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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
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601 KAMOKILA BLVD, KAPOLEI HI 96706

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
WATER, LAND and OCEAN RESOURCES

Friday, February 10, 2012
1:30p.m.
State Capitol, Conference Room 225

In consideration of
HOUSE BILL 2420
RELATING TO HISTORIC STRUCTURES

House Bill 2420 proposes to: (1) Establish a tax credit for qualifying rehabilitation expenses of historic structures; and (2) Establish a Historic Preservation Revolving Fund into which shall be deposited legislative and county appropriations to fund subject tax credit. The Department of Land and Natural Resources (Department) has concerns about the bill as currently written. In addition, the Department defers to the Department of Taxation on the impacts administering this tax credit would have on present and future operations.

Rather than create a fund and have the Department administer the fund, the Department suggests that the State mirror the federal tax credit process. In the federal process, the National Parks Services verifies that rehabilitation work has been done according to the Secretary of Interior Standards and the Internal Revenue Service takes care of the administering the actual credit.

Under this scenario, on the state level, the Department would have its State Historic Preservation Division verify that work has been done according to the Secretary of Interior's standards and the State Department of Taxation would administer the actual tax credit. In addition, the Department would suggest that the application for the state historic preservation tax credit mirror the application for the federal historic preservation tax credit.

Should the Legislature decide not to mirror the federal process, the Department suggests that first a study be done to see what infrastructure and processes are needed to implement such a program, and also what the costs would be, and then implementation be done as a second phase at least a year later.

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES
ON
HOUSE BILL NO. 2420

February 10, 2012

RELATING TO HISTORIC STRUCTURES

House Bill No. 2420 establishes a tax credit for qualifying rehabilitation expenses of historic structures and establishes a Historic Preservation Revolving Fund administered by the State Historic Preservation Division to fund the tax credit.

The Department of Budget and Finance defers to the Departments of Land and Natural Resources and Taxation regarding the merits of the bill and some of the technical issues; however, as a matter of general policy, the department does not support the creation of special funds which do not meet the requirements of Section 37-52.3, Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to House Bill No. 2420, it is difficult to determine whether there is a clear nexus between the beneficiaries and the sources of funding, and it does not appear that the revolving fund will be self-sustaining.

I encourage the Legislature to scrutinize the fiscal and operational plan for this program to ensure that it does conform to the requirements of Section 37-52.3, Hawaii Revised Statutes.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Historic preservation tax credit

BILL NUMBER: HB 2420

INTRODUCED BY: McKelvey and Ching

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers to claim a tax credit for the qualified rehabilitation expenses incurred to rehabilitate a historic structure for mixed residential and nonresidential uses in the state provided at least 30% of the total square footage is for residential use.

For each rehabilitation plan accepted by qualified staff of the state historic preservation division of the department of land and natural resources (DLNR), the credit shall be: (1) 25% of the projected qualified rehabilitation expenditures; or (2) 30% of the projected qualified rehabilitation plans if: (a) at least 20% of the units are rental units and qualify as affordable housing; or (b) at least 10% of the units are individual home ownership units and qualify as affordable housing.

The tax credit shall be available in the tax year in which the substantially rehabilitated historic structure is placed in service provided the tax credit shall be prorated for projects completed in phases.

Requires the qualified staff of the state historic preservation division to develop standards and criteria for the approval of certified historic structures for which the credit is sought. Requires the taxpayer to notify the state historic preservation division upon completion of the structure and submit documentation and certification of the costs incurred in rehabilitating the historic structure. The qualified staff of the state historic preservation division shall review the rehabilitation and verify its compliance with the rehabilitation plan.

Delineates how the credit is to be computed in the case of a partnership, S corporation, estate or trust. Stipulates that if a deduction is taken under section 179 of the IRC, no tax credit shall be allowed for the qualifying costs for which the deduction is taken.

