SB1277

Linda Lingle
GOVERNOR

KAREN SEDDON
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO

Statement of
Karen Seddon
Hawaii Housing Finance and Development Corporation
Before the

SENATE COMMITTEE ON EDUCATION AND HOUSING
SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFFAIRS

February 13, 2009 1:30 p.m.
Room 225, State Capitol

In consideration of
S.B. 1277
RELATING TO HOUSING.

The Hawaii Housing Finance and Development Corporation (HHFDC) has the following specific comments on S.B. 1277.

Part I (Self-help housing)
The HHFDC **does not support this Part**, which creates and funds a Self-Help Housing Trust Fund out of a portion of conveyance tax revenues. Given the current fiscal difficulties, it would not be prudent to pursue enactment at this time.

Currently, HHFDC may make loans to qualified nonprofit developers for the acquisition of land for self-help housing projects. Loans for the construction of self-help housing may also be made. These interim loans would be paid off when the owner-builder obtains a permanent mortgage loan. HHFDC does not provide grants or fund pre-development costs, capacity building for nonprofit housing developers, or other services or activities.

Part II (Low-Income Housing Tax Credits)
The HHFDC **supports Part II**, which reduces the period over which state low-income housing tax credits are taken from 10 years to 5 years. However, we would prefer to amend this measure by replacing its contents with the contents of S.B. 861. S.B. 861 contains improved and clarified language prepared by the Department of Taxation. We defer to the Department on the details of these specific provisions.

The low-income housing tax credit (LIHTC) program promotes the development and rehabilitation of low-income rental housing through the use of federal and state LIHTCs. Eligible projects must either set aside 20 percent of units for tenants earning less than 50 percent of the area median income (AMI) as determined by the U.S. Department of Housing and Urban Development (HUD); or 40 percent of units for tenants earning less than 60 percent AMI. The program continues to be a needed financing tool for affordable rental housing development, especially when awarded in conjunction with state rental housing trust funds.

Currently, both the federal and state LIHTCs are generally governed by the requirements of section 42 of the Internal Revenue Code. The State of Hawaii is allotted a per capita tax credit volume cap. A dollar-for-dollar credit is given to eligible projects on a competitive basis. The annual federal LIHTC is either 9 percent (competitive tax credits) or 4 percent (non-competitive tax credits) of qualified development costs.

The annual state credit is equal to 50 percent of the federal credit allocation. The LIHTCs are taken over a ten-year period by the project owner. The credit is available only on the portion of the project that is set-aside for low-income tenants and may be kept by the owner-developer, or sold to qualified investors or partners to raise equity for the development of the project.

Because of the limited market for state credits and the current financial climate, owner-developers are having difficulty selling their state LIHTCs. Amending the period over which state LIHTCs are taken from ten years to five years would increase the present value of the credits when sold to investors, and provide a more attractive financing incentive to potential developers of affordable rental housing.

Part III (Shared appreciation equity)

The HHFDC **strongly supports this Part with requested technical amendments**. It would enable the HHFDC to more easily collect the value of shared appreciation equity and other restrictions when an affordable housing property is sold and require advance written notification of intent to foreclose on properties encumbered by such priority liens.

The sale of affordable housing properties sponsored or assisted by the HHFDC is subject to a buyback restriction and a shared appreciation equity (SAE) lien. The HHFDC has also provided deferred sales price liens to assist low or moderate income homebuyers in purchasing a first home. Upon the sale or transfer of an HHFDC-assisted home, the SAE is collected and deposited into the Dwelling Unit Revolving Fund, where it can be used to support the development of additional affordable housing projects.

Recently, the HHFDC has not been receiving sufficient prior notice of foreclosure proceedings on HHFDC-assisted properties. The lack of sufficient advance notice makes it difficult for HHFDC to prepare to bid at foreclosure sales. This measure would afford the HHFDC with notice of intent to foreclose forty-five days before commencement of the foreclosure. This notice period will allow HHFDC sufficient time to conduct our due diligence and, when, appropriate and beneficial to do so, prepare to bid at the foreclosure sale.

Additionally, because SAE or other government entity liens are priority liens (following the purchase money mortgage), the mortgagee pursuing the foreclosure must satisfy the amount due to the HHFDC before claiming the property at the auction. However, the HHFDC has had to intervene in over 50 bankruptcy and foreclosure actions and litigate to assert our rights as a priority lien holder. Passage of this bill will protect HHFDC's lien rights in the event of foreclosure, and enable us to recover funds to support the development of additional housing.

