission is to research, educate and advocate for reasonable, rational, and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while stewarding Hawaii's significant natural and cultural resources, and safeguarding public health and safety.

LURF appreciates the opportunity to express its **strong support of SB 2, SD2, HD1**, because it will help streamline the development of HHFDC's affordable housing projects on state "public" lands that can help provide some of the needed 36,305 housing units for lower income and workforce households for all ethnic groups, including Native Hawaiians.

SB 2, SD2, HD1. This measure clarifies that lands set aside by the governor to the HHFDC or leased to the HHFDC by other state departments or agencies are exempt from the definition of "public lands." It also clarifies that lands set aside by the governor or leased to the Hawaii housing finance development corporation from other state departments or agencies are subject to legislative approval prior to the sale or gift of those lands and requires HHFDC to return any land leased to it by other state departments or agencies if the land is no longer needed for housing, finance, or development. Requires the HHFDC to submit certain documentation to the Office of Hawaiian Affairs regarding government or crown lands set aside or leased to the HHFDC prior to the development or financing an affordable housing project on those lands.

LURF’s Position. The exemption provided by this measure will confirm HHFDC’s jurisdiction over suitable state lands set aside to it by E.O.; and it will streamline the development process for affordable housing by reducing the number of approvals required for projects located on state lands set aside to HHFDC.

LURF supports SB2, SD2, HD1, based on the following:

1. **There is a critical shortage of housing in Hawaii, and this measure will help to provide needed low-income and workforce housing.**

According to DBEDT/HHFDC estimates, approximately **50,156 total housing units are needed statewide, for all ethnic groups during the 2020-2025 period**, of which approximately **36,305 housing units will be needed by Hawaii’s lower income and workforce households** (i.e., those earning 140% and below the area median income [AMI] as established by the U.S. Department of Housing and Urban Development).¹

HOUSING UNITS NEEDED IN THE STATE OF HAWAII, 2020-2025
 HHFDC Estimates based on HUD Categories and Income Classifications

	Total Units Needed, 2020 through 2025								
	HUD Income Classification								Total
	LT 30	30 to 50	50 to 60	60 to 80	80 to 120	120 to 140	140 to 180	180+	
State of Hawaii	10,457	5,730	3,141	6,910	6,055	4,011	5,854	7,997	50,156
Honolulu	4,200	2,923	1,979	2,944	3,037	1,710	2,405	2,970	22,168
Maui	1,721	777	492	1,272	740	647	1,800	2,955	10,404
Hawaii	3,475	1,356	373	2,285	2,143	1,163	1,198	1,309	13,303
Kauai	1,060	674	297	408	136	492	451	763	4,281

Source: Hawaii Housing Planning Study, 2019, p. 40.

2. **Native Hawaiians and Other Pacific Islanders are substantially benefiting from HHFDC’s existing programs and will benefit even more from affordable housing and workforce housing projects built on HHFDC’s lands.** According to HHFDC, as it delivers more affordable housing units, it is also housing more Native Hawaiians. HHFDC has recently reported that an increasing number of HHFDC’s existing affordable and workforce dwelling units are being occupied by Native Hawaiians and Other Pacific Islanders.

- **Increasing numbers of Native Hawaiians and Other Pacific Islanders occupy 37.9% of all affordable rental units in HHFDC’s Low-Income Housing Tax Credit (LIHTC)-assisted affordable rental projects.** HHFDC reports that according to ethnicity data from Hawaii’s LIHTC-assisted affordable rental projects, **in 2019, Native Hawaiian and Other Pacific Islanders occupied 37.9% of LIHTC affordable units statewide** (12,970 of 34,196 units). This is up from 2015, which was 36.3% (6,860 of 18,862 units).

¹ **Estimated Housing Need.** LURF understands that HHFDC’s estimates of housing need are calculated by taking housing demand projections by the Department of Business Economic Development and Tourism (DBEDT) and adding units estimated to be needed to reduce pent-up demand caused by years of supply shortages (using demand survey data) and units needed to accommodate homeless households entering the housing market.

- **Over the past five years, Native Hawaiians/Other Pacific Islands constituted 44% of HHFDC's HOME Investment Partnerships Program-assisted households.**
3. **The Hawaii Supreme Court has ruled that the under the ceded lands law, the State can use or sell state lands for housing.** LURF understands that according to HHFDC, the State Department of the Attorney General (AG) has confirmed that the Hawaii Supreme Court has already ruled that the State may sell ceded lands so long as such sales are for a public purpose (housing is designated as a public purpose by the Hawaii Constitution). HHFDC's testimony on this measure indicates that in 1998, in the case of Trustees of the Office of Hawaiian Affairs v. Board of Land & Natural Resources of the State of Hawaii, the Hawaii Supreme Court validated Attorney General Opinion No. 95-03 (July 17, 1995) which advised that the State may alienate ceded lands so long as such sales are for a public purpose, and Article XI, Section 10 of the State Constitution and Section 5(f) of the Admissions Act provide that homeownership is such a public purpose.

For the reasons set forth above, LURF is **in strong support of SB2, SD2, HD1**, and respectfully urges your favorable consideration of this bill.

Thank you for the opportunity to submit testimony regarding this matter.

SB-2-HD-1

Submitted on: 3/30/2021 1:11:23 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John D. Smith	Individual	Support	No

Comments:

I support this to be passed through legislature.

SB-2-HD-1

Submitted on: 3/30/2021 1:11:35 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Elmer Domingo	Individual	Oppose	No

Comments:

these lands need to be given back to the Hawaiians.

SB-2-HD-1

Submitted on: 3/30/2021 3:13:25 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nako'olani Warrington	Individual	Oppose	No

Comments:

STRONG OPPOSITION to SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/30/2021 5:38:04 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaikea K. Blakemore	Individual	Oppose	No

Comments:

We do not support the sale and reallocation of lands away from their intended recipients. In order to address housing inequities based around racial injustice in Hawai'i, those injustices should not be expanded.

Melody Kapilialoha MacKenzie
579 Kāne‘apu Place, Kailua, Hawai‘i 96734

S.B. 2, S.D. 2, H.D. 1
RELATING TO PUBLIC LAND

House Committee on Finance
Hearing: Thursday, April 1, 2021, at 2:30 pm

Aloha, and thank you for the opportunity to submit testimony in **strong opposition** to S.B. 2, S.D. 2, H.D. 1. I am an attorney, advocate for the Native Hawaiian community and its trust resources, and a Professor Emerita at the William S. Richardson School of Law. I have helped to litigate and written extensively on the legal issues involving the Public Land Trust and the constitutional and statutory mandates relating to these trust lands and funds. I submit this testimony in my personal capacity.

