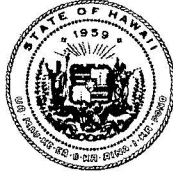


Linda Lingle
GOVERNOR



ORLANDO "DAN" DAVIDSON
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HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
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IN REPLY REFER TO

Statement of
Orlando "Dan" Davidson
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING

February 12, 2008, 8:40 a.m.
Room 329, State Capitol

In consideration of
H.B. 2666

RELATING TO AN AFFORDABLE RENTAL HOUSING DONATION TAX CREDIT.

The HHFDC supports the intent of H.B. 2666, as it would provide an incentive for the donation of resources for the development of affordable rental housing and to the Rental Housing Trust Fund, but defers to the Department of Taxation regarding the overall merits of the new tax credits proposed in the bill.

The Rental Housing Trust Fund provides equity gap financing for the construction or preservation of affordable rental housing projects throughout the State. Section 201H-202(c) provides that private donations may be deposited into the Rental Housing Trust Fund.

Thank you for the opportunity to testify.

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



KURT KAWAFUCHI
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HOUSE COMMITTEE ON HUMAN SERVICES & HOUSING

TESTIMONY REGARDING HB 2666 RELATING TO AN AFFORDABLE RENTAL HOUSING DONATION TAX CREDIT

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 12, 2008
TIME: 8:40AM
ROOM: 329

This bill provides a transferable income tax or franchise tax credit for amounts donated in cash to the rental housing trust fund or to an affordable rental housing project for development.

The Department of Taxation (Department) **opposes** transferable tax credits. The Department **prefers** the fiscal priority of the Lingle-Aiona administration bill HB 3057, which extends the increase in conveyance tax deposits into the Rental Housing Trust Fund permanently.

I. THE DEPARTMENT OPPOSES TRANSFERABLE TAX CREDITS.

ABILITY TO SELL OR TRANSFER CREDITS—The Department is strongly opposed to any provision that allows Hawaii tax credits to be sold, assigned, or transferred. Allowing taxpayers to market or sell their tax credits is fundamentally poor tax policy. Selling tax credits can be subject to abuse and suspect motivation by parties involved.

TRANSFER UNWORKABLE—Moreover, this legislation's transferability concept is unworkable. This measure does not provide an explicit mechanism for transferring the credit, only that it may be transferred. In order to prevent a transferor and transferee from claiming the same credit, there must be an official transfer procedure in place that is clear and documented.

It is also unclear when the transfer may be accomplished: does the credit have to be claimed by the donor first or may the transferee be the first to claim the credit? The Department points out that in order for there to be a credit to sell, *it must first be claimed* by the entity that has the facts necessary to sustain a claim for credit.

Furthermore, allowing credits generated against net income tax to be transferred and used against the franchise tax, and vice versa, will result in administrative difficulties, including tracking

difficulties as well as difficulties with crediting the tax credits to the proper taxpayer's account.

II. CREDIT FOR CASH DONATION INEFFICIENT

A credit for cash donation to the Rental Housing Trust Fund is an inefficient means to provide money to this important housing fund. An outright appropriation to the fund would eliminate the tremendous amount of administration this tax credit program envisions.

III. CREDIT LANGUAGE IS NOT CLEAR OR CONSISTENT

CREDIT CANNOT BE CLAIMED BY A TRANSFEREE UNLESS TRANSFEREE HAD NET INCOMETAX LIABILITY IN THE PREVIOUS TAXABLE YEAR – Net income tax liability is defined as income tax liability reduced by all credits and refunds. In order to even claim this credit in the first place, the taxpayer donating cash must have had a positive tax liability for the previous tax year. If that is not the case, then the credit can never be claimed, and therefore can never be transferred. Likewise for a taxpayer that is transferred this credit; if the transferee did not have a positive tax liability for the tax year preceding the year of transfer, then the transferee can never claim the credit, even though the taxpayer may have bought the credit. It is unclear why the credit is conditioned on tax liability in a previous taxable year.

