



**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  
**Craig K. Hirai**  
Hawaii Housing Finance and Development Corporation  
Before the

**HOUSE COMMITTEE ON HOUSING**

February 8, 2016 at 8:30 a.m.  
State Capitol, Room 329

In consideration of  
**H.B. 2744**  
**RELATING TO HOUSING.**

The HHFDC *offers comments on* H.B.2744. This bill amends statutes relating to the State Low-Income Housing Tax Credit (LIHTC) program, which HHFDC administers.

H.B. 2744 appears to be an attempt to accelerate and double the value of the State 4% non-volume cap LIHTCs, which are coupled with the use of Hula Mae Multifamily revenue bonds to finance affordable rental housing developments for households at or below 60 percent of the area median income. We note that there is an Administration bill, H.B. 2304, that would accelerate both the 9% volume cap and the 4% non-volume cap LIHTCs and increase their value as a source of equity financing for affordable rental projects.

H.B. 2744 deletes language in section 235-110.8, HRS, relating to the Federal American Recovery and Reinvestment Act of 2009 on page 2, lines 11 to 16, and page 4, lines 3 through 12. This would adversely affect existing LIHTC projects. Although the Federal program has ended, this language is needed for existing projects still subject to the LIHTC program's compliance monitoring provisions.

The measures also decouples the State LIHTC program from the Federal LIHTC program in ways that would reduce the accountability of LIHTC project owners, such as the deletion of language relating to passive activity losses on page 6, lines 7 through 9 of this bill.

Thank you for the opportunity to testify.

DAVID Y. IGE  
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To: The Honorable Mark J. Hashem, Chair  
and Members of the House Committee on Housing

Date: Monday, February 8, 2016  
Time: 8:30 A.M.  
Place: Conference Room 329, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 2744, Relating to Housing.

The Department of Taxation (Department) appreciates the intent of H.B. 2744, but has serious concerns, especially as it relates to the non-conformity of various provisions to the Internal Revenue Code (IRC). The Department defers to the Hawaii Housing Finance and Development Corporation (HHFDC) on the merits of this bill, and provides the following comments regarding H.B. 2744 for your consideration.

H.B. 2744 amends the low-income housing tax credit by:

- Removing the provisions related to subawards issued under section 1602 of the American Recovery and Reinvestment Act of 2009,
- Clarifying that the allocation of tax credits for pass-through entities,
- Bases the amount of the tax credit on whether or not a building is financed by tax-exempt bonds, and
- Removes reference to Internal Revenue Code sections regarding the application of at-risk rules and limitation of passive activity losses and credits.

The measure is effective on July 1, 2017, except that the provisions relating to the tax credit applies to taxable years ending after December 31, 2016.

First, the Department is deeply concerned with the removal of the requirements that the taxpayer be subject to the at risk rules of IRC § 42(k) and the passive activity loss and credit limitations set forth under IRC § 469. The Department always prefers conformity to the IRC where possible, as this provides clear guidance to both the Department and to taxpayers, since there is substantial guidance issued in the form of rules and regulations issued by the Internal Revenue Service, as well as court decisions regarding the various sections of the IRC. These proposed amendments add an additional layer of complexity without any clear benefit.

Second, this measure eliminates the provision that HHFDC determine whether a project is eligible for an award of low income housing tax credits, and instead only leaves to HHFDC with the task of determining the eligible basis of a building. The Department believes that HHFDC should continue to determine the eligibility of a project, a role that it has long held and has the required expertise in. Without HHFDC's determination, the Department will have to examine a credit area that it has no particular expertise in and one in which it has not been involved with before.

Finally, this measure also sets the amount of the credit, with respect to buildings that are not financed with tax-exempt bonds, at fifty per cent of the applicable percentage of the qualified basis of each building located in Hawaii, whereas buildings that are to be financed with tax-exempt bonds will receive one hundred per cent of the applicable percentage of the qualified basis of each building located in Hawaii. It is not clear why a building financed with tax exempt bonds should receive a greater amount of credits than one that is not financed with tax exempt bonds. Nevertheless, the Department defers to HHFDC on the merits of this provision.

Thank you for the opportunity to provide comments.

Testimony in Support of HB 2744  
House Committee on Housing  
Monday, February 8, 2016, 8:30AM HCR 329

The Honorable Mark Hashem, Chair and Members of the Committee on Housing:

My name is Rachel Stern, with InState Partners, testifying in strong support of HB 2744 Relating to Housing.

Currently, for every 100 low-income families in Hawaii, there are only 29 affordable housing units available. Housing is considered “affordable” when a household spends less than 30 percent of their income on shelter and utilities. Households that spend more are considered cost-burdened and are frequently forced to make difficult financial tradeoffs with other basic necessities. Under these criteria, more than half of all Hawaii renters do not live in affordable housing.

State and Federal Low Income Housing Tax Credits can be a successful part of the solution to this affordable housing crisis. As the law is written now, the state provides a 50% match for the Federal credits for both 9% and 4% LIHTC projects. This bill, HB2744, instead creates a one to one match between state and federal credits for the 4% deals. As is expected, 4% LIHTC deals are much more difficult to finance, because they require developers to take on significantly more debt than the 9% projects. The current 50% state match to federal credits does not generate enough subsidy for the 4% projects to be economically viable, resulting in low developer and investor interest. As such, Hawaii is currently only using 60% of the state’s total possible Federal subsidies for these projects—a one to one match will help Hawaii bring more federal dollars to the state, and increase the amount of affordable housing projects being done on the islands.

