

NEIL ABERCROMBIE
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 FINANCE

February 24, 2011 at 1:30 p.m.
Room 308, State Capitol

In consideration of
H.B. 1306, H.D. 1 RELATING TO HOUSING.

HHFDC *offers the following comments* to H.B. 1306, H.D. 1. We defer to the Department of Taxation with respect to provisions in this bill affecting that department.

Section 2 of the bill makes all records maintained by the HHFDC for this program public record. We have been advised by our Deputy Attorney General that under current law, information submitted by qualified persons or firms to request and obtain certification under this program is considered tax return information as defined in section 237-34(b), HRS. *It is a criminal misdemeanor for any state employee to disclose tax return information publicly without consent of all the taxpayers involved.*

HHFDC has concerns with language added to Section 201H-36(b), Hawaii Revised Statutes. On page 5, lines 7 through 8 of the H.D. 1, we are concerned that the language added in the H.D. 1 providing that certifications be done every four years could adversely affect HHFDC's annual certifications of rental projects. Annual certification allows HHFDC to ensure that rental projects are in compliance with program eligibility criteria and that the exemption from GET is only on rental income derived from affordable rental units.

On page 5, lines 4 through 6 of the H.D. 1, the deletion of the phrase, "and certified by" and insertion of language requiring "review" of claims for exemption from GET by both HHFDC and the Department of Taxation may inadvertently eliminate the authority to certify claims for GET exemption altogether.

We also note that on page 7, lines 2 through 3 of the H.D. 1, Section 201H-36(e), Hawaii Revised Statutes was amended to deposit program fees into the Rental Housing Trust Fund. We respectfully request that the language be amended to restore the existing language depositing program fees into the Dwelling Unit Revolving Fund, so that fee income can be used to offset administrative expenses of HHFDC's Development Branch, which reviews and processes claims for GET exemptions of both affordable rental and for-sale housing projects.

Finally, we also note that Section 4 would apply the changes made in this bill to taxable years beginning after December 31, 2010, i.e. starting with the 2011 taxable year. We respectfully suggest that the effective date be amended to read "taxable years beginning after December 31, **2011**," i.e., starting with the 2012 taxable year, since the 2011 taxable year has already begun.

Thank you for the opportunity to testify.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1530
FAX NO: (808) 587-1584

FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

HOUSE COMMITTEE ON FINANCE

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 1306, HD 1 RELATING TO HOUSING

WRITTEN TESTIMONY ONLY

TESTIFIER: FREDERICK D. PABLO, DIRECTOR OF TAXATION
(OR DESIGNEE)
COMMITTEE: FIN
DATE: FEBRUARY 24, 2011
TIME: 1:30PM
POSITION: DEFER TO HHFDC

This measure, among other things, amends a general excise tax exemption for qualified persons who construct or rehabilitate low-cost rental housing.

The Department of Taxation defers to the Hawaii Housing Finance and Development Corporation on the merits of this legislation. However, the Department also has technical concerns.

CONCERNED ABOUT DISCLOSURE OF CONFIDENTIAL TAXPAYER INFORMATION – Section 2 of the bill states that notwithstanding any law to the contrary, records maintained by HHFDC shall be made available to the public. Information submitted by taxpayers to request and obtain certification under this program is considered tax return information under HRS § 237-34(b). Therefore a substantial amount of HHFDC's records maintained under HRS § 201H-36 are likely confidential. This makes the inclusion of this public availability language largely pointless, as existing laws to the contrary would bar HHFDC, under criminal penalties of law, from making its records available to the public.

CONCERNED AUTHORITY TO CERTIFY CLAIMS HAS BEEN REMOVED – The deletion of the phrase "and certified by" and insertion of language requiring merely "review" of claims for exemption may inadvertently eliminate authority to certify the claims for exemption entirely. In addition, HHFDC, as the agency with the expertise regarding low-income housing, should be solely responsible for certifying the exemption. The Department of Taxation's role should be to audit the claim of the exemption when the tax return is filed.

CONCERNED ABOUT EFFECTIVE DATE – The Department requests the effective date be amended to begin in tax year 2012 rather than 2011.

