

SB749 SD2
RELATING TO THE PUBLIC HOUSING AUTHORITY
Ke Kōmike Hale o ke Kuleana Hale Noho
House Committee on Housing

Malaki 18, 2021

9:15 a.m.

Lumi 423

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB749 SD2, which seeks to amend Hawai‘i Revised Statutes (HRS) § 356D by authorizing the Hawai‘i Public Housing Authority (HPHA) to build market-rate or above market-rate “housing” not subject to any affordability or income restrictions. OHA notes this measure may result in the foreclosure of Native Hawaiian claims to potentially large swaths of “ceded” lands for a century or longer, by the issuance of long-term leases 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.**

SB749 SD2 contemplates a significant expansion of HPHA’s authority, by enabling it to plan, develop, construct, and finance the development of any type of housing, including market- and above market-rate and non-income restricted units. Combined with HPHA’s extremely liberal leasing authority for lands leased or set aside to the agency, this measure may result in significant pressure to set aside or lease large swaths of public and “ceded” lands to the HPHA, to be disposed of for mixed-use and market- or above market-rate developments under multi-generational, long-term leases far exceeding the 65 year limit generally applicable to public land leases.

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

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

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.

Moreover, OHA notes that this measure contradicts HPHA’s own stated purpose to “provide Hawai‘i residents with affordable housing,” by focusing on developing affordable rental, supportive, and public housing and services.² Currently, under HRS § 356D-11, HPHA may develop “public housing projects,” pursuant to federal regulations and guidelines, to assist states with addressing “the shortage of housing affordable to low-income families” (emphasis added). SB749 SD2 would delete the definition of “public housing projects” and authorize HPHA to work with “eligible developers” to construct “housing” projects explicitly defined in this bill as any type of housing, without restrictions as to affordability or income levels of occupants. **Allowing HPHA to develop market- or above market-rate housing would not only foreclose the use of our limited land base for affordable housing purposes, but could also result in an increase in demand for affordable and workforce housing.**³ Accordingly, this bill would not only distract from HPHA’s primary purpose to facilitate the development of housing for low-income local residents, but it may also hinder the ability of lower income families, including Native Hawaiian families, to secure affordable housing in our increasingly expensive state.

Should the Committees nonetheless choose to move SB749 SD2 forward, **OHA respectfully urges the inclusion of language to provide a mechanism to recognize and protect Native Hawaiian claims to “ceded” lands, which are likely to become subject to the broad leasing authorities of HPHA.** OHA specifically urges the amending the language on page 2, line 5, to read as follows:

“projects[-];
provided that any contract, sponsorship, partnership,
or development under this chapter that involves the
lease, sublease, rental, exchange, transfer,
assignment, or pledge of lands classed as government
or crown lands prior to August 15, 1895, or exchanged
for such lands, that exceeds an aggregate period of
longer than 65 years shall contain terms and
conditions approved by the board of trustees of the

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)).

² Hawai‘i Public Housing Authority Official Website, available at <http://www.hpha.hawaii.gov/> (last accessed February 9, 2021).

³ See KEYSER MARSTON ASSOCIATES, RESIDENTIAL NEXUS ANALYSIS, 6 (SEPTEMBER 2015) (every 100 new market-rate housing units generate an additional demand for an 20 affordable units, 15 (i.e. 75%) of which are needed to be at 100% AML or below).

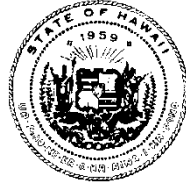
Office of Hawaiian Affairs. Such terms and conditions may include provisions that reflect the maintained claims of native Hawaiians in the "ceded" lands corpus, such as provisions requiring rights of first refusal, transfers or commitments of resources for programs serving native Hawaiian interests, 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."

In addition, to clarify the obligations of the HPHA under the public land trust, which is a subset of the "ceded" lands corpus specifically set aside and held for the benefit of native Hawaiians and the general public, as well as under the Hawaiian Homes Commission Act, OHA urges amending the language found on page 4, line 14, to read as follows:

"authority, and excluding amounts required to be set aside or transferred pursuant to section 5(f) of the Admission Act of 1959 or sections 1 and 6 of article XII of the state constitution, shall be deposited in the public housing revolving"

Accordingly, OHA respectfully urges the Committee to **HOLD** SB749 SD2. However, should the Committee choose to move this measure forward, OHA minimally urges the inclusion of the suggested amendments offered above. Mahalo nui loa for the opportunity to testify on this measure.

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Statement of
Hakim Ouansafi

Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON HOUSING

Thursday, March 18, 2021
9:15 AM – Room 423, Hawaii State Capitol

In consideration of

SB 749, SD2

RELATING TO THE PUBLIC HOUSING AUTHORITY

Honorable Chair Nakamura, and Members of the House Committee on Housing, thank you for the opportunity to provide testimony concerning Senate Bill (SB) 749, SD2, relating to the public housing authority.

The Hawaii Public Housing Authority (HPHA) **supports** the passage of SB 749, SD2, which allows the Hawaii Public Housing Authority to build non-subsidized housing.

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

The mixed-income, mixed-use and mixed-finance redevelopment model is an attractive option because in addition to the social good that comes with creating housing units for occupancy by extremely low-income families, it also contributes to the diversity and stability of the community itself with the addition of higher income earning households with rents based on Area Median Incomes that increase up to market rate. Creating market rate units also provides a taxpayer benefit by reducing the gap financing needed from the Legislature.

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

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

In order for the HPHA to implement this plan, the financing component with funding assistance from the Legislature is needed. For example, the HPHA's Elderly Affordable Rental Housing Project at School Street has a total of 800 units, but due to the gap financing assistance needed from the Legislature and the unavailability of tax credits, the HPHA must construct the project in 8 years instead of 2 years.

The HPHA stands ready to assist in combatting the housing crisis and looks at this measure as an opportunity to be a part of the overall solution needed to address all housing related issues in Hawaii.

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