

DAVID Y. IGE
GOVERNOR



DENISE ISERI-MATSUBARA
EXECUTIVE DIRECTOR

STATE OF HAWAII

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

IN REPLY REFER TO:

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

**HOUSE COMMITTEE ON HOUSING
HOUSE COMMITTEE ON WATER & LAND**

March 16, 2021 at 10:00 a.m.
State Capitol, Room 423 & 430

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

The HHFDC ***supports*** S.B. 2, S.D. 2, a measure to expand 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. This bill will help streamline the development of affordable housing on state lands.

S.B. 2, S.D. 2, will minimize the number of approvals from the Department of Land and Natural Resources as projects move forward from set-aside to the leasing, entitlement, financing, and development phases. Housing development will be subject to all conditions imposed by the Board of Land and Natural Resources and as set forth in the Executive Order. This includes the return of state land if it is no longer needed for housing.

Thank you for the opportunity to testify.

SB-2-SD-2

Submitted on: 3/14/2021 3:57:52 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Janice Takahashi	HHFDC	Support	No

Comments:

I am available for questions.


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

SB2 SD2
RELATING TO PUBLIC LANDS
Ke Kōmike Hale o ke Kuleana Hale Noho
House Committee on Housing
Ke Kōmike Hale o ka Wai a me ka ‘Āina
House Committee on Water & Land

Malaki 16, 2021

10:00 a.m.

Lumi 423/430

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB2 SD2, 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 inclusion in this bill that lands set aside by the Governor or leased to HHFDC by any state agency or department remain consistently protected against inappropriate alienation pursuant to HRS § 171-64.7. OHA is also appreciative of the additional provision added to HRS § 201H-9, requiring that any lands leased to HHFDC by any state department or agency be returned to that department or agency when no longer needed by HHFDC for housing, finance, or development purposes. These safeguards would help to ensure the appropriate use and disposition of our public lands, including “ceded” lands, and further ensure clear and consistent oversight, accountability, and transparency in the potential sale or alienation of our limited public and “ceded” land base.

However, SB2 SD2 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, 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 irretractable 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 Committees 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 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

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)).

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."

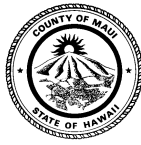
Accordingly, OHA respectfully urges the Committees to **HOLD** SB2 SD2. However, should the Committees choose to move this measure forward, OHA minimally urges the inclusion of the suggested amendment offered above. Mahalo nui loa for the opportunity to testify on this measure.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

March 15, 2021

TO: Honorable Chair Nadine K. Nakamura, Vice-Chair Troy N. Hashimoto, and members of the House Committee on Housing

Honorable Chair David A. Tarnas, Vice-Chair Patrick Pihana Branco, and members of the House Committee on Water and Land

FROM: Tamara Paltin
Maui County Councilmember

DATE: March 15, 2021

SUBJECT: **OPPOSING SB 2, RELATING TO PUBLIC LANDS**

Thank you for the opportunity to testify in this important measure. The purpose of this measure is to exempt from the definition of "public lands" those lands that are set aside to the Hawaii Housing Finance and Development Corporation by the Governor or leased to the Corporation by other state departments and agencies.

I OPPOSE this measure for the following reasons:

1. Native Hawaiians are owed revenue from these lands. If the state is leasing the land to a lessee that isn't generating revenue off the land, Native Hawaiians are being short-changed from the best uses of lands that were stolen from them.
2. Historically, these long-term lessees start arguing that the land ultimately belongs to them, and public trust lands end up in private ownership. Lands stolen from Hawaiians and held in trust for Hawaiians were given away after these long, multi-generational leases.

Respectfully Submitted,

A handwritten signature in black ink that reads "Tamara A. M. Paltin".

TAMARA PALTIN
Councilmember



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

RELATING TO PUBLIC LANDS

HOUSE COMMITTEE ON HOUSING & COMMITTEE ON WATER AND LAND

March 16, 2021

10:00 a.m.

Rooms 423 and 430

Aloha e Committee Chairs and Members,

The Native Hawaiian Legal Corporation (“NHLC”) **OPPOSES SB2 SD2**, 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’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 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 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** 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**. Mahalo for the opportunity to testify.