Bernard P. Carvalho, Jr.
Mayor

Gary K. Heu
Managing Director



Eugene K. Jimenez
Housing Director

KAUA'I COUNTY HOUSING AGENCY

County of Kaua'i, State of Hawai'i

Pi'ikoi Building 4444 Rice Street Suite 330 Lihu'e Hawai'i 96766
TEL (808) 241-4444 FAX (808) 241-5118

February 24, 2011

Rep. Marcus R. Oshiro, Chair, and Committee on Finance Members
House of Representatives
The Twenty-Sixth Legislature, Regular Session of 2011
State of Hawaii

SUBJECT: TESTIMONY CONCERNING HB1306 HD1, RELATING TO HOUSING
Hearing: FIN February 24, 2011 1:30 AM Conference Room 308

The Kaua'i County Housing Agency is strongly concerned about HB1306 HD1 Relating to Housing, as currently worded.

The vast majority of affordable housing developed on Kaua'i is not developed pursuant to HRS Chapter 201H, but pursuant to HRS 46-15.1. However, funding for affordable projects generally flows from the federal government through HHFDC to the County, and is awarded to projects developed by the County or by qualified non-profit developers. Typically, 100% of the units in HRS 46-15.1 approved projects are affordable to low-income or moderate income households.

HB1306 HD1 Section 1 proposes to delete in its entirety the general excise tax exemption for projects developed under HRS 46-15.1. The loss of this exemption would be a significant blow to County and non-profit developed affordable housing development on Kaua'i. The exemption of general excise tax provides a significant reduction in development costs.

We believe there should be no distinction between state and county developed affordable housing projects with respect to the application of GET. However, we do recognize that the approval process for exemptions has been problematic, with some developers seeking exemption approval from counties after being denied by HHFDC. By the counties consulting first with HHFDC on eligibility, any misapplication of the law can be avoided.

We strongly support amending the HB1306 HD1 to maintain the exemption for projects developed pursuant to HRS 46-15.1, with the exemptions being approved through a clearinghouse process involving the County, HHFDC and the Department of Taxation.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "E. Jimenez".

Eugene K. Jimenez, Housing Director



An Equal Opportunity Employer

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Periodic review of certified housing projects

BILL NUMBER: HB 1306, HD-1

INTRODUCED BY: House Committee on Housing

BRIEF SUMMARY: Amends HRS section 201H-36 to provide that claims for the general excise tax exemption shall be filed with the Hawaii housing finance and development corporation (HHFDC) and reviewed by the HHFDC and the department of taxation prior to any initial or renewal certification; provided that the certification shall be obtained every four years and may be audited by the auditor as directed by the legislature. All funds collected by the claims that do not meet the requirements for the exemption shall be deposited into the rental housing trust fund.

Requires the department of taxation to maintain an annual and cumulative record of all tax exemptions claimed. Also requires HHFDC to submit its annual record to the legislature beginning with the 2012 session. All records maintained by the HHFDC shall be public records and shall be made available upon request; provided that the corporation may charge a reasonable reproduction fee for any requested records. Any fee charged by the HHFDC in connection with its approvals and certifications shall be deposited into the rental housing trust fund instead of the dwelling unit revolving fund.

Amends HRS section 46-15.1 to repeal the provision granting a general excise tax exemption for county housing projects.

The amendments made to HRS section 46-15.1 of this act, shall not be repealed when that section is reenacted on June 30, 2015, pursuant to Act 141, SLH 2009.

EFFECTIVE DATE: Tax years beginning after December 31, 2010

STAFF COMMENTS: HRS section 237-29 provides a general excise tax exemption for the planning, design, financing, construction, sale, or lease of a certified housing project. The proposed measure would require all claims for the exemption to be filed with the HHFDC and reviewed by the HHFDC and the department of taxation prior to any initial or renewal certification of the exemption.

Since any tax exemption results in a reduction of tax revenues by the amount of the exemption, periodic review of any tax exemption should be done on a timely basis. In the case of an affordable housing project, HHFDC should also require the owners or managers of such projects to re-certify all families claiming to meet the income requirements on an **annual** basis. Many projects which claim to be affordable housing projects have had families living in the project for a number of years without re-qualification as to the need of the subsidized unit. This is blatantly unfair to families who may be on the waiting list for that subsidized unit. Not doing so brings into question the validity of the general excise tax exemption.