We respectfully request that the Committee adopt the following amendments:

1. On page 18, line 11, the word `"initially"` should be deleted;
2. Page 20, line 9 should be amended to read as follows: "<u>consented to, and agreed to subordinate the restrictions to the</u>"; and
3. Page 9, line 21 should be amended by deleting the semicolon.

We defer to the Department of Taxation with respect to part IV of this bill.

Thank you for the opportunity to testify.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

KURT KAWAFUCHI
DIRECTOR OF TAXATION

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SENATE COMMITTEES ON EDUCATION & HOUSING AND WATER, LAND, AGRICULTURE & HAWAIIAN AFFAIRS
TESTIMONY REGARDING SB 1277
RELATING TO HOUSING

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 13, 2009
TIME: 1:30PM
ROOM: 225

This measure, among other things, increases the conveyance tax, increases the amount deposited to the rental housing trust fund, modifies the low-income housing tax credit, and provides a mortgage interest tax credit.

The Department of Taxation (Department) is **concerns with parts** of this measure; **supports parts** of this measure; and **opposes any unbudgeted revenue loss**.

I. THE ISSUE OF AFFORDABLE HOUSING IS IMPORTANT.

The Department recognizes that affordable housing is an important issue; however affordable housing priorities and projects must be budgeted and prioritized just like every other state expenditure through the use of general funds rather than earmarks and diversions of tax revenues.

II. OPPOSED TO INCREASING THE CONVEYANCE TAX

The Department is opposed to the conveyance tax increase in this measure because ultimately the increase will merely make property prices more expensive. Taxes such as the conveyance tax will be recovered through the price the property is sold. This will not help in alleviating the already high real property prices in Hawaii.

III. OPPOSED TO THE INCREASE IN DEPOSITS TO THE RENTAL HOUSING TRUST FUND.

Though the Department and Administration have strongly supported increasing the conveyance tax deposits into the rental housing trust fund in the past, this session such an increase cannot be supported. Every dollar of general fund revenues must be protected.

The Department cannot support the tax provision in this measure because it is not factored into the budget. The Department must be cognizant of the biennium budget and financial plan. This measure has not been factored into either. Given the forecasted decrease in revenue projections, this measure would add to the budget shortfall.

IV. DEFERAL TO HHFDC ON PART III

The Department defers to the Hawaii Housing Finance & Development Corporation (HHFDC) on Part III of this measure.

V. SUPPORT FOR MODIFICATIONS TO THE LOW-INCOME HOUSING TAX CREDIT

The Department **supports the portion of the measure which enhances the low-income housing tax credit** by accelerating the credit period, which will encourage the development of more affordable housing projects. Under existing law, taxpayers may claim 50% of the aggregate federal low income housing tax credit equally over a 10-year period. This measure allows the taxpayer to claim 50% of the aggregate federal low income housing tax credit equally over a 5-year period.

The Department supports this provision because it is similar to the administration proposal and is already factored into the budget.

VI. OPPOSED TO MORTGAGE INTEREST CERTIFICATES

The intent of this measure is to provide meaningful mortgage interest relief to low- and moderate-income taxpayers that are acquiring a principal residence. The legislation establishes a Qualified Mortgage Credit Certificate Program, which, among other things, charges the Department of Taxation with the obligation to determine qualified mortgage amounts and issue a certificate for an income tax credit.

The Department opposes and objects to this method of providing relief to homebuyers that are subject to paying mortgage interest. The target demographic of this legislation is the low- and moderate-income homebuyer of Hawaii. **The Department would like to point out that this legislation is overly complicated as presented and would likely unnecessarily burden taxpayers applying for this incentive**. The complicated nature of this legislation may force these poor homebuyers to hire a tax professional who will decipher this tax law for a fee. The Department's mission is to simplify tax laws and their application for taxpayers. This bill is not simple and likely outside the grasp of the average taxpayer.

The Department also points out the real estate reality of Hawaii. Hawaii's average house prices for current acquisitions are hundreds of thousands of dollars in many places. This legislation applies only to acquisitions of principal residences and the mortgages thereon. The Department questions this legislation's intent to provide acquisition incentives for mortgage interest when low-and moderate-income taxpayers cannot pay rent—let alone a mortgage on a $600,000 home.

The Department recognizes the importance of the high cost of housing in Hawaii and the need to provide relief and incentives for the low- and moderate-income taxpayers to likewise obtain the "American Dream" of home ownership.

QUALIFIED MORTGAGE CERTIFICATE PROGRAM—The Department is not in a position to certify mortgages. First, the Department opposes having to make uncertain determinations, which is provided in this legislation. To be certified, the residence must "reasonably" be expected to be the residence within a "reasonable" amount of time. The Department opposes the terms "reasonable" as this term is subject to multiple interpretations. The Department suggests amending these terms to reflect certain dates.