Most of the public lands held by the State are the Government and Crown Lands of the Hawaiian Kingdom, and embody the familial, spiritual, and physical connection of the Native Hawaiian people to ‘āina. The State’s fiduciary duty in relation to these lands, held by the State with significant portions designated as the “Public Land Trust,” is deeply rooted in Hawai‘i law. As the Hawai‘i Supreme Court has stated, State officials are obligated “to use reasonable skill and care in managing the public lands trust” and the State’s conduct should be judged “by the most exacting fiduciary standards.” *Office of Hawaiian Affairs v. Housing Community and Development Corporation of Hawai‘i*, 117 Hawai‘i 174, 195, 177 P.3d 884, 905 (2008). Thus, the State’s well-established commitment to reconciliation with the Native Hawaiian community includes the preservation of the “ceded” or trust lands to the greatest extent possible, until the unrelinquished claims of the Native Hawaiian community to the lands are resolved.

This bill would amend the definition of “public lands” found in Hawai‘i Revised Statutes (HRS) § 171-2 to remove lands set aside by the Governor or leased by other State departments or agencies to the Hawai‘i Housing Finance and Development Corporation (HHFDC). The bill would allow vast amounts of public lands—which are overwhelmingly lands to which Native Hawaiians maintain unrelinquished claims—to be leased or otherwise disposed of under HHFDC’s broad leasing and disposition authorities. Unfortunately, the long-term leases contemplated for public lands under this measure may foreclose Native Hawaiian claims to potentially large portions of “ceded” lands for a century or longer; this would be analogous to a fee sale of lands and effectively act as a barrier to resolving Native Hawaiian claims to the trust lands.

The State has recognized that these lands have a unique history and, in previously enacting laws requiring a two-thirds majority vote in both houses of the Legislature for the sale or gift of trust lands, has made a commitment to limit the alienation of these lands to ensure that they are preserved for future reconciliation efforts with the Native Hawaiian community. HRS § 171-64.7. Although this proposal keeps in place the two-thirds majority vote for alienation of the trust lands set aside to HHFDC, and also includes a three-month notice requirement to OHA on plans to develop or finance a housing development on trust lands, by removing potentially large amounts of trust land from the definition of public lands and allowing extremely long-term leases of the lands, this bill goes too far and undermines the State’s overall commitment to true reconciliation.

For the above reasons, I **strongly oppose** S.B. 2, S.D. 2, H.D. 1, and ask that this Committee hold this bill. Mahalo for the opportunity to submit this testimony.

SB-2-HD-1

Submitted on: 3/30/2021 6:39:32 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sharde Freitas	Individual	Oppose	No

Comments:

OPPOSE

SB-2-HD-1

Submitted on: 3/30/2021 6:46:50 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Keli'i Fisher	Individual	Oppose	No

Comments:

This bill is essentially an attempt to foreclose Hawaiian claims to stolen "ceded" lands for 99+ years or more - basically the SAME as fee-simple sales! Why do you folks keep trying to build MORE & MORE units on our finite lands in the name of supposedly "affordable" housing (although, where are all the local, affordable units in Kaka'ako??), instead of **RENOVATING all the old & rundown buildings &/or REPURPOSING all the EMPTY hotel buildings for affordable rentals?** The Land Use Commission also claims that there are already over 40,000+ residential units "approved" and ready to go - why not focus on actually building those already-approved units to help remedy the housing crisis? Building More & More is NOT the answer - please be smart! - instead of repeating your past mistakes like in Kaka'ako & Waikiki.

Please **HOLD** this ridiculous bill, and others like it, that in effect will not provide more affordable housing, but just take away Hawaiian claims to stolen lands. Mahalo.

SB-2-HD-1

Submitted on: 3/30/2021 6:46:58 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marissa Baptista	Individual	Oppose	No

Comments:

Aloha! My name is Marissa Baptista and I am a resident and constituent with my husband and our 3 public school children currently living in Moanalua. I am Native Hawaiian and oppose SB2/ HB1902. Land grabs under the guise of removing regulations to provide affordable housing are unethical and abhorrent. I strongly encourage you to oppose these bills.

Mahalo,

Marissa Baptista

SB-2-HD-1

Submitted on: 3/30/2021 7:00:39 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Morgan	Individual	Oppose	No

Comments:

This bill is another attempt to deny Hawaiian claims to stolen "ceded" lands for 99+ years or more - basically the SAME as fee-simple sales! The Land Use Commission claims that there are already over 40,000+ residential units "approved" and ready to go - why not focus on actually building those already-approved units to help remedy the housing crisis? Building More & More is NOT the answer - please be smart! - instead of repeating your past mistakes like in Kaka'ako & Waikiki.

Please **HOLD** this ridiculous bill, and others like it, that in effect will not provide more affordable housing, but just take away Hawaiian claims to stolen lands. Yours truly,

Charles Morgan

SB-2-HD-1

Submitted on: 3/30/2021 9:11:08 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dina Shek	Individual	Oppose	No

Comments:

Dear Committee Members,

I strongly OPPOSE SB 2 SD2. This bill deeply undercuts Native Hawaiians' legal and just claims over "ceded" lands. These lands must be preserved and protected for the benefit of—and with the leadership and decisionmaking of—Native Hawaiian people.

Thank you for your consideration,

Dina Shek

SB-2-HD-1

Submitted on: 3/30/2021 9:33:54 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Terina Fa'agau	Individual	Oppose	No

Comments:

I **OPPOSE** SB2 SD2 HD1 because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer. The HD1 amendments are not meaningful in any way and do not provide any additional layer of protections for these lands.

SB-2-HD-1

Submitted on: 3/30/2021 9:35:02 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Harley Broyles	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer. The HD1 amendments are not meaningful in any way and do not provide any additional layer of protections for these lands.

SB-2-HD-1

Submitted on: 3/30/2021 9:41:29 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Chang	Individual	Oppose	No

Comments:

I oppose this bill for what I feel are self-evident historical reasons

SB-2-HD-1

Submitted on: 3/30/2021 10:15:02 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
corene peltier	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer. The HD1 amendments are not meaningful in any way and do not provide any additional layer of protections for these lands.

SB-2-HD-1

Submitted on: 3/30/2021 10:52:45 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Aiko Yamashiro	Individual	Oppose	No

Comments:

I oppose this measure that would remove critical Chapter 171 protections from public "ceded" lands. These protections and processes are necessary to allow the public to participate in management and care for land--creating space for community voice critical to a strong democratic society.

