



**TESTIMONY TO THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND
TAXATION**

**THURSDAY, MARCH 13 2008 AT 1:40 P.M.
ROOM 224, STATE CAPITOL**

RE: H.B. 1075, HD1 Relating to Real Property

Chair Fukunaga, Vice Chair Espero, Members of the Committee:

My name is Christine H. H. Camp, Chair of the Chamber of Commerce of Hawaii, Land Use and Transportation Committee. The Chamber of Commerce of Hawaii is strongly opposed to HB 1075 HD1.

The Chamber is the largest business organization in Hawaii, representing 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. 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.

H.B. No. 1075 proposes to implement certain conditions governing long-term leases of commercial and industrial properties.

The legislature finds that certain elements of inequity exist in the relationship of fee simple owners of commercial and industrial properties and holders of long-term leasehold interest in those properties who undertake the leases for the purpose of developing, improving, operating, and subletting the properties. These inequities accrue to the detriment of Hawaii's business and economic development and harm Hawaii's working and retired taxpayers. Uncomplicated and fair legislative remedies exist that can obviate these inequities.

We do not believe it is appropriate for the legislature to interject itself into an existing contractual arrangement between two private parties. Lessees who choose to invest in their improvements should make their respective decisions based on the remaining term of the lease. Should they require more time to amortize their investment, they should attempt to negotiate an extension of the lease prior to making their investment.

The lease contract reflects a business decision that both parties made of their own free will. Amending or modifying the contract through legislation is inappropriate and may serve to discourage landowners for entertaining or entering into long-term leasehold arrangements in the future.

Thank you for this opportunity to express our views.

**Testimony on HB1075 HD1
Relating to Real Property
Senate Committee on Economic Development and Taxation
Keali'i Lopez, President and CEO of 'Ōlelo Community Television
March 11, 2008**

Chair Fukunaga, Vice Chair Espero, members of the Senate Committee on Economic Development and Taxation. Aloha, I'm Keali'i Lopez, president and CEO of 'Ōlelo Community Television, and we support of HB1075 HD1.

We are a local non-profit organization located in Mapunapuna. The building that we own is located on a parcel of land that we lease from a mainland lessor. We have 27 years remaining on our lease and could soon see our lease rent increase by 120 percent when we renegotiate terms later this year.

A substantial increase in lease rent, coupled with major increases in our other operating expenses such as electricity, could place us in a very precarious financial position. In this respect, we are no different from a small business that operates on a very slim margin. However, we have no customers to pass these increases on to.

We understand that lessors have rights, to include the expectation of a reasonable return on their investments, but clearly there is a need for safeguards to ensure that lessees are not subject to unreasonable increases that drastically curtail services or force them out of business.

We are members of the Citizens for Fair Valuation, a non-profit organization committed to ensuring fair valuation of the commercial and industrial ground leases in the Sand Island, Mapunapuna and Kalihi Kai areas. We believe that fair interpretation of leases is crucial to the health of non-profit organizations and small businesses that all of us rely upon.

Because of this, we ask that you include a definition of "fair and reasonable" in Hawaii State law so that equity prevails as leases are renegotiated. In summary, I ask for your support of HB 1075, HD1. That concludes my testimony.

JAMES W. Y. WONG

HONOLULU OFFICE

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ANCHORAGE OFFICE

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TO: Senator Carol Fukunaga, Chair, Economic Development and Taxation
Senator Will Espero, Vice Chair, Economic Development and Taxation
Senator Sam Slom, Member
Senator Kalani J. English, Member
Senator David Y. Ige, Member

FR: James W. Y. Wong

DT: March 12, 2008

RE: **HB1075 HD1 Relating to Real Estate**

My name is James W. Y. Wong, a Hawaii developer that strongly urges your favorable consideration of HB1075.

I cannot emphasize strongly enough that passage of this bill is urgently needed to help return Hawaii's rapidly failing economy to a healthy state. This bill will allow especially small industrial and commercial lease holders to remain viable in their ability to develop, improve, operate, or sublet their properties.

The very real dangers of continuing the status quo is becoming more and more evident every day. You are likely familiar with the Bowl-O-Drome property in Moiliili, which illustrates the effect of steep property costs resulting in excessive and burdensome commercial rentals. An analysis of the per square foot lease cost for the Bowl-O-Drome property shows that, assuming an 8% cap rate on the lease value, the land value would be \$180.00 per square foot. Based on a 6% cap, the amount rises to \$248.00 per square foot. At these rates, nobody will be able to afford rents like this and subsequently, our economy suffers.

Another case involves the economic peril our industrial lessees are facing in the Mapunapuna area and certainly in other areas as well. An analysis of this per square foot lease rental at \$9.25 per annum, assuming an 8% cap rate, shows the land value would be \$115.00 per square foot. Based on a 6% cap, the value of land would be \$154.00 per square foot. This situation is playing itself out in various forms throughout our State.

Please vote in favor of HB1075 and I thank you for all your efforts on behalf of the many business men and women of Hawaii.



SERVCO PACIFIC INC.

P.O. Box 2788 • Honolulu, Hawaii 96803-2788 • Telephone: (808) 564-1300 • Facsimile: (808) 523-3937 • www.servco.com

To: Senator Carol Fukunaga, Chair
Senator Will Espero, Vice Chair
Committee on Economic Development and Taxation
State Capitol, Conference Room 224
Honolulu, Honolulu 96813

From: Carol K. Lam
Senior Vice President
Servco Pacific Inc.
2850 Pukoloa Street, Suite 300
Honolulu, Hawaii 96819

Hearing Date: Thursday, March 13, 2008 (1:40 p.m.)

In Support of HB 1075 HD1, Relating To Real Property

On behalf of Servco Pacific Inc. ("**Servco**"), I am writing to ask that you support the adoption of HB 1075 HD1 (the "**Bill**") and we further ask for your support to extend the bill to incorporate the ground rent renegotiation process by adding a definition of "fair and reasonable rent." Commercial and industrial ground leases in the Sand Island, Mapunapuna and Kalihi Kai areas provide that the rent renegotiation process is to determine "fair and reasonable rent." This definition would provide that the ground rent that is determined must be fair and reasonable to both parties to the lease. The addition of this definition to the Bill will support an equitable interpretation of that term in the ground rent renegotiation process.

Servco Pacific Inc. is a member of the Citizens for Fair Valuation ("**CFV**"), a newly founded non-profit organization committed to ensuring fair valuation of the commercial and industrial ground leases in the Sand Island, Mapunapuna and Kalihi Kai areas. CFV represents businesses that employ thousands of Hawaii workers and represent millions of dollars of economic activity and tax revenue for the State of Hawaii. We believe that fair interpretation of the lease provisions is essential to the preservation of small businesses that constitute the backbone of our state's economy.

Thank you for your consideration and we again ask for your support of HB 1075 HD1 with the requested additions.

**HB 1075 HD1
RELATING TO REAL PROPERTY**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

MARCH 13, 2008

Chair Fukunaga and Members of the Senate Committee on Economic
Development & Taxation:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB
1075 HD1, "A BILL FOR AN ACT RELATING TO REAL PROPERTY." We respectfully
oppose this bill.

This bill establishes various conditions on long term leases for commercial and
industrial properties. As leases for commercial and industrial properties reflect
contractual business decisions between a lessor and a lessee, we have concerns with
the impact that this bill may have upon the scope within which leases may be negotiated
and executed. This bill will limit the ability to freely negotiate leases in a manner that
best suits the business requirements of both the lessor and the lessee. Agreements to
provide lower lease rents at the beginning of a long term lease to allow the lessee to
grow their business in exchange for a long term commitment by the lessee to maintain
and improve the property may no longer be feasible under the provisions of this bill. By
prohibiting the enforcement of higher standards for the repair, maintenance, and
surrender, the overall maintenance of properties may decline, impacting both subject
property and the surrounding community.

As presently drafted, the bill appears to also apply to current leases that have an unexpired term of twenty years or more. We understand that changing contractual obligations in existing leases may be unconstitutional.

Based on the aforementioned, we respectfully request that this bill be held in Committee.

Thank you for the opportunity to testify.



KAMEHAMEHA SCHOOLS

March 12, 2008

TESTIMONY TO THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TAXATION

By

Livingston S. Wong, Director
Legal/Endowment Legal Division
Kamehameha Schools

Hearing Date: Thursday, March 13, 2008
1:40 p.m., Conference Room 224

To: Senator Carol Fukunaga, Chair
Senator Will Espero, Vice Chair
Members of the Committee on Economic Development and Taxation

RE: House Bill No. 1075, HD1 - Relating to Real Property

Kamehameha Schools respectfully submits the following in opposition to H.B. No. 1075, HD1 (the "**Bill**"):

As a lessor of commercial and industrial real property, Kamehameha Schools **opposes** this Bill because, as written, it: (1) violates lessors' constitutional rights under the contract clause, (2) effects a taking under the 5th amendment, (3) violates lessors' due process rights, (3) denies lessors their equal protection rights, (5) is designed to benefit only a select group of lessees to the detriment of lessors, future lessees, sublessees, tenants, and consumers; and (6) negatively impacts our community.