AGGREGATE AMOUNT—The Department opposes that there is an aggregate amount as provided for in the proposed § 235-D. It is unreasonable to have the aggregate cap subject to legislative enactment. The legislature, theoretically, is never bound to pass any law or resolution. The Department feels this requirement may jeopardize the success of this program if an aggregate amount is subject to annual legislative control.

CARRY FORWARD—The Department finds this section overly complicated. A taxpayer should be able to carry forward a credit for the 3 years and terminate.

VII. <u>REVENUE IMPACTS</u>

This bill results in the following revenue impacts—

GENERAL FUND IMPACT

<u>Low-Income Housing Credit:</u> Annual revenue loss is estimated at $1.3 million in FY2010, $2.6 million in FY2011, $3.2 million in FY2012, $3.4 million in FY2013, $3.7 million in FY2014 and $3.9 million in FY2015.

<u>Conveyance Tax Allocation & Increase in Conveyance Tax:</u> Annual revenue gain is estimated at $4.0 million for FY2010 and after.

<u>Mortgage Credit Certificates:</u> Annual revenue loss is estimated at $4.0 million for FY2010 and after.

SPECIAL FUND IMPACT

<u>Conveyance Tax Allocation & Increase in Conveyance Tax</u>: Starting in FY 2010, Land Conservation Fund increases $4.0 million per year; Rental Housing Trust Fund increases $23.0 million per year; Natural Area Reserve Fund increases $7.0 million per year; Self-Help Housing Trust Fund (New) receives $4.0 million per year.

Conservation Council for Hawai'i

Testimony Submitted to the Senate Committee on Education and Housing
and Senate Committee on Water, Land, Agriculture and Hawaiian Affairs
Hearing: Friday, February 13, 2009
1:30 pm
Room 225

Support for SB 1277 Relating to Housing with Recommendation

Aloha. My name is Marjorie Ziegler, and I am testifying on behalf of the Conservation Council for Hawai'i and its 6,000 members.

We support SB 1277, which increases incentives for the development of affordable housing in Hawai'i. However, we do not support the proposed 5 percent reduction of conveyance tax revenue to the Natural Area Reserve.

Working Today for the Nature of Tomorrow!

Telephone/Fax 808.593.0255 • email: info@conservehi.org • web: www@conservehi.org
P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 212 • Honolulu, HI 96814

Hawai'i Affiliate of the National Wildlife Federation

The NAR Fund supports our Natural Area Reserves on ceded land, essential watersheds, endangered species and habitat, public-private conservation partnerships, and the Youth Conservation Corps. The NAR Fund leverages private and federal funding, stretching limited state funds. However, the NAR Fund is low because conveyance tax revenues have decreased in the last year.

Please do not reduce the percentage of conveyance tax that supports the NAR Fund.

Mahalo for the opportunity to testify.

The Nature Conservancy
Protecting nature. Preserving life.™

The Nature Conservancy of Hawai'i
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Testimony of The Nature Conservancy of Hawai'i
Commenting on S.B. 1277 Relating to Housing
Senate Committee on Education and Housing
Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs
February 13, 2009, 1:30PM, Room 225

The Nature Conservancy objects to Section 2 of this bill where it proposes to amend HRS §247-7 by reducing the portion of the conveyance tax paid into the Natural Area Reserve Fund from 25% to 20%.

We certainly appreciate the effort to create a funding source for very worthy self-help housing programs. However, we are concerned that as drafted the bill could have very negative impacts on the NAR Fund's conservation programs, even considering the increased conveyance tax rates on high end sales proposed in the bill. Others will certainly argue that the proposed tax rates in S.B. 1277 are excessively high. Additionally, high end sales are particularly depressed in the current real estate market and may not generate significant conveyance tax collections.

Under HRS §247-7(3), a portion of existing conveyance tax revenue has been appropriately used for forested watershed conservation via the Natural Area Reserve Fund. While the development and sale of real estate can have very positive effects on the state's economy, it also poses some significant challenges. For example, fresh water in this state is not a limitless resource that can forever be tapped to support developed real estate.

The source of fresh water is not the faucet, pipe, or even the well or stream it's drawn from. The real source is a system of healthy forested watersheds that capture rain and cloud moisture and deliver it efficiently to aquifers and surface sources for subsequent consumption in our daily lives. We now know from the Waiahole contested case that the demand for fresh water on O'ahu will exceed supply by 2020. In recent years, enormous amounts have been invested in the development and sale of real estate, and there are plans for continued investment in development and construction to help lift our economy out of the current recession. Yet, we make a comparatively tiny investment in protecting the forested watersheds that provide the most basic resource to support that development—clean fresh water.