Summer L.H. Sylva



Executive Director
Native Hawaiian Legal Corporation

Ashley K. Obrey



Staff Attorney
Native Hawaiian Legal Corporation

**SB2 SD2
PUBLIC LANDS**

House Committee on Housing and House Committee on Water & Land

March 16, 2021

10:00 AM

Videoconference

The Council for Native Hawaiian Advancement (CNHA), a member-based 501(c)(3) non-profit organization with a mission to enhance the cultural, economic, political, and community development of Native Hawaiians, **STRONGLY OPPOSES** SB2 SD2, which would amend Hawai'i Revised Statutes Chapter 171 definition of "public lands" to include lands set aside by the governor to the Hawai'i Housing and Finance Development Corporation (HHFDC) and lands leased to HHFDC by any department or agency of the State, which could cause the harmful erosion of the public land trust lands (PLT) corpus, which includes "ceded" lands, all of which are held in trust by the state, in part, for the betterment of conditions for Native Hawaiians.

This measure would essentially allow HHFDC to acquire PLT lands and through HHFDC's lease mechanism, these lands could be subjected to dispositions that include 99-year leasehold interests and sale, which could permanently alienate these lands from the public trust.

CNHA emphasizes that the State's obligation to the betterment of conditions for Native Hawaiians is substantively carried out by the revenue generated from the Public Land Trust lands (PLT), which include those lands commonly referred to as "ceded" lands. The State, in fulfilling its trust mandate and fiduciary obligations to Native Hawaiians, must ensure against the further erosion of the PLT corpus, while also ensuring that these lands are subjected to best possible uses.

Historically, these multiple-lifetime-long leases, through the passage of time, increasingly lack clarity in terms of original "ownership" and purpose, and as a result, PLT lands have effectively been removed from the State's inventory and placed into private ownership. These extremely long leases may and continue to alienate public and "ceded" lands, which would further undermine the State's trust and fiduciary obligations to Native Hawaiians.



Furthermore, extending a lease over multiple generations could effectively lock the State out of ensuring the best use of those lands, which again, would inhibit the State from fulfilling its fiduciary obligations to Native Hawaiians.

For these reasons, CNHA respectfully requests that this measure be held.

Mahalo nui loa for this opportunity to provide testimony on this measure.

Respectfully,

J. Kūhiō Lewis
President & CEO
Council for Native Hawaiian Advancement



March 16, 2021

[HOUSE COMMITTEES ON HOUSING AND WATER & LAND](#)

Representative Nadine K. Nakamura, Chair, and Representative David A. Tarnas, Chair

Representative Troy N. Hashimoto, Vice Chair, and Representative Patrick Pihana Branco, Vice-chair

Testimony Strongly OPPOSING SB 2, SD 2

Aloha, Chair Nakamura, Chair Tarnas, Vice Chair Hashimoto, Vice Chair Branco, and members of the Committee,

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii **strongly opposes SB 2 SD 2** that states land set aside for the Hawai'i Housing and Finance Development Corporation (HHFDC) is exempt from the definition of "public lands." The Caucus objects to any legislation that compromises the State's fiduciary obligation to Native Hawaiians under the public trust and public land trust.

We continue to believe that the State has a moral and fiduciary duty to honor, respect, and follow through on its legal obligation to protect and preserve public lands and transfer 20% of the revenue for the benefit of Native Hawaiians. Any measures to side-step that obligation expose the State to litigation.

We encourage your committees to oppose SB 2, SD 2.

Mahalo nui loa for the opportunity to testify.

Me ka mahalo nui,

JUANITA MAHIENAENA BROWN KAWAMOTO, Chair

Hawaiian Affairs Caucus of the Democratic Party of Hawai'i

SB-2-SD-2

Submitted on: 3/12/2021 5:26:04 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ellen Godbey Carson	Individual	Support	No

Comments:

Please pass SB2, which would assist in ALOHA Homes and related efforts to increase our housing supply here in Hawiai. We need tens of thousands of units to be built to accomodate Hawaii's people, and this bill can assist.

SB-2-SD-2

Submitted on: 3/13/2021 10:18:11 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Blumer-Buell	Individual	Oppose	No

Comments:

Aloha,

I oppose SB2 SD2. I reviewed testimony from OHA dated Peleluali 26, 2021, "RELATting TO PUBLIC LANDS". I support the OHA analysis and views.