I. The Bill Violates the Contract Clause because it serves No Legitimate Public Purpose.

A. A desire to achieve "equity" for a small group of individuals is **not** a legitimate public purpose. That is, merely trying to give selected lessees a benefit is **insufficient** to serve as a public purpose.

1. The Hawai'i Supreme Court recognized in Anthony v. Kualoa Ranch, Inc., 69 Haw. 112, 736 P.2d 55 (1987) ("**Anthony**") that an impairment of contractual rights in existing leases is unconstitutional. There, the Court rejected the application of amendments to Haw. Rev. Stat. § 516-70 to existing leases, stating:

"This statute, as applied to leases already in effect, purely and simply, is an attempt by the legislature to change contractual remedies and obligations, to the detriment of all lessors and to the benefit of all lessees . . . **simply for the purpose of doing equity, as the legislature saw it.** If there is any meaning at all to the contract clause [of the United States Constitution], it prohibits the application of HRS § 516-70 to leases existing at the time of the 1975 amendment. Accordingly, that section, as applied to leases existing at the time of the adoption of the 1975 amendment, is declared unconstitutional."

Id. at 123, 736 P.2d at 63.

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2. The Bill offers no facts or data to support the suggestion that such inequities exist, or that the protections proposed are needed, or that such protections would provide a legitimate benefit to the public-at-large.
 3. To the contrary, according to the study by the Legislative Reference Bureau – Report No. 5, 2003 “Real Property Leases” (the “**2003 Report**”), “there is no indication at this time of a broad based compelling need for the Legislature to pass legislation to mandate the alteration of existing lease agreements.” 2003 Report at 24.
- B. Opinions of the Department of the Attorney General dated April 20, 2000, March 22, 2001, April 11, 2002, and April 23, 2002, on proposed legislation changing the lease contract concluded that each violated the Contract Clause. The April 11, 2002 letter concluded that the proposed legislation “substantially impairs contractual relationships without promoting a significant and legitimate board societal interest.” In a June 19, 2000 communication from then Governor Cayetano, the Anthony case was cited by him to return a rent control bill unsigned to the Senate because he did not believe the “bill will pass constitutional muster.”

II. The Bill Violates the Takings Clause of the 5th Amendment.

- A. The government cannot take or damage private property without paying just compensation to the owner.
- B. The United States District Court for the District of Hawai‘i and the Ninth Circuit have previously considered and rejected as unconstitutional a rent cap that the City and County of Honolulu attempted to impose upon leasehold residences. See Richardson v. City & County of Honolulu, 802 F. Supp. 326 (D. Haw. 1992) (“Richardson I”), aff’d, 124 F.3d 1150 (9th Cir. 1997), cert. denied, 525 U.S. 871 (1998).
- C. In the context of a rent control statute, the lessor is entitled to a just and reasonable rate of return on its investment.
- D. In Richardson I, Judge Ezra held that the rent control ordinance did not guarantee landlords a just and reasonable rate of return on its investment because, in part, **there was a lack of individualized consideration and an absence of any meaningful review process**. See Richardson I at 334-37.
- E. The Bill is unconstitutional because it also fails to ensure that lessors receive a just and reasonable rate of return.

III. The Bill Violates Lessors’ Due Process Rights.

- A. The fourteenth amendment of the United States Constitution provides that no state shall “deprive any person of life, liberty, or property, without due process of law.”

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- B. This clause is a guaranty against any legislation that arbitrarily deprives a lessor of its rights. It protects the lessor against the arbitrary, capricious, and unreasonable exercise of the legislature's power.
- C. Vague and ambiguous provisions of the Bill violate the due process rights of lessors because the provisions can be applied in an arbitrary, capricious, and unreasonable manner. For example, in R.S.T. Builders, Inc. v. Village of Bolingbrook, 141 Ill.App.3d 41, 44, 489 N.E.2d 1151, 1154 (1986), the court held that a city ordinance that failed to prescribe adequate standards to control the actions of a city land use committee in determining whether an application for a building permit would be approved was unconstitutionally vague and indefinite.
- D. By way example, subsection (a)(4) of Section 2 of the Bill provides: "Where a lease provides for periodic step-ups in lease rent over the term of the lease, the increases in lease rent shall be determined, in part, on a determination of the financial feasibility of the rent increase in relation to the current use of the leasehold property." Commercial leases that include increases in rent are typically structured with a specific, mathematical formula clearly stated in the lease instrument that is negotiated between the lessor and the lessee before the lease commences. If implemented, Subsection (a)(4) would cause that certainty to disappear in lieu of an unspecified derivative of "the financial feasibility of the rent increase in relation to the current use of the leasehold property." The Bill does not define the phrase "financial feasibility." Consequently, this broad, undefined phrase is subject to innumerable interpretations. Lacking such requisite specificity, it is doubtful the Bill could ever be enforced.

IV. The Bill Denies Lessors their Equal Protection Rights.

- A. The United States Constitution, amend. XIV provides in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."
- B. Legislation that burdens one class will not be upheld if the varying treatment does not bear a rational relation to a legitimate state interest.
- C. The Bill only applies "where the lessor is the owner, directly or indirectly, of fifty thousand square feet or more of commercial or industrial leasehold property in the state." Assuming that one can determine how this standard is applied, there is no rational relation between this class of landowners (versus other landowners) and any legitimate reason for the Bill.

V. The Bill is Designed to Benefit Only a Select Group of Lessees.

- A. The Bill benefits **only** the initial lessee and does not benefit subsequent lessees.
- B. The lessee is able to get a "premium" on a leasehold sale with below market rents and conditions – that is, the lessee can "monetize" the below market rents and conditions by selling the leasehold.

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1. There is no mechanism to limit the sales price of the leasehold interest.
 2. Thus, the initial lessee is allowed to sell the leasehold for any price and pocket the profits to the detriment of a purchasing lessee.
- C. The Bill benefits **only** the lessee and does not benefit sublessees, tenants, or consumers.
1. For a lessee merely subletting the premises, there is no mechanism to ensure that the lessee's cost savings are shared with its sublessees and tenants.
 2. For a lessee using the premises, there is no mechanism to ensure that the lessee's cost savings are shared with its customers.
 3. Thus, the lessee can keep all the profits from the below market rents and conditions with no requirement to pass on or even share the cost savings with sublessees, tenants, or consumers.
- D. The Bill impermissibly re-writes the contractual rights and obligations of lessors and lessees under unreasonable conditions.
1. The lessor's ability to enforce legitimate, mutually agreed-upon lease terms to repair, maintain and return leasehold properties in a superior condition (beyond what is minimally required to comply with existing laws) is restricted.
 2. The lessee is allowed to keep the premises in disrepair even if that is a breach of the lease.
 3. The Bill may even encourage lessees to keep their premises in disrepair and reward them with below market rents.
 4. For a lessee merely subletting the premises, the Bill's effect is especially egregious because the sublessees and tenants suffer the consequences of such disrepair with no assurance of below market rents being passed along to them.

VI. The Bill has a Negative Impact on the Community.

- A. The Bill would reduce flexibility in leasing.
1. Lessors subject to the Bill would lose the benefit of being able to freely negotiate leases in ways that best suit business requirements of both lessors and their lessees, especially lessees who are leasing smaller premises or starting new businesses.
 2. For example, lessors and lessees often agree to very low lease rents at the beginning of a long-term lease to permit new lessees to grow their business in exchange for a long-term commitment by the lessee to maintain and return the property in a superior condition, which allows lessors to realize fair returns at the end of the lease. These agreements

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help lessees, especially those starting new businesses, but they would no longer be feasible under the Bill.

- B. If the Bill prohibits lessors from enforcing higher standards of repair, maintenance and surrender, properties would likely be poorly maintained and allowed to deteriorate over time. Neighborhoods and communities would suffer from these substandard properties.
- C. The Bill would limit the ability of businesses to freely negotiate and rely on their lease contracts. This could impact the stability of business relationships, which depends, in part, on the right of parties to freely negotiate, rely on and enforce mutually agreed contract terms.

In view of the numerous opinion letters cited above, we respectfully request that you hold the Bill or refer it to the Department of the Attorney General for review. Thank you for this opportunity to express our opposition to the Bill.

Support for HB1075 HD1 & HD2040

March 12, 2008

To: Jason Watts (Sergeant-at-Arms)
Fax No.: 808-586-6659

I wholeheartedly support HB1075 HD1 and HB 2040. In my opinion, these bills will help the Hawaii economy and all the people of Hawaii. HB 1075 HD1 will help keep the cost of living in Hawaii more manageable. Hopefully HB 2040 will identify new methods to keep the cost of living in Hawaii under control.

With what appears to be the early stages of a recession in Hawaii, these bills are, in my opinion, essential to cope with a Hawaii economy that could be headed to bad economic times.

I am a sandwich lessee in Hawaii, who hears from my tenants, even the very strongest, that they are worried about the recession which has begun to take effect in Hawaii. Because they have the ground rent pass through, they feel that if "fair and reasonable rent" which is part of their/my master lease is not "fair and reasonable rent to both of the parties to the lease" then their business will no longer be able survive.

Please pass both bills with this modification.

Please let me know if you have any questions regarding this matter.

