

Testimony of the Honorable Neil Abercrombie
To The

Hawaii State House of Representatives
Committee on Housing

Rep. Rida Cabanilla, Chair
Rep. Pono Chong, Vice Chair

LATE TESTIMONY

March 17, 2010 at 9:00 am
Conference Room 325

Regarding SB 2593, SB 2594 & SB 2595

Chair Cabinilla and Vice Chair Chong, thank you for the opportunity to testify before the Housing Committee. I am here to express my support for SB 2593, SB 2594 and SB 2595 which generally curtail the General Excise Tax (GET) exemption for certain housing projects.

These bills (1) require the State to periodically review the eligibility of housing projects for the GET exemption; (2) require housing projects with a GET exemption to meet certain residency requirements; and (3) set income and residency restrictions on housing projects seeking a GET exemption.

In search of the least painful way to balance the State's budget for the coming fiscal year, the Legislature has resurfaced a proposal that is long overdue. The bills mentioned above could help the State to bring in needed revenues from large mainland housing development firms doing business in Hawaii.

In 1996, I co-wrote and passed legislation in the House Armed Services Committee that created military public-private housing partnerships. I pursued this public-private proposal, and subsequent projects in Hawaii, because I believed it was

the fastest way to improve the quality of life for military families in Hawaii. And, as an additional benefit, these projects have employed local contractors, alleviated the strain on Oahu's rental market, and provided a model for energy efficient communities in Hawaii.

It was 2003 when the military began awarding the contracts for three 50-year public-private housing partnerships on Oahu to include the Navy & Marine Corps, the Army, and the Air Force. I was concerned then, as I am today, that the companies awarded these billion dollar contracts pay their fair share of GET.

These large companies are now a part of Hawaii's economy but not fully required to participate in it. While their subcontractors are paying GET on every penny of work they perform, the general contractor does not. Essentially, the 4.6% GET exemption gives these companies an advantage over large - and small - Hawaii firms competing for business in the region. When Hawaii contractors bid on a project in the Pacific, the military housing companies can underbid them by the 4.6% they are making on these multi-billion dollar projects.

If you look over the H-1 viaduct as you drive from Honolulu to the airport, you will see the absolutely fantastic communities that these public-private housing partnerships have created for military families. I am here today to say that our Hawaii families deserve the same high quality, energy efficient, safe neighborhoods that our military now enjoys. To see that vision into reality, there must be a level playing field for all and a contribution from all who benefit in our community to give back to it.

I understand there is ongoing consideration to remove the general excise tax exemption for nonprofits—organizations that help hold the fabric of our local community together. If we are going to talk about scaling back tax exemptions, the GET exemption mentioned in these bills should be at the top of the list if we are to align our priorities with our values.

Mahalo for your time and consideration of my views.

LATE TESTIMONY



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March 16, 2010

The Honorable Rida Cabanilla, Chair
House Committee on Housing
State Capitol, Room 325
Honolulu, HI 96813

RE: S.B. 2594 SD1 - Relating to Housing

HEARING: Wednesday, March 17, 2010 at 9:00 a.m.

Aloha Chair Cabanilla, Vice Chair Chong and Members of the Committee:

I am Craig McGinnis, Vice President of Ford Island Housing, LLC ("FIH"), the ground lessee and owner of The Waterfront at Pu'uloa, a rental housing project located at Iroquois Point/Pu'uloa, Ewa Beach, Hawaii (the "Pu'uloa Housing Project"). FIH opposes S.B. 2594 SD1 which adds a residency requirement for households in a newly constructed or moderately or substantially rehabilitated housing project developed by a qualified person or firm in order for that person or firm to be considered to receive a General Excise Tax exemption.

This bill is targeted at FIH's rental housing project and discriminates against the military. S.B. 2594 SD1 modifies HRS §201H-36(a)(4) to require that for project qualification purposes a renter's household must include a "qualified resident" under HRS §201H-32 who is domiciled in the State of Hawaii.

FIH believes the Pu'uloa Housing Project may not be able to qualify for its current exemption if it has to exclude military tenants, most of whom may not be "qualified residents" because they are not technically domiciled in Hawaii under federal law.

Furthermore, FIH believes this bill may be unconstitutional because it appears to violate the ¹Privileges and Immunities Clause and the ²Supremacy Clause of the United States Constitution.