Unfortunately, with the slumping real estate market and dramatically reduced conveyance tax collections, the forest conservation programs of the Natural Area Reserve Fund likely will suffer 60% reductions in FY2010. The partnerships that receive these funds and manage our natural resources have already stopped filling open positions, are planning to cut staff in the coming months, and have pulled back on protection efforts. (see attached)

The existing condition of conveyance tax collections coupled with further reductions in Natural Area Reserve Fund Revenues, such as proposed in S.B. 1277, may render many natural resource protection programs either inoperable or severely diminished, leaving our watersheds vulnerable to threats which do not recognize recessions. It is not only these programs and our forests that will lose, but ultimately everyone in Hawai'i whose daily lives rely on what the forests provide.

Attachments

PROGRAM	OBJECTIVE	TOTAL # OF STAFF	STAFF SUPPORTED BY STATE FUNDS	RESULTS OF ANTICIPATED 60% REDUCTION IN STATE FUNDS IN FY10
WATERSHED PARTNERSHIPS	The Hawaii Association of Watershed Partnerships (HAWP) is comprised of nine Watershed Partnerships on six islands. Watershed Partnerships are voluntary alliances of landowners and other partners working collaboratively to protect more than 1 million acres of forested watersheds for water recharge, conservation, and other ecosystem services.	67	43	• **Layoff 27 Staff** • Reduced weed/ungulate control activity • Only maintain current fences • Gains of prior years severly eroded • Loss of species, habitat and water recharge capacity • Increased exposure to fire • Decreased outreach • Increased cost to repair environmental degradation downstream and on reefs
NATURAL AREA PARTNERSHIP PROGRAM	The Natural Area Partnership Program was established in 1991 to provide state funds on a two-for-one basis with private funds for the management of private lands that are dedicated to conservation. With over 30,000 acres enrolled, this innovative program complements the protection efforts on state lands - a partnership essential for the success of conservation in Hawai`i.	28	19	• **Layoff 13 staff** • Reduce forest mangement activity by 60% • Lose investment in staff training and expertise • Increased future costs to control identified invasive species • Feral pig damage will increase significantly causing degredation to native ecosystems, rare plants and watershed • Invasive weeds will significantly displace native ecosystems • Lose ground gained by removing ungulates from newly fenced area
NATURAL AREA RESERVES SYSTEM	The Natural Area Reserves System (NARS) was established in 1970 to preserve in perpetuity Hawaii's most unique ecosystems. There are currently 19 reserves on five islands, encompassing more than 109,000 acres. The diverse areas found in the NARS range from marine and coastal environments to lava flows, tropical rainforests, and an alpine desert. The reserves also protect major watershed areas, which are vital sources of fresh water.	39	39	• **Layoff 8-13 staff** • No ability to conduct necessary archaeological/cultural surveys or design services necessary for effective management of resources within the NARS • Reduced ability to maintain existing fences and special mgmt units, control priority weeds/ungulates, or outplant rare plants • Significantly reduced ability to coordinate volunteers and outreach • Reduced support/funding for educational/outreach programs • No ability to provide consistent presence and reduced ability to accomplish management priorities at ORMP areas: Kaena Point NAR and Ahihi Kinau NAR • Reduced ability to maintain and repair infrastructure such as fences, trails, roads, boardwalks, helipads, and management shelters.
YOUTH CONSERVATION CORPS	The Youth Conservation Corps (YCC) is a hands-on summer learning experience aimed at educating Hawaii's youth on the many conservation issues that threaten Hawaii's unique environment. Students are mentored by and work alongside some of Hawaii's premiere conservation leaders. Nearly 170 local youth participated in the 2008 summer program.	8	4	• **Layoff 2 staff** • Summer program will be reduced from 120 students to 58 • Summer program leaders will remain at 24 as they are funded by federal dollars, but for half of the managers, duties will change from mentoring youth to working as an intern for 7 weeks • Natural resources will suffer from less human assistance to mitigate for ungulates, invasives and other impacts