IT IS UNCLEAR FOR WHICH TAXABLE YEAR THE CREDIT MUST BE CLAIMED – Except the fact that it must be claimed by the twelfth month following the close of the taxable year, there is no language that states the credit must be claimed for the taxable year in which the donation or transfer is made. Therefore it is conceivable to argue that a taxpayer can meet the requirements of the credit in one year but claim it against the tax liability for the next taxable year. The taxpayer should have to claim the credit for the taxable year that cash was donated or the credit transferred. Allowing a taxpayer to claim a credit for a tax year other than the one in which the requirements have been met will cause problems with auditing claims.

CREDIT CARRY-FORWARD LANGUAGE CONTRADICTS LAPSE LANGUAGE - Either the credit can be carried forward until exhausted or it cannot. If the intent of this bill is to allow the credit to be claimed for only the first five years following the cash donation, then the carryforward language should be consistent with subsection (f): in other words, all credits can only be carried forward for five years.

RECAPTURE—The recapture provision should put the onus on the taxpayer to report the recapture rather than requiring the Department to bill for the amount owed the State.

IV. TECHNICAL ISSUES

DEFINITIONS AT THE END OF THE SECTION – It would be clearer if the definitions were placed at the end of the section rather than at the beginning. It would be clearer if subsection (a) contained the language currently found in subsection (b), which are the general requirements for claiming the credit.

V. REVENUE ESTIMATE.

This legislation will result in an indeterminate revenue impact.

From: Kevin Carney [mailto:kcarney@eahhousing.org]
Sent: Monday, February 11, 2008 10:48 AM
To: HSHtestimony
Cc: Kevin Carney
Subject: HB2666 Testimony, 12 February, 2008 8:40am

Dear Chair Shimabukuro, Vice Chair Rhoads and Members of the Human Services and Housing Committee:

EAH Housing strongly supports HB2666 which establishes an affordable rental housing donation tax credit. We applaud both the House and the Senate for considering such a measure. We do have a few comments that we would like to offer:

1. In Section 2: "Affordable Rent" is defined as rent chargeable to low or moderate-income families. HUD defines low income as up to 80% of the Area Median Income (AMI) and moderate income as up to 95% of the AMI. We suggest the program be limited to those at 80% and below of the AMI.
2. In Section 2: "Affordable Rental Housing Project" – we suggest that the definition should also include a Federal Regulatory Agreement.
3. In Section 2: "Development of an affordable rental housing project" – we suggest that this include acquisition and rehabilitation of existing Affordable Rental Housing Projects. For every low-income rental unit we build, we lose 2 units to condominium conversion. We need to preserve our existing inventory as well as build new inventory.
4. In Section 2: It provides for the tax credit to lapse at the end of the fifth taxable year. Given our experience with the length of the development process, particularly the entitlement process, we do not believe 5 years is long enough. We suggest 8 years.

In summary, this bill is creative and exciting and provides a way for everyone to share in creating much needed housing. It allows for and encourages all the residents of our state and all the businesses who do business in our state to help in solving our affordable housing crisis.

Thank you for the opportunity to submit our thoughts on this very important topic.

Sincerely yours,
Kevin

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L E G I S L A T I V E

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SUBJECT: INCOME, FINANCIAL INSTITUTIONS - Affordable rental housing donation tax credit

BILL NUMBER: HB 2666

INTRODUCED BY: Say

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers, with income tax liability in the previous taxable year, to claim an affordable rental housing donation tax credit in the amount of the: (1) cash donation to the rental housing trust fund; provided such amount has not been claimed as a deduction or credit under the state income tax; (2) cash donation for development of an affordable rental housing project; provided such amount has not been claimed as a deduction or credit under the state income tax or if the project is a condition of a government land development approval; or (3) transfer from another taxpayer of unused claimable portions of a tax credit. Further delineates to which tax year the credit shall be applicable.