This pandemic has taught us that the world can be upended at any moment. 99-year (or more) leases on land are simply unnecessary, and in fact would be a detriment to the creativity and adaptability that we need right now to build back better, to experiment boldly and smartly, and to reflect and change strategies as needed. Giving these dangerously long leases to entities to build non-subsidized housing will exacerbate our housing crisis, and continue to make living in Hawai'i affordable to only the rich.

Because "ceded" lands are kept for the specific benefit of our Native Hawaiian community, it is important that this community protection be maintained in its integrity. I am not Native Hawaiian (fourth-generation, Japanese/Okinawan, Windward O'ahu), but have seen over and over again how important it is to take care of this community. Besides being clearly the right and just thing to do given Hawai'i's history, taking care of Native Hawaiian claims to land strengthens their culture, and benefits our shared future.

I greatly support measures that take care of Hawai'i's unique culture and wisdom. Native Hawaiians are not a special interest group in Hawai'i. They are the foundation of this place. Rather than import urban housing ideas from elsewhere, we have an opportunity now to turn to our unique communities and cultures to find the most innovative and wise ideas to strengthen the health of our lands, urban spaces, and peoples.

SB-2-HD-1

Submitted on: 3/30/2021 11:43:04 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Thomas Iwanicki	Individual	Oppose	No

Comments:

I am FOR reconciliation and land back, therefore I am OPPOSED to this legislation.

DEREK H. KAUANOE

dkauanoe@gmail.com

(808) 729-0289

SB2, SD2, HD1
RELATING TO PUBLIC LAND
House Committee on Finance
Hearing: Thursday, April 1, 2021, at 2:30 pm

While I understand the need for the Hawaii Housing Finance & Development Corporation's work, I urge you to **vote "NO" on S.B. 2, S.D. 2, H.D. 1** because exempting public lands, especially so-called "ceded" lands, "from the definition of 'public lands'" for the purpose of land development is very likely **an international human rights concern**. This international human rights concern is in addition to "the state's constitutional and moral obligations to Native Hawaiians."

A BRIEF TIMELINE PROVIDING CONTEXT FOR S.B. 2, S.D. 2, H.D. 1

In 2009, our state legislature took a huge step forward in protecting Native Hawaiians' interests in so-called "ceded" lands when it passed Act 176.¹ Act 176 established a comprehensive process that provided notice to the Office of Hawaiian Affairs and required a supermajority approval by the legislature prior to any sales, or gifts, of state-held lands.

Around the time the Hawai'i legislature developed this protective measure, the Lingle Administration sought United States Supreme Court review of a Hawai'i Supreme Court decision. The United States Supreme Court held the Congressionally-passed 1993 Apology Resolution to Native Hawaiians did not prevent the State of Hawai'i from selling "ceded" lands. But, the Court also recognized that the State of Hawai'i has the authority to place limits on itself, regarding the management of these lands, for purposes of reconciliation with Native Hawaiians.

In 2010, the Obama Administration moved the United States on a course to meet its international obligations for protecting indigenous peoples' human rights when the administration endorsed the United Nations Declaration on the Rights of Indigenous Peoples² ("UNDRIP") in 2010. In doing so, President Obama also mentioned efforts in advancing the rights of Native Hawaiians.³

In 2011, our state recognized Native Hawaiians "as the only indigenous, aboriginal maoli people of Hawaii."⁴ This was done with the United Nations General Assembly's passage of the UNDRIP and the Obama Administration's subsequent endorsement of the UNDRIP, serving as a backdrop.

THE RELEVANCE OF INTERNATIONAL INDIGENOUS HUMAN RIGHTS TO S.B. 2, S.D. 2, H.D. 1

In passing the UNDRIP, the world's nations recognized "[I]ndigenous peoples possess [1] collective rights which are [2] indispensable for their existence, well-being and integral

¹ Act of July 13, 2009, No. 176, available online at https://www.capitol.hawaii.gov/session2009/bills/GM809_.PDF

² G.A Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007) (hereinafter "UN Declaration").

³ See, Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples, available at <https://2009-2017.state.gov/s/srgia/154553.htm>

⁴ Act of July 6, 2011, No. 195, 2011 Haw. Sess. Laws 646 (codified at HAW. REV. STAT. ch. 10H (2013)).

development as peoples[.]”⁵ To clarify, “the[se] articulated collective rights derive from values of human dignity that are commonly associated with human rights.”⁶ Indigenous peoples’ collective rights include land rights.

A few months after passage, the Hawai‘i Supreme Court expressed a similar sentiment as the UNDRIP in a decision dealing with “ceded” lands and stated, “we are keenly aware -- as was Congress -- that ‘the health and well-being of the [n]ative Hawaiian people is intrinsically tied to *their deep feelings and attachment to the land[.]*”⁷

According to international indigenous human rights expert S. James Anaya,

[i]ndigenous peoples’ collective rights over traditional lands and resources . . . can be seen as derivative of the universal human right to property, as concluded by the inter-American human rights institutions, or as extending from the right to enjoy culture, as affirmed by the UN Human Rights Committee in light of the cultural significance of lands and resources to indigenous peoples.⁸

The UNDRIP also recognizes the importance of obtaining indigenous peoples’ free, prior, and informed consent regarding land issues.⁹ Article 32 requires States to

consult and operate in good faith with the indigenous peoples concerned *through their own representative institutions* in order to obtain their free and informed consent *prior* to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”¹⁰

Free, prior, and informed consent (colloquially known as “FPIC”) refers to consultation processes satisfying elements ensuring that consent is in fact free, prior, and informed. To satisfy the “free” element, consultation processes need to be free of coercion and pressure. To satisfy the “prior” element, consultations must be conducted before *any* action or development project is undertaken (when “development projects affect[] Indigenous peoples’ lands, consultations should be conducted sufficiently in advance of any authorization or commencement of activity and more specifically during the exploratory or planning phase of the corresponding project”¹¹ and development plans start only after consultations are completed). To satisfy the “informed” element, consultations must also be informative. Informative

⁵ UN Declaration Preambular Para. [22].

⁶ S. James Anaya, Keynote Address to the 52nd International Congress of Americanists: Why There Should Not Have to Be a Declaration on the Rights of Indigenous Peoples 3 (July 2006) *available at* www.u.arizona.edu/~wbraynen/globalsocietyjustice/papers/anaya.pdf (hereinafter “Anaya keynote”).

⁷ Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp., 117 Hawai‘I 174, 214, 177 P.3d 884, 924 (2008) (footnotes and internal citations omitted) (emphases in original)..

⁸ Anaya keynote, at 13 (internal citations omitted).

⁹ UN Declaration, arts. 10, 11(2), 19, 28(1), and 29(2), 32(2).

¹⁰ *Id.*, at art. 32 (emphases added).