PROGRAM	OBJECTIVE	TOTAL # OF STAFF	STAFF SUPPORTED BY STATE FUNDS	RESULTS OF ANTICIPATED 60% REDUCTION IN STATE FUNDS IN FY10
FORESTRY/ FOREST STEWARDSHIP PROGRAM	The Forest Stewardship Program (FSP), administered by the Department of Land and Natural Resources, Division of Forestry and Wildlife (DLNR-DOFAW), provides technical and financial assistance to owners of nonindustrial private forest land that are interested in conservation, restoration, and/or timber production. The Forestry Program manages 55 forest reserves comprising more than 640,000 acres, or 16% of Hawaii's land area. The program also provides financial incentives to agricultural landowners to covert fallow or open land to trees, shrubs, and forest habitat, conducts control and monitoring efforts in each county for existing and incipient invasive species, and coordinates T&E species management.	17	12	• **Layoff 4-6 staff** • Limited ability to maintain existing fences and special management units, control priority weeds, or control ungulates • Decreased ability to mitigate known threats to federally endangered species, interruption of restoration and data collection projects • No new FSP projects. Two projects in development to be placed on hold • Limited ability to continue multi-year fence construction projects • Unmitigated degredation of existing road, trail and fencing infrastructure • Possible loss of federal funds due to lack of matching, including loss of up to 2.5 FTE state funded staff supporting these projects; more positions may be lost if federal grants are lost due to lack of funding • Erosion of existing rare plant restoration/ research projects, further loss of Hawaii's natural heritage due to extinction
INVASIVE SPECIES COMMITTEES	The Invasive Species Committees (ISCs) are island-based partnerships of government agencies, NGOs, and private businesses working to protect each island from the most threatening invasive pests. The ISCs address the need for rapid response and control work on new invasive pests that have the ability to severely impact our economy, ecosystem, watersheds, human health, and quality of life. A driving objective of the ISCs is to control the most threatening pests while populations are still relatively small and it is economically feasible to control or eliminate them.	64	29	• **Layoff 19 staff** • Increased future costs to control identified invasive species (*e.g*., estimated cost impacts from delaying miconia work on Maui range from $22M-$34M) • Inability to respond to new coqui reports resulting in island-wide infestations • Inability to assist with HDOA nursery surveys to prevent spread of Little Fire Ant, nettle caterpillars, and coqui frogs
HAWAII INVASIVE SPECIES COUNCIL	The Hawaii Invasive Species Council (HISC) was established to provide policy level direction, coordination, and planning among state departments, federal agencies, and international and local initiatives for the control and eradication of harmful invasive species infestations throughout the State, and to prevent the introduction of other invasive species that may be potentially harmful.	33	33	• **Layoff 13 staff** • Cease operation of SuperSucker, and lose 5-year investment in technology/research • Reduced capacity to conduct risk assessments for new plants • Lose ballast water management data collection • Reduced ability to conduct vessel hull inspections • Reduced capacity to respond to new pest incursions • Reduced community outreach • 50% reduction in West Nile Virus sample collection (mosquito traps, dead birds, bird sera), testing and detection

CONVEYANCE TAX COLLECTIONS & TRANSFERS FOR FY 2009

Month	Total Monthly Conveyance Tax Collections to General Fund - 100%	**DLNR** S-09-342-C NARS Trf In - 25%	**DLNR** S-09-317-C Land Conservation Trf In - 10%	**HCDCH** T-09-930-B Rental Housing Trust Trf In - 30%	**TAXATION** G-00-000-C General Fund Balance Remaining - 35%
July	$2,192,465.87	$548,116.47	$219,246.59	$657,739.76	$767,363.05
August	$1,774,945.34	$443,736.34	$177,494.53	$532,483.60	$621,230.87
September	$2,514,102.90	$628,525.73	$251,410.29	$754,230.87	$879,936.01
October	$1,825,468.79	$456,367.20	$182,546.88	$547,640.64	$638,914.07
November	$1,233,090.89	$308,272.72	$123,309.09	$369,927.27	$431,581.81
December					$0.00
January					$0.00
February					$0.00
March					$0.00
April					$0.00
May					$0.00
June					$0.00
Grand Totals	$9,540,073.79	$2,385,018.46	$954,007.38	$2,862,022.14	$3,339,025.81

TOTAL CONVEYANCE TAX COLLECTIONS		
FY08	$	38,408,022
FY07	$	48,328,508
FY06	$	56,646,115
FY05	$	24,318,038
FY04	$	18,432,214

