

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879  
HONOLULU, HAWAII 96805

**TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE COMMITTEES ON WAYS AND MEANS & JUDICIARY  
DECISION MAKING ON FEBRUARY 26, 2020 AT 1:10PM IN CR 211**

**SB 2043, SD1 RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND**

February 25, 2020

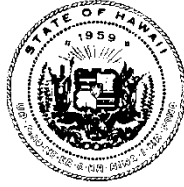
Aloha Chair Dela Cruz, Chair Rhoads, and members of the Committees:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill that authorizes the Hawaii Housing Finance and Development Corporation (HHFDC), the Hawaii Community Development Authority (HCDA), and Hawaii Public Housing Authority (HPHA) to sell leasehold units in residential condominiums located on state lands. The bill was amended to add a provision which would provide for the transfer of a certain percentage or number of leasehold condominium units to DHHL or to the Office of Hawaiian Affairs.

The Department appreciates the overall motivation behind the amendment to this measure. As noted in the testimony of the Department of the Attorney General on similar measures, there are some issues unique to DHHL that will require further review.

Thank you for your consideration of our testimony.

DAVID Y. IGE  
GOVERNOR



DENISE ISERI-MATSUBARA  
INTERIM 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 JUDICIARY**  
**SENATE COMMITTEE ON WAYS AND MEANS**

February 26, 2020 at 1:10 p.m.  
State Capitol, Room 211

In consideration of  
**S.B. 2043, S.D. 1**  
**RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND.**

The HHFDC opposes the S.D. 1 to S.B. 2043. The original bill authorized HHFDC to develop and sell leasehold units in condominiums developed on State lands that are set aside to the HHFDC by the Governor and lands leased to the HHFDC by any state department or agency, in addition to lands to which HHFDC holds title, for terms of up to 99 years. The S.D. 1 now requires HHFDC to adopt administrative rules providing for the transfer of an unspecified percentage of leasehold units within a condominium to the Department of Hawaiian Home Lands (DHHL) or the Office of Hawaiian Affairs (OHA), and subjects said lands to legislative approval for the sale or exchange of any lands set aside or leased to HHFDC.

Because HHFDC is bound to follow Federal and State Fair Housing laws under §201H-5, HRS, HHFDC cannot transfer housing units to the DHHL or OHA, if said housing would be for a racially discriminatory purpose. HHFDC as a housing agency must act to affirmatively further fair housing. The S.D. 1 also does not provide any mechanism for the condominium developer/HHFDC to be compensated for the development of housing units proposed to be transferred to DHHL or OHA. Without remuneration, the cost of the transferred housing units would be borne by the working families that purchase housing units in a project. HHFDC also notes that per our development stakeholders, residential leasehold project financing would be jeopardized if any portion of a project is to be for race-based housing.

Thank you for the opportunity to provide written comments on this bill.



**SB2043 SD1**  
**RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND**  
Ke Kōmike ‘Aha Kenekoa o ka Ho‘okolokolo  
Ke Kōmike ‘Aha Kenekoa o ke Ki‘ina Hana a me nā Kumuwaiwai

Pepeluali 26, 2020

1:10 p.m.

Lumi 211

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB2043 SD1, which seeks to address the State’s need for affordable housing by authorizing the sale of long-term leasehold units on certain state lands. OHA is **very appreciative** of the SD1 draft amendments to this measure, including the contemplated benefits to Native Hawaiians via rulemaking that would transfer some unspecified proportion of residential units in anticipated projects to OHA or the Department of Hawaiian Home Lands (DHHL), as well as the inclusion of parallel Hawaii Revised Statutes § 171-64.7 language to protect our public lands, including “ceded” lands, from inappropriate alienation.

OHA also appreciates the opportunity to be a meaningful part of the dialogue informing the development of this measure, and respectfully offers comments to (1) further explain the justification for the explicit provision of benefits to Native Hawaiians from the use of public and likely “ceded” and public land trust lands, and (2) ensure that lease terms are reasonably set.

