



SB521 SD1
RELATING TO MILITARY LAND USE
Senate Committee on Ways and Means
Senate Committee on Judiciary

March 3, 2023

10:00 AM

Room 211

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on **SB521 SD1**, which would create a long-term task force to proactively plan for the remediation and restoration of lands currently under federal control that are anticipated and should be returned to the State. **OHA urges the Legislature to name OHA as the “organization with a mission statement or purpose of preserving Native Hawaiian traditional and cultural practices and preventing the desecration of the environment.”**

OHA is the principal public agency in the State responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians.¹ OHA has the constitutional mandate “to hold title to all real and personal property in trust for Native Hawaiians”² as well as “to manage and administer the proceeds from the sale or other disposition of lands, natural resources, minerals and income derived from whatever sources for Native Hawaiians.”³ OHA has provided unrivaled and substantial advocacy toward both the preservation of Native Hawaiian traditional and cultural practices as well as advocacy and enforcement against the desecration of Native Hawaiian cultural resources and the natural environment.

OHA also maintains a critical interest in the Crown and Government lands of the Hawaiian Kingdom, as a preeminent matter of unresolved historical wrongdoing committed against the Hawaiian people. Professor Jon M. Van Dyke stated it most succinctly:

“In January 1893, the Kingdom was overthrown by Western businessmen (primarily Americans), with the support of U.S. military forces and the U.S. diplomatic official posted in Honolulu. These westerners and their supporters established a Provisional Government in 1893 and later the ‘Republic of Hawaii,’ which lasted from 1894 to 1898. The Republic confiscated the Crown Lands, merged them administratively with the Government Lands, and established homestead programs through which some acreage was transferred into private hands. In 1898, when Hawai‘i was [illegally] annexed to

¹ HRS §10-3.

² Haw. Stat. Con. Art. XII, Sec. 5 (1978).

³ Haw. Stat. Con. Art. XII, Sec. 6 (1978).



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the United States, the Republic ‘ceded’ the remaining Crown and Government Lands to the United States, and they became a Public Land Trust managed by the United States but maintained separately from the government’s other public lands because they were held in trust for the people of Hawai‘i. **In 1959, the United States transferred about 1.4 million acres of these lands in trust to the new State of Hawai‘i but retained the remaining 373,720 acres.**⁴

Finally, OHA maintains an economic interest in the Crown and Government lands of the Hawaiian Kingdom – including those that have yet to be returned to Native Hawaiians.⁵ OHA wishes to emphasize that the Crown and Government lands of the Hawaiian Kingdom, often referred to as “Ceded Lands” of the Public Land Trust corpus, are continuously held in trust for the betterment of the conditions of Native Hawaiians.⁶ In addition to its codification within the Hawai‘i Admissions Act, lawmakers sought to ensure the continuous uplifting of Native Hawaiian socio-economic status through the creation of OHA and the enacting of these principles into State law.⁷ OHA serves as the principal public agency of the State responsible for the programs and activities of Native Hawaiians,⁸ whose well-being is often positively impacted by the programs and services funded by revenue from the public land trust.

OHA appreciates the opportunity to provide comments on this measure and respectfully asks that the Legislature **amend SB521 SD1 to include OHA as a member of the Surplus Military Land Task Force.** Mahalo nui loa.

⁴ Jon M. Van Dyke, *Who Owns The Crown Lands of Hawai‘i?*, pp. 8-9, 2008.

⁵ Pub. L. 86-3, 73 Stat. 4; Hawai‘i Admissions Act of 1959; Haw. Stat. Con. Art. XII, Sec. 4 (1978).

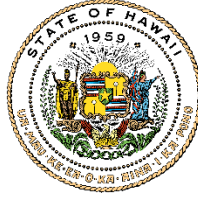
⁶ Pub. L. 86-3, 73 Stat. 4; Hawai‘i Admissions Act of 1959.

⁷ HRS §10-3.

⁸ Id.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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DAWN N.S. CHANG
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BOARD OF LAND AND NATURAL RESOURCES
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M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committees on
JUDICIARY
and
WAYS AND MEANS

Friday, March 3, 2023
10:00 AM

State Capitol, Conference Room 211 & Videoconference

In consideration of
SENATE BILL 521, SENATE DRAFT 1
RELATING TO MILITARY LAND USE

Senate Bill 521, Senate Draft 1 proposes to establish a Surplus Military Land Task Force within the Office of Planning and Sustainable Development to plan for the remediation and restoration of lands currently under federal control that are anticipated to be returned to the State, consider potential alternative uses, and identify any lands that should continue under federal control for the next ten years. **The Department of Land and Natural Resources (Department) offers the following comments, and proposed amendments.**

This measure addresses an important issue about which the public has raised concerns, and the Department strongly agrees that now is the right time to plan for the future appropriate use of lands under current military lease. The Department also agrees that the public should have a voice in how the lands should be used, and that the effort should be collaborative amongst state departments, counties, communities surrounding federally-leased lands, those who steward and restore Hawai'i's lands and waters, the Native Hawaiian community that has a vested interest in the lands and has suffered harm and displacement from military use of state leased lands, and the diverse public.