¹¹ Mauro Barelli, *Free, Prior, and Informed Consent in the UNDRIP: Articles 10, 19, 29(2), and 32(2)*, in THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: A COMMENTARY, 250 (Jessie Hohmann and Marc Weller eds., 2018).

consultations ensure that affected communities know the scope and effects of proposed development projects on their lives, resources, and culture.¹²

Also important is the UNDRIP's recognized obligation upon States to "consult and cooperate in good faith with the indigenous peoples concerned . . . to obtain their free, prior and informed consent *before adopting and implementing legislative or administrative measures that may affect them.*"¹³

In both articles 19 and 32 of the UNDRIP, the General Assembly of the United Nations requires consultations be "through [an affected indigenous people's] own representative institutions in order to obtain their free[, prior,] and informed consent"

PROBLEMS WITH S.B. 2, S.D. 2, H.D. 1

S.B. 2, S.D. 2, H.D. 1 makes it possible for public and "ceded" lands – lands that Native Hawaiians have unrelinquished claims to – to be effectively sold via 99-plus year leases, without the comprehensive protection process (prior notice to the Office of Hawaiian Affairs *and* supermajority legislative approval) for the fee sale of such lands our legislature created when it passed Act 176 in 2009.

Even with an amendment providing a three-month notice to the Office of Hawaiian Affairs, S.B. 2, S.D. 2, H.D. 1 falls short of international human rights standards by not including language for obtaining Native Hawaiians' free, prior, and informed consent regarding leased lands Native Hawaiians have claims to. As a reminder, "ceded" lands are lands Native Hawaiians have unrelinquished claims to. A ninety-nine year (or longer) lease is, in effect, a land sale. A land sale (or long-term lease) that does not seek to obtain Native Hawaiians' free, prior, and informed consent violates the human rights principles the United States government acknowledged when President Obama endorsed the UNDRIP and the growing body of international human rights law developed at, and by, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.¹⁴

In addition to requiring a process for obtaining Native Hawaiians' free, prior, and informed consent, through their own representative institutions, on land issues, S.B. 2, S.D. 2, H.D. 1 itself is the type of legislative measure contemplated in article 19 of the UNDRIP. Again, article 19 obligates States to pursue consultation *before* adopting and implementing measures not unlike S.B. 2, S.D. 2, H.D. 1. While I have heard spoken testimony describe S.B. 2, S.D. 2, H.D. 1 as also benefitting Native Hawaiians, I have seen no indication that Native Hawaiians were previously consulted with in developing this bill.

Perhaps more importantly, the Office of Hawaiian Affairs is 1.) a state agency, and 2.) since the Supreme Court's *Rice v. Cayetano* decision, is an agency with elected leaders chosen by all Hawai'i voters; not just Native Hawaiians. As a result, consulting with the Office of Hawaiian

¹² *Id.*

¹³ UN Declaration, art. 19 (emphasis added).

¹⁴ These two entities are organs of the Organization of American States for which the United States is a founding member. See, OAS: About the IACHR available at <https://www.oas.org/en/iachr/mandate/what.asp>. See also, OAS: Our History available at http://www.oas.org/en/about/our_history.asp.

Affairs does not satisfy the UNDRIP's requirement of "consult[ing] and operat[ing] in good faith with the indigenous peoples concerned through their own representative institutions"

While it may be true that S.B. 2, S.D. 2, H.D. 1 may comport with Hawai'i law, **passage of S.B. 2, S.D. 2, H.D. 1**, coupled with anticipated actions to develop "exempted" lands (including leased lands), puts Hawai'i's reputation as a tourist destination at risk by potentially changing it to a human rights violator.

CONCLUSION

I understand and sympathize with the unique needs and concerns the State of Hawai'i, and its people, face. *How* we approach these needs and concerns are equally important. **I urge you to vote NO on S.B. 2, S.D. 2, H.D. 1** and find another way – a way that acknowledges, protects, and respects Native Hawaiians' human rights - to meet the challenges ahead.

Derek Kauanoe
(808) 729-0289
dkauanoe@gmail.com

Strongly oppose SB2 SD2 HD1 for the following reasons:

1) The purpose of the bill is to provide more lands for development of housing and to reduce the approvals from DLNR once lands have been set aside to the Hawaii Housing Finance and Development Corporation (HFDC) to facilitate the development of affordable housing on state land. On the surface, sounds good...but is it? How do we assure that, in fact, the housing that is developed will meet the needs of the State of Hawaii? How do we assure that HHFDC will not flagrantly lease out our lands for a pittance of affordable housing, i.e. 20% of the development at AMI of 80% as has been the case in many developments?

2) The bill contains no correlation to the State of Hawaii's Consolidated Plan, Draft FY2021 Annual Action Plan by the Hawaii Housing Finance and Development Corporation, thus how does the State assure that leasing out public lands will produce the housing (and rentals) necessary that is affordable to our people, especially affordable rental housing for the extremely low-income households.

4) This measure would remove critical Chapter 171 protections for public lands. These protections and processes are necessary to allow the public to participate in management and care for land--creating space for community voice, which is critical to a strong democratic society. As one other testifier has noted, this pandemic has taught us that the world can be upended at any moment. Ninety-nine (99-year or more) leases on land would be a detriment to the creativity and adaptability that we need right now to build back better, to experiment boldly and smartly, and to reflect and change strategies as needed.

5) At least six major, respected Native Hawaiian organizations, and over 50 citizens have opposed this legislation commenting on how it will negatively impact on ceded lands. The legislature has passed many resolutions calling for working groups recognizing that partnerships, coordination, and collaboration make for more informed decisions. Thus, when proposing bills such as this that impacts on ceded lands, it would be good government policy to coordinate with the Office of Hawaiian Affairs before introduction of a bill that impacts on such lands.

Under HHFDC's broad leasing and disposition authorities contemplated under this measure, leasing lands 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. 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. **The State, as trustee of the Public Land Trust, has a fiduciary responsibility to protect the ceded lands and to grow its value. Long-term leases and removal of lands from the Public Land Trust limit the flexibility of the State to manage these lands to their fullest potential.**

6) The Native Hawaiian community is just as concerned about housing for the homeless especially since the O'ahu Mayor's Office of Housing issued a report titled, "Unsheltered in Honolulu" that examined unsheltered homelessness in Honolulu from 2017 to 2020. It reported that, "The majority of all 7,496 unique individuals counted as unsheltered in the 2017-2020 Point

in Time reports identified Native Hawaiian or Other Pacific Islanders (54%). Almost a third identified as White (32%), and over a quarter identified as multiracial (29%) and Asian (28%). Yet, we do not agree with this bill that would give carte blank authority to the Governor to exempt lands from the Public Land Trust and to allow HHFDC to lease such lands without specific proof that such action will realize the kind of affordable homes needed by low income families.

