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

HOUSE COMMITTEE ON HOUSING

March 18, 2009 9:30 a.m.
Room 325, State Capitol

In consideration of
S.B. 1118, S.D. 2
RELATING TO LOW-INCOME HOUSING.

The HHFDC **supports** S.B. 1118, S.D. 2, which reduces the period over which state low-income housing tax credits (LIHTC) are taken from 10 years to 5 years. The 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.

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.

The HHFDC would prefer, however, the language provided in H.B. 1043, H.D. 1 which also reduces the state LIHTC period to 5 years <u>and</u> allows a qualified low-income building that has been awarded a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, to be eligible for the state LIHTC (see Section 5 of H.B. 1043, H.D. 1). We respectfully request that the Committee consider replacing this Draft with the text of H.B. 1043, H.D. 1.

Thank you for the opportunity to testify.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

HOUSE COMMITTEE ON HOUSING

TESTIMONY REGARDING SB 1118 SD 2
RELATING TO LOW-INCOME HOUSING

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: MARCH 18, 2009
TIME: 9:30AM
ROOM: 325

This legislation amends the low income housing tax credit provisions to accelerate the low-income housing tax credit by applying a five-year (rather than a ten-year) credit schedule.

The Department **supports** this measure as it 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.

The Department recommends that a technical clarification be made to § 235-110.8(c), HRS, to clarify that taxpayers may claim Hawaii low-income housing credit in an amount equal to the federal low-income housing credit that may be claimed for the first five years of the ten-year federal credit period (not to be confused with the adjusted five year credit period defined in § 235-110.8(f), as amended by this measure).[1] Without this technical clarification, taxpayers may mistakenly

---

1 §235-110.8(c) should be amended to read as follows (amendments noted in bold):

c) The amount of the low-income housing tax credit that may be claimed by a taxpayer as provided in subsection (b) shall be [~~fifty 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.~~] equal to the amount of the federal low-income housing tax credit that the taxpayer claimed or could have claimed pursuant to section 42 of the Internal Revenue Code for the same taxable year with respect to each qualified low-income believe that the federal low-income housing tax credit is first recomputed over a 5-year credit period, and then the provisions of §235-110.8(b) are applied, which would effectively result in doubling the cost of the credit to Hawaii (i.e., result in paying 100% of the aggregate federal credit).

Notwithstanding the above, it should be noted that the American Recovery and Reinvestment Act of 2009 (the "Federal Stimulus Bill") allows states to elect to receive grants instead of tax credits to finance low-income housing for 2009 (the grants reduce the amount of the state credit allocation). Therefore, the attractiveness of accelerating Hawaii's low-income housing tax credit (as a means of encouraging affordable housing for at least 2009) is somewhat dependent on the Housing and Finance Development Corporation's decision regarding the grant election.

REVENUE IMPACT: If the proposal takes effect upon its approval, annual revenue loss is estimated at:

Revenue Loss		
FY 2011	$	1,275,000
FY 2012	$	2,550,000
FY 2013	$	3,187,500
FY 2014	$	3,442,500
FY 2015	$	3,697,500

---

building located in Hawaii; provided that, for purposes of subsection (b), the taxpayer may claim a low-income housing tax credit only with respect to the amount of federal low-income housing tax credit claimed for the first five years of the credit period, as defined in section 42(f)(1) of the Internal Revenue Code **(without regard to section 235-110.8(f))**, for each respective qualified low-income building that is located in Hawaii; provided further 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.

OFFICE OF HAWAIIAN AFFAIRS
Legislative Testimony

SB 1118, SD 2 Relating to Low-Income Housing
House Committee On Housing

March 18, 2009 9:30 a.m. Room 325

The Office of Hawaiian Affairs **supports** the purpose and intent of SB 1118, SD 2.

The growing affordable housing problem is one of the most critical issues faced by our communities, especially our Native Hawaiian communities. This issue seems to have many of our families struggling to find adequate housing and to make ends meet.