In addition to the credit above, allows a taxpayer to claim an additional amount of credit based on the projected revenue growth, computed as the sum of: (1) the amount of the taxpayer's net income tax liability for the previous taxable year; and (2) the result derived by multiplying (1) by the lesser of (a) the percentage change of general fund revenues for the upcoming fiscal year under the most recent Council on Revenues' projection; or (b) 0%.

Spouses filing separate returns shall only be entitled for the amount of the credit to which they would have been entitled if they filed jointly. Delineates how the credit is to be computed in the case of a partnership, S corporation, estate or trust.

If a taxpayer has any excess credit, the taxpayer may: (1) claim the unused portion in subsequent years until exhausted or lapsed; or (2) transfer the unused claimable portion to another taxpayer. A taxpayer, before claiming any portion of the taxpayer's entitled tax credit, may transfer any unused claimable portion to another taxpayer. Permits that the transferred portion of credits may be claimed by a person with net tax liability for the previous year under HRS chapter 241.

Any unused amount of a taxpayer's entitled tax credit shall lapse after the end of the fifth taxable year following the year in which the cash donation was made.

Requires all claims for the credit to be filed on or before the twelfth month following the close of the taxable year for which the credit is claimed. Directs the director of taxation to prepare the necessary forms, require the furnishing of information to validate a claim for the credit and adopt rules pursuant to HRS chapter 91. Delineates conditions and provision for the recapture of the credit.

Allows this credit to be claimed in addition to the low-income housing credit.

HB 2666 - Continued

Adds a new section to HRS chapter 241 to establish an affordable rental housing tax credit for taxpayers subject to HRS chapter 241.

Amends HRS section 235-7 to exclude from state income taxation, compensation received for the transfer of an unused claimable portion of the affordable rental housing donation tax credit, but not more than the dollar amount of the unusable claimable portion received.

Defines "affordable rent," "affordable dwelling unit in an affordable rental housing project," "affordable rental housing project," "cash donation for the development of an affordable rental housing project," "county median income," "development of an affordable rental housing project," "net income tax liability," "rental housing trust fund" and "unused claimable portion of a tax credit" for purposes of the measure.

EFFECTIVE DATE: Tax years beginning after December 31, 2007

STAFF COMMENTS: This measure proposes an incentive in the form of an income tax credit to encourage taxpayers to make cash donations to assist in the development of affordable rental housing in the state. Inasmuch as the measure allows a taxpayer to claim a credit equal to 100% of the contribution, why even deal with the taxpayer making the contribution? Skip the taxpayer and just have government write a check directly to the rental housing trust fund or for the development of affordable rental housing on behalf of the taxpayer. Taxpayers can merely request the "free handout" by the state without having to deal with a tax return.

While it proposes that taxpayers with income tax liability may claim the credit, taxpayers with no income tax liability but make a cash donation do not qualify for the proposed credit. For those taxpayers that qualify for the credit, it appears that the credit amount is the amount of their cash donation, adjusted by the percentage change in the growth of general fund revenues. However, in the formula used to calculate such change, the formula specifies that in computing the amount of the credit, the amount of the taxpayer's net income tax liability added to an amount calculated by: (1) the amount of the taxpayer's net income tax liability multiplied by the lesser of either: (a) the percentage change in general fund revenues for the upcoming fiscal year or 0%. Under the proposed formula, any number multiplied by zero, which will always be the lesser number, will result in a zero, making the formula unnecessary.

It should also be remembered that there is already a tax preference for such cash contributions in the form of a deduction which, while not as generous as the dollar-for-dollar return that a tax credit provides, it is nonetheless already available to donors of goods or services to a government agency, in this to the rental housing trust fund.

While this measure provides another incentive to a select group of taxpayers, it should be remembered that the tax system is not an efficient means to accomplish this goal. It should be remembered that tax credits generally are designed to mitigate the tax burden of those individuals who do not have the ability to pay their share of the tax burden. These credits are justified on the basis that low-income taxpayers should be relieved of the burden imposed by taxes that are not based on the ability of the taxpayer to pay that tax. In this case, the proposed credits amount to nothing more than a handout of state funds and cannot be justified.

Digested 2/11/08