



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 1074, H.D.1, RELATING TO TAXATION.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, February 20, 2013 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Damien A. Elefante, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill.

This bill creates a net income tax credit for individual and corporate taxpayers for rehabilitation or preservation of historic structures in the State.

In response to concerns from the joint Committees on Water and Land and Energy and Environmental Protection, the following wording was added to the original version of this bill on p. 2, lines 6-9:

For purposes of this section, the term “husband and wife” shall include any individuals who are party to a reciprocal beneficiary relationship or a civil union and who are otherwise eligible to file a joint tax return.

There is a canon of statutory construction that stands for the principle that the inclusion of one thing is the exclusion of another. By specifying a statement about the status of civil union partners in one place, there is a risk of the omission being understood as deliberate elsewhere.

Currently, Act 1, Session Laws of Hawaii 2011, gives all the rights of marriage under state law to civil unions couples. Act 1 allows civil unions couples to be treated as married for purposes of state tax law, even though they are not married for purposes of federal tax law. See Haw. Rev. Stat. § 235-93.4 (2011).

To avoid the misinterpretation and misapplication of Act 1, we recommend that lines 6-9 be omitted from this bill.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD STE 555
KAPOLEI HI 96707

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
FINANCE**

**Wednesday, February 20, 2013
2:00 p.m.
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 1074, HOUSE DRAFT 1
RELATING TO TAXATION**

The Department of Land and Natural Resources (Department) supports House Bill 1074, House Draft 1 which proposes to create a historic preservation tax credit for purpose of historic preservation. The historic preservation income tax credit would allow the owners of historic structures to claim an income tax credit for the rehabilitation or preservation of their historic properties. Properties would have to be duly listed on the State or National Registers of Historic Places and the Hawaii Historic Preservation Review Board would be required to promulgate rules addressing:

- The criteria for qualifying structures
- A definition of "qualifying costs"
- Standards to ensure that the rehabilitation or preservation preserves the archaeological, cultural, or historic character of the structure
- A minimum amount, or threshold, required to be invested in the rehabilitation or preservation
- Provisions for recapture of the credit

The Department of Taxation is responsible for developing forms for this tax credit, asking for reasonable information to ascertain the validity of credits claimed, promulgating rules and reporting annually to the legislature.

The Department notes that income tax credits have been shown to be an effective means of promoting the preservation of historic properties.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

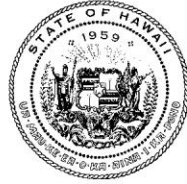
ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Wednesday, February 20, 2013
Time: 2:00 p.m.
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 1074, H.D. 1 Relating to Taxation

The Department appreciates the intent of H.B.1074, H.D. 1 and provides the following information and comments for your consideration.

H.B. 1074, H.D. 1 creates a refundable tax credit against net income tax for expenditures made to rehabilitate a historic structure at an unspecified percentage limited by an unspecified cap. The credit applies to tax years beginning after December 31, 2012.

This bill requires that the taxpayer qualify with the Hawaii Historic Places Review Board (Board) before claiming the credit. The Department notes that it does not have the staff, resources or expertise to audit this qualification with the Board due to the specific requirements set forth in the bill, such as the criteria for qualifying structures and standards to ensure that the rehabilitation or preservation preserves the archaeological, cultural, or historic character of the structure. In other words, the Hawaii Historic Places Review Board would now make the determination as to whether the taxpayer qualifies for the income tax credit, effectively eliminating any audit and enforcement capability of the Department.

The Department also has concerns that under subparagraph (d)(1)(E), the Board is adopting administrative rules pursuant to Chapter 91, Hawaii Revised Statutes, regarding minimum expenditure amounts and credit recapture provisions. The Department suggests that the minimum expenditure amount be set forth in the statute and that any administrative rules necessary to administer the recapture of this credit be placed in the jurisdiction of the Department.

The bill imposes a reporting requirement and will require new forms and instructions. If approved, the bill is effective upon approval and applies to taxable years beginning after December 31, 2012, requiring the Department to begin implementation immediately. The Department respectfully requests that this bill be applicable to taxable years beginning after December 31, 2014.

The Department estimates this bill would result in a revenue loss of \$6.05 million in FY 2013 and \$12.1 million yearly thereafter.

Thank you for the opportunity to provide comments.

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 1074, HD-1

INTRODUCED BY: House Committee on Water & Land

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers to claim a tax credit equal to the qualifying costs expended to rehabilitate or preserve archaeological, cultural and historic structures in the state. The credit shall be _____% of the taxpayer's qualifying costs provided that a single claim for the credit shall not exceed \$_____.

To qualify for the income tax credit, the taxpayer shall: (1) qualify under criteria or rules adopted by the Hawaii historic places review board pursuant to chapter 91; and (2) be in compliance with all applicable federal, state, and county statutes, rules, and regulations.

Tax credits in excess of a taxpayer's income tax liability shall be refunded provided such amounts are in excess of \$1. Requires claims for the credit to be filed on or before the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with this provision shall constitute a waiver of the right to claim the credit. Also provides for recapture of the credit if the taxpayer no longer qualifies for the tax credit.

Requires the director of taxation to prepare the necessary forms to claim the credit and may require the taxpayer to provide proof of the claim for the credit. Also requires the director of taxation to report annually to the legislature on the number of taxpayers claiming the credit and the total cost of the credit to the state during the past year.