Please do not pass SB2, SD2, HD1.

Respectfully

Leimomi Khan

SB-2-HD-1

Submitted on: 3/31/2021 7:31:19 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Francis Chandler IV	Individual	Oppose	No

Comments:

I Francis Chandler, **OPPOSE** SB2 SD2 HD1 because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer. The HD1 amendments are not meaningful in any way and do not provide any additional layer of protections for these lands.

I, Keith Fernandez, **OPPOSE** SB2 SD2 HD1 because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' un-relinquished claims for a century or longer. The HD1 amendments are not meaningful in any way and do not provide any additional layer of protections for these lands.

SB-2-HD-1

Submitted on: 3/31/2021 7:48:07 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jocelyn Leialoha Doane	Individual	Oppose	No

Comments:

I write in strong opposition to sb2 sd2 hd1, which would remove the applicability of chapter 171 disposition provisions to "ceded" lands set aside or leased to hhfdc. "Ceded" lands are stolen lands which native Hawaiians continue to maintain claims to. Most "ceded" lands are held in trust by the state as public land trust lands, which should benefit public land trust beneficiaries, including native Hawaiians. Broadening HHFDC's disposition authorities to apply to lands set aside or leased to hhfdc would allow hhfdc to lease large tracts of ceded lands for 99 years with indefinite lease extensions, effectively foreclosing native Hawaiian claims.

Any suggestion that 99 year leases are needed in order to develop affordable housing is not based on facts or data. who will these homes be built for? While the state continues to fail to fund DHHL and OHA appropriately and native Hawaiians continue to die on the hawaiian homelands waiting list, the legislature and hhfdc have rejected all attempts to require hhfdc to specifically partner within dhhl or oha. Hhfdc and the legislature have also repeatedly rejected all attempts to require these bills to specifically benefit native Hawaiians. So again, who will these homes be built for? Will we use hawaiian lands to house everyone while native Hawaiians continue to wait for decades?

Allowing indefinite dispositions of "ceded" stolen and public land trust lands is effectively a 21st century theft of hawaiian lands.

please hold sb2

HEARING OF THE HOUSE COMMITTEE ON FINANCE

ATTN: CHAIR SYLVIA LUKE & VICE CHAIR TY J.K. CULLEN

Testimony in Strong Opposition to SB 2, SD2, HD1: Relating to Public Lands

April 1, 2021, 2:30 p.m., Via Videoconference

Aloha Chair Luke, Vice Chair Cullen, and Members of the House Committee on Finance:

I am testifying in strong opposition to SB 2, and urge you to hold this bill. SB 2 would harm both Native Hawaiians and efforts at reconciliation with the Native Hawaiian people by removing large amounts of trust land from the definition of “public lands” and allowing long-term leases of that ‘āina. As you well know, the Government and Crown Lands of the Hawaiian Kingdom comprise most of the “public land trust” res at issue in this bill, which imposes a significant kuleana on decisionmakers. In addition to the usual fiduciary duties of a trustee, the State has committed to preserving that ‘āina until Native Hawaiian claims are resolved. This bill erodes both the public land trust and the public’s faith in the reconciliation process, especially those of Native Hawaiians like me.

Although I am testifying in my personal capacity because of the significant concerns that I and my ‘ohana share about SB 2, I have some experience in this area. I am a Professor of Law at the University of Hawai‘i at Mānoa’s William S. Richardson School of Law and the Director of Ka Huli Ao Center for Excellence in Native Hawaiian Law. I teach and write in this highly specialized area, including the Law School’s course in Native Hawaiian Rights where we cover the public land trust and reconciliation. I am also a practicing attorney with over twenty years of litigation experience in Native Hawaiian Law.

Please maintain Hawai‘i Revised Statutes Chapter 171’s protections for ‘āina set aside by the governor to the Hawai‘i Housing Finance and Development Corporation (“HHFDC”), or leased to HHFDC by any state department or agency, by holding SB 2. Allowing this bill to move forward enables HHFDC to tie up ‘āina from the public land trust for extended periods, which further undermines our ability to resolve Native Hawaiian claims.

Mahalo for your time and consideration.

Me ka ha‘aha‘a,

/s/

D. Kapua‘ala Sproat

SB-2-HD-1

Submitted on: 3/31/2021 8:04:05 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rosanna Anolani Alegado	Individual	Oppose	No

Comments:

This measure would allow for an almost unlimited diminishment of the “ceded” (stolen) land corpus, to which the Native Hawaiian people still have unrelinquished claims. This bill would allow for a significant expansion of ceded lands that could be leased for 99 years, which is tantamount to a land sale, denying justice for Native Hawaiians for the loss of these ancestral lands until our grandchildren’s grandchildren’s generation. The Native Hawaiian community has fought for decades to protect against the alienation of these lands. The calls for justice from the Native Hawaiian community continue to fall on deaf ears. Enough is enough! Stop HB 902 HD1 SD1.

SB-2-HD-1

Submitted on: 3/31/2021 8:08:13 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jen Jenkins	Individual	Oppose	No

Comments:

Aloha Chair and Honorable Members,

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

Mahalo,

Jen Jenkins

SB-2-HD-1

Submitted on: 3/31/2021 8:12:26 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lori Feiteira	Individual	Oppose	No

Comments:

Leave the Native Hawaiian ceded lands for the Native Hawaiians. Stop trying to find ways around the Hawaiian Constitution and the government's duty to protect the land, water and indigenous people of Hawaii. Enough Is Enough!

SB-2-HD-1

Submitted on: 3/31/2021 8:15:30 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Paahana Kincaid	Individual	Oppose	No

Comments:

I, Paahana Kincaid, OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 8:16:30 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Troy J.H. Andrade	Individual	Oppose	No

Comments:

For the reasons articulated by the Office of Hawaiian Affairs, I strongly oppose this measure.

SB-2-HD-1

Submitted on: 3/31/2021 8:18:36 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shilla Lee	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 8:23:29 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica dos Santos	Individual	Oppose	No

Comments:

Dear Legislators,

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

Respectfully,

Jessica dos Santos

SB-2-HD-1

Submitted on: 3/31/2021 8:24:09 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Namaka	Individual	Oppose	No

Comments:

Aloha Chair Luke, Vice Chair Cullen and members of the Committee on Finance,

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1

Mahalo!

SB-2-HD-1

Submitted on: 3/31/2021 8:25:19 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew K. Ing	Individual	Oppose	No

Comments:

A 99-year lease of stolen Hawaiian lands will mean my future grandchildren will not even have the option to seek the justice owed to our people. I strongly oppose this measure.