**1. Policy changes that allow the broad and multigenerational commitment of significant amounts of valuable “ceded” and public land trust lands should be accompanied by direct benefits to Native Hawaiians, as reflected in the current draft of SB2043 SD1**

SB2043 SD1 contemplates a significant expansion of the public lands, including “ceded” and public land trust lands, that could be leased under HHFDC’s very flexible and liberal land disposition authorities. Currently, HHFDC can only give out extremely long-term, 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 market value, and without the auction or other requirements generally applicable to the disposition of public lands. SB2043 SD1 would allow a vastly greater 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. Currently, these additional lands are likely subject to the public transparency and accountability protections of HRS Chapter 171, which include lease length limitations (i.e. a maximum aggregate lease period of 65 years), lease extension prohibitions, and auction requirements for the leasing of public

lands; **allowing these lands to be exempted from HRS Chapter 171 and instead subjecting them only to the HHFDC's broad leasing and disposition 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.**

Given the proposed foreclosure of opportunities for Native Hawaiians to more fully realize benefits from a potentially vast amount of public lands to which they maintain claims, some level of assurance should be provided – as proposed in the current draft of this measure – to minimally ensure that Native Hawaiians will directly benefit from HHFDC's expanded use of public lands.

The unique and significant housing needs of Native Hawaiians make this measure's contemplated transfer of residential units to OHA or DHHL a particularly appropriate benefit to provide to Native Hawaiians from the use of "ceded" and public land trust lands. Native Hawaiians have significant and unique housing needs, and are particularly affected by the ongoing lack of affordable housing. For example, data show that Native Hawaiians are less likely to own a home;<sup>i</sup> Native Hawaiian households are also much more likely to be crowded with more than two persons per bedroom,<sup>ii</sup> and "doubled up," with multigenerational or unrelated individuals living together in single households.<sup>iii</sup> Furthermore, Native Hawaiian households are twice as likely to have a 'hidden homeless' family member than all state households.<sup>iv</sup> Moreover, a growing number of Native Hawaiian households are disproportionately at risk of becoming homeless.<sup>v</sup> 75% of the Native Hawaiian demand for housing is also for units affordable for households making below 140% AMI, and 56% of Native Hawaiian housing demand will be from households under 80% AMI.<sup>vi</sup> This data demonstrates the dire need for affordable housing among the Native Hawaiian and DHHL-beneficiary communities, and reflects the appropriateness of ensuring that at least some proportion of residential units be provided to OHA or DHHL in exchange for the vastly expanded use of lands to which Native Hawaiians maintain claims.

Given the maintained claims of Native Hawaiians to "ceded" lands that are highly likely to be developed and leased if this measure passes, the State's fiduciary obligation to uphold the interests of Native Hawaiians in public land trust lands that may also be developed under this measure, as well as the State's responsibilities to DHHL and its native Hawaiian beneficiaries, it is both equitable and appropriate to ensure a percentage of units to be transferred to OHA and/or DHHL. Accordingly, if the Committees choose to pass this measure, we respectfully urge the Committees to maintain this language.

**2. Extremely long-term, multi-generational leases may lead to the alienation of public and "ceded" lands, and without specific benefits to Native Hawaiians as is contemplated by the current draft, OHA respectfully recommends reducing the maximum lease term**

Consistent with past OHA positions, OHA expresses its concerns over the length of the proposed 99-year leasehold interests in certain state lands that would be authorized

for sale under this measure; notably, such state lands may likely include Public Land Trust lands as well as “ceded” lands taken through the illegal overthrow of the Hawaiian Kingdom and to which Native Hawaiians maintain unrelinquished claims. **Extremely long-term multi-generational leases, such as those proposed in this measure, may inhibit multiple future generations from ensuring the best use of such lands, and may inadvertently 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.** With regards to this latter concern, OHA notes that it 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.

Although OHA understands that HHFDC may currently offer 99-year leases for up to 140% AMI households on lands to which it holds title, SB2043 SD1 would substantially broaden the lands that HHFDC may issue such long-term leases for, to include lands that the governor may set aside to HHFDC in the future, as well as lands it may lease from other state agencies.

Therefore, **OHA respectfully recommends reducing the maximum 99-year lease length for lands that may be set aside to or leased by HHFDC to maximum of 75 years for affordable housing projects.**<sup>vii</sup> OHA particularly recommends the following suggested language if there are no express benefits to Native Hawaiians.

