

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  
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IN REPLY REFER TO:

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

**SENATE COMMITTEE ON WATER AND LAND  
SENATE COMMITTEE ON HOUSING**

February 5, 2021 at 1:00 p.m.  
State Capitol, Room 229

In consideration of  
**S.B. 2**  
**RELATING TO PUBLIC LANDS.**

The HHFDC ***supports*** S.B. 2, which amends the definition of "public lands" in Section 171-2, HRS, to exclude lands set aside by the governor to HHFDC and lands leased to HHFDC by other State department or agency. Currently, only lands to which HHFDC holds title to in its corporate capacity are exempt from the definition of "public lands." However, HHFDC does not own much land.

This amended exemption will help streamline the development of affordable housing on State lands by minimizing 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. We therefore strongly support this bill.

Thank you for the opportunity to testify.



**SB2**  
**RELATING TO PUBLIC LANDS**

Ke Kōmike ‘Aha Kenekoa o ke Kuleana Hale Noho  
Ke Kōmike ‘Aha Kenekoa o ka Wai a me ka ‘Āina

Pepeluali 5, 2021

1:00 p.m.

Lumi 229

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **OPPOSE** SB2, 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 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 appreciateive 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 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 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 highlighted numerous times in the past, 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.** Every year we see lessees attempt to change laws and policies to allow them to hold on to public lands for longer and longer periods. 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 diminution of the “ceded” lands corpus. Accordingly, OHA cannot support a measure that may subject a significant amount of “ceded” lands to extremely long-term, multigenerational leases, including the instant measure.

Should the Committees nonetheless 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 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 rules adopted pursuant to chapter 91 and approved by the board of trustees of the Office of Hawaiian Affairs. Rules 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. 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.

**Kūpuna for the Mo'opuna**  
*committed to the well-being of Hawai'i for the next generations to come*  
kupuna4moopuna@gmail.com



**STOP LEGAL THIEVERY!**

COMMITTEE ON WATER AND LAND

Senator Lorraine R. Inouye, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

COMMITTEE ON HOUSING

Senator Stanley Chang, Chair  
Senator Dru Mamo Kanuha, Vice Chair

Date: Friday, February 5, 2021    Time 1:00 P.M.    Place: Room 229

**Testimony of Kūpuna for the Mo'opuna**

SB 2 - RELATING TO PUBLIC LANDS.    **STRONG OPPOSITION**

We, Kūpuna for the Mo'opuna, a group of kūpuna Hawaiian homestead farmers committed to the well-being of Hawai'i for the next generations to come, are in **strong opposition to SB 2.**

Mahalo to the teachers who taught us, *"Just because you wrote your name on a pencil you stole from a classmate, that doesn't make it yours. Give it back, apologize, and don't do it again."*

**We urge these Committees to HOLD SB 2.**

***Ua mau ke ea o ka 'āina i ka pono!***

**SB-2**

Submitted on: 2/4/2021 12:17:02 PM

Testimony for WTL on 2/5/2021 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Erik Horn	Individual	Support	No

Comments:

Allowing lands in the HHFDC inventory to be siloed into their own legislative category will allow more aggressive action to be taken in a targeted fashion to speedily render these lands to their best and highest use without risking containment failure on legislative text spilling over into the broader land management ecosystem, or vice versa, and the unintended consequences associated with such spaghetti statute spillovers.