I believe the OHA analysis and views are widely supported in East-Maui.

Appreciate your carefull consideration.

Malama Pono,

John Blumer-Buell, Mu'olea, Hana, Maui

SB-2-SD-2

Submitted on: 3/13/2021 10:37:03 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

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

Comments:

I **OPPOSE** SB2 SD2 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-SD-2

Submitted on: 3/14/2021 7:26:09 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Oppose	No

Comments:

Oppose. I am concerned with the unintended consequences of this legislation. SB2 contemplates a significant expansion of the public lands that could be leased under HHFDC's very flexible and liberal land disposition authorities. SB2 would allow a vast amount of public lands, which are overwhelmingly "ceded" lands to which Native Hawaiians maintain unrelinquished claims, and which are 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. Under HHFDC's broad leasing and disposition authorities, 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.**

SB-2-SD-2

Submitted on: 3/14/2021 9:10:54 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

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

Comments:

I **OPPOSE** SB2 SD2 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-SD-2

Submitted on: 3/14/2021 12:20:11 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Solomon P. Kaho?ohalahala	Individual	Oppose	No

Comments:

I am in strong opposition to SB2 SD2. Please

HOLD this bill. Thank you.

SB-2-SD-2

Submitted on: 3/14/2021 1:44:31 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Kawamoto	Individual	Support	No

Comments:

My name is John Kawamoto, and I support SB 2 SD 2. The bill streamlines the process for the Hawaii Housing Finance and Development Corporation to build affordable housing.

In Hawaii, real estate values have steadily risen for decades, along with construction costs and other development costs. Meanwhile, wages have stagnated. As a result, fewer and fewer families can afford to pay for the housing that they need because the cost of living has outpaced their ability to pay.

Hawaii faces a housing crisis that disproportionately impacts Hawaii's working families. Prior to Covid-19, the National Low Income Housing Coalition estimated that Hawaii faced a shortage of more than 40,000 homes for families earning incomes of 50% or below of the area median income.

The Aloha United Way (AUW) recently issued an update during the pandemic of its report, entitled, "ALICE: A Study in Financial Hardship in Hawaii" (ALICE = Asset Limited, Income Constrained, Employed). AUW reported that 59% of Hawaii households cannot afford the basic necessities of life. They must choose which necessities to do without. Housing is the biggest item in a typical family's budget, so these families are in dire need of housing that is affordable to them.

The exemption from the definition of "public lands" proposed by this measure will streamline the development of affordable housing on state land by reducing the number of approvals required from the Department of Land and Natural Resources as affordable housing projects move forward from set-aside to leasing, entitlement, financing, and development.

For the foregoing reasons, I support SB 2 SD 2.

SB-2-SD-2

Submitted on: 3/14/2021 2:44:39 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Faith Mackillop	Individual	Oppose	No

Comments:

I strongly oppose SB2!

March 14, 2021

Dear Honorable Members of the *House Committee on Water and land*,

My name is *Keith Fernandez* and I live in *Honolulu*. I am a *Native Hawaiian living in Honolulu*. I am testifying today in *opposition of SB2 SD2*.

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. **I personally 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.**

Please consider *opposing* this bill. Thank you for your time and efforts.

Sincerely,

Keith Fernandez

250 Kawaihae St.,20E, Honolulu, HI 96825

SB-2-SD-2

Submitted on: 3/14/2021 3:30:27 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brittney Hedlund	Individual	Oppose	No

Comments:

I oppose this bill because government leased lands should not be exempted from public lands. This jeopardizes our rights as kÅ• naka to return to our 'Ä€ina and gain acces to our sites for too long of a period of time.

SB-2-SD-2

Submitted on: 3/14/2021 6:12:50 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mavis Oliveira-Medeiros	Individual	Oppose	No

Comments:

Aloha Senate Committee,

I am writing in strong opposition to SB2 SD2.

Mahalo,

Mavis Oliveira-Medeiros

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

S.B. 2, S.D.2
RELATING TO PUBLIC LAND
House Committee on Housing
House Committee on Water and Land
Hearing: Tuesday, March 16, 2021, at 10:00 am

Aloha, and thank you for the opportunity to submit testimony in **opposition** to S.B. 2, S.D.2. 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 spiritual and physical connection of the Native Hawaiian people to the ‘āina or land. 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. See 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, by removing potentially large amounts of trust land from the definition of public lands and contemplating 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 **oppose** S.B. 2, S.D. 2. Mahalo for the opportunity to submit this testimony.