By amending the language on page 1, lines 14-16, to read as follows:

“(b) The term of the lease shall not exceed seventy-five years and shall not be extended beyond the initial seventy-five year term.”

And amending the language on page 3, lines 9-11, to read as follows:

“(b) The term of the lease shall not exceed seventy-five years and shall not be extended beyond the initial seventy-five year term.”

And amending the language on page 5, lines 1-3, to read as follows:

“(b) The term of the lease shall not exceed seventy-five years and shall not be extended beyond the initial seventy-five year term.”

And by inserting a new section in the measure, to read as follows:

SECTION \_\_. Section 201H-9, Hawai'i Revised Statutes, is amended to read as follows:

“[+]§201H-9[+] **Acquisition, use, and disposition of property.** (a) The corporation may acquire any real or personal property or interest therein by purchase, exchange, gift, grant, lease, or

other means from any person or government to provide housing. Exchange of real property shall be in accordance with section 171-50.

(b) The corporation may own or hold real property. All real property owned or held by the corporation shall be exempt from mechanic's or materialman's liens and also from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the corporation be a charge or lien upon its real property; provided that this subsection shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of the corporation or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the corporation on its rents, fees, or revenues. The corporation and its property shall be exempt from all taxes and assessments.

(c) ~~[The]~~Subject to subsection (e), 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.

(d) The corporation may insure or provide for the insurance of its property or operations against risks as it deems advisable.

(e) Notwithstanding any law to the contrary, as it relates to the leasing of lands set aside by the governor to the corporation, or lands leased to the corporation from other state agencies, no lease shall be for a longer term than seventy-five years, provided that the aggregate of the initial term and any extension shall in no event exceed seventy-five years, provided further that the lease is for the primary purpose of providing affordable housing."

Mahalo piha for the opportunity to testify on this measure.

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<sup>i</sup> See Office of Hawaiian Affairs, Native Hawaiian Homeownership Ho'okahua Waiwai Fact Sheet Vol. 2016, No. 1, page 3, available at <http://www.oha.org/wp-content/uploads/NH-Homeownership-Fact-Sheet-2016.pdf>. This figure includes 8,329 DHHL residential lease "owner-occupied" property units. DHHL Annual Report 2014, at 47, available at <https://dhhl.hawaii.gov/wp-content/uploads/2011/11/DHHL-Annual-Report-2014-Web.pdf>. For non-DHHL properties, the Native Hawaiian homeownership rate is therefore 41.2%, 15.5 percentage points below the statewide rate.

<sup>ii</sup> 21.2% of Native Hawaiian households are crowded with more than two persons per bedroom versus 10.9% of other households in the state. SMS, Hawai'i Housing Planning Study, at 73 (2019), available at <https://dbedt.hawaii.gov/hhfdc/files/2020/01/FINAL-State-Hawaii-Housing-Planning-Study.pdf>.

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ii 24.5% of Native Hawaiian households, compared to 9.0% of other households include more than two generations or unrelated individuals. *Id.*

iii 24.5% of Native Hawaiian households, compared to 9.0% of other households include more than two generations or unrelated individuals. *Id.*

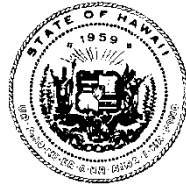
iv 38% of Native Hawaiian households, compared to 19% of other households, reported having at least one person residing there because they had insufficient resources to buy or rent their own place. *Id.* at 74.

v 32% of Hawaiian households indicated that they would become homeless if they lost their primary source of income for more than two months. This figure is up nine percentage points from the 2016 study, and compares to only 23% of non-Hawaiian households at similar risk. *Id.*

vi *Id.* at table 60.

vii OHA does acknowledge concerns raised regarding the potential for kūpuna without family or resources and those with special physical and health needs to outlive a 75-year lease; OHA is open to further discussions regarding whether additional statutory lease extension language can accommodate such exigent circumstances.