SB-2-HD-1

Submitted on: 3/31/2021 8:30:14 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Lee	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 8:30:35 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lea Iwamoto	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 8:46:00 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Naomi Silva	Individual	Oppose	No

Comments:

I STRONGLY OPPOSE SB2 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation of the Native Hawaiian people. Please DO NOT pass this bill!! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 8:54:33 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dr. Jamaica Osorio	Individual	Oppose	No

Comments:

Aloha kākou,

O wau nā o Dr. Jamaica Heoliemeleikalani Osorio and I am a professor of Native Hawaiian and Indigenous Politics at the University of Hawai'i at Mānoa. I write to you in full opposition to SB2 SD2 HD1

This bill represents another attempt by the state to further disenfranchise Native Hawaiians from our ancestral lands and attempts to continue the facade of American title over our Native lands and government.

This bill would provide the Board of Land and Natural Resources the power to extend leases of "public" lands for commercial, mixed, industrial, resort, or government use with little or no public input or oversight. The majority of the lands held in the public lands trust are "ceded lands" or Hawaiian Kingdom crown and government lands which were illegally transferred to the US and as a condition of Statehood was transferred to the State of Hawai'i to be held in a public trust for 5 purposes. One purpose being the betterment of the conditions of "native Hawaiians" as defined in the Hawaiian Homes Commission Act, 1920. If these lands are used for any other object other than the 5 purposes it could be considered a breach of trust for which suit can be brought by the United States.

Allowing the extension of leases beyond 65 years with no cap (e.g. some lessees could end up with a 105 year lease) would set up lessees as pseudo land owners of Hawaiian "public" lands that may eventually lead down a slippery slope of lease to fee conversions. This could have a devastating impact on specific sacred sites such as Mauna a Wākea, Pāhūloa, Makua Valley, etc.

Importantly the title over these lands is still heavily contested. Therefore, this bill proposes to circumvent both international law and Hawai'i's own constitution that have designated these lands for the betterment of Native Hawaiians. The state is still defunct in meeting the supreme court mandate of paying 20% of ceded land revenues. These existing issues must be resolved before Any further leasing (or sale) of Hawaiian Kingdom crown and government lands.

Certain majorly contested leases are set to expire in the coming years. Specifically, the lease to PÅ• hakuloa Training Area and Makua Valley The native Hawaiian community does not consent to the extension of these leases and many of us see this bill as an opportunity for the state to do just that without any community oversight and input. This represents yet another mechanism to steal and repurpose our 'Ä• ina.

The Native Hawaiian community does not consent to this ongoing theft and occupation of our 'Ä• ina. We implore the state to uphold its constitutional mandate to hold these lands in trust. Any act/ legislation that would threaten that should be swiftly defeated.

Me ka 'oia'i'o,

Dr. Jamaica Heolimeleikalani Osorio

SB-2-HD-1

Submitted on: 3/31/2021 8:56:13 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Sendao	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer. The HD1 amendments are not meaningful in any way and do not provide any additional layer of protections for these lands.

SB-2-HD-1

Submitted on: 3/31/2021 8:59:09 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Frances Dinnan	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 8:59:36 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Davielynn Briones	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

It is heartbreaking to see that Native Hawaiians have to continue to fight for the injustices that have happened for decades upon decades. Ceded lands are owed to Hawaiians and no one else.

SB-2-HD-1

Submitted on: 3/31/2021 9:18:41 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
R Crowder	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1. Thank you.

SB-2-HD-1

Submitted on: 3/31/2021 9:20:21 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gloria Palma	Individual	Oppose	No

Comments:

I oppose this bill. Mahalo.

SB-2-HD-1

Submitted on: 3/31/2021 9:23:11 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brenn Nakamitsu	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people.

On January 16, 1893, United States diplomatic and military personnel conspired with a small group of individuals to overthrow the constitutional government of the Hawaiian Kingdom and prepared to provide for annexation of the Hawaiian Islands to the United States of America, under a treaty of annexation submitted to the United States Senate, on February 15, 1893. Newly elected U.S. President Grover Cleveland, having received notice that the cause of the so-called revolution derived from *illegal intervention* by U.S. diplomatic and military personnel, withdrew the treaty of annexation and appointed James H. Blount, as Special Commissioner, to investigate the terms of the so-called revolution and to report his findings.

The report concluded that the United States legation assigned to the Hawaiian Kingdom, together with United States Marines and Naval personnel, were directly responsible for the illegal overthrow of the Hawaiian Kingdom government. The report details the culpability of the United States government in violating international laws and the sovereignty of the Hawaiian Kingdom by an act of war, but the United States Government fails to follow through in its commitment to assist in reinstating the constitutional government of the Hawaiian Kingdom.

Instead, the United States allows five years to lapse and a new United States President, William McKinley, enters into a second treaty of annexation with the same individuals who participated in the illegal overthrow with the U.S. legation in 1893 on June 16, 1897, but the treaty was unable to be ratified by the United States Senate due to protests that were submitted by Her Majesty Queen Lili'uokalani and signature petitions against annexation by 21,169 Hawaiian nationals.

As a result of the Spanish-American War, the United States opted to unilaterally annex the Hawaiian Islands by enacting a congressional joint resolution on July 7, 1898, in

order to utilize the Hawaiian Islands as a military base to fight the Spanish in Guam and the Philippines. The United States has remained in the Hawaiian Islands and the Hawaiian Kingdom has since been under prolonged occupation to the present, but its continuity as an independent State remains intact under international law.

A joint resolution does NOT have the ability to annex, seize, or control another sovereign state. If so, pass a joint-resolution to unilaterally annex Russia, China, Brazil, and all the rest of the countries in the world so they comply with this **FACADE** (an outward appearance that is maintained to conceal a less pleasant or creditable reality).

Please do not pass this bill! Stop SB2 SD2 HD1.

Brenn Kilinahe-Puahi Nakamitsu

SB-2-HD-1

Submitted on: 3/31/2021 9:27:45 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Olivia	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer. The HD1 amendments are not meaningful in any way and do not provide any additional layer of protections for these lands.

SB-2-HD-1

Submitted on: 3/31/2021 9:28:11 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisette Akamine	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 9:30:57 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Thomas	Individual	Oppose	No

Comments:

OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 9:51:14 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Villanueva	Individual	Oppose	No

Comments:

: I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill!
Stop SB2 SD2 HD1

Sincerely, he kanaka 'ai pohaku!

SB-2-HD-1

Submitted on: 3/31/2021 10:00:05 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Roselani Oga	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 10:00:37 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
George White	Individual	Oppose	No

Comments:

Aloha Chair Luke, Vice-Chair Cullen and Members -

I write in OPPOSITION to SB2, SD2 HD1, because ths bill would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency.