SB-2-SD-2

Submitted on: 3/14/2021 6:44:31 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mykie E. Menor Ozoa-Aglugub	Individual	Oppose	No

Comments:

I **OPPOSE** SB2 SD2 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.

Thank you for your time and consideration,

Mykie E. Menor Ozoa-Aglugub, J.D.

SB-2-SD-2

Submitted on: 3/14/2021 7:46:29 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

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-SD-2

Submitted on: 3/14/2021 8:16:13 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
kevin landers	Individual	Oppose	No

Comments:

Native Hawaiians have unrelinquished claims over "ceded" lands. A'ole to this move by capital. LAND BACK.

Speak

SB-2-SD-2

Submitted on: 3/14/2021 8:23:05 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

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

Comments:

I OPPOSE SB2 SD2 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-SD-2

Submitted on: 3/14/2021 8:33:55 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sarah Michal Hamid	Individual	Oppose	No

Comments:

I **OPPOSE** SB2 SD2 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-SD-2

Submitted on: 3/14/2021 9:14:33 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

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

Comments:

I OPPOSE SB2 SD2 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-SD-2

Submitted on: 3/14/2021 10:10:20 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Emma McGuire	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 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-SD-2

Submitted on: 3/14/2021 10:12:44 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kamalani Keliikuli	Individual	Oppose	No

Comments:

I oppose this bill

SB-2-SD-2

Submitted on: 3/15/2021 2:14:11 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Raul Nohea Goodness	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 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-SD-2

Submitted on: 3/15/2021 3:28:24 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

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

Comments:

These lands should be given back to the Hawaiian people

SB-2-SD-2

Submitted on: 3/15/2021 7:15:51 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
MaryAnn Omerod	Individual	Oppose	No

Comments:

I STRONGLY OPPOSE SB2 SD2 because it would remove Chapter 171 protections from the 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-SD-2

Submitted on: 3/15/2021 8:02:48 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leanne K. Fox	Individual	Oppose	No

Comments:

I **OPPOSE** SB2 SD2 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-SD-2

Submitted on: 3/15/2021 8:04:56 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Koa Young	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 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-SD-2

Submitted on: 3/15/2021 8:11:17 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
melissa tomlinson	Individual	Oppose	No

Comments:

I am surprised that there continues to be legislation brought regarding the selling or leasing of public land use after so much rightful opposition has been made with SB 499 and SB 257. The truth is that The Kingdom of Hawai'i is illegally occupied by the U.S. and stealing more land in its name through the use of legislation being proposed by said occupation is not justified, wrong on every humanitarian and environmental level, plus an act of war. Do not support this bill. Do not continue the plight of genocide against Kanaka Maoli and Hawaiian Nationals. Because these legislative propositions continue, despite the overpouring opposition and truth that seems to be continuously denied by U.S. representatives, I am including my testimony from previous bills as it still relates.

As I submitted in opposition for SB 499, HB 499, SB 257, HB 902 (all versions) I am submitting testimony in opposition against SB 2 SD 2 as well. I strongly oppose the lack of acknowledgment in the theft and false authority from governing officials, renewing, and or selling and or leasing public land for state, city, and privatized agendas or profiteering. These "public land" spaces are still illegally occupied territories of The Kingdom of Hawai'i. It is inappropriate and violent for U.S. government legislation to faculty determination of land use within the Hawai'ian islands. Furthermore, it is corrupt to take these spaces away from the public for any kind of monetary gain to the U.S. proclaimed "state" of Hawai'i. The land is Hawai'ian and must be protected. The U.S. has continually allowed abusive practices such as desecration to sacred spaces of Hawai'ian culture, restricting the rights of Kanaka Maoli to practice their religious/spiritual beliefs, police brutality, and literal state sanctioned violence against native peoples through genocide. Allowing this bill to pass would allow the renewal of this violence against the native people of Hawai'i, it is time for practices such as these to cease! It is the time of recognition and of accountability! With everything happening in today's world it is ever clear to me, especially in Hawai'i, that the governing practices by the U.S. are responsible for the calamities we face as humans bound to its forces. The militarization of the islands of Hawai'i is a strong example of how destructive and unhealthy the U.S. governing practices have been, among countless others since 1893. Providing lease extensions or selling of public land is unacceptable, especially considering leasing and selling should never have been granted to begin with, as it is not the United States lands. This bill would allow stolen Hawaiian Kingdom and government lands to be leased for a century at a time. Native Hawaiians have unrelenquished claim over 'ceded' lands and this bill attempts to prevent Hawaiian

claims to their land from ever being resolved. A'ole! Hewa! Acts of War and war crimes! Please search for creating peace, Do not approve SB 2 SD2, it is not in alignment with what is best for Hawai'i or with what is best for humanity.