Tax credits in excess of a taxpayer's income tax liability shall be refunded provided such amounts are over $1. Requires all claims for the credit to be filed on or before the twelfth month following the close of the taxable year for which the credit is claimed. Directs the director of taxation to prepare the necessary forms, require the furnishing of information to validate a claim for the credit and adopt rules pursuant to HRS chapter 91.

Limits the aggregate amount of tax credits that may be claimed for qualified rehabilitation projects to $___ million per year. Establishes recapture provisions. Directs the state historic preservation division, in consultation with the department of taxation, to annually determine the types of information necessary to enable a quantitative and qualitative assessment of the outcomes of an application for the tax credit. Requires the submission of a statement to the review board by the last day of the taxable year following the close of a tax year in which the qualified expenditures were expended. Failure to file the required statement shall result in the recapture of such credits. The statement submitted shall be a public document.

Requires the state historic preservation division, in consultation with the department of taxation, to submit a report annually evaluating the effectiveness of the tax credit.

Defines "certified historic structure," "qualified rehabilitation expenditures," "qualified staff of the state historic preservation division," "rehabilitation plan," and "substantial rehabilitation" for purposes of the measure.

Adds a new section to HRS chapter 6E to establish the historic preservation revolving fund which shall be expended for the historic preservation income tax credit provided that: (1) moneys in the fund equal to the total amount of historic preservation income tax credits approved in the previous year shall be paid to the credit of the general fund on an annual basis; (2) the director of taxation shall report annually to the state historic preservation division on the total amount of the historic preservation income tax credits approved in the previous year; and (3) the director of taxation and the state historic preservation division each may adopt rules pursuant to HRS chapter 91 to effectuate this section

EFFECTIVE DATE: Tax years beginning after December 31, 2011

STAFF COMMENTS: This measure proposes an incentive in the form of an income tax credit to encourage taxpayers to rehabilitate historic properties for mixed residential and nonresidential use in the state. While it appears that the credits are proposed on a prospective basis - that is, it would provide tax credits to the taxpayer based on the projected qualified rehabilitation expenditures prior to the rehabilitation of the historic property, the tax credits would only be available in the tax year the historic structure is placed in service.

Utilizing the tax system to accomplish social goals, such as this measure addresses, sets poor tax policy and cannot be justified. Note well, that the legislature is surrendering its oversight as to what will qualify for the tax credit to the state historic preservation division of DLNR, leaving the door wide open to whatever the board decides as guidelines to qualify as a historic structure.

To the extent that this measure would grant preferential tax treatment because of circumstances unrelated to the imposition of the tax, the burden of the tax would be shifted to other taxpayers on an inequitable basis. If this measure is enacted, it would result in a public subsidy of costs incurred for historic preservation by a private taxpayer.

Again, tax credits are designed to alleviate some unusual burden of taxes such as the food excise tax credit which is designed to alleviate the general excise tax burden on essentials purchased by those in lower income categories. In the case of the proposed tax credit for historic preservation, there is no indication of a need for financial help, in fact in order to claim the tax credit the taxpayer has to make the expenditures first before the credit can be claimed. And if those expenditures are of any substance, the taxpayer probably already has the ability to make those expenditures. At the county level where there are complete exemptions of such sites from the real property tax, a wealthy resident living a multimillion dollar valued historic home pays absolutely no real property taxes but benefits from the multitude of city services.

If it is the intent of the legislature is to encourage and assist such rehabilitation of historic sites, then an appropriation of public funds subject to legislative review would be more appropriate. Even a no-interest, low-interest loan revolving fund would be more appropriate as the needs of the taxpayer and the kinds of improvements to be financed would be subject to an informed review.

Finally, with all of the cuts that state programs have endured as a result of revenue shortfalls, it is incredulous that such a proposal would be forwarded at this time. Taxpayers should realize that such targeted tax credits that are not based on need for tax relief amounts to nothing more than an expenditure of public dollars albeit out the back door where there is no oversight and no public awareness.

Digested 2/9/12