These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources.

Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer.

The HD1 amendments are not meaningful in any way and do not provide any additional layer of protections for these lands. Thank you for this opportunity to provide testimony in opposition to SB2, SD2 HD1.

Respectfully -

George White

SB-2-HD-1

Submitted on: 3/31/2021 10:03:00 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Banner Fanene	Individual	Oppose	No

Comments:

OPPOSE!

THIEVES who Support... Your names are Recorded.

What Goes Around, Comes Around!

SB-2-HD-1

Submitted on: 3/31/2021 10:17:35 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cheryl Chong-Ariola	Individual	Oppose	No

Comments:

SB-2-HD-1

Submitted on: 3/31/2021 10:39:06 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nana-Honua Manuela	Individual	Oppose	No

Comments:

I OPPOSE SB2 because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer.

SB-2-HD-1

Submitted on: 3/31/2021 10:39:09 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Sojot	Individual	Oppose	No

Comments:

Dear Members of the Finance Committee,

I strongly oppose SB2 SD2 HD1.

Public lands should not be used for un-“affordable” housing. The state housing development agency, HHFDC, currently considers a [\\$1 million, two-bedroom home as “affordable.”](#) HB902 HD1 and SB2 SD2 would vastly expand the amount of public lands that the HHFDC could lease to private developers for 99-plus years at a time, for the development of “affordable” housing units that are priced far above what the majority of island residents can actually afford. **There should be no giveaway of public lands to private developers for a century at a time, to build housing units that local residents won’t be able to afford.**

Furthermore, allowing public lands to be sold off to developers for a century or longer only further perpetuates the forced and unlawful taking of the Hawaiian people's crown and government lands.

Please make the right choice and stop SB2.

Sincerely,

Amy Sojot

SB-2-HD-1

Submitted on: 3/31/2021 10:54:56 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sherry Hester	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 11:15:10 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Noalani Nakasone	Individual	Oppose	No

Comments:

Aloha e FIN Committee,

I OPPOSE HB902 HD1 SD1. This measure would allow for an almost unlimited diminishment of the "ceded" (stolen) land corpus, to which the Native Hawaiian people still have unrelinquished claims. This bill would allow for a significant expansion of ceded lands that could be leased for 99 years, which is tantamount to a land sale, denying justice for Native Hawaiians for the loss of these ancestral lands until our grandchildren's grandchildren's generation. The Native Hawaiian community has fought for decades to protect against the alienation of these lands. The calls for justice from the Native Hawaiian community continue to fall on deaf ears. Enough is enough! Stop HB 902 HD1 SD1. Please make the pono decision. Do "what is right" (OPPOSE)

Mahalo,

Noalani Nakasone

Kaua`i Resident

SB-2-HD-1

Submitted on: 3/31/2021 11:32:31 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karynne L C Morgan	Individual	Oppose	No

Comments:

I OPPOSE this measure because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer. Please STOP this bill from moving forward.

SB-2-HD-1

Submitted on: 3/31/2021 11:38:15 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Noelani Ahia	Individual	Oppose	No

Comments:

I OPPOSE SB2 because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer.

SB-2-HD-1

Submitted on: 3/31/2021 11:53:41 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tadia Rice	Individual	Oppose	No

Comments:

Please DO NOT PASS this bill! Stop SB2 SD2 HD1. If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC).

Mahalo.

SB-2-HD-1

Submitted on: 3/31/2021 12:09:53 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kimberly U'ilani Chow-Rule	Individual	Oppose	No

Comments:

This measure would allow for an almost unlimited diminishment of the “ceded” (stolen) land corpus, to which the Native Hawaiian people still have unrelinquished claims. This bill would allow for a significant expansion of ceded lands that could be leased for 99 years, which is tantamount to a land sale, denying justice for Native Hawaiians for the loss of these ancestral lands until our grandchildren’s grandchildren’s generation. The Native Hawaiian community has fought for decades to protect against the alienation of these lands. The calls for justice from the Native Hawaiian community continue to fall on deaf ears. Enough is enough! Stop HB 902 HD1 SD1

SB-2-HD-1

Submitted on: 3/31/2021 12:24:09 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
johnna rapozo	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 12:49:13 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Hoku Cabebe	Individual	Oppose	No

Comments:

Do not pass this bill. Kingdom Lands are not "State" of Hawaii lands to be given away. a'ole!!

SB-2-HD-1

Submitted on: 3/31/2021 12:52:47 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Erik Meade	Individual	Oppose	No

Comments:

I **OPPOSE** SB2 SD2 HD1 because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer. The HD1 amendments are not meaningful in any way and do not provide any additional layer of protections for these lands.

Erik Meade

Testimony in Opposition to SB2

House Committee on Finance

Thursday, April 1, 2021 2:30pm

Aloha and thank you for the opportunity to testify in strong **opposition** to this measure. As numerous others have already pointed out, this bill contemplates long leases of "ceded" lands that are tantamount to the sale of "ceded" lands. In addition to the strong moral reasons to not pass this bill, I urge the committee to consider the **significant legal implications**.

Contrary to the assertions of HHFDC, the predecessor to the HHFDC did NOT "[win] the right to alienate 'ceded' lands."¹

In *State of Hawaii v. OHA*,² the U.S. Supreme Court merely held that the State Supreme Court improperly relied on the *federal Apology Resolution* when it held that "ceded" lands could not be alienated from the public land trust until Native Hawaiian claims to "ceded" lands has been resolved. **Importantly, the U.S. Supreme Court recognized that it had "no authority to decide questions of Hawaiian law" and so remanded the case.** Before the Hawaii courts could determine whether *state law* would prevent the transfer of "ceded" land for private development, the legislature passed Act 176 and OHA dropped the case. **Thus, the issue was never settled on the merits; the predecessor to HHFDC did not "[win] the right to alienate 'ceded' lands."**

If this bill becomes law, the state will open itself up to another lawsuit. It should also be noted that the HD1 amendment³ does not provide any additional safeguards to protect the interests of Native Hawaiians, nor does it contemplate any type of meaningful consultation.

Mahalo nui for the opportunity to testify on this measure,

-J.R. Kealoha

¹ This statement was made by Executive Director of Denise Matsubara in the 03/16/21 WTL/HOU hearing for SB2 SD2. It was made at the 22 minute mark of the youtube video of the hearing: <https://youtu.be/o2MDALyC4MY?t=1320>.