This bill would allow current lessees to bypass a public bidding process where input for past, current, and future land stewardship can be reviewed, higher rent negotiated, and if need be environmental assessments allowed. 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 to be used for the betterment of the conditions of "native Hawaiians". Allowing the extension of leases beyond 65 years with no cap will result in 100 year leases that would set up developers as pseudo land owners of Hawaiian "public" lands.

Furthermore in continuation of why I oppose this bill and the lease extensions being renewed is in considering Puanani Brown's testimony of HB 499 in opposition where she states--"the extensions of the long-term and poorly stewarded commercial, industrial, resort, mixed-use, or government leases of Hawai'i's public lands also known as Crown Lands, illegally taken from the Hawaiian people at the time of the 1893 overthrow in an "act of war" (United States Public Law 103-150). If these lease holders have poorly managed the land, WHY should the Hawaiian people be forced to grant them an even longer term to further demonstrate their lack of care for these lands and for the Native Hawaiian people? We cannot afford to allow the further destruction, desecration, and abuse of our sacred sites. Let us be clear that many of these lands are also conservation districts meant to be protected for historical and ecological preservation, that corporate interests have gleefully abused. These lands hold the cultural heritage of the Native Hawaiian people, they are the burial sites of our ancestors and highest chiefs, they are tied intrinsically to the Hawaiian people through our creation story and religion, they are the source of water for traditional kalo farmers, and they encompass critically endangered ecosystems and lands that are home to endemic species found nowhere else on earth. This bill seeks to deprive people of their right to appeal an agency decision to the Court. It also asks agencies to nonsensically share orders between them. Together, these changes violate the people's right to due process. The people harmed are, primarily, Indigenous Hawaiians who have already survived genocide, the intentional erasure of our history and language, and who are now constantly fighting for our survival and against cultural genocide at the hands of this de facto state of Hawai'i via the overexploitation and development of our ancestral lands to suit the short term economic wants of the current tourism, military, and agrochemical plantation economy. While one third of the homeless population in Hawaii is Native Hawaiian, the state continues to put all your eggs in a few unsustainable baskets fueling the desecration of sacred lands and disrespect of Indigenous rights - taking advantage over and over again of all the beauty and aloha that makes Hawai'i so uniquely cherished. Furthermore, the United Nations has declared it a human rights violation to develop these lands without the free, prior, and informed consent of the Indigenous people of Hawai'i. Shame on you for even proposing this bill that would

allow for the destruction of lands that hundreds of thousands of Native Hawaiians and allies around the world have put their bodies on the line to protect. This bill would foreclose on our rights to fully litigate claims before a Court to see if an agency acted properly or violated the law. It targets Native Hawaiians because it targets the issues and rights we hold most dear: our sacred sites, cultural resources, burials, fresh water sources, and our entire worldview. This bill is unconstitutional, egregiously racist and genocidal in both its nature and intent."

Please do better to protect land and water! Please stop these genocidal efforts and oppose bill SB 2 SD 2.

SB-2-SD-2

Submitted on: 3/15/2021 8:51:49 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

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-SD-2

Submitted on: 3/15/2021 9:02:43 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
kalena Charlene Holani	Individual	Oppose	No

Comments:

This is immoral, unjust, unethical, and straight up disrespectful to Hawaii its dying people and culture. I oppose SBS SD2!

JOINT HEARING OF THE HOUSE COMMITTEES ON
HOUSING AND WATER & LAND

ATTN: CHAIRS NADINE K. NAKAMURA AND DAVID A. TARNAS
& VICE CHAIRS TROY N. HASHIMOTO AND PATRICK PIHANA BRANCO

Testimony in **Strong Opposition** of SB2:
Relating to Public Lands

March 16, 2021, 10:00 a.m.
Via Videoconference

Aloha Chairs, Vice Chairs, and Honorable Members of the House Committees on Housing and Water and Land,

My name is Alexa Deike and I am testifying in **strong opposition** of SB2. I am a student at the William S. Richardson School of Law at the University of Hawai‘i at Mānoa.

