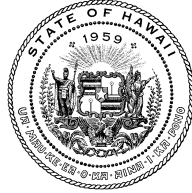


SB184

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

SENATE COMMITTEE ON EDUCATION & HOUSING

TESTIMONY REGARDING SB 184 RELATING TO TAXATION

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

DATE: FEBRUARY 9, 2009

TIME: 1:15PM

ROOM: 225

This legislation amends the low income housing tax credit provisions to provide for the credit to be taken over a five-year period and recalculates Hawaii's low income housing tax credit so that it is effectively double the amount of the existing Hawaii low income housing credit (in the aggregate).

While the Department **supports the intent** of encouraging the construction of affordable housing, we **OPPOSE** this measure due to budgetary constraints, as well as due to the increased administrative burden that may be imposed by the bill. **The Department prefers SB 861.**

Under current law, §235-110.8, HRS, allows an eligible taxpayer to claim 50% of the federal low income housing credit over a period of ten years. The federal low-income housing tax credit is claimed over ten years. §42 of the Internal Revenue Code (the "Code"), which Hawaii conforms to, allows eligible taxpayers to obtain a credit equal to the present value of 70% of the qualified basis of new low income housing buildings that are not federally subsidized. On a monthly basis, the Internal Revenue Service publishes the "applicable percentage" that when applied to the qualified basis of a qualified building, results in the annual credit amount available for each of the first ten years after the project is placed in service that, in the aggregate, equals 70% of the qualified basis of the low income housing project. The IRS bases its applicable percentage calculation on §42(b) of the Code, which does not reference the credit period. Rather, §42(b)(1)(B) states that "[t]he percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit . . . which have a present value equal to . . . 70% of the qualified basis of a new building."

This measure would place additional administrative burdens, caused by the complexity of the calculation, on whichever State agency would be required to recalculate the applicable percentage. Moreover, this measure is costly as it allows taxpayers to receive, in the aggregate, 100% of the federal credit (rather than 50% of the federal credit, as under existing law) over five years.

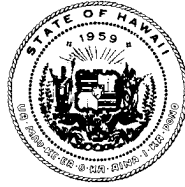
Department of Taxation Testimony

SB 184

February 9, 2009

Page 2 of 2

The revenue loss for this measure is estimated to be as follows: \$1.3 million in FY 2011, \$2.6 million in FY 2012, \$3.2 million in FY 2013, and \$3.4 million in FY 2014, and \$3.6 million in FY 2015.



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

February 9, 2009 1:15 p.m.
Room 225, State Capitol

In consideration of
S.B. 184
RELATING TO TAX CREDITS.

The Hawaii Housing Finance and Development Corporation (HHFDC) **supports S.B. 184** 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, a copy of which is attached for the Committee's convenience. Although S.B. 184 and S.B. 861 are similar, 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.

Thank you for the opportunity to testify.

JAN 26 2009

A BILL FOR AN ACT

RELATING TO LOW-INCOME HOUSING TAX CREDITS.

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

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

3 "§235-110.8 Low-income housing tax credit. (a) Except
4 for Section 42(b) of the Internal Revenue Code, which shall not
5 be operative for purposes of this chapter, Section 42 (with
6 respect to the low-income housing credit) of the Internal
7 Revenue Code shall be operative for [~~the~~] purposes of this
8 chapter as provided in this section.

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

S.B. NO. 861

1 (c) The amount of the low-income housing tax credit that
2 may be claimed by a taxpayer as provided in subsection (b) shall
3 be [fifty per cent of the applicable percentage of the qualified
4 basis of each building located in Hawaii. The applicable
5 percentage shall be calculated as provided in section 42(b) of
6 the Internal Revenue Code.] equal to the amount of the federal
7 low-income housing tax credit that the taxpayer claimed or could
8 have claimed pursuant to Section 42 of the Internal Revenue Code
9 for the same taxable year with respect to each qualified low-
10 income building located in Hawaii; provided that, for purposes
11 of subsection (b), the taxpayer may claim a low-income housing
12 tax credit only with respect to the amount of federal low-income
13 housing tax credit claimed for the first five years of the
14 credit period for each respective qualified low-income building,
15 as defined in Section 42(f)(1) of the Internal Revenue Code that
16 is located in Hawaii; and, further provided that the amount of
17 the low-income housing tax credit claimed by a taxpayer shall be
18 computed without regard to any federal low-income housing tax
19 credit that is carried forward from a prior taxable year.