Mahalo,

Stan Solomon

Stanley B. Solomon
Snyder Family Trust / STI Industries
E-mail: stansolo@aol.com
Mobile phone: 310-488-2228

LINDA LINGLE
GOVERNOR



RUSS K. SAITO
Comptroller
BARBARA A. ANNIS
Deputy Comptroller

**STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES**
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

WRITTEN COMMENTS
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
ECONOMIC DEVELOPMENT AND TAXATION
ON
March 13, 2008
H.B. 3243, H.D. 2

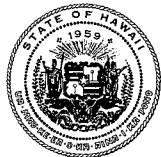
**MAKING AN APPROPRIATION FOR THE HONOLULU SYMPHONY AND ITS
PROGRAMS**

Chair Fukunaga and members of the Committee, thank you for the opportunity to comment on H.B. 3243, H.D. 2.

The Department of Accounting and General Services (DAGS) defers to the Legislature's assessment as to the need to assist the Honolulu Symphony with financial support. However, DAGS would oppose this bill if appropriations for it take away from projects in the Administration's budget submittal.

Thank you for the opportunity to comment on this matter.

THE
STATE
FOUNDATION
ON
CULTURE
AND
THE ARTS



LINDA LINGLE
Governor

RUSS K. SAITO
Comptroller

LORI V. THOMAS
Chairperson

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RONALD K. YAMAKAWA
Executive Director

TESTIMONY
OF
STATE FOUNDATION ON CULTURE AND THE ARTS
TO THE
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT
AND TAXATION

MAR 12 2008

March 13, 2008

H.B. 3243 HD 2

MAKING AN APPROPRIATION FOR THE HONOLULU
SYMPHONY AND ITS PROGRAMS

Chair Fukunaga and members of the committee, thank you for the opportunity to testify on H. B. 3243 HD2.

The State Foundation on Culture and the Arts (SFCA), as Hawaii's state arts agency, encourages and supports programming in arts and culture, history and the humanities, as central to the quality of life for the people of Hawaii. The SFCA supported both Acts 97 and 156, which appropriated \$4 million to the State of Hawaii Endowment Fund, in support of the Honolulu Symphony. We are pleased to verify that the transfer of the \$4 million to the Endowment took place on Friday, February 29, 2008.

We understand the challenges that arise when administering as complex an operation as the Honolulu Symphony and we stand by the quality of artistry and performances that the Symphony continues to provide. While the SFCA is not in a position to request additional funds for either itself or its constituents, we wholeheartedly support the fine musical tradition that the Honolulu Symphony has established in Hawaii and the need to keep it flourishing.

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Web Page: www.hawaii.gov/sfca

Thank you for the opportunity to testify on this matter.

testimony

From: maurice kaya [mauricekaya@mac.com]
Sent: Tuesday, March 11, 2008 7:01 PM
To: testimony
Subject: Testimony in Support of H.B. 3243 H.D. 2 (HSCR1008-08)

Testimony in Support of H.B. 3243 H.D. 2 (HSCR1008-08)
Submitted by: Shelley Kaya, Board Member, Honolulu Symphony Associates
for a hearing by the
Senate Committee on Economic Development and Taxation
Hawaii State Capitol
Thursday, March 13, 2008
1:40 p.m. – Room 224

Chair Fukunaga, Vice Chair Espero, and members of the Senate Committee on Economic Development and Taxation, I am pleased to provide this testimony in support of H.B. 3243 H.D. 2, making an appropriation for the Honolulu Symphony and its programs.

Funds in the amount of \$810,000 need to be appropriated for fiscal year 2008-2009 to meet the shortfall in funding for the operations of the Honolulu Symphony and its programs. The bill needs to be amended with this specific amount and with this specific timing.

Last year's \$4 million appropriation (Act 156) is for a symphony endowment fund and cannot be released for that purpose until matching endowment donations are received by private parties. Only the interest on that \$4 million endowment fund can be used for operations such as wages and expenses.

If the symphony receives a nominal 5% per year interest on this \$4 million, and if matching funds were obtained and pledged today, they would receive \$200,000 a year from now. That is not enough to make up the current shortfall created in part by being displaced by the Lion King.

How long can our musicians and their families continue to live in Hawaii? \$810,000 is needed NOW to pay the musicians and staff, who have not been paid on time since December and are several weeks behind in pay.

Hawaii cannot afford to lose its world-class symphony. Our musicians provide us with artistic excellence and are mentors and teachers to our children. I strongly urge you to pass HB3243 H.D.2, with \$810,000 in fiscal year 2008-2009 specifically stated.

testimony

From: kadoyama@gmail.com on behalf of Keith Kadoyama [keith@honolulusymphony.com]
Sent: Wednesday, March 12, 2008 4:50 PM
To: testimony
Subject: Testimony for EDT, 3/13/08 @ 1:40 p.m.

Submitted for Thomas J. Gulick, Executive Director

Thomas J. Gulick, Executive Director, Honolulu Symphony
To the Senate Committee on Economic Development and Taxation
Senator Carol Fukunaga, Chair
Hearing date: Thursday, March 13, 2008

In Support of HB 3243 H.D. 2 (HSCR 1008-08), Making an Appropriation for the Honolulu Symphony and its Programs

Chair Fukunaga, Vice Chair Espero, and members of the Senate Committee on Economic Development and Taxation, I would like to submit this testimony in support of H.B. 3243 H.D. 2, making a State appropriation to meet the shortfall in operational funding for the Honolulu Symphony and its programs.

Many of you have heard the recent press regarding the financial plight of the Honolulu Symphony. The past several months have been extremely trying for the organization. Our musicians have played despite not knowing when their next paycheck will come, and our administrative staff has made the same sacrifice to ensure the continuation of this organization.

We thank the State for recognizing the importance of a professional symphony orchestra in Hawaii and for its wish to support this cultural and educational asset. Through Act 156, this legislative body, has made provisions for an increase in the long term funding and support off the Honolulu Symphony through an increase in its permanent endowment. The distinction between the provisions of Act 156 and the current request in HB 3243 HD2 must not be confused.

In clarification of the relationships that exist, the Honolulu Symphony Society is the administrative entity that is tasked with the daily operations of the organization. The Honolulu Symphony Foundation is a separate entity charged with the maintenance and administration of funds for the perpetuation of a professional symphony orchestra in Hawaii.

Act 156 allows for a transfer of up to \$4 million to the Symphony Endowment Fund, managed by the Honolulu Symphony Foundation. The funding must be matched on a 1-to1 basis and only the interest gained may be utilized for operational needs. Interest income through Act 156 is estimated to generate approximately \$200,000 a year which may be transferred to the Honolulu Symphony Society for its operations, however, this revenue would not be realized until a year after funds have been placed in endowment. Additionally, even if these funds were available immediately, they would be insufficient to meet the current operational shortfall of the Honolulu Symphony Society.

The original submission of HB 3243 sought a direct appropriation of \$810,000 to the Honolulu Symphony Society's operations in support musician's salary and ongoing programming. This bill specifically addresses a critical shortfall in revenues and requests immediate operational support to sustain the organization and its many educational programs, such as our upcoming community outreach

concert in Laie.

This free concert will be presented the evening of March 12, 2008 in conjunction with the BYUH Concert Choir, Hawai'i Youth Opera Chorus, the Kahuku High School Choirs, and the Ko'olauloa Children's Chorus and is to be held at the BYU Hawai'i Cannon Activities Center. Through this concert, we hope to engage a new community and to share our special gift with families from the Winward Coast who may not normally have the opportunity to experience a live symphony performance.

As executive director, these are the times we hope to never face. Through this difficulty, however, I have seen what this orchestra and the Honolulu Symphony mean to our community. In December, our community stepped forward to show their support. Through an incredible outpouring of aloha the Honolulu Symphony raised over half a million dollars in just over three weeks. Over 1,000 individuals from across our state, the mainland, and as far away as Singapore made a commitment to the see the continuation of the oldest orchestra west of the Rocky Mountains. These funds allowed the organization to meet its immediate payroll and critical operational needs, however, the Honolulu Symphony still faces a significant operational shortfall which threatens its existence.

The Honolulu Symphony is a cultural and educational asset which is in serious financial jeopardy at this time. The operational funding requested is critical to the continuation of the Honolulu Symphony, and we request the support of this committee for HB 3243 H.D.2.

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"If it's good enough to call, then it's good enough to raise"

testimony

From: J Darigo [jdarigo@yahoo.com]
Sent: Wednesday, March 12, 2008 12:08 PM
To: testimony
Cc: Keith Kadoyama; Norm Foster
Subject: Legislative Update and Testimony Request: HB 3243

This testimony is being submitted for EDT 3/13/08 at 1:40 p.m.

Testimony in Support of H.B. 3243 H.D. 2 (HSCR1008-08)

Submitted by: Jane Darigo, Registered Nurse Straub Clinic & Hospital, LCDR Nurse Corps Officer
 Navy Reserves, volunteer cellist Army Community Theater Fort Shafter
 for a hearing by the
 Senate Committee on Economic Development and Taxation
 Hawaii State Capitol
 Thursday, March 13, 2008
 1:40 p.m. – Room 224

Chair Fukunaga, Vice Chair Espero, and members of the Senate Committee on Economic Development and Taxation, I am pleased to provide this testimony in support of H.B. 3243 H.D. 2, making an appropriation for the Honolulu Symphony and its programs.

