

Honolulu, Hawaii

April 5, 2012

RE: S.B. No. 2394
S.D. 1
H.D. 3

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Finance, to which was referred S.B. No. 2394, S.D. 1, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO CONSUMER PROTECTION,"

begs leave to report as follows:

The purpose of this measure is to promote consumer protection by accomplishing the following:

- (1) Protecting military service members and their dependents from abusive lending practices by allowing the Director of Commerce and Consumer Affairs to enforce certain federal laws relating to fraud, deception, and similar practices;
- (2) Establishing under the Hawaii Housing and Finance Development Corporation (HHFDC) a Distressed Residential Properties Program (Program) to assist Hawaii homeowners who face foreclosure on their mortgages by, among other things:
 - (A) Establishing a Distressed Residential Properties Program Special Fund (Special Fund);
 - (B) Allowing the Special Fund to be used to purchase, in whole, or in part, existing loans of distressed residential properties;



- (C) Allowing HHFDC to issue revenue bonds in amounts not exceeding \$25,000,000 to be deposited into the Special Fund;
- (D) Requiring HHFDC to submit to the Legislature at least 20 days prior to the convening of each Regular Session a report on the number of loans purchased and the disposition of the loans by HHFDC;
- (E) Setting forth eligibility requirements for homeowners who wish to participate in the Program; and
- (F) Establishing terms and conditions of qualified mortgages.

The Oahu Veterans Council; the Military Officers Association of America, Hawaii Chapter; IMUAlliance; Faith Action for Community Equity; and several individuals supported this measure. The Hawaii Association of REALTORS, Hawaii Credit Union League, the Hawaii Financial Services Association, and the Hawaii Bankers Association opposed this measure. The Office of Consumer Protection, the Hawaii Housing Finance and Development Corporation, the Department of the Attorney General, the Department of Budget and Finance, The Chamber of Commerce of Hawaii, and Legal Aid Society of Hawaii commented on this measure.

Your Committee has amended this measure by:

- (1) Elaborating upon the preamble in Part II of the measure, to declare that:
 - (A) The mortgage crisis has skewed the land market and placed into question the title to residential real property in the State, which has jeopardized the health, welfare, and safety of Hawaii's citizens;
 - (B) Part II is intended to protect the health, safety, and welfare of Hawaii's citizens;
 - (C) The exercise of the power of eminent domain under Part II is a public use in accordance with the Fifth Amendment of the United States Constitution



and Article I, section 20, of the Constitution of the State of Hawaii;

- (D) The exercise of the power of eminent domain under Part II is in accord with the State's authority to take private property for a public use, as asserted in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984) and reaffirmed in *Kelo v. City of New London, Connecticut*, 545 U.S. 469 (2005);
 - (E) Section 101-71, Hawaii Revised Statutes, permits the State to take private personal property used in connection with real property for public use so long as just compensation is paid; and
 - (F) A mortgage debt constitutes private personal property used in connection with real property;
- (2) Deleting a provision that would prohibit property subject to legislative approval of sale or gift of land in accordance with section 171-64.7, Hawaii Revised Statutes, from being eligible to participate in the Program;
 - (3) Lowering to \$10,000,000 the amount of revenue bonds that HHFDC is authorized to issue in order to carry out the purposes of Part II;
 - (4) Requiring that the application for the Program shall include an authorization for HHFDC to pull an applicant's credit records related to the mortgage loan account and share its contents with authorized third parties;
 - (5) Extending the time period for HHFDC to review an application for the Program to sixty days;
 - (6) Clarifying that sales of property under the Program are exempt from legislative approval;
 - (7) Increasing the mortgage servicing fee to one percent of the amount loaned to the purchaser;
 - (8) Authorizing the Attorney General, for loans purchased from lenders subject to a federal multistate consent judgment in the matter of *United States of America et al*

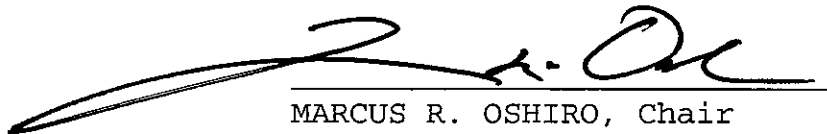


v. Bank of America Corp., J.P. Morgan Chase & Co., Wells Fargo & Company, Citigroup Inc. and Ally Financial Inc., to monetize certain credits available to lenders under the terms of the judgment for purposes of discounting the value of loans purchased by HHFDC pursuant to part II of this measure;

- (9) Appropriating an unspecified amount of general funds to carry out the purposes of this measure;
- (10) Appropriating an unspecified amount of general obligation bonds to carry out the purposes of this measure;
- (11) Changing the effective date to July 1, 2030, to facilitate further discussion; and
- (12) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2394, S.D. 1, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2394, S.D. 1, H.D. 3.

Respectfully submitted on
behalf of the members of the
Committee on Finance,


MARCUS R. OSHIRO, Chair