OHA recognizes housing is the highest cost item for our families and more needs to be done to address the affordable housing issue or our families will continue to move down the economic and social ladder.

Additional incentives for the development of affordable housing is definitely an opportunity we need to consider to get affordable rentals and affordable for sale units to our residents. Government's responsibility is to look at the viability of many different types of incentives to provide to developers of affordable units.

OHA also advocates a commitment to reestablishing the relationship between the art of building and the making of community, through citizen-based participatory planning and design. Therefore, the resources obtained to devote full time attention to the process of developing partners to do affordable rentals and for sale units timely need to include the related communities.

Mahalo nui loa for the opportunity to provide this testimony.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Low-income housing credit

BILL NUMBER: SB 1118, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

BRIEF SUMMARY: Amends HRS section 235-110.8 to provide that the low-income housing tax credit shall be equal to the amount of the federal low-income housing tax credit that the taxpayer claimed or could have claimed pursuant to IRC section 42 with respect to each qualified low-income building located in Hawaii. Stipulates 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 the credit period in section 42(f)(1) of the Internal Revenue Code shall be a five-year period instead of a 10-year period for Hawaii income tax purposes.

This measure shall be applicable to buildings placed in service after December 31, 2009.

EFFECTIVE DATE: January 1, 2110

STAFF COMMENTS: This is an administration measure submitted by the department of business, economic development and tourism BED-02 (09). The legislature by Act 216, SLH 1988, adopted the federal low-income 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 shorten the time period to five years.

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.

It should be noted that Congress has provided under the American Recovery and Reinvestment Act (ARRA) that states may elect to substitute a portion of their low-income housing credit allocation for 2009 grants. States would receive a grant equal to up to 85% of 40% of the state's low-income housing tax credit allocation in lieu of the low-income housing tax credits they would have received. Congress had contemplated, as part of the stimulus package, an acceleration of the low-income tax credit to a five-year period as this measure proposes for the state's low-income housing tax credits, but in the end the monetization of credit was adopted because the current market has no appetite for the credits. As part of the ARRA, Congress added $4 billion in additional stimulus funds for public and Indian housing to fill the "gap" in this market.

Finally, it should be noted that while it has been difficult to sell the state tax credits because of the freeze in the credit markets, the state's low-income housing tax credits are also being by-passed because they must now compete with more generous credits such as the credit for investment in qualified high technology businesses. Thus, the incentive for affordable housing is being thwarted by those other generous credits.

Digested 3/17/09

March 16, 2009

Representative Rida Cabanilla, Chair
House Committee on Housing
State Capitol, Room 442
Honolulu, Hawaii 96813

Subject: SB1118 SD2 Hearing March 18, 2009, 9:00AM; Testimony in Support

Dear Chair Cabanilla and Members of the House Committee on Housing:

EAH Housing strongly supports SB1118 SD2, the shortening of the Low Income Housing Tax Credit (LIHTC) return period from 10 years to 5 years. EAH Housing is a non-profit public benefit corporation dedicated to developing, managing, promoting and preserving affordable rental housing. We depend on a viable market for the sale of LIHTCs in the financing of the development of our affordable rental housing projects.

Reducing the return period from 10 years to 5 years will make the LIHTC more competitive with Act 221 tax credits and hopefully more attractive to potential tax credit investors. However, just reducing the return period does not place the LIHTC on equal ground with Act 221 tax credits which is what we would like to see.

In addition to shortening the return period to 5 years please also consider an enhanced return in year one similar to Act 221 credits which we believe are equal to returns of 35% in year one, 20% in year two and 15% in years 3, 4 and 5.

Thank you for this opportunity to submit our thoughts.

Sincerely,

Kevin R. Carney, (PB)
Vice President, Hawaii

Creating community by developing, managing and promoting quality affordable housing since 1968.

