

Linda Lingle
GOVERNOR



ORLANDO "DAN" DAVIDSON
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
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IN REPLY REFER TO

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

SENATE COMMITTEE ON WAYS AND MEANS

March 28, 2008, 9:30 a.m.
Room 211, State Capitol

In consideration of
H.B. 3059, H.D. 1, S.D. 2
RELATING TO LOW-INCOME HOUSING TAX CREDITS.

The HHFDC supports H.B. 3059, H.D. 1, S.D. 2, which reduces the period over which state low-income housing tax credits are taken from 10 years to 5 years. The HHFDC also supports the Department of Taxation's proposed Senate Draft 3, which proposes technical amendments to this bill that are intended to improve the ease of administering the LIHTCs, while retaining the provisions needed to improve their value to investors and affordable housing developers.

The low income housing tax credit (LIHTC) program promotes the development and rehabilitation of low-income rental housing by providing equity to developers of eligible affordable housing projects. The program is a powerful financing tool for affordable rental housing development, especially when leveraged with state Rental Housing Trust Funds.

The LIHTCs provide a dollar-for-dollar credit against annual income tax liability over a 10 year period. Developers typically sell the tax credits to tax payers/investors to raise equity for the development of a rental housing project. Unfortunately, the sale of State LIHTCs generates less than half of the "equity" than that of the federal LIHTC, or approximately \$0.35 to \$0.50 for every \$1.00 of state credit. By shortening the time period over which the State credits can be taken (i.e., from 10 years to 5 years), more investors may become interested in the State LIHTC. The value of the State LIHTC could be enhanced and more equity could be generated for the development of affordable rental housing.

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

testimony

From: Kevin Carney [kcarney@eahhousing.org]
Sent: Tuesday, March 25, 2008 12:58 PM
To: testimony
Cc: Kevin Carney
Subject: HB3059, HD1, SD2, Hearing March 28,2008 at 9:30am Committee on Way and Means

Dear Chair Baker, Vice Chair Tsutsui and Members of the Senate Committee on Ways and Means:

Thank you for this opportunity to submit testimony in strong support of HB3059. EAH is a non-profit housing corporation that has been developing, managing and preserving affordable rental housing since 1968. Our most powerful tool in developing and acquiring affordable rental housing is the Low Income Housing Tax Credit (LIHTC) program – Section 42 of the Internal Revenue Code.

HB3059 is a great bill and a very critical bill for our industry! It is creative and hopefully will have a direct impact on our ability to develop and preserve affordable rental properties. State LIHTC's exist in a very limited marketplace – only companies who do business in Hawaii can purchase these credits. These credits also compete with other State tax credit programs such as the Film Industry credit. The idea of shortening the take down period from 10 years to 5 years should make the credits more competitive and therefore more appealing to investors. The more appealing they are, the more value they generate and value is directly transferable into equity. The greater the equity that is derived from the sale of LIHTC's, the less debt the property has to carry. This equates to making it more feasible to develop and/or acquire low-income rental housing projects.

The average low-income rental property has seven (7) different layers of financing on it and each layer brings a different set of rules and regulations that must be adhered to. The passage of this bill will not be a cure-all for affordable rental housing. The marketplace will determine the impact on production and preservation. But, we strongly believe that this bill will increase the value of these credits so that they remain a powerful tool in our toolbox of financing options. Please give it your full support. Thank you.

Sincerely yours,
Kevin

Kevin R. Carney, (B)
Vice President, Hawaii
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3/25/2008

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Low-income housing credit

BILL NUMBER: HB 3059, SD-2

INTRODUCED BY: Senate Committee on Economic Development and Taxation

BRIEF SUMMARY: Amends HRS section 235-110.8 to provide that for a low-income housing project placed in service beginning on January 1, 2009: (1) pursuant to IRC section 42(b)(2)(B) the state housing credit shall be 100% of the applicable percentage of the qualified basis of each building located in Hawaii; and (2) pursuant to IRC section 42(f)(1) the credit period for the low-income housing credit shall be taken over a five-year period instead of the current 10-year period.

EFFECTIVE DATE: January 1, 2009; applicable to building placed in service after December 31, 2008

STAFF COMMENTS: This is an administration measure submitted by the department of business, economic development, and tourism BED-06(08). The legislature by Act 216, SLH 1988, adopted the federal low-income rental housing credit which was part of the Tax Reform Act of 1986. The credit was enacted to offset the repeal of tax shelters and other incentives to build rental housing under prior law, such as accelerated depreciation, capital gains preference, certain tax-exempt bonds, etc., and to specifically target low-income rentals.