¹ The addition of a "qualified resident" requirement to HRS §201H-36(a)(4) in order to qualify a workforce rental housing project for a GET exemption under HRS §237-29 appears to discriminate against nonresident rental applicants solely because of their residency in violation of the Privileges and Immunities Clause of the United States Constitution (Article IV, Section 2). See, for example, Lunding Et Ux. v. New York Tax Appeals Tribunal, 522 U.S. 287 (1998).

² The only reason military personnel on active duty in Hawaii who occupy rentals may not be "qualified residents" is because of the home state voting and income tax provisions of the Servicemembers Civil Relief Act (50 U.S.C. App. 571). Requiring military personnel to become "qualified residents" in order not to be discriminated against when applying to rent GET exempt workforce rental housing may therefore be a violation of the Supremacy Clause of the United States Constitution (Article VI, Section 2) because it could frustrate the purposes of the Servicemembers Civil Relief Act. See U.S. v. Onslow County Board of Education, 728 F.2d 628 (4th Cir., 1984), and U.S. v. County of Humboldt, California, 628 F.2d 549 (9th Cir., 1980).

The Pu'uloa Housing Project consists of 1,446 two, three and four bedroom rental housing units that were constructed around 1960 (Iroquois Point) and 1975 (Pu'uloa) as federally-owned Navy housing.

FIH acquired the Pu'uloa Housing Project from the Navy in 2003 by way of a long-term lease under which FIH agreed to make renovations to all of the rental housing units over a period of time. The final phase of the renovations was completed in 2009. About half of the units in the Pu'uloa Housing Project are still occupied by active duty military personnel.

FIH paid GET on the renovation costs and all of the Pu'uloa Housing Project rents until 2009, when the project received an exemption from GET for a portion of its rents from the Hawaii Housing Finance and Development Corporation under HRS §201H-36(a)(4). Under HHFDC rules, the project must pay GET on rents received from units occupied by households with incomes above 140% of the area median income.

FIH believes that with the income limits imposed by its current GET exemption, the Pu'uloa Housing Project is an excellent model for the preservation of affordable workforce housing in Hawaii.

Mahalo for the opportunity to testify. We respectfully request that this bill be held for the foregoing reasons.

LATE TESTIMONY

THE CHAMBER OF COMMERCE OF HAWAII
1132 Bishop Street, Suite 402
Honolulu, HI 96813

Testimony to the House Committee on Housing
Wednesday, March 17, 2010
9:00 AM

Conference Room 325

RE: SENATE BILL NO. 2594, SD1, RELATING TO HOUSING

Chair Cabanilla, Vice Chair Chong, and members of the committee:

My name is Charles Ota and I am the Vice President for Military Affairs at The Chamber of Commerce of Hawaii (The Chamber). I am here to state The Chamber's **opposition** to Senate Bill 2594, Relating To Housing.

The Chamber's Military Affairs Council (MAC) serves as the liaison for the state in matters relating to the US military and its civilian workforce and families, and has provided oversight for the state's multi-billion dollar defense industry since 1985.

The measure proposes to add a residency requirement for households in a newly constructed or moderately or substantially rehabilitated housing project developed by a qualified person or firm in order for that person or firm to be considered to receive a general excise tax exemption.

The residency provision outlined in this measure would unfairly change the housing eligibility for military personnel living in Hawaii and would have negative impact on the state's affordable housing program.

The proposed measure adds in Section 3, a new requirement under HRS Section 201H-36, paragraph (a) (4), that the household must include a "qualified resident" as defined in Section 201H-32. This will require the resident be domiciled in the state, which would disqualify virtually all military personnel as they are domiciled in their home states.

We believe that this measure places an unfair restriction on military families that are sent to Hawaii on competent government orders. Military personnel are ordered to military bases in Hawaii to provide for the security of our Nation and the Asia Pacific region. They do not come to Hawaii on their own volition as is the case of hundreds of non-residents who voluntarily relocate to Hawaii for employment or other reasons. **We should point out that a large number of military families qualify as low income families.**

Moreover, the exclusion of low income military personnel could have negative impact on the state's affordable housing program.

In light of the above, we oppose this measure and recommend that it be held.