From Hawaiian 'oli to high school marching bands to the classical and popular compositions performed by the Orchestra, music is human expression at the highest level that communicates across the generations, cultures and geographic locations. For over a century, our Symphony has been recognized for its diverse musical entertainment offerings, including MasterWorks, Pops concerts, and youth education and outreach performances. Its mission is to "enhance the quality of life of the people of Hawai'i by sustaining a symphony orchestra of the highest artistic quality, and to serve as a community leader for musical activities that include concerts, operas, ballet and educational programs".

The members of our Orchestra form the cornerstone of the performing arts in this community, ensuring the availability of highly trained professional musicians to the Hawai'i Opera Theatre, Ballet Hawai'i, Chamber Music Hawai'i, the Maui Pops, and for numerous touring artists year-round.

Equally as important, these musicians serve as the backbone of music education in our State. According to the Hawai'i Music Educators Association, less than 50% of public elementary schools in the state have an active music program. Most classroom teachers have little training, few resources, and no time to offer a music curriculum to their students. Budget constraints often prevent Hawaii's schools from providing students with any meaningful exposure to music education. The Honolulu Symphony fills this need through Education and Community Outreach programs that introduce young people to symphonic music and promote a life-long love of music and music-making.

The Honolulu Symphony impacts every facet of life within our community. It enhances the reputation of our state nationally and internationally, adds to the cultural diversity of our State, and positively affects the local economy. The legislation before you speaks of the importance of this organization to the State, and reaffirms the many benefits our outstanding orchestra continues to contribute to local communities. We must not lose this powerful and invaluable resource for human development in our

State.

testimony

From: Don Immel [contact@donimmel.com]
Sent: Wednesday, March 12, 2008 12:54 PM
To: testimony
Cc: kadoyama@gmail.com
Subject: Testimony in Support of H.B. 3243 H.D. 2 (HSCR1008-08)

Testimony in Support of H.B. 3243 H.D. 2 (HSCR1008-08)

Don Immel, and Erin Kaser Immel (daughter of Tom Kaser, former staff writer for the Honolulu Advertiser)
 Senate Committee on Economic Development and Taxation
 Hawaii State Capitol
 Thursday, March 13, 2008
 1:40 p.m. – Room 224

Chair Fukunaga, Vice Chair Espero, and members of the Senate Committee on Economic Development and Taxation, I am pleased to provide this testimony in support of H.B. 3243 H.D. 2, making an appropriation for the Honolulu Symphony and its programs.

Erin and I wish to emphatically request that the Senate Committee support this important cause! Erin grew up listening to the Honolulu Symphony Orchestra, and I was fortunate to perform a season as Principal Trombonist of the orchestra a few years ago. I had to leave Honolulu for a performance job in Denmark due to the need to have a stable income for my family. The HSO have changed SO MUCH for the better in just a few short years! Due to wonderful, important changes in the orchestra's management, the entire organization has pulled together and is focused on success! This is the time to help the HSO over an important hurdle. HSO has strong leadership, great musicians, a wonderful new artistic director... NOW is the time to support the arts. NOW is THE time for government to step up and support meaningful art and culture for the citizens of Hawai'i. This is a fantastic orchestra. Beyond that, the HSO provides enormous economic activity in Honolulu!

Erin and I would love very much to come back and live, pay local taxes to, and support the local economy in the place of her birth. We wish we had this option! For now, we are in Denmark as I perform with a 52-week, full-time orchestra. My orchestra here receives 95% of its operating expenses from the government! In Hawai'i, it must - of course - be more of a balanced approach to supporting large arts organizations; including funds from private donors and corporations as well as government. But the government MUST lead the way in making important decisions about quality of life, culture, art (etc.)! Please lead. Please support the arts on the LOCAL level.

From Hawaiian 'oli to high school marching bands to the classical and popular compositions performed by the Orchestra, music is human expression at the highest level that communicates across the generations, cultures and geographic locations. For over a century, our Symphony has been recognized for its diverse musical entertainment offerings, including MasterWorks, Pops concerts, and youth education and outreach performances. Its mission is to "enhance the quality of life of the people of Hawai'i by sustaining a symphony orchestra of the highest artistic quality, and to serve as a community leader for musical activities that include concerts, operas, ballet and educational programs".

The members of our Orchestra form the cornerstone of the performing arts in this community, ensuring the availability of highly trained professional musicians to the Hawai'i Opera Theatre, Ballet Hawai'i, Chamber Music Hawai'i, the Maui Pops, and for numerous touring artists year-round.

Equally as important, these musicians serve as the backbone of music education in our State. According to the Hawai'i Music Educators Association, less than 50% of public elementary schools in the state have an active music program. Most classroom teachers have little training, few resources, and no time to offer a music curriculum to their students. Budget constraints often prevent Hawaii's schools from providing students with any meaningful exposure to music education. The Honolulu Symphony fills this need through Education and Community Outreach programs that introduce young people to symphonic music and promote a life-long love of music and music-making.

The Honolulu Symphony impacts every facet of life within the Honolulu and wider island(s) community. It enhances the reputation of our state nationally and internationally, adds to the cultural diversity of our State, and positively affects the local economy. The legislation before you speaks of the importance of this organization to the State, and reaffirms the many benefits our outstanding orchestra continues to contribute to local communities. We must not lose this powerful and invaluable resource for human development in our State.

Thank you for your shared concern for the HSO.

Sincerely,

Don Immel and Erin Kaser Immel

Jackie Mahi Erickson
1315 Kaweloka St.
Pearl City, Hawaii 96782

For hearing: **Thursday, March 13, 2008. @ 1:40pm.**
Room 224

To: **Senate Committee on Economic Development and Taxation**
Senator Carol Fukunaga, Chair
Senator Will Espero, Vice Chair

Subject: **In Support of HB3243, HD2 (HSCR1008-08),**
Making an Appropriation for the Honolulu Symphony and its
Programs

Chairman Fukunaga, Vice Chairman Espero, and Honorable Committee
Members,

My name is Jackie Mahi Erickson. I am in favor of HB 3243, HD2 and ask for your support of this important bill which would appropriate funds to meet the shortfall in funding for the operations of the Honolulu Symphony and its programs.

Section 1 of this Bill explains the importance of the Honolulu Symphony to Hawaii and the need for State support.

Throughout the USA and all over the world we see that diversity of culture and arts, including music, are important indicia of a community's soul and quality of life. Our Symphony has been recognized for its diverse musical offerings, including MasterWorks, Pops concerts, and youth education and outreach performances. The members of our Orchestra form the cornerstone of the performing arts in this community, ensuring the availability of highly trained professional musicians to the Hawai'i Opera Theatre, Ballet Hawai'i, Chamber Music Hawai'i, Pacific International Chamber Association, the Maui Pops, and for numerous touring artists year-round.

Without the Symphony, these musicians who serve as the backbone of music education in our State, would likely seek employment elsewhere. According to the Hawai'i Music Educators Association, less than 50% of public elementary schools in the state have an active music program. Most classroom teachers have little training, few resources, and no time to offer a music

curriculum to their students. Budget constraints often prevent Hawaii's schools from providing students with any meaningful exposure to music education. The Honolulu Symphony and its musicians fill this need through Education and Community Outreach programs that introduce young people to symphonic music and promote a life-long love of music and music-making.

Internationally, nationally and locally, Hawaii's diverse cultural stature has grown and, in spite of difficult economic situations which resulted in the Symphony musicians and staff suffering pay cuts, the ever improving musical reputation of Honolulu Symphony continues upwards.

During the 2006 and 2007 Hawaii Legislative Sessions the House and Senate acknowledged the desirability and the difficulties a community our size has to provide quality classical music to Hawaii's public and to educate our children to the wonders and beauty of such music. Hence, in 2007, the legislature appropriated \$4m in support of the Symphony. In 2007, the Symphony was fortunate to have renowned Maestro Adreas Delfs agree to join the Symphony as its Conductor, to lead its musicians, to bring his experiences and to share his vision so Hawaii can further enhance the enjoyment and quality of classical music in Hawaii. It was a terrible disappointment when the legislative appropriations pursuant to Act 97 were not available to the Symphony in 2007, and, at the same time the Symphony's concert revenues and donations weren't enough to make up for losses resulting from months of performances at smaller and less desirable substitute music halls instead of the NBC concert hall.

HB 3243, HD2, is very important to the education of our youth and to the musical needs of our community.

I ask for your support of this bill.
Mahalo.

Jackie Mahi Erickson

Mari Yoshihara
Associate Professor of American Studies
University of Hawai'i at Manoa

To the Committee on Economic Development and Taxation
Senator Carol Fukunaga, Chair
Hearing Date: **Wednesday, Thursday, March 13, 2008 at 1:40pm**

[I will not be able to attend the hearing in person; therefore I am submitting this testimony in writing.]