20 (d) For the purposes of this section, the determination
21 of:

S.B. NO. 861

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

12 of the Internal Revenue Code.

13 (e) As provided in section 42(e), rehabilitation

14 expenditures shall be treated as separate new building and their

15 treatment under this section shall be the same as in section

16 42(e). [~~The definitions and special rules relating to credit~~

17 ~~period in section 42(f) and the]~~ The definitions and special

18 rules in section 42(i) shall be operative for the purposes of

19 this section.

20 (f) The definitions and special rules relating to credit

21 periods in section 42(f) shall be operative for the purposes of

22 this section; except that section 42(f)(1) of the Internal

S.B. NO. 861

1 Revenue Code shall be modified as follows: the term "credit
2 period" means, with respect to any building, the period of five
3 taxable years beginning with:

4 (1) The taxable year in which the building is placed in
5 service; or

6 (2) At the election of the taxpayer, the succeeding
7 taxable year;

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

11 ~~[(f)]~~ (g) The state housing credit ceiling under section
12 42(h) shall be zero for the calendar year immediately following
13 the expiration of the federal low-income housing tax credit
14 program and for any calendar year thereafter, except for the
15 carryover of any credit ceiling amount for certain projects in
16 progress which, at the time of the federal expiration, meet the
17 requirements of section 42.

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

1 A tax credit under this section which exceeds the
2 taxpayer's income tax liability may be used as a credit against
3 the taxpayer's income tax liability in subsequent years until
4 exhausted. All claims for a tax credit under this section must
5 be filed on or before the end of the twelfth month following the
6 close of the taxable year for which the credit may be claimed.
7 Failure to properly and timely claim the credit shall constitute
8 a waiver of the right to claim the credit. A taxpayer may claim
9 a credit under this section only if the building or project is a
10 qualified low-income housing building or a qualified low-income
11 housing project under section 42 of the Internal Revenue Code.

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

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

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

19

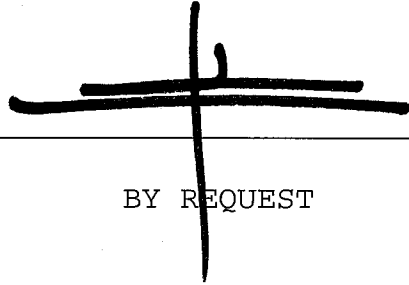
20

S.B. NO. 861

1 SECTION 3. This Act shall take effect on January 1, 2010,
2 and apply to buildings placed in service after December 31,
3 2009.

4
5
6

INTRODUCED BY: _____

A large, bold, handwritten signature in black ink, consisting of a vertical line and a horizontal line crossing at the top, with a small loop at the end of the horizontal line.

BY REQUEST

Report Title:

Low-Income Housing Tax Credits

Description:

Makes state low-income housing tax credits more valuable by shortening the period over which the credits can be taken from ten years to five years.

SB 861

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development and Tourism

TITLE: A BILL FOR AN ACT RELATING TO LOW-INCOME HOUSING TAX CREDITS.

PURPOSE: To make state low-income housing tax credits more valuable by shortening the period over which the credits can be taken from ten years to five years.

MEANS: Amend section 235-110.8, Hawaii Revised Statutes.

JUSTIFICATION: 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 powerful 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, currently \$2,500,000 annually. 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. The federal LIHTCs are generally worth up to 95 percent of their face value when sold. However, because of the limited market for state credits, owner-developers are getting approximately 35 cents on the dollar for the state LIHTCs. Changes to the state LIHTC could improve their value to finance more affordable rental housing units.

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. This measure directly supports DBEDT's strategic objective to create workforce housing units to support a skilled labor force in Hawaii.