This bill intends to 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.

Mahalo for your time and consideration,

Alexa Deike

SB-2-SD-2

Submitted on: 3/15/2021 9:18:16 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mahina Duarte	Kanaeokana	Oppose	No

Comments:



March 15, 2021

TO: House Committee on Housing and House, Committee on Water & Land

FR: Kanaeokana Kula Hawai'i Network

RE: SB2 SD2 Relating to Public Lands

Aloha Representatives:

Kanaeokana, the Kula Hawai'i Network which includes membership of DOE Hawaiian Language Immersion Program sites, all 17 Hawaiian Focused Charter Schools (HFCS), and over 50 other Hawaiian education organizations, strongly opposes the measure to remove Chapter 171 protections and exempt land set aside by the governor to HHFDC and lands leased to HHFDC from other state departments or agencies from classification as public lands subject to DLNR management.

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. The result would be tantamount to selling "ceded" land by foreclosing Native Hawaiians' unrelinquished claims for a century or longer.

As a Hawaiian education network, Kanaeokana's mission is to collaboratively develop and strengthen a Native Hawaiian education system—built on a strong 'Ā• lelo Hawai'i and 'ike Hawai'i foundation—to grow and sustain aloha 'Ā• ina leaders. We urge our elected officials to keep our public land trusts protected.

Therefore, we humbly ask the committees to OPPOSE SB2 SD2.

Me Ka 'Oia'i'o

Mahina Paishon-Duarte, Co-Chair

Elena Farden, Co-Chair

KÅ• mike Advocacy

Kanaeokana Kula Hawai'i Network

SB-2-SD-2

Submitted on: 3/15/2021 9:29:41 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Malia Marquez	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 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. This bill is about greed and money. To extend leased lands for a century? We all know who and what this bill protects and it is NOT the people of this land. Please do the PONO (right) thing and OPPOSE SB2 SD2. Mahalo for your time on this very important matter. Me ka ha'aha'a. Malia Marquez.

SB-2-SD-2

Submitted on: 3/15/2021 9:34:38 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sally Thrasher	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 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-SD-2

Submitted on: 3/15/2021 9:35:16 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kalai Joy	Individual	Oppose	No

Comments:

I am testifying in opposition of HB499 HD2, HB902 HD1, and SB2 SD2. These bills would allow stolen Hawaiian Kingdom crown and government lands, taken during the 1893 insurrection and overthrow of Queen Lili'uokalani, to be leader for a century which would effectively prevent Hawaiian claims to these lands.

We need to protect these "ceded" lands. It is the responsibility of anyone who cares for Hawai'i to protect and preserve these lands until these claims are resolved.

SB-2-SD-2

Submitted on: 3/15/2021 9:38:49 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sheena Lopes	Individual	Oppose	No

Comments:

I **OPPOSE** SB2 SD2 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-SD-2

Submitted on: 3/15/2021 9:58:25 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kelley Farquhar	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 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-SD-2

Submitted on: 3/15/2021 9:59:13 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kristen Alice	Individual	Oppose	No

Comments:

I strongly oppose this measure for the reasons listed in the testimony submitted by the Office of Hawaiian Affairs.

SB-2-SD-2

Submitted on: 3/15/2021 9:59:42 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

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

Comments:

Oppose. Thank you.

SB-2-SD-2

Submitted on: 3/15/2021 10:00:50 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

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

Comments:

Aloha to the Committee,

I oppose this bill because I feel concerned about removing Chapter 171 protections from public "ceded" lands. These protections are critical for a strong democratic process and help to involve the public in management and care of these lands. These protections also were developed to help to safeguard an important cultural resource for our Native Hawaiian community. If there is anything the pandemic has taught us, it is that the world is constantly changing, sometimes drastically, and we need to be able to adapt and grow with change. The impacts of climate change on our infrastructure and community life are growing as well. The possibility of 99-year leases would hamper our community's ability to adapt and grow.