Recognizing that the public has raised concerns regarding the continued status of the United States Department of Defense (USDOD) use of state public lands, including ceded lands, the Department has initiated discussions with USDOD on the Department's land disposition process, including environmental compliance, cultural impact statements, Ka Pa'akai Analysis, and

expectations of proactive and extensive community engagement by USDOD. The Department appreciates the Legislature's desire to create a task force to discuss and ensure remediation and restoration of lands under federal control. It is critical that the effectiveness of the Task Force recommendations proceed in a timely fashion to ensure their recommendations can be timely considered by the Department and ultimately the Board of Land and Natural Resources (Board) in its land disposition process.

The Department notes that Section 5(e)¹ of the Admissions Act already provides that any lands no longer needed by the United States shall be conveyed to the State of Hawai'i.

(e) Within five years from the date Hawaii is admitted into the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to subsections (c) and (d) of this section shall report to the President the facts regarding its continued need for such land or property, and if the President determines that the land or property is no longer needed by the United States it shall be conveyed to the State of Hawaii.

The default position, without agreement otherwise by the Board, is that any such lands would return to the State through the Board.

The Department respectfully requests the following amendments:

- 1) Amend the bill's proposed Hawaii Revised Statutes (HRS) §225M(a). The Board has the authority, subject to compliance with applicable laws, to determine whether state public lands may be used, including for military purposes. Accordingly, the Department recommends the following amendment:
There is established a surplus military land task force within the office of planning and sustainable development for administrative purposes, as provided in section 26-35, to plan for the remediation and restoration of lands currently under federal control that are anticipated to be returned to the State, **and** consider potential alternative uses [~~, and identify any lands that should continue under federal control for the next ten years~~].
(The Department's added language is bolded).
- 2) Delete the proposed HRS §225M(a)(5). Pursuant to HRS §171-95, the Board will approve any leases, including approving environmental remediation associated with federal leases. A task force that meets twice a year is not equipped to negotiate numerous and complicated leases and environmental remediation agreements, and is not authorized to do so, but their work and input will provide direction for the Department and the Board.
- 3) Add the Chair of the Board as a member of the task force under HRS §225M(b).

¹ The five (5) year limitation in 5(e) was extended indefinitely.

4) Revise HRS §225M(b)(5) as follows:

A representative from each of the four counties, **from an adjacent community to the state land used by the military**, to be selected by the mayor of each county;

(The Department's added language is bolded).

5) Revise HRS §225M(b)(6) as follows:

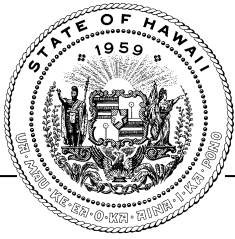
A representative from an organization whose mission statement or purpose [~~is dedicated to~~] **includes** the remediation and prevention of military debris and site contamination or degradation **and has a track record of such work in Hawaii**; and

(The Department's added language is bolded).

6) Appropriate significant funds commensurate with the significant time and staff resources

needed to fulfill the proposed HRS §225M(a)(3) and HRS §225M(4). The Department will work with other state departments to provide information to fulfill the task force mandates HRS §225M(a)(1) through HRS §225M (a)(6). However, HRS §225M(a)(3) and HRS §225M(a)(4) will require public outreach meetings held in the adjacent communities on each island, and staff to design environmental remediation plans and alternative uses, and to document feedback from the meetings held in adjacent communities, and from appropriate departments and agencies, including the Office of Hawaiian Affairs. Due to the importance of this work, the Department requests funding for one dedicated staff person in the Chair's Office to assist the Chair and Deputy Director to fulfill this measure, and a GIS staff person to support this work. The Department also recommends that funds for task force travel and meetings be provided, and that funding support be provided for staff positions at the Office of Planning and Sustainable Development.

Mahalo for the opportunity to comment on this measure and propose amendments that will facilitate a clear and coordinated process.



**STATE OF HAWAII
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Statement of
SCOTT GLENN, Director

before the
SENATE COMMITTEES ON JUDICIARY AND WAYS AND MEANS

Friday, March 3, 2023, 10:00 AM
State Capitol, Conference Room 211

in consideration of
**SB 521, SD1
RELATING TO MILITARY LAND USE**

Chairs Rhoads and Dela Cruz, Vice Chairs Gabbard and Keith-Agaran, and Members of the Senate Committees on Judiciary and Ways and Means:

The Office of Planning and Sustainable Development (OPSD) supports the intent of SB 521, SD1, which establishes a Surplus Military Land Task Force within the Office of Planning and Sustainable Development to plan for the remediation and restoration of lands currently under federal control that are anticipated to be returned to the State, consider potential alternative uses, and identify any lands that should continue under federal control for the next ten years.