CONVEYANCE TAX COLLECTIONS & TRANSFERS FOR FY 2008

Month	Total Monthly Conveyance Tax Collections to General Fund - 100%	**DLNR** S-08-342-C NARS Trf In - 25%	**DLNR** S-08-317-C Land Conservation Trf In - 10%	**HCDCH** T-08-930-B Rental Housing Trust Trf In - 50%	**TAXATION** G-00-000-C General Fund Balance Remaining - 15%
July	$2,213,212.44	$553,303.11	$221,321.25	$1,106,606.22	$331,981.86
August	$3,025,234.70	$756,308.68	$302,523.47	$1,512,617.35	$453,785.20
September	$4,492,022.48	$1,123,005.62	$449,202.25	$2,246,011.24	$673,803.37
October	$3,573,776.52	$893,444.13	$357,377.65	$1,786,888.26	$536,066.48
November	$2,959,259.75	$739,814.94	$295,925.98	$1,479,629.88	$443,888.95
December	$3,079,131.57	$769,782.89	$307,913.16	$1,539,565.79	$461,869.73
January	$3,478,274.45	$869,568.61	$347,827.45	$1,739,137.23	$521,741.16
February	$1,871,282.33	$467,820.58	$187,128.23	$935,641.17	$280,692.35
March	$2,952,992.29	$738,248.07	$295,299.23	$1,476,496.15	$442,948.84
April	$4,051,020.17	$1,012,755.04	$405,102.02	$2,025,510.09	$607,653.02
May	$2,860,587.29	$715,146.82	$286,058.73	$1,430,293.65	$429,088.09
June	$3,851,227.53	$962,806.88	$385,122.75	$1,925,613.77	$577,684.13
Grand Totals	$38,408,021.52	$9,602,005.38	$3,840,802.17	$19,204,010.79	$5,761,203.18

TOTAL CONVEYANCE TAX COLLECTIONS	
FY07	$48,328,508
FY06	$56,646,115
FY05	$24,318,038
FY04	$18,432,214

KAMEHAMEHA SCHOOLS

TESTIMONY TO THE SENATE COMMITTEE ON EDUCATION AND HOUSING
AND THE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
By
Paul Quintiliani, Director
Endowment/Commercial Assets Division
Kamehameha Schools

TO: Hearing Date: Friday, February 13, 2009
1:30 p.m., Conference Room 225

February 12, 2009

TO: Senator Norman Sakamoto, Chair
Members of the Committee on Education and Housing
Senator Clayton Hee, Chair
Members of the Committee on Water, Land, Agriculture, and Hawaiian Affairs

Thank you for the opportunity to comment on SB No. 1277.

Kamehameha Schools respectfully supports this measure.

Kamehameha Schools broadly supports the increasing availability of affordable housing throughout Hawai'i. We believe that the housing crisis in Hawai'i is real and requires immediate action. We also believe it is critically important to implement policies that will result in the construction of new affordable units (or retention of existing supply) and not have the unintended and ironic consequence of inhibiting construction altogether.

Our overarching comment is that provisions in statute, rules and policies concerning affordable housing must be viewed collectively for their contribution to an overall effective policy that promotes actual development of affordable housing. To achieve this desired outcome, we believe that a range of tools and strategies are needed.

SB No. 1277 is positive legislation that promotes many of the tools and strategies we believe can facilitate development of more affordable housing in Hawai‘i. We commend the legislature for its forward thinking approach to providing many value-added tools to encourage and support affordable housing development.

We appreciate the opportunity to express our views on this measure.

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February 12, 2009

The Honorable Norman Sakamoto, Chair
Senate Committee on Education and Housing
The Honorable Clayton Hee, Chair
Senate Committee on Water, Land, Agriculture,
and Hawaiian Affairs
State Capitol, Room 225
Honolulu, Hawaii 96813

RE: S.B. 1277 Relating to Housing

HEARING DATE: Friday, February 13, 2009 at 1:30 pm

Aloha Chair Sakamoto and Members of the Committee on Education and Housing:

I am Craig Hirai, a member of the Subcommittee on Taxation and Finance of the Government Affairs Committee of the Hawai‘i Association of REALTORS® ("HAR"), here to testify on behalf of the HAR and its 9,600 members in Hawai‘i. HAR **strongly opposes Section 4** of S.B. 1277, Relating to Housing, which increases the Conveyance Tax on real property transfers in the State of Hawaii.

HAR believes that, while self-help housing may have value, the Conveyance Tax increase set forth in S.B. 1277 will increase the already high cost of housing and cost of living in Hawaii inasmuch as the proposed Conveyance Tax increase will apply to the conveyance of multi-family rentals, land for residential subdivisions, mixed-income and multi-use properties, commercial properties, resort properties, and agricultural lands, as well as condominium and single-family homes worth more than $1,000,000.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.

SUBJECT: INCOME, CONVEYANCE, Increase rate, disposition; low-income housing tax credit, mortgage credit certificates

BILL NUMBER: SB 1277

INTRODUCED BY: Sakamoto, Chun Oakland, Espero, Galuteria, Green, Ihara, Kidani and 9 Democrats

BRIEF SUMMARY: Amends HRS section 247-2 to propose the following conveyance tax rates for properties (eligible for a home exemption as well as all non-residential property) with a value of $1 million and over:

Rate Per $100	Property Value
$ .50	$1,000,000 but less than $2,000,000
1.00	$2,000,000 but less than $4,000,000
2.00	$4,000,000 but less than $6,000,000
3.00	$6,000,000 but less than $10,000,000
4.00	$10,000,000 and greater

Amends HRS section 247-7 to: (1) increase the amount of conveyance tax revenues earmarked to the rental housing trust fund from 30% to 45%; (2) reduce the amount of conveyance tax revenues earmarked to the natural area reserve fund from 25% to 20%; and (3) provide that 5% of conveyance tax revenues shall be earmarked to the self-help housing trust fund.