SB-2-SD-2

Submitted on: 3/15/2021 10:20:17 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jillian Paulino	Individual	Oppose	No

Comments:

I **OPPOSE** SB2 SD2 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-SD-2

Submitted on: 3/15/2021 10:24:14 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tory Kono	Individual	Oppose	No

Comments:

I **OPPOSE** SB2 SD2 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-SD-2

Submitted on: 3/15/2021 10:29:38 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Layla Kilolu	Individual	Oppose	No

Comments:

Aloha Policymakers,

I am writing in opposition to SB2 SD2 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 consider discussing this matter with the Native Hawaiian community for a deeper understanding of this matter.

Respectfully,

Layla M. Kilolu

PhD student, Department of Urban & Regional Planning, UH Manoa

SB-2-SD-2

Submitted on: 3/15/2021 10:38:59 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

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

Comments:

Strongly Oppose

It "contemplates a significant expansion of the public lands that could be leased under HHFDC's very flexible and liberal land disposition authorities". Like so many "authorities" who can grant long term leases and move land from one jurisdiction to another, there is so much room for wrong. We see so much lack of overview, supervision of leases now.. these folks have 99 year leases. We've all seen the results . OPPOSE

SB-2-SD-2

Submitted on: 3/15/2021 10:52:41 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kialoa Mossman	Individual	Oppose	No

Comments:

Aloha mai kākou, my name is Kialoa Mossman, an Oahu resident born and raised on Hawai'i island and I **OPPOSE** SB2 SD2 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-SD-2

Submitted on: 3/15/2021 11:45:59 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tara Rojas	Individual	Oppose	No

Comments:

I OPPOSE SB2 SD2 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-SD-2

Submitted on: 3/15/2021 1:12:49 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ellen-Rae Cachola	Individual	Oppose	No

Comments:

I **OPPOSE** SB2 SD2 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-SD-2

Submitted on: 3/15/2021 1:29:40 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

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

Comments:

I OPPOSE SB2 SD2 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-SD-2

Submitted on: 3/15/2021 2:14:07 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Oppose	No

Comments:

Oppose

SB-2-SD-2

Submitted on: 3/15/2021 8:25:36 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

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

Comments:

I STRONGLY OPPOSE this bill that has the effect of reducing the “ceded” lands inventory via long-term lease authorizations. Such measures threaten to alienate public and “ceded” lands by granting broad leasing and disposition authorities; end-runs around the protections otherwise afforded these lands by HRS Chapter 171. For those many of us, especially those who have long advocated to protect and preserve these lands for the benefit of Native Hawaiians, proposals that facilitate their diminution before addressing, let alone resolving, outstanding historical land claims are wrongheaded and deeply offensive.

SB-2-SD-2

Submitted on: 3/15/2021 8:46:26 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

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

Comments:

Strong opposition

SB-2-SD-2

Submitted on: 3/15/2021 9:13:24 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sky Uyehara	Individual	Oppose	No

Comments:

I **OPPOSE** SB2 SD2

SB-2-SD-2

Submitted on: 3/15/2021 9:25:10 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Euliana Hudson	Individual	Oppose	No

Comments:

Native Hawaiians need to be consulted and considered in processes like these!

SB-2-SD-2

Submitted on: 3/15/2021 9:50:52 PM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kelsey Amos	Individual	Oppose	No

Comments:

I oppose this bill. I think the issue of ceded lands and the claims of Native Hawaiians to these lands should be taken seriously. Removing protections from public/ceded lands does not get us closer to resolving these claims, instead it maintains the current (im)balance of power and defers the problem to future generations.

SB-2-SD-2

Submitted on: 3/16/2021 12:09:15 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Azuma Chrupalyk	Individual	Oppose	No

Comments:

The state needs to take a step back to rectify and redefine "public lands".

If they can build housing developments on Hawaiian graves, then we should build the next housing development on top of Punchbowl Cemetery. If you say no to this idea, then stop allowing the building on top of our graves.

Secondly, what aquifers are these new developments drawing from?

Red Hill water is contaminated on O'ahu

The 'Äaao Aquifer in West Maui is tapped at over a 90% rate, meaning that the aquifer does not have ample time to recharge before being sucked dry.

East Maui water is being stolen from farmers to go to Mahi Pono lands, and the rest of the water goes toward developing on known Hawaiian burials - because tourist expansion is so badly needed while the State of Hawai'i ignores the needs of residents.