In Support of HB3243, Making an Appropriation for the Honolulu Symphony and its Programs

My name is Mari Yoshihara. I am an associate professor in the Department of American Studies at the University of Hawai'i at Manoa, specializing in the history of American culture and the arts. I am the author of the book, *Musicians from a Different Shore: Asians and Asian Americans in Classical Music*, recently published by Temple University Press. I submit this testimony in support of HB3243 which would appropriate \$810,000 for fiscal year 2007-08 to support the Honolulu Symphony and its programs.

The Honolulu Symphony is facing a severe financial crisis, and the musicians have gone without regular pay since December. Despite this situation, this season the symphony has given some of the best performances in recent years. The new conductor Andreas Delfs's artistic leadership is clearly infusing the musicians with renewed energy. Their energetic performance with the Hawai'i Opera Theatre last month has exemplified the musicians' dedication to world-class performance.

As a longtime supporter of the Symphony, I know that the orchestra's financial difficulty is nothing new. For many years the Symphony's finances have suffered seriously, culminating in the 20% cut in the musicians' already modest salary in 2003 which has only been restored this season. As a scholar who has studied the history and economy of classical music in America, I also know that such a situation is not unique to the Honolulu Symphony. The structural issues facing the Symphony—e.g., the cuts in public funding for the arts, the rising cost of performances, the aging and shrinking audience for classical music—are shared by orchestras everywhere in the United States.

But the Honolulu Symphony also plays unique roles in our community that distinguish it from the nation's other orchestras. Although some people may feel that the Symphony represents a form of elite high culture and that going to a symphony concert is an unaffordable luxury, these perceptions are mostly false. The Honolulu Symphony indeed serves as a key node of Hawai'i's cultural life, its work extending far beyond classical music.

Its Masterworks Series features both classical European masterpieces and the innovative works of living composers from various backgrounds—Tan Dun, whose music bridges the East and the West; young composer Kenji Bunch, who merges his classical training with his versatility in pop, rock, and bluegrass, for instance—and performs them at the highest professional level. It brings world’s best soloists—ranging from conductor Seiji Ozawa and soprano Renée Fleming to pianist Jon Nakamatsu and violinists Midori and Sarah Chang. The Pops Concerts bring superstars of diverse genres—Dianne Reeves, Diana Krall, Pat Benatar, Kenny G, to name a few—who would not come to the islands if it were not for the Symphony. In the Pops concerts, the Symphony also collaborates with local Hawai‘i musicians—such as Keali‘i Reichel, the Brothers Cazimero, Jake Shimabukuro, and Amy Hanaiali‘i Gilliom—and merge the traditions of orchestral music with Hawai‘i’s unique musical cultures.

The Symphony works hard to make these performances available to the general public. The full-priced tickets for its regular concerts start at a mere fourteen dollars, with discounts available to students, seniors, and military personnel. The Symphony gives free concerts in the parks, educational concerts in public schools, and performances in the neighbor islands. The Symphony also provides the music for the performances of Hawaii Opera Theatre and Ballet Hawaii every year. The Symphony musicians play a major role in music education across the state, both through private lessons and school programs from elementary to university levels. In other words, the Honolulu Symphony is the centerpiece of the performing arts, musical life, and arts education in the state. It is rare to see an institution that brings such diverse cultures together as the Honolulu Symphony does.

Yet for me, the islands’ rich cultural and artistic life is not just about being able to attend these wonderful performances. It is about knowing that there are many musicians in town who are every day striving for the highest level of artistic achievement. The exciting and moving moments of the concerts are made possible only through the many solitary and frustrating hours of daily practice and rehearsals that the musicians dedicate themselves to. Yet the financial difficulty makes it impossible to sustain such a commitment. Already some of the symphony musicians are having to take on a second or third job in order to pay the bills, cutting into the time and effort they can devote to music and thus impoverishing the cultural life for all of us on the islands.

It is important for Hawai‘i to support the Symphony, not because the music the Symphony performs is any more important than any other cultural form that exist in Hawai‘i, but because the Symphony is one of the centerpieces of the rich and diverse cultural life of the islands. By letting the Symphony not only survive but also flourish, we also sustain and enrich the arts and cultures of Hawai‘i as a whole. Please pass this bill so that the musicians can continue the priceless work they have done for many years. Thank you.

Sincerely,

Mari Yoshihara

testimony

From: Agnes M. Niyekawa [agnesmn@hawaiiintel.net]
Sent: Tuesday, March 11, 2008 11:38 PM
To: testimony
Subject: RE: HB 3243
Attachments: Symphony by D. Swift

Testimony in Support of H.B. 3243 H.D. 2 (HSCR1008-08)

Submitted by: Agnes M. Niyekawa, Prof. Emeritus, UHM
for a hearing by the
Senate Committee on Economic Development and Taxation
Hawaii State Capitol
Thursday, March 13, 2008
1:40 p.m. – Room 224

Chair Fukunaga, Vice Chair Espero, and members of the Senate Committee on Economic Development and Taxation, I am pleased to provide this testimony in support of H.B. 3243 H.D. 2, making an appropriation for the Honolulu Symphony and its programs.

From Hawaiian 'oli to high school marching bands to the classical and popular compositions performed by the Orchestra, music is human expression at the highest level that communicates across the generations, cultures and geographic locations. For over a century, our Symphony has been recognized for its diverse musical entertainment offerings, including MasterWorks, Pops concerts, and youth education and outreach performances. Its mission is to "enhance the quality of life of the people of Hawai'i by sustaining a symphony orchestra of the highest artistic quality, and to serve as a community leader for musical activities that include concerts, operas, ballet and educational programs".

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I strongly believe that Hawaii should become the Pacific Center of Music just as being the Pacific Center of Medicine. We should attract Japanese tourists to attend Honolulu Symphony concerts, just as they attend the New Year concerts in Vienna. There are always a large number of Japanese in the audience. Please note the attachment, an article by Prof. David Swift of UHM, which appeared in the Stra-Bulletin on Sunday.

The Honolulu Symphony impacts every facet of life within our community. It enhances the reputation of our state nationally and internationally, adds to the cultural diversity of our State, and positively affects the local economy. The legislation before you speaks of the importance of this organization to the State, and reaffirms the many benefits our outstanding orchestra continues to contribute to local communities. We must not lose this powerful and invaluable resource for human development in our State.

testimony

From: Peter Coraggio [profondo@hawaii.rr.com]
Sent: Wednesday, March 12, 2008 3:39 PM
To: testimony
Subject: Legislative Update and Testimony Request: HB 3243

To Whom:

This testimony is being submitted for EDT 3/13/08 at 1:40 p.m.

Testimony in Support of H.B. 3243 H.D. 2 (HSCR1008-08)

Submitted by:

Peter Coraggio, Professor Emeritus, Music Department, University of Hawaii at Manoa

for a hearing by the

Senate Committee on Economic Development and Taxation

Hawaii State Capitol

Thursday, March 13, 2008

1:40 p.m. - Room 224

Chair Fukunaga, Vice Chair Espero, and members of the Senate Committee on Economic Development and Taxation, I am pleased to provide this testimony in support of H.B. 3243 H.D. 2, making an appropriation for the Honolulu Symphony and its programs.

The University of Hawaii Music Department faculty consists of a small number of full-time faculty members and a large number of lecturers. Most of our instrumental teachers are members of the Honolulu Symphony. These lecturers cannot live here in Hawaii with the salary they receive from the Honolulu Symphony. Each must teach numerous private students to survive.

The Honolulu Symphony expenses cannot be covered by ticket proceeds alone. The budget must be supplemented by private and corporate donations. But this still leaves a deficit.

Without the support of the community through government assistance, the Honolulu Symphony may not be able to continue to exist. That would cause a snowball effect throughout our community. The UH music programs will suffer and perhaps will also cease to exist.

Please support the Honolulu Symphony and all of its programs that benefit all the citizens of our State of Hawaii.

Thank you.

Peter Coraggio

LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA YAHIRO
DEPUTY DIRECTOR

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TAXATION

TESTIMONY ON HB 3191 HD 1
RELATING TO CONFORMITY OF THE HAWAII INCOME TAX LAW TO THE
INTERNAL REVENUE CODE

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: MARCH 13, 2008
TIME: 2:05PM
ROOM: 224

The purpose of this bill is to amend Hawaii's income tax law to conform with the changes to the Internal Revenue Code made by Congress in 2007.

The House of Representatives passed this measure on third reading.

The Department of Taxation ("Department") supports this Lingle-Aiona Administration-sponsored bill.

Section 235-2.5(c), Hawaii Revised Statutes (HRS), mandates that the Department submit to each regular session of the Legislature a bill that amends Hawaii income tax law to conform to the changes in the Internal Revenue Code (IRC), for the previous calendar year.

Digests of the 2007 federal laws to be considered as conformity items have been provided to the Committee prior to this hearing. These digests discuss the operative and non-operative amendments of the Internal Revenue Code in more detail.

The adoption of the amendments to the IRC sections assures continued State conformity with federal income tax law and minimizes taxpayers' burdens in complying with Hawaii's income tax law.

Section 1 of this bill amends section 235-2.3(a), HRS, to conform the Hawaii Income Tax Law to the operative IRC sections of subtitle A, chapter 1, amended as of December 31, 2007. Generally, subtitle A, chapter 1, refers to the IRC sections 1 through 1400T.