EFFECTIVE DATE: Tax years beginning after December 31, 2012

STAFF COMMENTS: This measure proposes an incentive in the form of an income tax credit to encourage taxpayers to rehabilitate or preserve archaeological, cultural and historic properties in the state. 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 Hawaii historic places review board, leaving the door wide open to whatever the board decides as guidelines to qualify as a historic structure. As a result, there is no way that lawmakers, at this point, can determine what kind of impact this measure will have on state revenues. This is the very issue with the plethora of targeted business tax credits adopted by the legislature in recent years.

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.

At the county level where there are complete exemptions of such sites from the real property tax, a wealthy resident living in a multimillion dollar valued historic home pays absolutely no real property taxes but benefits from the multitude of city services. Inasmuch as a tax benefit is already extended at the county level, one must question why another tax incentive is necessary at the state level.

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 proposals this session to raise additional revenues, one must ask why lawmakers deem it so important to provide yet another hand out of those tax dollars. From that perspective, this proposal represents nothing more than a shift of the tax burden to other taxpayers who are not so blessed with a historic structure. Taxpayers should realize that such targeted tax credits that are not based on need for tax relief amount to nothing more than an expenditure of public dollars albeit out the back door where there is no oversight and no public awareness.

Digested 2/19/13

HISTORIC HAWAII FOUNDATION

To: Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair
Committee on Finance

From: Kiersten Faulkner
Executive Director, Historic Hawai'i Foundation

Committee Date: Wednesday, February 20, 2013
2:00 p.m., Agenda #1
Conference Room 308

Subject: **HB 1074 HD 1, Relating to Taxation**

On behalf of Historic Hawai'i Foundation (HHF), I am writing in support of HB 1074 HD 1, which establishes an income tax credit for the rehabilitation or preservation of historic structures and archaeological sites in the state.

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF's 850 members and numerous additional supporters work to preserve Hawaii's unique architectural and cultural heritage and believe that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.

Historic preservation tax credit programs have proved to be successful incentives for rehabilitating older structures and returning them to useful life. Preserving and using our historic buildings are ways to enhance community character, provide an alternative to sprawl, create jobs, provide affordable housing, encourage heritage tourism, and generally spur economic development in older neighborhoods and commercial districts. The measure also provides an incentive for the preservation of important archaeological features and associated landscapes.

Tax credit programs for rehabilitation of historic properties have been used at the federal level and by almost two-thirds of the States. While the details of the programs vary state by state, preservation tax credits have universally been shown to be effective, especially when coupled with the 20% federal historic tax credit available to income-producing historic properties, such as commercial, office, industrial and resort properties. At the request of the Legislature in 2007, Historic Hawai'i Foundation released a study into the economic benefits realized by states that use a rehabilitation tax credit. The study found that the tax credits spurred economic development and increased direct tax revenues that offset the tax credit expense. Through increased economic output, the state recovers its investment in rehabilitation tax credits through four sources: construction period taxes, real property taxes, post-construction sales and income taxes.

Historic Hawai'i Foundation

680 Iwilei Road, Suite 690 • Honolulu, HI 96817 • Tel: 808-523-2900 • FAX: 808-523-0800 • www.historichawaii.org

Historic Hawai'i Foundation was established in 1974 to encourage the preservation of historic buildings, sites and communities on all the islands of Hawai'i. As the statewide leader for historic preservation, HHF works to preserve Hawai'i's unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, environmental sustainability, and economic viability of the state.

Some 31 states have adopted laws creating credits against state taxes to provide incentives for the appropriate rehabilitation of historic buildings. Most programs include the following basic elements:

- Criteria establishing what buildings qualify for the credit;
- Standards to ensure that the rehabilitation preserves the historic and architectural character of the building;
- A method for calculating the value of the credit awarded, reflected as a percentage of the amount expended on that portion of the rehabilitation work that is approved as certified rehabilitation;
- A minimum amount, or threshold, required to be invested in the rehabilitation; and
- A mechanism for administering the program, general involving the state historic preservation office, and in some cases, the state department of revenue or of economic development.

HB1074 addresses each of these provisions, and also mirrors the qualifications and programs of the federal rehabilitation tax credit program. These technical elements help to ensure that the program can be administered with minimal new training or procedures, and that it is consistent with experience and best practices learned from other jurisdictions.

Many of the states that provide a historic preservation tax credit have conducted economic impact studies to determine the fiscal effect. All of them determined that the fiscal return was greater than the state's forgone taxes, often returning three to five times more revenue to the state in new taxes and significant new investment. The rehabilitation tax credit also was successful in creating new jobs, increasing loan demand and deposits in local financial institutions, enhancing property values and generating sales. In addition to these direct fiscal impacts, the tax credit also has proven benefits related to environmental sustainability, affordable housing, tourism and visitation, and neighborhood revitalization.

These tax credit programs help to return historic properties to tax rolls and generate employment and housing where they are needed most. State investments in tax credits can pay heavy dividends. For example, the Rhode Island historic preservation tax credit, passed in 2002, generated a total of \$795 million in economic activity from an investment by the state of \$145 million. The study, which was commissioned by Grow Smart Rhode Island, estimates that the state rehabilitation tax credit will add \$242 million to the tax base of local communities and to generate a present value basis of \$179 million in additional property tax revenue and \$42 million in sales and income tax revenue.

As an incentive for reinvestment in our neighborhoods and communities, the historic property tax credit program makes sense. As an economic development program, it also makes fiscal sense for the state.

Therefore, Historic Hawai'i Foundation urges the Legislature to support HB 1074 HD 1.

Historic Hawai'i Foundation

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HB1074

Submitted on: 2/17/2013

Testimony for FIN on Feb 20, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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