Hawaii Regional Office
841 Bishop Street, Suite 2208
Honolulu, Hawaii 96813
808 / 523-8826 ▪ Fax 808 / 523-8827

Main Office
2169 East Francisco Blvd., Suite B
San Rafael, California 94901-5531
415 / 258-1800 ▪ Fax 415 / 453-4927

Hawai'i Association of REALTORS®
www.hawaiirealtors.com

The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaiirealtors.com

March 17, 2009

Representative Rida Cabanilla, Chair
House Committee on Housing
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: S.B. 1118, S.D.2, Relating to Low-Income Housing

HEARING DATE: Wednesday, March 18, 2009 at 9:30 a.m.

Aloha Chair Cabanilla and Members of the Committee:

I am Craig Hirai, a member of the Subcommittee on Taxation and Finance of the Government Affairs Committee of the Hawaiʻi Association of REALTORS® ("HAR"), here to testify on behalf of the HAR and its 9,600 members in Hawaiʻi. HAR **supports** S.B. 1118, S.D.2, Relating to Low-Income Housing, which makes state low-income housing tax credits more valuable by shortening the period over which the credits can be taken from 10 years to 5 years.

HAR has historically supported mechanisms to help increase the supply of low and moderate income affordable housing such as the Rental Housing Trust Fund Program which can help integrate the use of mixed-income and mixed-use projects, special purpose revenue bonds, low-interest loans, block grants, low-income housing tax credit programs and deferred loan programs to provide rental housing opportunities.

Amending the period over which state low-income housing tax credits are taken from 10 years to 5 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.

HAR would also note that Sections 1602 and 1404 of the American Recovery and Reinvestment Tax Act of 2009 give state housing credit agencies such as the Hawaii Housing Finance and Development Corporation (HHFDC) an election to substitute grants from the federal government for low-income housing projects in lieu of a low-income housing credit allocation for 2009.

As passed by the House, H.B. 1043, H.D.1, Relating to Low-Income Housing Tax Credits, allows for the use of the State Low-Income Housing Tax Credit under HRS §235-110.8 if the HHFDC should, as is likely, make such an election, and it is therefore a more up-to-date vehicle than S.B. 1118, S.D. 2.

Under normal circumstances, HAR would urge this Committee to substitute the contents of H.B. 1043, H.D.1, for the contents of S.B. 1118, S.D. 2. However, these are not normal times.

Hawai'i Association of REALTORS®
www.hawaiirealtors.com

The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaiirealtors.com

HAR has concerns that because H.B. 1043, H.D.1, will result in additional revenue losses to the State during the next biennium, it may not pass, and that even if it does pass it might be difficult for a qualified low-income building to sell State Low-Income Housing Credits at a reasonable price when it has received a subaward from the HHFDC and has no Federal Low-Income Housing Tax Credits to sell.

HAR therefore submits for your consideration the attached Proposed H.D.1. The intent of the Proposed H.D.1 is to give owners of qualified low-income buildings an election to "monetize" the State Low-Income Housing in a manner similar to what the federal government has done with subawards under Sections 1602 and 1404 of the American Recovery and Reinvestment Tax Act of 2009. Like the federal election, this election would be in lieu of receiving the current State Low-Income Housing Tax Credit under HRS §235-110.8.

Because the State cannot afford to fund an up-front award like the federal government, and because the State cannot generally appropriate funds for a period as long as the 10-year credit period for the federal and Hawaii Low-Income Housing Tax Credits, the Proposed H.D.1 uses taxable general obligation bond proceeds in an amount equal to an unspecified percentage of the present value of the annual State Low-Income Housing Tax Credits a qualified low-income building would currently receive under HRS §235-110.8 discounted at the rate of interest the State pays on the taxable general obligation bonds.

From an economic standpoint, HAR would argue that, if elected by an owner of a qualified low-income building, the Proposed H.D.1 (with the unspecified percentage properly filled in after consultation with the HHFDC) should not result in any net revenue loss to the State over the current 10-year credit period under HRS §235-110.8. This could help both the State and the property owner by setting a floor for a qualified low-income building's State Low-Income Housing Tax Credits, thus making it unnecessary to sell credits at an unreasonable discount.