Section 2 of this bill amends section 235-2.4(g), HRS, to provide that the State will not increase the maximum section 179 expense deduction to \$125,000 from the current state maximum deduction of \$25,000 or increase the qualifying investment amount to \$500,000 from the current state qualifying investment amount of \$200,000 for taxable years 2007 through 2010.

Section 3 of this bill amends section 235-2.45(g), HRS, to make non-operative for Hawaii income tax purposes section 1400N(c) (relating to special rules for the low-income housing credit for low-income housing constructed in the Gulf Coast areas affected by Hurricanes Katrina, Rita, and Wilma). While section 1400N(c) was enacted in 2005 and has been operative for Hawaii income tax purposes, section 1400N(c) has no real effect in Hawaii because for Hawaii income tax purposes the low-income housing credit as provided in HRS section 235-110.8 only applies to low-income housing located in Hawaii. To avoid confusion, the Department believes that section 1400N(c) should no longer be operative.

Section 4 of this bill amends section 235-55.91(c), HRS, to add to the definition of vocational rehabilitation referral to conform to the definition in section 51 of the Internal Revenue Code.

The following is a description of the new federal acts that were passed by Congress in 2007 that amended the Internal Revenue Code:

1. The Small Business and Work Opportunity Act of 2007. (P. L. No. 110-28; May 25, 2007):

The amendments to operative provisions include: certain pension rule amendments; allowing a deduction for the interest on debt used to acquire S Corporation stock by an Electing Small Business Trust; allowing certain partnerships consisting of only a husband and wife to file a joint return instead of a partnership return; treating sale of stock in a Qualified Chapter S Subsidiary as a sale of a portion of the assets; not taking into account restricted bank director stock in determining S Corporation qualification; and S Corporation capital gains are not treated as passive investment income under the S Corporation rules.

2. The Andean Trade Preference Act. (P. L. No. 110-42; June 30, 2007):

This Act only amends non-operative provisions.

3. The Joint Resolution Approving the Renewal of Import Restrictions Contained in the Burmese Freedom and Democracy Act of 2003. (P. L. No. 110-52; August 1, 2007).

This Act only amends non-operative provisions.

4. To Extend the Trade Adjustment Assistance Program Under the Trade Act of 1974. (P. L. No. 110-89; September 28, 2007):

This Act only amends non-operative provisions.

5. To Implement the United States-Peru Trade Promotion Agreement. (P. L. No. 110-138; December 14, 2007):

This Act only amends non-operative provisions.

6. Energy Independence and Security Act of 2007. (P.L. 110-140; December 19, 2007):

The only operative provision of this Act extends the amortization period of geological and geophysical costs for major integrated oil companies from five years to seven years.

7. 2007 Virginia Tech Victims Act. (P.L. 110-141; December 19, 2007):

The operative provision of this Act excludes from gross income certain payments received by surviving victims and survivors of slain victims of the Virginia Tech shootings.

8. Mortgage Forgiveness Debt Relief Act of 2007. (P.L. 110-142; December 20, 2007):

The amendments to operative provisions include: clarification of low-income housing tax credit rule regarding full-time students; exclusion from gross income of up to \$2 million of cancellation of indebtedness income where debt relates to acquisition of a principal residence; clarifies exclusion amounts applicable to gain from the sale of a principal residence where a spouse is deceased on the date of sale; provides a new exclusion from gross income for qualified state or local tax benefits or payments received in exchange for services provided as members of qualified volunteer emergency response organizations; extension of interest deduction for mortgage insurance premiums until 2010; and two alternative tests for qualifying as a cooperative housing corporation.

9. Tax Increase Prevention Act of 2007. (P.L. 110-166; December 26, 2007):

This Act only amends non-operative provisions.

10. Consolidated Appropriations Act, 2008. (P.L. 110-161; December 26, 2007):

This Act only amends non-operative provisions.

11. Tax Technical Corrections Act of 2007. (P.L. 110-172; December 29, 2007):

This Act makes clarifying or purely technical amendments to the Internal Revenue Code, such as correcting erroneous cross-references.

Revenue Impact

It is estimated that the conformity bill would reduce income tax revenues at an annual rate of about \$506,000 in fiscal year 2009 and after.

For most provisions, the Hawaii State revenue impact is obtained by adjusting the revenue estimate provided for the U.S. government by the Joint Committee on Taxation. Three adjustments are made. The first is for the size of Hawaii's economy, which is roughly ½ of one percent of the total U.S. GDP. The second is for the difference in federal and Hawaii State effective tax rates. It is assumed that the State average effective tax rate is one-quarter of the federal for the Individual Income Tax and 18% of the federal for the Corporation Income Tax. The third is for the difference in fiscal years: the federal fiscal year ends September 30. The revenue effects are estimated for annual rates in fiscal year 2008.

The following provisions were deemed to have more than a negligible effect on Hawaii State income tax collections:

"Mortgage Forgiveness Debt Relief Act of 2007" (P.L. No. 110-142, December 20, 2007), - \$473,000.

Discharge up to \$2 million of acquisition debt on taxpayer's principal residence in 2007-2009 are excluded from income; -\$280,000.

Tax relief and expense reimbursements provided by state and local governments to volunteer firefighters and emergency medical responders for services performed are tax-free for 2008-2010 tax years; -\$86,000.

Interest deduction for mortgage insurance premiums is extended to amounts paid or incurred after 2007 and before 2011; -\$107,000.

"The Small Business and Work Opportunity Tax Act of 2007" (P.L. No. 110-28, May 25, 2007), - \$33,000.

S corporation capital gains are not treated as passive income; -\$33,000.

"The Tax Technical Corrections Act of 2007" (P.L. No. 110-172, December 29, 2007)

No appreciable revenue impact.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Conformity to federal Code

BILL NUMBER: HB 3191, HD-1

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 235-2.3(a) by changing the date references to make the Internal Revenue Code (IRC) applicable for state income tax purposes as it was amended on 12/31/06 for tax years beginning after 12/31/07.

Amends HRS section 235-2.4(g) to provide that IRC section 179 (with respect to the election to expense certain depreciable business assets): (1) the maximum deduction shall be increased to \$125,000 for taxable years beginning after 2006 and before 2011; and (2) the qualifying investment amount shall be increased to \$500,000 for tax years beginning after 2006 and before 2011 for Hawaii income tax purposes.

Amends HRS section 235-2.45 to provide that IRC section 1400N (c) with respect to the low-income housing credit shall not be operative for Hawaii income tax purposes.

Amends HRS section 235-55.91 to amend the definition of "vocational rehabilitation referral" to also mean an individual who has been certified by the department of human services vocational rehabilitation and services for the blind division in consultation with the Hawaii state employment service of the department of labor and industrial relations as having been referred to the employer upon completion of rehabilitative services pursuant to an individual work plan developed and implemented by an employment network pursuant to subsection (g) of section 1148 of the Social Security Act, as amended.

Provides that the retroactive and prospective effective dates contained in the congressional acts relating to the Internal Revenue Code and enacted during 2007 shall be operative for HRS chapter 235.

EFFECTIVE DATE: Tax years beginning after December 31, 2007

STAFF COMMENTS: This is the annual conformity measure submitted by the department of taxation TAX-06(08) in compliance with HRS section 235-2.5 which requires the department to annually submit a measure to maintain state income tax conformity with the federal Internal Revenue Code. The purpose of conformity is to update the state income tax laws with respect to the definition of income with those changes made to the federal Code during the past year and to adopt those changes that are appropriate to Hawaii law.

The changes this measure adopts are those included in the: (1) Tax Technical Corrections Act of 2007 (P.L. 110-172); (2) Tax Increase Prevention Act of 2007 (P.L. 110-166); (3) Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142); and (4) Small Business and Work Opportunity Tax Act of 2007 (Title VIII of P.L. 110-28).

The proposed measure increases IRC Section 179 expensing through 2010 and increases Section 179's dollar amount from \$100,000 to \$125,000 for tax years beginning after 2006. It also increases the Section 179 investment limitation from \$400,000 to \$500,000 for tax years beginning after 2006. These amendments are a result of adopting amendments made by the Small Business and Work Opportunity Act of 2007.