DAVID Y. IGE  
GOVERNOR



HAKIM OUANSAFI  
EXECUTIVE DIRECTOR

BARBARA E. ARASHIRO  
EXECUTIVE ASSISTANT

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Statement of  
**Hakim Ouansafi**  
Hawaii Public Housing Authority  
Before the  
**SENATE COMMITTEE ON WAYS AND MEANS**  
  
**AND**

**SENATE COMMITTEE ON JUDICIARY**  
  
**Wednesday, February 26, 2020**  
**1:10 PM - Room 211, Hawaii State Capitol**

In consideration of  
**SB 2043, SD1**  
**RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND**

Honorable Chair Dela Cruz, Honorable Chair Rhoads, and Members of the Senate Committee on Ways and Means and Members of the Senate Committee on Judiciary, thank you for the opportunity to provide testimony concerning Senate Bill (SB) 2043, SD1, relating to leasehold condominiums on state land.

The Hawaii Public Housing Authority (HPHA) **supports the intent, with amendments,** SB 2043, SD1, which authorizes the Hawaii Housing Finance and Development Corporation, Hawaii Community Development Authority, and Hawaii Public Housing Authority to sell leasehold units in residential condominiums located on state lands.

The HPHA would like to humbly request the following amendments be included:

- On page 4, please remove lines 15 – 20: **Due to conflicts with Federal and State Fair Housing Laws, there is also no mechanism for compensation for the units proposed to be transferred to DHHL or OHA, and the residential leasehold project financing would be jeopardized if any portion of a project is to be race-based housing.**
- On page 5, line 9, please replace the word [**corporation**] with **authority.**



- On page 7, line 21 through page 8, line 1, please remove [**and state lands set aside to the Hawaii community development authority by the governor**]: **It's the wrong agency and lands set aside by the governor to the HPHA are currently exempt from the "Public Lands" definition.**

The HPHA is here to assist the Legislature in this endeavor and looks at this measure as an opportunity to be a part of the solution towards the creation of 17,000 leasehold units as the Agency is currently involved with several redevelopment projects on its properties.

The HPHA appreciates the opportunity to provide the Committees with the HPHA's testimony regarding SB 2043, SD1. We thank you very much for your dedicated support.



# HAWAII COMMUNITY DEVELOPMENT AUTHORITY

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## STATEMENT OF GARETT KAMEMOTO, INTERIM EXECUTIVE DIRECTOR HAWAII COMMUNITY DEVELOPMENT AUTHORITY

### Before the SENATE COMMITTEE ON WAYS AND MEANS AND SENATE COMMITTEE ON JUDICIARY

Wednesday, February 26, 2020  
1:10 P.M.  
State Capitol, Conference Room 211

in consideration of

### **SB 2043, SD1 RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND**

Chairs Dela Cruz and Rhoads, Vice Chairs Keith-Agaran and Keohokalole, and members of the committees.

The Hawaii Community Development Authority (HCDA) **supports** efforts to increase affordable housing for Hawaii's residents. Developing leasehold condominiums for the people of Hawaii on state lands is a positive step toward addressing the housing shortage, and with long term leases of ninety-nine years this proposed legislation has the potential to aid in creating housing that could be affordable for generations to come.

Thank you for the opportunity to testify on **SB 2043, SD1**.



Chamber of Commerce HAWAII  
*The Voice of Business*

**LATE**

**Testimony to the Senate Committees on Ways and Means and Judiciary  
Wednesday, February 26, 2020 at 1:10 P.M.  
Conference Room 211, State Capitol**

**RE: SB 2043 SD1, RELATING TO LEASEHOLD CONDOMINIUMS ON STATE LAND**

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

The Chamber of Commerce Hawaii ("The Chamber") **supports** SB 2043 SD1, which proposes to authorize Hawaii Housing Finance and Development Corporation to enter into ninety-nine (99) year leases of units in residential condominiums located on state lands.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

Most residential developments on leasehold lands require extended lease terms to make projects economically feasible. As a major landowner at several rail stations along the transit corridor, the proposed bill would provide the state with flexibility in negotiating with investors who would be building residential condominiums on the state-owned lands. We believe this bill would broaden interest among private developers to consider developments on state-owned lands. Additionally, a longer lease term would help to ensure that a unit would remain with one family for at least one generation.

Thank you for the opportunity to provide testimony on SB 2043 SD1.