The federal credit is a 70% present value credit for qualified new construction and rehabilitation expenditures which are not federally subsidized, and 30% for those which are federally subsidized. While the existing state credit allows for a credit of 50% of the "applicable percentage of the qualified basis" allowed under federal law taken over a period of 10 years, the proposed measure would increase the state credit to 100% and shorten the time period to five years. The justification sheet submitted with this measure states that by shortening the time period over which the low-income housing tax credits are taken would increase the present value of the credits when sold to investors. This would, the justification argues, provide a more attractive alternative financing incentive to potential developers of affordable rental housing.

While this is just one incentive to encourage developers to build affordable housing, consideration should be given to a number of strategies including the debt financing, partnerships with financial institutions who could then turn around and sell the credits, and the use of federal private activity bonds. Finally, apparently public officials still have not recognized that one of the greatest contributors to the cost of housing in Hawaii is the draconian maze of permitting and regulatory processes in order to bring those homes to market. While those regulatory guidelines are to insure the health and safety of the public, streamlining the process would accelerate the time needed to secure those permits thereby reducing the cost of financing. This savings would go a long way toward reducing the final cost of the house to the consumer. For example for one housing project on Kauai, it took nearly five years to secure the necessary permits to build 14 affordable homes.

Digested 3/27/08

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



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

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SENATE COMMITTEE ON WAYS & MEANS

TESTIMONY REGARDING HB 3059 HD 1 SD 2 RELATING TO LOW-INCOME HOUSING CREDITS

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: MARCH 28, 2008

TIME: 9:30AM

ROOM: 211

This legislation modifies Hawaii's conformity to the federal Low-Income Housing Tax Credit provided by Section 42 of the Internal Revenue Code, by reducing the number of years over which the credit may be claimed.

The House Committee on Human Services & Housing passed this measure unamended.

The House Committee on Finance amended the effective date of the measure.

The House of Representatives passed this measure on third reading.

The Senate Committee on Human Services & Public Housing amended the measure to read similar to its companion.

The Senate Committee on Economic Development & Taxation amended the measure by inserting the contents of SB 2981 SD 2.

The Department **supports** this Lingle-Aiona Administration bill; however has **concerns with the current draft** and encourages the Committee to **pass this measure with the Department's requested amendments.**

I. THE DEPARTMENT DEFERS TO THE HOUSING AGENCIES ON THE MERITS.

The Department defers to the various executive housing agencies on the merits of this bill in general. Hawaii is currently facing an affordable housing crisis. It will take meaningful initiatives in order to eliminate the shortage of affordable housing suitable for Hawaii residents.

II. THE ISSUE OF AFFORDABLE HOUSING IS IMPORTANT AND MAKING HAWAII'S CREDIT MORE ATTRACTIVE IS CRITICAL.

The Department recognizes that affordable housing is an important issue. To properly eliminate the affordable housing crisis, sufficient incentives must also be available in order to leverage public-private partnerships to construct additional housing in Hawaii. Through the use of the Low-Income Housing Tax Credit, partnerships between the state and private developers are leveraged through attractive tax incentives that subsidize investments in projects.

This legislation is a positive solution. This legislation effectively reduces the horizon of years over which the Low-Income Housing Tax Credit must be claimed. Currently, the Hawaii credit must be claimed over a 10-year period. This bill reduces that period to 5 years. The reduction in the claim period makes the credit far more attractive to investors. The reduction also makes the credit more useful to project partnerships because cash from the government is released in a much shorter time.

III. PREFERENCE FOR DEPARTMENT'S AMENDMENTS

After further consideration, the Department believes that its suggested amendments below will allow for this measure to function properly. As a state credit that otherwise conforms to federal law, it is critical that the decoupling feature contemplated by this measure be able to properly operate on its own. The amendments below are important to ensure proper implementation of the credit calculation:

SECTION 1. Section 235-110.8, Hawaii Revised Statutes, is amended to read as follows:

"**§235-110.8 Low-income housing tax credit.** (a) Section 42 (with respect to low-income housing tax credit) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section.

(b) Each taxpayer subject to the tax imposed by this chapter, who has filed [+]a[+] net income tax return for a taxable year may claim a low-income housing tax credit against the taxpayer's net income tax liability. The amount of the credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed on a timely basis. A credit under this section may be claimed whether or not the taxpayer claims a federal low-income housing tax credit pursuant to section 42 of the Internal Revenue Code.