Other provisions adopted for state income tax purposes include:

- (1) the forgiveness of debt, which occurs when a lender forgoes repayment of principal and/or interest the borrower owes. Typically, discharged debt is considered ordinary income to the borrower for income tax purposes. The new law allows taxpayers to exclude this amount and thus escape the tax liability. Homeowners will have a three-year window to refinance their mortgage and pay no taxes on any debt forgiveness that they receive: (a) as long as the debt must have been discharged by the lender in 2007, 2008 or 2009; (b) the amount of debt that can be excluded is limited to \$2 million; (c) the exclusion can be used only if the loan was taken out to acquire, build or substantially improve a principal residence;
- (2) extends a one-year deduction of mortgage insurance premiums that was effective in 2007 for three more years, until 2010, on loans that were originated after Dec. 31, 2006, and before Jan. 1, 2011 provided the full deduction is available only to taxpayers whose adjusted gross income is less than \$100,000. A partial deduction is allowed for taxpayers with adjusted gross incomes up to \$109,000;
- (3) allows a surviving spouse to claim the \$500,000 if the home is sold within two years after the date of the spouse's death;
- (4) a clarification of the deduction limits for S corporation shareholders where the S corporation contributes appreciated property;
- (5) a correction of an error in present law for determining the foreign earned income exclusion in the case where a taxpayer has net capital gains in excess of taxable income;
- (6) expands the preparer penalties to apply to all types of returns, and not just to income tax returns - if a tax preparer understates a taxpayer's tax liability and claims an "unreasonable position," the penalty is the greater of \$1,000 or 50% of the income derived by the preparer with respect to the return. This may be increased to the greater of \$5,000 or 50% of the income derived by the preparer with respect to the return if there is a willful or reckless disregard of the law. This provision is effective for returns prepared after May 25, 2007;
- (7) if a claim for a refund or credit is made for an excessive amount, an accuracy-related penalty of 20% of the excessive amount is assessed on the person making the claim (either the preparer or taxpayer), applicable to any claim filed after May 25, 2007.

The conformity statute, as written today, is a far cry from the way the state adopted changes to the Internal Revenue Code prior to 1978 when the changes were adopted by referencing the Public Law making the change. Practitioners can now assume that everything not listed in HRS section 235-2.3 of sections not operative for state tax purposes is applicable to the definition of income for state tax purposes.

There have been numerous proposals in recent years, as well as during this session, that recommend providing for unique exemptions and deductions that affect the definition of income. If all of these proposals were adopted, Hawaii would once more fall out of conformity with the federal code creating numerous differences between the two laws that would require taxpayers to constantly be aware of those differences. This is the major reason that the legislature back in 1977 and decided that maintaining close conformity with the federal definition of income was important to minimize difficulties and reduce costs of compliance. Perhaps lawmakers should revisit the issue of conformity and the ease that it brings to taxpayers and administrators in complying with and administering the state income tax law.

It is curious that this measure adopts the federal effective dates. Tax changes for Hawaii are usually adopted for a tax year to insure compliance and simplicity of administration while HRS 235-2.5(a)(3) addresses retroactive provisions in federal public laws recognizing that the specified dates in the federal Code shall be operative.

Digested 2/25/08



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

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Statement of
THEODORE E. LIU
Director

Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT
AND TAXATION**

Thursday, March 13, 2008
2:05 P.M.
State Capitol, Conference Room 224

in consideration of
HB 2228HD2
**RELATING TO MAKING AN APPROPRIATION FOR COMMUNITY-BASED
ECONOMIC DEVELOPMENT.**

Chair Fukunaga, Vice-Chair Espero and Committee members:

The department supports the concept behind HB2228 HD2, which makes an appropriation for the community-based economic development revolving fund to assist qualifying community-based organizations. There have been many good ideas introduced this legislative session that support the State's economic development goals. We note, however, that this appropriation was not included in the Executive's Supplemental Budget, and request that this appropriation not displace the priorities contained in that budget.

Our State's greatest challenge in the coming years is to restructure our economy to focus on human development. We must strengthen the abilities of our people to permit Hawaii to compete and thrive in the global economy.

Some regions of Hawaii are less able to take advantage of a strong economy due to remote locations lacking access to traditional business opportunities and financial capital, and having limited education and workforce training opportunities. Some regions may not desire large-scale economic development with the accompanying large infrastructure.

The CBED Program is unique in that it provides planning (“seed”) grants and small implementation (matching) grants to community-based non-profit organizations to build capacity and develop businesses, marketing or other necessary planning documents in order to access larger funding through Federal, State, County and other private funding resources. Since its inception in 1991, the CBED grant and loan revolving fund and technical assistance program has committed more than \$4 million to more than 180 community-based organizations statewide. Approximately 67 percent of program funds were distributed to Neighbor Islands.

In fiscal year 2006, the CBED Program awarded just over \$260,000 in grant funds to 15 community organizations. Twelve of the fifteen organizations completed their grants in FY 2007. These organizations reported creating 163 new full-time jobs and 100 part-time jobs, the establishment of 72 new businesses, and assistance or expansion of 92 existing businesses. In technical assistance, CBED funds provided 12 organizations with one-on-one business planning or organizational capacity-building assistance. More than 280 high school students were provided business training through workshops. And, more than 2,600 individuals representing more than 550 community organizations or agencies were provided community economic development training, information and assistance.

The CBED Program will play a major role in assisting communities achieve their goals and vision through economic development. CBED can provide our communities the opportunities to gain the *know-how* and skills to take control over local resources, become an active cooperative community, and provide more avenues for community empowerment.

Thank you for the opportunity to offer these comments.

HACBED

Hawai'i Alliance for Community-Based Economic Development
677 Ala Moana Blvd., Suite 702 Honolulu, HI 96813
Ph. 808.550.2661 Fax 808.534.1199
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Charter School

Kukul & Gary Maunakea-Forth
WCRC/Mala Al'Opio

Rian Dubach
American Savings Bank

Tommy Otake

HACBED Staff

Robert Agres, Jr
Executive Director

Justin Fanslau
Associate Director

Larissa Meinecke
Public Policy Associate

Tony Hall
Administrative Director

Senate Committee on Economic Development and Taxation
Thursday, March 13, 2008 at 2:05 p.m.
Conference Room 224

HB 2228 HD2 – SUPPORT

MAKING AN APPROPRIATION FOR COMMUNITY-BASED ECONOMIC DEVELOPMENT

Chair Fukunaga and committee members thank you for the opportunity to provide testimony in **support of HB 2228 HD2** which would appropriate funds to the Hawaii Community-Based Economic Development Technical and Financial Assistance Program of the State Department of Business, Economic Development, and Tourism for the purpose of funding community based economic development (CBED) organizations statewide.

We believe that State support for CBED projects for communities is crucial because they are:

- addressing critical social and community issues through initiatives with economic impact – getting to the “double bottom line”;
- leveraging limited resources through creative public, private, and community partnerships; and
- empowering families and communities to have choice and control over their own futures.

These communities have been building their capacity as economic development practitioners to contribute to the diversity of the state's strong economy. Since its inception, CBED's grant and loan revolving fund and technical assistance program has committed more than \$3.8 million to more than 160 community based organizations (CBOs) statewide. Close to 70% of program funds were distributed to the Neighbor Islands. The DBEDT/CBED program has been an instrumental partner in assisting community based institutions to plan for and implement economic initiatives that create jobs. Last year, the CBED grantees created or retained over 173 jobs.

The Hawai'i Alliance for Community-Based Economic Development (HACBED) is a statewide 501(c) 3 organization established in 1992 to help maximize the impact of community-based economic development organizations (CBEDOs). HACBED believes that social, economic and environmental justice can be achieved by the people and communities of Hawai'i.

HACBED

Hawai'i Alliance for Community-Based Economic Development
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We pursue our mission by helping CBEDOs to increase community control of their assets and means of production. We accomplish this in many ways -- by providing technical support to help CBEDOs deal with organizational issues; by networking on a local and national basis for funding and financing for community-based efforts; and, by advocating for communities to play a more active role in the political process in order to effect systemic change.

We therefore ask for your support of HB 2228 HD2 and the continuing efforts on the part of communities to exercise greater control over their own futures.

Thank you for the opportunity to provide this testimony.

Sincerely,

Bob Agres
Executive Director

Justin Fanslau
Associate Director

Larissa Meinecke
Public Policy Associate



Legislative Testimony

Senate Committee on Economic Development and Taxation

March 13, 2008

2:05 p.m.

Room 224

State Capitol, Conference Room 224

In consideration of

HB 2228 HD2

RELATING TO MAKING AN APPROPRIATION FOR COMMUNITY-BASED ECONOMIC DEVELOPMENT

Chair Fukunaga, Vice-Chair Espero and Committee members:

The Office of Hawaiian Affairs **Strongly Supports** **HB 2228 HD2**, which makes an appropriation for DBEDT's Community-Based Economic Development (CBED) Revolving Fund to assist qualifying community-based organizations. There have been many good ideas introduced this legislative session that support the State's economic development goals and we hope that the legislature will support, pass, and fund these ideas, together with priorities of the Executive's Supplemental Budget.

CBED is an important program for Hawaii's Native Hawaiian community, especially in these times of scarce grant dollars and great community needs. This vital community program provides seed money in the form of grants and matching grants to community-based nonprofit organizations thereby establishing business development, marketing development, and capacity building for fledgling community organizations. With this start-up assistance, small organizations have the ability to establish themselves within their communities and can access larger funding through Federal, State, County and private funding resources.

OHA believes that the CBED program plays an important role in assisting communities in achieving their goals through economic development, capacity building, business development, and the marketing of goods and services from the communities. It provides opportunities to communities in gaining small business skills, building capacity, and supports feasible ventures that meet community values and vision. Ultimately, the main outcome of a CBED funded project is job creation in the community. This is good for the communities in Hawaii and for the Hawaiian people.

OHA urges the Committee to **PASS HB 2228 HD2** that will provide sustainable community-based economic development for Hawaii's communities.