Impact on the public: Will provide more incentives for the development of affordable rental housing projects.

Impact on the department and other agencies:
None.

GENERAL FUND:	FY 2010-2011:	\$1,250,000
	FY 2011-2012:	\$2,500,000
	FY 2012-2013:	\$3,125,000
	FY 2013-2014:	\$3,250,000
	FY 2014-2015:	\$3,375,000

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED 160.

OTHER AFFECTED
AGENCIES:

TAX

EFFECTIVE DATE: January 1, 2010.

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 184; SB 1161 (Similar)

INTRODUCED BY: SB 184 by Chun Oakland and 5 Democrats; SB 1161 by Sakamoto

BRIEF SUMMARY: SB 184 amends HRS section 235-110.8 to provide that for a low-income housing project placed in service beginning on January 1, 2010: (1) pursuant to IRC section 42(b)(2)(B) the credit period for the low-income housing credit shall be taken over a five-year period instead of the current 10-year period; (2) 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.

Also provides that for a low-income housing project placed in service beginning on January 1, 2010 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.

SB 1161 provides that for a low-income housing project placed in service beginning on January 1, 2009 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: SB 184 - Tax years beginning after December 31, 2008; SB 1161 - January 10, 2020; applicable to tax years beginning after December 31, 2009

STAFF COMMENTS: 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 measures would increase the state credit to 100% and 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 is currently considering 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 credit. There is also discussion of including \$5 billion in additional stimulus funds for affordable housing to fill the "gap" in this market along more stringent recapture of the low-income housing tax credit to insure that these projects remain affordable.

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 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 2/6/09



SB 184 Relating to Tax Credits
Senate Committee on Education and Housing

February 9, 2009
225

1:15 pm

Room

The Office of Hawaiian Affairs **supports** the purpose and intent of SB 184.

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 and the reduction to the period over which state low-income housing tax credits are taken from 10 years to 5 years may provide additional incentive.

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.



KAMEHAMEHA SCHOOLS

February 6, 2009

Testimony to the Senate Committee on Education and Housing

By: Michael G. Dang, Director
Endowment / Planning & Development

Hearing Date: Monday, February 9, 2009
1:15 p.m. – Conference Room 225

To: Senator Norman Sakamoto, Chair
Senator Michelle Kidani, Vice Chair
Members of the Committee

Re: SB 184: Relating to Tax Credits.

Kamehameha Schools **supports the purpose and intent of this bill.** We support policies that encourage and support the actual building of more housing for Hawaii's people.

Thank you for the opportunity to testify on this legislation.

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February 7, 2009

The Honorable Norman Sakamoto, Chair
Senate Committee on Education and Housing
State Capitol, Room 225
Honolulu, Hawaii 96813

RE: S.B. 184 Relating to Tax Credits

HEARING DATE: Monday, February 9, 2009 at 1:15 p.m.

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 **supports S.B. 184** which reduces the period over which state low-income housing tax credits are 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.

Mahalo for the opportunity to testify.



Housing Hawaii

Advocating Creating Maintaining Affordable Housing

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Takahashi, Architects
Hawaii

Director – Kirk

Caldwell, City and
County of Honolulu

Director – Kamaile

Sombelon, Lokahi
Pacific

February 9, 2009

The Honorable Norman Sakamoto, Chair
Senate Committee on Education and Housing
Hawaii State Capitol, Room 230
Honolulu, HI 96813

Dear Chair Sakamoto and Members:

RE: SB 184, RELATING TO TAX CREDITS

I am Nani Medeiros, Executive Director of Housing Hawaii, testifying in support of Senate Bill 184, Relating to Tax Credits. This bill modifies current provisions of the state low income housing tax credit.

Housing Hawaii **supports the intent** of this measure. Thank you for the opportunity to comment.

Nani Medeiros
Executive Director

Executive Director
Nani Medeiros

Housing Hawaii, 841 Bishop Street, Suite 2208, Honolulu, HI 96813

Phone: 808-469-7774

Email: housinghawaii@hawaii.rr.com

www.housinghawaii.org