This issue is carried over from last year when questions were raised about low- and affordable-income housing projects which qualified under HRS 201H-36 to be exempt from the general excise tax on not only the planning, engineering, design and construction of such projects but also on the gross income received from activities directly related to the operation of the qualified project. Some dispute arose over the fact that not all of the units were occupied by those who may have had the amount of qualifying income be it 50%, 80% or 120% of area median income.

While it is understandable that policymakers may not see the need for the general excise tax exemption if some of the units in an affordable housing project are not being let to qualifying income families, but it should be noted that in some cases, in order to allow a developer/owner to provide below-market rental rates for those families who need the subsidized units some of the units have to be let at market rental rates or even above market rates. These are mixed-income affordable housing projects and are probably how affordable housing will have to be developed in the future as the cost of purely affordable housing projects is no longer feasible.

Thus, it is also curious that this measure also repeals the general excise tax exemption for county designated affordable housing projects. Just because it is a county authorized or sponsored housing projects should not disqualify it be being afforded the same subsidies as a state-sponsored project.

Finally instead of requiring certification for tax exemptions for affordable housing projects every four years, each unit built as a qualifying affordable unit should be required to be re-certified each year, that is the tenant upon renewing the lease for another one-year term be asked to resubmit proof of income in order to remain in a subsidized unit. Too often tenants will qualify initially and then remain for very long periods of time without being asked to re-certify to determine whether or not they still have low enough incomes to qualify. Projects not agreeing to an ongoing program to re-certify their tenants on an annual basis should no longer qualify for the general excise tax exemption.

Digested 2/23/11

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 23, 2011 1:13 PM
To: FINTestimony
Cc: moh@hawaii Realtors.com
Subject: Testimony for HB1306 on 2/24/2011 1:30:00 PM

Testimony for FIN 2/24/2011 1:30:00 PM HB1306

Conference room: 308
Testifier position: comments only
Testifier will be present: Yes
Submitted by: Craig Hirai
Organization: Hawaii Association of REALTORS®
Address:
Phone:
E-mail: moh@hawaii Realtors.com
Submitted on: 2/23/2011

Comments:
Thank you for your time.

House Committee on Finance
February 24, 2011
1:30 p.m., Rm. 308
Ilalo Parayno -Resident of Leeward
Testimony in **support**
HB 1306

Chair Oshiro, Vice Chair Lee and members of the Finance Committee,

I **support** HB 1306. I am Ilalo Parayno, a Leeward resident and retired educator and administrator with 41 years with the DOE, and a retired Vice Principal of Campbell High School. I am in support of HB 1306. We are in dire financial straits yet there may exist tax loopholes that allow the biggest multi-national companies a GET tax loophole that may result in millions of dollars of loss in taxes. The Department of Taxation needs to be aware of the recipients and magnitude of the use of this affordable housing GET tax loophole exemption in order to make an assessment of possible abuse.

Here may be a blanket exemption for affordable housing GET tax exemptions, they may be bleeding the state of hundreds of thousands of dollars every year. For example, Hunt, Flor, Actuus, Leasing, or any property management company of military housing that permits civilians to live there as well.

In many cases neither military families nor the civilian families would qualify for affordable housing GET exemptions yet the huge company is getting the exemption without passing on the savings to the resident renters.

These huge corporations are gaining a huge windfall at the expense of revenue generation. We need to take a look at every tax credit and exemption to ensure a healthy budget.

I strongly urge this committee to support this bill.

Ilalo Parayno

Rep. Rida Cabanilla

From: Kanani Souza [kananisouza@yahoo.com]
Date: Wednesday, February 23, 2011 8:25 PM
To: Rep. Rida Cabanilla
Subject: Testimony in Support for HB1306 Relating To Housing for FIN 02-24-11 1:30 p.m.

I submit this testimony in support of HB1306 to allow county affordable housing projects to have the same general excise tax & receipt tax exemptions as the Hawaii Housing Finance & Development Corporation. This measure provides fairness to counties with State agencies dealing with affordable housing projects.

Kanani Souza
Hawaii Resident

Testimony emailed to capitol website