While the measure provides an opportunity to increase the 4% dollars and deals coming to the state, we offer suggested amendments that are outlined in the attachment. We welcome the chance to work with this committee and with the state departments to put forth a measure that incentivizes Hawaii developers and investors while building much needed low-income housing.

Thank you for this opportunity to testify.

HOUSE OF REPRESENTATIVES  
TWENTY-EIGHTH LEGISLATURE, 2016  
STATE OF HAWAII

H.B. NO.

2744

A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 201H-15, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The corporation is designated as a state housing credit agency to carry out section 42(h) (with respect to limitation on aggregate credit allowable with respect to a project located in a state) of the Internal Revenue Code of 1986, as amended. As a state housing credit agency, the corporation shall determine the ~~[eligibility]~~ eligible basis for a qualified low-income building, make the allocation of housing credit dollar amounts within the State, and determine the portion of the State's housing credit ceiling set aside for projects involving qualified nonprofit organizations. The corporation shall file any certifications and annual reports required by section 42 (with respect to low-income housing credit) of the Internal Revenue Code of 1986, as amended.

(b) The state aggregate housing credit dollar amount shall be allocated annually as required by section 42 of the Internal Revenue Code of 1986, as amended, by the corporation in an amount equal to ~~[\$1.25]~~ \$1.75 multiplied by the state population in the calendar year or such greater or lesser amount as provided by section 42(h) of the Internal Revenue Code of 1986, as amended."

SECTION 2. Section 235-110.8, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) through ~~[(e)]~~ [(f)] to read:

"(a) Section 42 (with respect to low-income housing credit) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section. ~~[A taxpayer owning a qualified low-income building who has been awarded a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, shall also be eligible for the credit provided in this section.]~~

(b) Each taxpayer that:

(1) Owns an interest in a qualified low-income housing building or qualified low-income housing project located in the State;

(2) Is subject to the tax imposed by this chapter~~[, who has]~~; and

(3) Has filed a net income tax return for a taxable year, may claim a low-income housing tax credit against the taxpayer's net income tax liability. The amount of the credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed on a timely basis. A credit under this section may be claimed whether or not the taxpayer claims a federal low-income housing tax credit pursuant to section 42 of the Internal Revenue Code.

(c) The amount of the low-income housing tax credit that may be claimed by a taxpayer as provided in subsection (b) shall be as follows:

(1) With respect to buildings that are not to be financed with tax-exempt bonds, fifty per cent of the applicable percentage of the qualified basis of each building located in Hawaii[-]; and

(2) With respect to buildings that are to be financed with tax-exempt bonds, one hundred per cent of the applicable percentage of the qualified basis of each building located in Hawaii.

~~[The applicable percentage shall be calculated as provided in section 42(b) of the Internal Revenue Code.]~~

~~(d) [If a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, has been issued for a qualified low-income building, the amount of the low-income housing tax credits that may be claimed by a taxpayer as provided in subsection (b) shall be equal to fifty per cent of the amount of the federal low-income housing tax credits that would have been allocated to the qualified low-income building pursuant to section 42(b) of the Internal Revenue Code by the corporation had a subaward not been awarded with respect to the qualified low-income building.] [In the case of a partnership, S corporation, estate, or trust, the tax credit shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 704(b) of the Internal Revenue Code.]~~

(e) For the purposes of this section, the determination of:

(1) Qualified basis and qualified low-income building shall be made under section 42(c);

(2) Eligible basis shall be made under section 42(d);

(3) Qualified low-income housing project shall be made under section 42(g); and

(4) Recapture of credit shall be made under section 42(j), except that the tax for the taxable year shall be increased under section 42(j)(1) only with respect to credits that were used to reduce state income taxes; ~~and~~

~~(5) Application of at-risk rules shall be made under section 42(k);]~~

of the Internal Revenue Code."

(f) As provided in section 42(e), rehabilitation expenditures shall be treated as a separate new building and their treatment under this section shall be the same as in section 42(e). The definitions and special rules relating to credit period in section 42(f) and the definitions and special rules in section 42(i) shall be operative for the purposes of this section ~~[-]~~, except that reference to 10 taxable years in section 42(f)(1) shall instead refer to six taxable years for purposes of this section.

2. By amending subsections (h) and (i) to read:

"(h) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. For the purpose of deducting this tax credit, net income tax liability means net income tax liability reduced by all other credits allowed the taxpayer under this chapter.

A tax credit under this section that exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to properly and timely claim the credit shall constitute a waiver of the right to claim the credit. A taxpayer may claim a credit under this section only if the building or project is a qualified low-income housing building or a qualified low-income housing project under section 42 of the Internal Revenue Code.

~~[Section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall be applied in claiming the credit under this section.]~~

(i) In lieu of the credit awarded under this section for a qualified low-income building that has been awarded federal credits that are subject to the state housing credit ceiling under section 42(h)(3)(C) of the Internal Revenue Code~~[-]~~ or federal credits that are allocated pursuant to section 42(h)(4) of the Internal Revenue Code, ~~[or a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5,]~~ the taxpayer owning the qualified low-income building may make a request to the corporation for a loan under section 201H-86. If the taxpayer elects to receive the loan pursuant to section 201H-86, the taxpayer shall not be eligible for the credit under this section."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2017; provided that section 2 shall apply to taxable years beginning after December 31, 2016.

INTRODUCED BY: \_\_\_\_\_