Amends HRS section 235-110.8 to provide that the low-income housing credit may be claimed equal to the amount of the federal low-income housing tax credit that the taxpayer claimed or could have claimed under IRC section 42 for the same taxable year with respect to each qualified low-income building located in Hawaii; provided that the low-income housing tax credit may be claimed with respect to the amount of federal low-income housing tax credit claimed for the first five years of the credit period for each respective qualified low-income building, as defined in IRC section 42(f)(1) that is located in Hawaii. Further stipulated that the amount of the low-income housing tax credit claimed by a taxpayer shall be computed without regard to any federal low-income housing tax credit that is carried forward from a prior taxable year.

The definitions and special rules relating to credit periods in IRC section 42(f) shall be operative for the purposes of this section; except that IRC section 42(f)(1) 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.

Adds a new part to HRS chapter 235 to allow taxpayers to claim an income tax credit in an amount equal to the product of: (1) the certificate credit rate; and (2) the interest paid or accrued by the taxpayer during the taxable year on the remaining principal of the certified indebtedness amount; provided that if the certificate credit rate exceeds 20%, the amount of credit shall not exceed $2,000. The taxpayer must purchase a single family residence in the state and have no prior interest in a residence in the three years prior to the closing mortgage and the purchase does not exceed $____ and the income of the taxpayer does not exceed $______.

The certificate credit rate specified in any mortgage credit certificate shall not be less than 10% or more than 50% and shall not exceed the amount authorized by the legislature for that year by a concurrent resolution.

Credits in excess of a taxpayer's tax liability shall be carried over to each of the three succeeding years and shall be added to the credit allowable for the succeeding tax year. Stipulates that the amount of the unused credit shall not exceed the amount by which the applicable tax limit for the tax year exceeds the sum of: (1) the credit allowable under this part for the tax year determined without regard to this section; and (2) the amounts, by reason of this section, that are carried to the taxable year and attributable to tax years before the unused credit year.

The credit shall not be applicable to any indebtedness that does not meet the requirements of this section. Delineates the period a mortgage credit certificate shall be in effect and reporting requirements of the program.

The director of taxation may adopt rules pursuant to HRS chapter 91 to carry out the purposes of this act, including rules that may require recipients of mortgage credit certificates to pay a reasonable processing fee to defray the expenses incurred in administering the program.

Appropriates an unspecified amount of general funds for each fiscal years 2010 and 2011 for the mortgage credit certificate program.

EFFECTIVE DATE: Tax years beginning after December 31, 2008

STAFF COMMENTS: The proposed measure increases the conveyance tax and increases the amount earmarked to the rental housing trust fund, reduces the earmarking to the natural area reserve fund and proposes an additional earmarking of conveyance tax revenues to the self-help housing trust fund. While the measure proposes another tap of the conveyance tax revenues, it should be noted that as with any earmarking, the legislature will be giving their stamp of approval for another “automatic funding” mechanism for the particular program - the self-help housing trust fund. It should be noted that while funds would be diverted to the fund without any legislative intervention, they will also avoid legislative scrutiny, and it will be difficult to ascertain the effectiveness of the program. It would also be difficult to ascertain whether or not the fund has too little or too much revenue.

Further, while this measure also proposes to increase the conveyance tax rates, it should be remembered that the conveyance tax is one of the least dependable sources upon which to rely for funding with collections rising and falling with the fortunes of the real estate market. Any amount collected under this tax will depend on activity in the real estate market. As the housing market slows down, revenues may not be sufficient to meet the expectations of the fund. If the additional revenues are not sufficient or another “important” program needs funding, will the conveyance tax be increased to generate even more revenue?