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.

Attachment

S.B. NO. 1118

PROPOSED H.D. 1

A BILL FOR AN ACT

RELATING TO LOW-INCOME HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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 the low-income housing credit) of the Internal Revenue Code shall be operative for [~~the~~] purposes of this chapter as provided in this section. A qualified low-income building that has been awarded a subaward under section 1602 of the American Recovery and Reinvestment Tax Act of 2009 shall also be eligible for the credit 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 amount of the low-income housing tax credit that may be claimed by a taxpayer as provided in subsection (b) shall be fifty 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 definitions and special rules in section 42(i) shall be operative for the purposes of this section.

(f) 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) 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) In lieu of the credit awarded under this section to a qualified low-income building that has been awarded federal credits which are subject to the state housing credit ceiling under section 42(h)(3)(C) of the Internal Revenue Code or a subaward under section 1602 of the American Recovery and Reinvestment Tax Act of 2009, the owner of the qualified low-income building may make a request to the Hawaii housing finance and development corporation for a loan under section 201H- . If the owner elects to receive the loan pursuant to section 201H- , the qualified low-income building shall not be eligible for 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. Chapter 201H, Hawaii Revised Statutes, is amended to read as follows:

"**§201H- Low-income housing tax credit loan.** (a) Pursuant to section 235-110.8(h), the corporation may provide a no interest low-income housing tax credit loan to an owner of a qualified low-income building that has been awarded federal credits which are subject to the state housing credit ceiling under section 42(h)(3)(C) of the Internal Revenue Code or a subaward under section 1602 of the American Recovery and Reinvestment Tax Act of 2009. The loan shall be in an amount equal to   percent of the cash value of the amount of the low-income housing credit determined under section 235-110.8 for each taxable year in the ten year credit period discounted to present day value and capitalized at the rate of interest on the taxable general obligation bonds used to fund such loan.

(b) A qualified low-income building that is provided a low-income housing tax credit loan under this section shall not be eligible for the credit under section 235-110.8.

(c) The corporation shall impose conditions or restrictions on the low-income housing tax credit loan including:

(1) A requirement providing for acceleration and repayment, on any no interest loan under this section so as to assure that the building with respect to which such loan is made remains a qualified low-income building under section 42 of the Internal Revenue Code or section 1602 of the American Recovery and Reinvestment Tax Act of 2009. Any such repayment shall be payable to the housing finance revolving fund;

(2) The same limitations on rent, income, and use restrictions on such buildings as an allocation of housing credit dollar amount allocated under section 42 of the Internal Revenue Code; and

(3) The payment of reasonable fees for the corporation to perform or cause to be performed asset management functions to ensure compliance with section 42 of the Internal Revenue Code and the long-term viability of buildings funded by any no interest loan under this section.

(d) The corporation shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code or section 1602 of the American Recovery and Reinvestment Tax Act of 2009, and the long-term viability of buildings funded by a no interest loan under this section.

(e) The corporation may collect reasonable fees from the owner of a qualified low-income building to cover expenses associated with the performance of its duties under this section and may retain an agent or other private contractor to satisfy the requirements of this section.

(f) If the owner is not in default, the corporation shall contribute the no interest loan to the owner of the qualified low-income building after thirty years.

SECTION 3. The director of finance is authorized to issue general obligation bonds in the sum of $, or so much thereof as may be necessary and the same sum or so much thereof as may be necessary is appropriated for fiscal year 2009-2010 for low-income housing tax credit loans made pursuant to section 201H-___.

SECTION 4. The appropriation made for the low-income housing tax credit loans authorized in section 2 of this Act shall not lapse at the end of the fiscal year for which the appropriation is made; provided that all moneys from the appropriation unencumbered as of June 30, 2011, shall lapse as of that date.

SECTION 5. The sum appropriated may be expended by the Hawaii housing finance and development corporation for the purpose of making low-income housing tax credit loans.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on January 1, 2010, and apply to buildings placed in service after December 31, 2009.