Thank you for the opportunity to testify on this measure.

testimony

From: Al Santoro [asantoro@hawaii.rr.com]
Sent: Monday, March 10, 2008 4:38 PM
To: testimony
Subject: HB2228

Aloha Committee on Economic Development and Taxation,

I am submitting testimony in favor of HB2228 - An Appropriation for Community-Based Economic Development. I am President of the Hawaii Co-op of Organic Farmers (HICOF); our association has received CBED funds in the past for our business planning and execution of direct support to organic farmers. We have never received the amount requested due to insufficient funds being available which has led to less than desirable results and the need to submit follow-on requests. For many of the smaller associations such as HICOF, CBED is our primary supporter as other sources require significant "matching" funds which we do not have. Please consider this additional CBED funding for the sake of us smaller associations...mahalo...Al Santoro, Pres, HICOF, 637-4555

March 10, 2008

Statement by Richard Pezzulo
Executive Director, Empower Oahu

HB 2228HD2 RELATING TO COMMUNITY-BASED ECONOMIC DEVELOPMENT.
Appropriates \$500,000 into the Hawaii community-based economic development revolving fund to financially assist qualifying community-based organizations statewide.

Submitted to: Senate Economic Development and Taxation Committee, Chaired by Senator Carol Fukunaga, Vice-Chair Will Espero
Hearing Date: Thursday, March 13, 2008 at 2:05 P.M.
State Capitol Room 224
Senator Will Espero, Chair

Testimony:

Chair Fukunaga, Vice-Chair Will Espero and members of the Senate Economic Development and Taxation Committee, thank you for the opportunity to **provide testimony in support of HB2228HD2**, which would appropriate funds to the Community-Based Economic Development Program of the State Department of Business, Economic Development, and Tourism for the purpose of providing low interest loans and grants to qualifying community-based organizations involved in economic development activities..

Empower Oahu (EO), a 501(c)3 organization, was established as a result of the 1998 and 2001 Empowerment Zone (EZ) application process that united nine communities around a common goal of improving economic conditions for Oahu's most economically distressed areas. EO was formed to support the individual Empower O'ahu CIGs as they further develop and implement their strategic plans prepared as part of the EZ process.

Empower O'ahu is made up of the following communities; Aiea, Kalihi-Palama-Chinatown, Papakolea, Ewa, North Shore, Wai'anae, Waimanalo, Wahiawa, and Waipahu. These communities are known as Community Implementation Groups (CIGs) and are responsible for implementing strategic plans, developed by each community, outlined in the EZ application.

Empower Oahu communities have been implementing a wide range of economic development activities resulting in the establishment of business support services for the creation of jobs and micro-enterprises for low income individuals. The CBED program has been an important partner in achieving member community economic development goals. EO and many of its community member organizations have received CBED support for capacity building and establishing economic development programs.

Empower Oahu urges the State to support the funding for the CBED program because this program will help EO and other communities to:

- increase the capacity of our community-based organizations to support sustainable economic and community development initiatives; and

- increase employment and economic opportunities for residents in low income communities by expanding and strengthening our economic base through business and industrial development.

Empower Oahu communities have made economic development progress over the past six years, but many of our communities have much more to achieve with the revitalization of their economies and communities. They require additional support and assistance, such as can be provided through the CBED program.

Empower Oahu is in **full support of HB2228HD2** and urges your favorable consideration and passage of this important Bill.

Thank you for your time.

Sincerely,

Richard Pezzulo
Executive Director

testimony

From: mike [mnagasaki@hawaii.rr.com]
Sent: Tuesday, March 11, 2008 9:28 AM
To: Wayne Thom; testimony

Statement of
Michael Nagasaki
Project Manager
Kona Pacific Farmers Cooperative
Before the
**Senate COMMITTEE on ECONOMIC DEVELOPMENT
AND TAXATION**

Thursday, March 13, 2008
2:05 P.M.
State Capitol, Conference Room 224

in consideration of
HB 2228 HD1
**RELATING TO MAKING AN APPROPRIATION FOR COMMUNITY-BASED ECONOMIC
DEVELOPMENT**

Chair Fukunaga, Vice-Chair Espero and Committee members:

Kona Pacific Farmers Cooperative supports the passage of HB2228 HD1. Kona Pacific Farmers Cooperative is made up of more than 300 Kona coffee farming families here on the Big Island.

The CBED Program is unique in that it provides planning (“seed”) grants and small implementation (matching) grants to community-based non-profit organizations to build capacity and develop businesses, marketing or other necessary planning documents in order to access larger funding through Federal, State, County and other private funding resources.

With adequate funding, we feel the CBED Program can accomplish bigger and better things. The CBED Program will play a major role in assisting communities achieve their goals and vision through economic development. CBED can provide our communities the opportunities to gain the *know-how* and skills to take control over local resources, become an active cooperative community, and provide more avenues for community empowerment.

Over the past five years, there has been a lack of support of our communities by keeping the CBED Program inadequately funded, under-funded, or drained of any community funds. This is why the CBED program has had to request that the Legislature to pass an appropriations bill for its funding during the Legislative Session.

Thank you for the opportunity to offer these comments.

Legislative Testimony
SUPPORT LEGISLATION

Measure Number: House Bill 2228 HD 2

Senate Committee on Economic Development & Taxation

Chairperson: Senator Carol Fukunaga

Vice-Chairperson: Senator Will Espero

Hearing Date: March 13, 2008
Room 224

Time: 2:05p

Location:

RE: Making an appropriation for Community-Based Economic Development

Part 1

In HRS Chap. 210D: The legislature finds its fiduciary and fiscal responsibility to support the statewide CBED program.

The community – based economic development organizations are the statewide backbone of local grass roots entrepreneurship. These organizations consist of co-operatives, non-profits with for – profit arms, collaborative and incubators for startup initiatives that have “effectively” boasted the local economy by an 11 to 1 leveraging power. These organizations not only apply for grants within the state but also through leveraging power, can compete on a national level with philanthropic entities.

Community – based economic development ventures are across many disciplines: (to name a few) Agriculture/Aquaculture, Artisans, Community Empowerment, Commercial Kitchens, Cultural Restoration, Health and Wellness, Music, Tourism, Youth, Etc.

Community-based economic development crosses the boundaries of races, ideas, products, projects and initiatives. It gives credence to the entrepreneurial spirit that is basis for today’s diversity throughout the capitalist world and other growing national and international economies.

If the legislature does not support, pass and fund this bill, the CBED program will not have the financial foundation needed to expedite great projects and the State-CBED movement will meet its demise. As it stands, there is no fiscal appropriation without restraint to implement this program. A serious statement but, without funding support to the CBED communities and disciplines, the ability to leverage funding and implement community initiatives will be hindered or dormant. It will stifle the innovative ideas of communities that create another layer of entrepreneur and economic diversity within the State of Hawaii.

PART 2

APPROPRIATES \$500,000 INTO THE HAWAII COMMUNITY-BASED ECONOMIC DEVELOPMENT revolving fund to financially assist qualifying community-based organizations statewide.

Part 1 is recycled testimony in support of this legislation from last year's initiative to get funding into this program. Unfortunately, this bill did not see the light of day in the Senate WAM committee chaired by Senator Rosalyn Baker. In retrospect, the House version was supported but the bill met its demise in the cross over to the Senate. Unfortunate indeed.

While the economy of the U. S. and Hawaii—are in decline, the source of income from tourism is taking a critical dive. While economist give predictions, what one must investigate is how we keep an economy viable in spite of stock market fluxes and overall decline of the dollar over the Euro.

To diversify and have the ability to empower the local community-based organizations in developing initiatives and projects, or sustain great projects/programs will enable and attract other funding sources with fresh monies from other philanthropic entities to leverage the limited grant funds within the state. This creates or sustains employment, works for community organizing handling their own kuleana and gives tourism more local ventures/venues to pick from, which continues to make Hawaii a desired destination.

The legislature could be so bold as supplementing this budget for 2 "much needed" positions and incorporate this appropriation into this present bill.

I pray, in the legislature's infinite wisdom, see the merits of supporting this piece of legislation and encourage the Senate AND House, as a whole, to follow its lead.

Testimony submitted by: Leona M. Kalima



IOLANI PALACE

PH (808) 522-0822 FAX (808) 532-1051

TESTIMONY OF KIPPEN DE ALBA CHU

COMMITTEE ON ECONOMIC DEVELOPMENT AND TAXATION
Senator Carol Fukunaga, Chair
Senator Will Espero, Vice Chair

Thursday, March 13, 2008
2:05 pm

HB 2611, HD1

Chair Fukunaga, Vice Chair Espero, and members of the Committee, thank you for this opportunity to testify in support of House Bill 2611, HD1.

Last year, Act 291 authorized the Legislature to directly fund The Friends of Iolani Palace through a line-item appropriation in the Executive Budget. However, due to concerns raised by both legislators and the Governor, The Friends requested introduction of this bill to establish standards and conditions that we have to meet in order to receive state funding. These standards and conditions are essentially identical to those that all tax-exempt organizations must satisfy in order to receive grants-in-aid through Chapter 42F.

The House Draft 1 of this measure incorporates a technical amendment. Therefore, we are in full support of this latest draft.

Thank you.