This increase appears to target more expensive properties being bought and sold perhaps in the belief it will target wealthy prospective homeowners because the increase initiates at the $1 million level. However, it should be remembered that this schedule also applies to non-residential properties covering everything from a mom and pop supermarket in Waialua to the Ala Moana Shopping Center to the car repair shop in Kaka'ako to the farm lot in Waimanalo all of which probably are valued at greater than $1 million. Thus, this proposal makes it even more expensive to do business in Hawaii. At a time when other committees of the legislature are hearing legislation to spur economic activity, this measure does just the opposite. Even the existing schedule of conveyance tax rates that apply to residential property that will not be owner-occupied misses the boat in that it imposes the highest conveyance tax rate on properties with values greater that $1 million. While lawmakers struggle to provide affordable rental housing, they are imposing the highest conveyance tax rate on properties that could provide that affordable rental housing as most apartment complexes are valued at greater than $1 million or raw land suitable for developing an affordable rental housing development would probably be hit with the highest rate. Thus, this increase demonstrates the lack of thought given to this issue.

If the legislature deems that housing programs be such a high priority, then it should maintain the accountability for these funds by appropriating the funds as it does with other programs. Earmarking revenues merely absolves elected officials from setting priorities. When the legislature dipped into housing special funds to maintain funding for programs like education and social services, that was poor tax policy. So for example, because the housing market slowed last year, the rental housing trust fund realized only $21 million in FY 2008 as compared to the $23 million it received in the prior year. If asked, housing officials would probably say that is not enough to carry out their mandate, thus the program is underfunded. If the money were appropriated, lawmakers could then evaluate the real or actual needs of this particular program.

Before earmarking any more funds for affordable rental housing, lawmakers should assess the success of the affordable rental housing program. Further, they should take into consideration the fact that during the past decade the homes revolving fund was raided to shore up general fund expenditures and that if the concern is affordable housing in Hawaii, then the homes revolving fund should be made whole again with an appropriation of general funds.

This measure also proposes to alter the application of the low-income housing tax credit under IRC section 42. While the measure proposes to reduce the time period from 10 years to five years within which to claim the credit for Hawaii income tax purposes, the measure contains unclear language relating to the claiming of the amount of the low-income housing credit "only with respect to the amount of federal low-income housing tax credit claimed for the first five years of the credit period."

This measure proposes to establish a mortgage credit certificate program to assist low and moderate-income taxpayers with purchasing a principal residence by allowing such taxpayers to claim an income tax credit of 20% or $2,000 of their annual mortgage interest payment. While the specific details to apply for and receive a state mortgage certificate are not delineated, it is questionable how taxpayers are to obtain a state mortgage certificate.

On the federal level, the Mortgage Credit Certificate (MCC) reduces the amount of federal income tax the borrower must pay, which in turn, frees up income to qualify for a mortgage. Home buyers must not exceed household income and home purchase price limits set according to federal tax law. The MCC will allow the borrower to take a tax credit equal to 25% of the annual interest paid on the mortgage loan for a single family conventional residence. The remainder - 75% of the mortgage interest - will continue to qualify as an itemized tax deduction. The specific dollar amount of the tax credit depends on how much interest the borrower pays on a mortgage loan. The amount of the credit cannot be more than their annual federal income tax liability after all other credits and deductions have been taken into account. In no case can the tax credit exceed $2,000 per year.

To receive an immediate benefit from the MCC, the borrower must file a revised W-4 withholding form with their employer, which should reduce their yearly tax contribution and increase the borrower's take-home pay, or take the benefit once a year through the federal income tax return when it is filed.

It should be remembered that the taxpayer is able to take the mortgage interest deduction for federal and state income tax purposes. Thus, if this measure is enacted, purchasers of their principal residence will enjoy a double tax benefit. Unlike the federal credit, there is no limitation on taking both the credit based on the percentage of the interest and the mortgage interest deduction and, thus, the double tax benefit.

Although the federal stimulus package also contains a first-time home-buyer tax credit of $8,000 for low-income families as a means to stimulate the housing market, the state is hardly in a financial position to offer either the mortgage credit certificate program or a similar stimulus tax credit.

If the intent of this measure is to help families and individuals struggling to purchase their first home, this tax credit program is not the answer. The rise in the cost of housing is directly related to the supply or inventory of affordable housing. Until the inventory is sufficient to meet the demand, the demand will dictate the cost of that housing. With the cost of money at historic lows, persons who would otherwise be shut out of the market are now bidding on what limited inventory there is, driving the cost higher and higher. Providing a tax credit to basically subsidize the interest paid on a mortgage will merely exacerbate the situation as taxpayers will figure the benefit of the credit into what they can afford for the monthly mortgage payment allowing them to bid even higher for what inventory there is. Thus, this subsidy makes the problem worse rather than better.

The proposed tax credit would be administered by the department of taxation and it is questionable whether the department of taxation is the appropriate agency to assist in the purchase of a principal residence. It would appear that the housing finance development corporation (HHFDC) would be the appropriate state agency who, in turn, would be able to provide assistance in the purchase of a residence through the "Hula Mae" program.

Digested 2/13/09