(c) The low-income housing tax credit shall be [~~fifty~~] one hundred per cent of the applicable percentage of the qualified basis of each building located in Hawaii. The applicable percentage shall be calculated as provided in section 42(b) of the Internal Revenue Code.

- (d) For the purposes of this section, the determination of:
- (1) Qualified basis and qualified low-income building shall be made under section 42(c);
 - (2) Eligible basis shall be made under section 42(d);
 - (3) Qualified low-income housing project shall be made under section 42(g);
 - (4) Recapture of credit shall be made under section 42(j), except that the tax for the taxable year shall be increased under section 42(j)(1) only with respect to credits that were used to reduce state income taxes;
 - (5) Application of at-risk rules shall be made under section 42(k);

of the Internal Revenue Code.

(e) As provided in section 42(e), rehabilitation expenditures shall be treated as separate new building and their treatment under this section shall be the same as in section 42(e). ~~[The definitions and special rules relating to credit period in section 42(f) and the]~~ The definitions and special rules in section 42(i) shall be operative for the purposes of this section.

(f) The definitions and special rules relating to credit periods in section 42(f) shall be operative for the purposes of this section; except that section 42(f)(1) of the Internal Revenue Code shall be modified as follows: the term "credit period" means, with respect to any building, the period of five taxable years beginning with:

- (1) The taxable year in which the building is placed in service; or
- (2) At the election of the taxpayer, the succeeding taxable year;

provided that the building is a qualified low-income building as of the close of the first year of such period. The election under paragraph (2), once made, shall be irrevocable.

~~(f)~~(g) The state housing credit ceiling under section 42(h) shall be zero for the calendar year immediately following the expiration of the federal low-income housing tax credit program and for any calendar year thereafter, except for the carryover of any credit ceiling amount for certain projects in progress which, at the time of the federal expiration, meet the requirements of section 42.

~~(g)~~(h) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. For the purpose of deducting this tax credit, net income tax liability means net income tax liability reduced by all other credits allowed the taxpayer under this chapter.

A tax credit under this section which exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a tax credit under this section must

be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed.

Failure to properly and timely claim the credit shall constitute a waiver of the right to claim the credit. A taxpayer may claim a credit under this section only if the building or project is a qualified low-income housing building or a qualified low-income housing project under section 42 of the Internal Revenue Code.

Section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall be applied in claiming the credit under this section.

~~[(h)]~~ (i) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2009, and apply to buildings placed in service after December 31, 2008."

IV. REVENUE ESTIMATE.

This measure will result in the following revenue loss if amended as requested above:

- **FY2009 (loss): none**
- **FY2010 (loss): \$1.25M**
- **FY2011 (loss): \$2.50M**
- **FY2012 (loss): \$3.13M**
- **FY2013 (loss): \$3.25M**

Absent this proposal, state low-income housing tax credits for new developments issued in 2007 would total \$1.25 million in Tax Year 2009. The proposal would increase this to \$5.0 million, which would result in net decreased tax revenue of \$3.75 million for FY 2010. The net cost for additional years includes the additional credit from new investments in that particular year, along with the additional credits awarded from previous years investments.

Castle & Cooke
Hawai'i



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March 28, 2008

To: Honorable Rosalyn Baker, Chair
Senate Committee on Ways and Means

Fr: Bruce Barrett, Executive Vice President of Residential Operations
Castle & Cooke Homes Hawaii

Re: **HB 3059, HD1, SD2 - Relating to Low-Income Housing Tax Credits –
SUPPORT**

Senate Committee on Ways and Means
Friday, March 28, 2008 – 9:30 A.M., Conference Room 211

On behalf of Castle and Cooke Homes Hawaii, we would like to offer our testimony in support and our comments in regards to HB 3059, HD1, SD2.

The lack of housing inventory and supply for a wide range of housing needs plagues the industry. By providing an important financing tool, this bill supports the production of low income rental housing, which is a vital component for the overall housing supply.

The Low-Income Housing Tax Credit program is a critical tool of the State's program to produce low income affordable rental housing. Along with federal tax credits, this credit offers a significant boost in helping to finance the development of lower rent affordable rental projects.

For these reasons we ask you to support the passage of HB 3059, HD1, SD2.

Should you have any questions, feel free to contact me at 548-3746 or Carleton Ching, Vice President of Government and Community Relations, at 548-3793