OPSD offers the following comments. The purpose of the proposed task force aligns with OPSD's specific activities as set forth in HRS § 225M-2, foremost being (b) (3) (C), which is to facilitate coordinated and cooperative planning and policy development and implementation activities among state agencies and between the state, county, and federal governments, by "[r]ecognizing the presence of federal defense and security forces and agencies in the State as important state concerns."

SB 521 SD1 builds on the report which OPSD submitted to the Legislature during the Regular Session of 2022, pursuant to Act 93 (21).

OPSD believes that continuing to build the inventory of state lands under federal control that may be returned to the State and, further, may have hazardous materials that need remediation by the federal government before return to the State, is an important task for a task force that solicits input from adjacent communities and consideration of alternative uses and models for continued occupation.

OPSD raises a concern that negotiation with federal agencies over lease terms is not an appropriate role for OPSD or a task force. We request that page 4, lines 5 – 10 be deleted from

this measure. The Governor and the Department of Land and Natural Resources (DLNR) have the authority to conduct negotiations. OPSD and the Task Force would support the State in its negotiations. OPSD also defers to the DLNR in its testimony on matters relating to DLNR and supports DLNR's recommended amendments to the work of the task force and its composition.

OPSD also appreciates the prior committees' clarification that OPSD shall provide all necessary administrative, professional, technical, and clerical support required by the task force. Given the importance of this work, specificity in professional and technical skills and knowledge, the logistics and travel necessary to ensure continued and timely public outreach and the work of the task force, OPSD requests that sufficient funds and two FTE positions (one professional, one clerical) be added to this measure, so long as the appropriation does not replace Administration priority requests as well as \$200,000 in both FY 24 and FY 25 for travel, logistics, data acquisition and mapping, and possible professional services to complete specific tasks.

Thank you for the opportunity to testify on this measure.



**TESTIMONY WITH COMMENTS ON SB 521, SD1
RELATING TO MILITARY LAND USE**

**Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair**

**Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair**

**Friday, March 3, 2023 at 10:00 A.M.
Conference Room 211 & Videoconference**

Chairs Rhoads and Dela Cruz, Vice Chairs Gabbard and Keith-Agaran, and Members of the Committees:

The Hawaii Military Affairs Council ("MAC") offers comments on SB 521, SD1 to establish a Surplus Military Land Task Force within the Office of Planning and Sustainable Development to plan for the remediation and restoration of lands currently under federal control that are anticipated to be returned to the State, consider potential alternative uses, and identify any lands that should continue under federal control for the next ten years.

The Hawaii Military Affairs Council (MAC) was established in 1985 when the Chamber was appointed by the State to serve as the liaison to the military. The MAC advocates on behalf of Hawaii's military, and is comprised of business leaders, academic institutions, State and County officials, members of the CODEL, community leaders, labor unions and organizations and retired U.S. flag and general officers. The MAC works to support Hawaii's location as a strategic U.S. headquarters in the Indo-Asia-Pacific region which is crucial for U.S. national and homeland security.

The MAC recognizes that in January 2023, the Air Force returned 363 acres of lands on Molokai which was used as a frequency receiver for radio communications back to the State of Hawaii. The Air Force determined it didn't need the land anymore, and began the process after an exhaustive and comprehensive remediation progress through approved collaboration with the state Department of Health and Department of Hawaiian Home Lands.



We express that when opportunities are available and lands are no longer in use, the Department of Defense seeks to return these lands, and to re-examine the state's obligations as stewards of Hawaiian trust lands.

Accordingly, there is already a mechanism in place for public, community, and state government input in the decision-making process, and with the addition of Act 93, Session Laws of Hawaii 2022. SB 521, SD1 may be duplicative and unnecessary.

Thank you for the opportunity to offer comments on this measure.

SB-521-SD-1

Submitted on: 2/28/2023 11:04:49 PM

Testimony for JDC on 3/3/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Sherry Pollack	Individual	Support	Written Testimony Only

Comments:

I support this measure that establishes a Surplus Military Land Task Force within the Office of Planning and Sustainable Development to plan for the remediation and restoration of lands currently under federal control that are anticipated to be returned to the State

I offer the suggested amendment: **None** of these leases should be extended. The military has proven to be a detriment to the safety and well-being of our communities. Their criminal, reckless contamination of the water and land must stop.

Mahalo.

SB-521-SD-1

Submitted on: 3/1/2023 8:16:57 AM

Testimony for JDC on 3/3/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Caroline Azelski	Individual	Support	Written Testimony Only

Comments:

In support of SD1. Thank you.