Perhaps the state should raise minimum wage so that people can pay for existing housing structures. As it stands now, continental people purchase much of our available real estate because locals cannot afford to pay for housing. Locals often don't qualify for better jobs because educational budgets are about the size of a piece of candy now. The oppression is reaching new levels of silly. Fix the minimum wage issue and stop allowing developers to build on Hawaiian graves. Stop the overdevelopment. This silliness is causing environmental failure that accompanies socioeconomic injustice.

I urge you to **vote “NO” on SB2 SD2** 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 SB2 SD2

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.

In 2010, the Obama Administration propelled the United States into meeting 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, 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 in front of the backdrop of the United Nations General Assembly’s passage of the UNDRIP and the Obama Administration’s subsequent endorsement of the UNDRIP.

THE RELEVANCE OF INTERNATIONAL INDIGENOUS HUMAN RIGHTS TO SB2 SD2

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

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.⁷

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)).

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 *Id.*, at 13 (internal citations omitted).

The UNDRIP also recognizes the importance of obtaining indigenous peoples' free, prior, and informed consent regarding land issues.⁸ More specifically, 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.”⁹

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”¹⁰ and development plans start only after consultations are completed). To satisfy the “informed” element, consultations must also be informative. Informative consultations ensure that affected communities know the scope and effects of proposed development projects on their lives, resources, and culture.¹¹

PROBLEMS WITH SB2 SD2

SB2 SD2 makes it possible for long-term leases to lands – lands that Native Hawaiians have unrelinquished claims to – exempt from the comprehensive protection process our legislature created when it passed Act 176 in 2009.

Second, in addition to exempting lands from the Act 176 protective process, SB2 SD2 falls short of international human rights standards by not including language for obtaining Native Hawaiians’ free, prior, and informed consent.

While it may be true that SB2 SD2 may comport with Hawai‘i law, **passage of SB2 SD2**, coupled with anticipated actions to develop “exempted” 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 SB2 SD2** and find another way – a way that acknowledges and respects Native Hawaiians’ human rights - to meet the challenges ahead.

⁸ UN Declaration, arts. 10, 11(2), 19, 28(1), and 29(2), 32(2).

⁹ *Id.*, at art. 32 (emphases added).

¹⁰ 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).

¹¹ *Id.*

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SB-2-SD-2

Submitted on: 3/16/2021 9:11:14 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Enomoto	Individual	Oppose	No

Comments:

Aloha,

THIS IS AN ABSOLUTE OPPOSITION to SB2 SD2. As a Kanaka Maoli I found the idea of leasing ceded for up to 100 years and obvious and continued settler colonial tactic of stealing Native lands. Introducing this bill in the midst of COVID preventing physical in-person opposition is also an obvious trick. Let's not pretend that this does not serve the desires of the TMT, the military and corporate developers. Do not attempt to do the work of those who have worked to set aside land for our people. Passing this bill demonstrates obvious contempt for Kanaka Maoli and a blatant disregard for the environmental well being of the 'Ä• ina. For those of you who introduced this bill you should be ashamed.

Mahalo,

Joy Lehuanani Enomoto

SB-2-SD-2

Submitted on: 3/16/2021 9:35:34 AM

Testimony for HSG on 3/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kim Compoc	Individual	Oppose	No

Comments:

Aloha e Senators,

Do not support this bill! As I understand it, SB2 SD2 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 bills would allow stolen Hawaiian Kingdom crown and government lands, taken during the 1893 insurrection and overthrow of Queen Lili'uokalani, to be leased for a century at a time -- effectively preventing Hawaiian claims to these lands from ever being resolved.

While I understand the need for more affordable housing, there are smarter solutions than this one. We can build or repair on the existing footprint of already developed land. There is so much housing in Hawai'i that is falling apart. Ordinary people in Hawai'i have no hope that new housing is truly going to be "affordable." We all know that tourists, military, and corporations always come first. This bill would be a windfall for corporate developers, not for ordinary people desperate for affordable housing. I am very worried about what a 100-year lease means for public transparency. I am very worried about what appears to be a land grab by corporate interests that would make things much worse for Native Hawaiians, and for all the people in Hawai'i concerned about proper land and water protection. Please stop this bill!

Kim Compoc