² *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009), available at: <https://www.oyez.org/cases/2008/07-1372>

³ (e) With regard to real property set aside or leased to the corporation that was classed as government or crown lands previous to August 15, 1895, or exchanged for such lands by the corporation for an aggregate period of more than sixty-five years, the corporation shall submit the following documentation to the office of Hawaiian affairs at least three months prior to any plan to develop or finance an affordable housing development under this section:

- (1) The specific location and size of the parcel of land to be developed or financed; and
- (2) A detailed project description of the proposed affordable housing development, including the type of project, whether rental or owned; number of stories; number of units; amenities; estimated rent or sales price of the units; and a development timeline."

SB-2-HD-1

Submitted on: 3/31/2021 12:58:28 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eweleiula Wong	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 12:59:35 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Luukia Archer	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 1:06:08 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kanoelani Steward	Individual	Oppose	No

Comments:

Aloha nui,

I am writing this testimony in OPPOSITION to SB2 SD2 HD1. This bill could potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside and/or leased to HHFDC. These ceded lands were unlawfully taken away without consent and compensation to the Native Hawaiian people and this bill could also potentially sever our relationship to our ancestral lands. Please OPPOSE this bill!!

SB-2-HD-1

Submitted on: 3/31/2021 1:17:04 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Elena Aukai	Individual	Oppose	No

Comments:

OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 1:18:17 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
maxine kahaulelio	Individual	Oppose	No

Comments:

opposing SB 2 how much more Hewa is this government going to do against our Hawaiian people. What have the Hawaiina people done to deserve all this Hewa. We live here, you all live here in Hawaii Nei, what more do all of you want? This is just a small Island, where do we go if you all keep letting our Hawaii Nei by being destroyed by big money developers who don't live here, then what!!!!!!! Lister to your Hearts, your heart is the most precious part of you that God gave you, your heart comes along with the "HA" the Breath of Life HE put into you, did you all forget? Listen to your Heart, not your Pockets and all the finer things on this World today, please remember, you all Live by "Greed" you "HALA" by greed. This is not what KeAkua wants from you, all of you, all KeAkua wants is your "LOVE" Love one another. Look around you and see what's happeneing to "HIS" World, Sad, sad, sad mahalo nui, mahalo for letting aunty max wala'au with you, E KeAkua Pu

SB-2-HD-1

Submitted on: 3/31/2021 1:36:57 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
JOSEPH AUKAI	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 1:55:10 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
sherry broder	Individual	Oppose	No

Comments:

Aloha Chairwoman Luke,

I oppose SB2 SD2 HD1. Granting these long term leases will effectively result in a diminution of the public land trust corpus and the erode the rights and claims of Native Hawaiians.

In 2008, in OHA v. HCDCH, the Hawai'i Supreme Court unanimously granted OHA's request for a moratorium on the sale of ceded lands. The Court specifically recognized that Native Hawaiians have "unrelinquished claims to the ceded lands," that "the Apology Resolution acknowledges only that unrelinquished claims exist and plainly contemplates future reconciliation with the United States and the State with regard to those claims," and that the Apology Resolution and the related state legislation "give rise to the State's fiduciary duty to preserve the corpus of the public trust lands, specifically, the ceded lands, until such time as the unrelinquished claims of the native Hawaiians have been resolved."

In OHA v. HCDCH, the Hawai'i Supreme Court clearly recognized these historic injustices and the imperative of the restoration of lands to Native Hawaiians and I urge this committee to honor these same principles of justice.

I am submitting this testimony in my personal capacity. For your information, I was the lead attorney the OHA v. HCDCH representing the Office of Hawaiian Affairs and I have represented the Office of Hawaiian Affairs in many other matters over the decades.

SB-2-HD-1

Submitted on: 3/31/2021 2:16:48 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Meleana Shim	Individual	Oppose	No

Comments:

Aloha Chair Luke, Vice Chair Cullen, and members of the committee,

I **OPPOSE** SB2 SD2 HD1 because it would remove Chapter 171 protections from public "ceded" lands set aside by the governor to the Hawai'i Housing Finance and Development Corporation ("HHFDC") or leased to HHFDC by any state department or agency. These protections include, but are not limited to: public auction and appraisal requirements, lease length and extension limits, and prohibitions against lease transfers without prior approval from the Board of Land and Natural Resources. Without Chapter 171 protections, HHFDC would be able to obtain "ceded" lands at little to no cost, lease it to a developer for 99 years, and then indefinitely extend those leases. These long leases are tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer. The HD1 amendments are not meaningful in any way and do not provide any additional layer of protections for these lands. Mahalo for considering our testimony on this measure.

- Meleana Shim

LATE

SB-2-HD-1

Submitted on: 3/31/2021 3:01:48 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jonnetta Peters	Individual	Oppose	No

Comments:

I strongly oppose this measure that would remove critical Chapter 171 protections from ceded lands. These crown and ceded lands are held in trust for the benefit of the Native Hawaiian community. They belong to the Native Hawaiian people! DHHL and OHA still needs to be funded with back payments due. Native Hawaiians wait for decades or die waiting for a DHHL award. Don't let history repeat itself. Please make the admirable and right decision and stop SB2.

LATE

SB-2-HD-1

Submitted on: 3/31/2021 3:40:51 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kathy Giffard	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

LATE

SB-2-HD-1

Submitted on: 3/31/2021 3:53:03 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
B.A. McClintock	Individual	Oppose	No

Comments:

Please oppose this bill!

SB-2-HD-1

Submitted on: 3/31/2021 8:51:21 PM

Testimony for FIN on 4/1/2021 2:30:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Johanna Stone	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

LATE

SB-2-HD-1

Submitted on: 3/31/2021 9:07:27 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
S. Joe Estores	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1.

SB-2-HD-1

Submitted on: 3/31/2021 10:08:16 PM
Testimony for FIN on 4/1/2021 2:30:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Joel Mark	Individual	Oppose	No

Comments:

Strongly oppose. Affordable housing is important but shouldn't be on STOLEN HAWAIIAN LAND.

SB-2-HD-1

Submitted on: 3/31/2021 11:12:51 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Kalani Thanee	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1

LATE

SB-2-HD-1

Submitted on: 4/1/2021 8:28:13 AM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
J. Russell Tai Hook	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 HD1 because it would potentially foreclose Native Hawaiian claims to "ceded" lands that are set aside or leased to the Hawai'i Housing Finance and Development Corporation (HHFDC). If this bill passes, HHFDC would be able to obtain "ceded" lands at little to no cost and lease them for 99+ years. Such long-term leases are tantamount to the sale of "ceded" lands, which are Hawaiian Kingdom crown and government lands that were unlawfully taken under extreme duress and without any consent or compensation to the Native Hawaiian people. Please do not pass this bill! Stop SB2 SD2 HD1!