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Sent: Tuesday, February 01, 2011 8:46 AM
To: HSGtestimony
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Subject: Testimony for HB1306 on 2/2/2011 8:30:00 AM

Testimony for HSG 2/2/2011 8:30:00 AM HB1306

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Beth Malvestiti
Organization: Individual
Address:
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Submitted on: 2/1/2011

Comments:

NEIL ABERCROMBIE
GOVERNOR



KAREN SEDDON
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
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IN REPLY REFER TO:

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

HOUSE COMMITTEE ON HOUSING

February 2, 2011 at 8:30 a.m.
Room 325, State Capitol

In consideration of
H.B. 1306 RELATING TO HOUSING.

Chair Cabanilla, Vice Chair Chong, and Members of the House Committee on Housing,

I am Karen Seddon, Executive Director of the HHFDC. HHFDC **offers the following comments and a proposed amendment** to H.B. 1306.

Section 1 of the bill amends section 201H-36 to require HHFDC to maintain a record of persons or businesses that have qualified for a General Excise Tax (GET) exemption thereunder. The existing Department of Taxation Form G-37 used by applicants already includes their name and address, the name and address of the project for which the exemption is sought, and the amount of the exemption. The criteria used are set forth in our program administrative rules, Chapter 15-306, Hawaii Administrative Rules (HAR). A copy of Form G-37 can be downloaded at <http://www6.hawaii.gov/tax/2008/g37.pdf>. Chapter 15-306, HAR can be downloaded from <http://hawaii.gov/dbedt/hhfdc/about/>.

Section 1 of the bill also makes all records maintained by the HHFDC 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.*

Finally, we note that section 201H-37, HRS, confers state tax exempt status onto the income and obligations of the Hawaii Public Housing Authority, a public housing agency as defined by section 11(b) of the U.S. Housing Act of 1937, as amended, and by the U.S. Department of Housing and Urban Development. **Because section 201H-37, HRS, is not related to the GET exemption at issue in sections 1 and 3 of this bill, we respectfully suggest that section 2 of this bill be deleted.**

Thank you for the opportunity to testify.

TAXBILLSERVICE

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SUBJECT: MISCELLANEOUS, Periodic review of certified housing projects

BILL NUMBER: HB 1306

INTRODUCED BY: Cabanilla, 1 Democrat and 3 Republicans

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 may be audited by the auditor as directed by the legislature.

Requires the HHFDC to maintain a record of all persons or businesses that have qualified for a general excise tax exemption and 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 annually 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.

Makes conforming amendments to HRS section 201H-37 and HRS section 237-29.

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.

Digested 2/1/11



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January 31, 2011

The Honorable Rida T.R. Cabanilla, Chair
House Committee on Housing
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1306 Relating to Housing

HEARING: Wednesday, February 2, 2011 at 8:30 a.m.

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

I am Craig Hirai, Chair of the Subcommittee on Affordable Housing, here to testify on behalf of the Hawaii Association of REALTORS® (“HAR”), the voice of real estate in Hawai‘i, and its 8,500 members. HAR would like to make the following **comments** with respect to H.B. 1306, Relating to Housing, which requires: (a) a review of all persons or businesses who qualified for a General Excise Tax exemption for affordable housing projects certified by the Hawaii Housing Finance and Development Corporation (“HHFDC”), with a second review by the Department of Taxation (“DoTax”); and (b) an annual report to the Legislature.

Section 2 of H.B. 1306 amends HRS §201H-37 by making the tax exemptions thereunder subject to the requirements of HRS §201H-36 as amended by H.B. 1306. It is not clear to the HAR whether the HHFDC is a “public housing agency” pursuant to Section 3(6) of the U.S. Housing Act of 1937, as amended (now 42 USC §1437a(b)(6)). Furthermore, it is also not clear to the HAR what effect the amendment to HRS §201H-37 will have on any bonds previously issued by the State of Hawaii under Section 11(b) of the U.S. Housing Act of 1937, as amended (now 42 USC §1437i(b)).

Section 3 of H.B. 1306 amends HRS §237-29 which is the operative section of the GET Law which grants a GET exemption for certified or approved housing projects. HAR believes that Section 3 should be deleted (or amended) because HAR believes that the amendment in Section 3 can be read to require compliance with HRS §201H-36 only “prior to being certified or approved under section 201H-36” (and not after) in order to be exempt from GET.

HAR further believes that an additional section should be added to H.B. 1306 as follows, amending HRS §46-15.1 to delete the power of the counties to grant GET exemptions under HRS §201H-36 in order to: (i) clearly mandate the prospective application of HRS §201H-36, as amended in H.B. 1306, to all projects statewide seeking initial and annual rental GET exemptions under HRS §237-29; and (ii) enable the HHFDC and DoTax to fully comply with H.B. 1306.

§46-15.1 Housing; county powers. (a) Any law to the contrary notwithstanding, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the Hawaii housing finance

and development corporation pursuant to chapter 201H insofar as those powers may be reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing low- and moderate-income housing; provided that no county shall be empowered to cause the State to issue general obligation bonds to finance a project pursuant to this section; [~~provided further that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the Hawaii housing finance and development corporation pursuant to section 201H-36;~~] and provided further that section 201H-16 shall not apply to this section unless federal guidelines specifically provide local governments with that authorization and the authorization does not conflict with any state laws. The powers shall include the power, subject to applicable limitations, to:

- (1) Develop and construct dwelling units, alone or in partnership with developers;
- (2) Acquire necessary land by lease, purchase, exchange, or eminent domain;
- (3) Provide assistance and aid to a public agency or other person in developing and constructing new housing and rehabilitating existing housing for elders of low- and moderate-income, other persons of low- and moderate-income, and persons displaced by any governmental action, by making long-term mortgage or interim construction loans available;
- (4) Contract with any eligible bidders to provide for construction of urgently needed housing for persons of low- and moderate-income;
- (5) Guarantee the top twenty-five per cent of the principal balance of real property mortgage loans, plus interest thereon, made to qualified borrowers by qualified lenders;
- (6) Enter into mortgage guarantee agreements with appropriate officials of any agency or instrumentality of the United States to induce those officials to commit to insure or to insure mortgages under the National Housing Act, as amended;
- (7) Make a direct loan to any qualified buyer for the downpayment required by a private lender to be made by the borrower as a condition of obtaining a loan from the private lender in the purchase of residential property;
- (8) Provide funds for a share, not to exceed fifty per cent, of the principal amount of a loan made to a qualified borrower by a private lender who is unable otherwise to lend the borrower sufficient funds at reasonable rates in the purchase of residential property; and
- (9) Sell or lease completed dwelling units.

For purposes of this section, a limitation is applicable to the extent that it may reasonably be construed to apply to a county.

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.