



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. 2771
RELATING TO HOUSING DEVELOPMENT.

The HHFDC *offers the following comments on* H.B. 2771 because the issues raised in this measure are being addressed.

H.B. 2771 amends section 201H-36, HRS, relating to HHFDC's authority to certify certain certified or approved housing projects for exemption from General Excise Taxes (GET) pursuant to section 237-29, HRS. Please note that HHFDC's regulatory agreement for housing projects certified for GET exemption includes a contractual provision for the recapture of the GET exemption. The project regulatory agreement is recorded and runs with the land.

The bill also amends section 201H-37, HRS relating to the exemption from State tax for income derived by a nonprofit entity determined to constitute a "public housing agency" pursuant to Section 3 (6) of the U.S. Housing Act of 1937, as amended. As this relates to tenant-based assistance under the Section 8 program, the proposed penalty for failure to complete the rental housing project is not applicable.

H.B. 2771 also amends section 201H-38, HRS, relating to HHFDC's 201H expedited processing for eligible housing projects. Please note that HHFDC's regulatory agreement for housing projects processed pursuant to section 201H-38, HRS sets forth project conditions, responsibilities, and restrictions.

For these reasons, we believe the measure is not necessary.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR

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

Date: 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. 2771, Relating to Housing Development.

The Department of Taxation (Department) appreciates the intent of H.B. 2771 and provides the following comments on sections 1 and 2 for your consideration.

Section 1 of H.B. 2771 amends section 201H-36, Hawaii Revised Statutes (HRS), by requiring that there be a provision in the regulatory agreement between the Hawaii Housing Finance Development Corporation (HHFDC) and a person for a rental housing project that requires the person to pay a penalty of no less than the amount of the general excise tax exempted if the person fails to complete the project. Section 2 of H.B. 2771 amends section 201H-37, HRS, by changing the word "which" to "the" on line 12 of page 2. H.B. 2771 also amends section 201H-37, HRS, by adding language that when a person fails to complete a rental housing project, HHFDC shall report said failure to the Department and the person shall pay a penalty of no less than the amount of tax exempted pursuant to that section. The bill is effective upon approval.

First, the Department notes that in section 1, the penalty provision only applies if the person fails to "complete" the rental housing project, which may be interpreted to mean completion of construction. If the intent of the bill is to also impose a penalty if the eligibility requirements in section 201H-36(b), HRS, are not met, the Department suggests amending the language to specify such.

Second, the Department notes that amending section 201H-37, HRS, by deleting the word "which" and replacing it with "the" renders the statute ambiguous and may have unintended consequences. Section 201H-37, HRS, currently exempts from taxation: (1) income earned by a nonprofit entity constituting a public housing agency under 42 U.S.C. §1437a from low-income housing projects; and (2) obligations, including interest, issued by public housing agencies in connection with low-income housing projects. See 42 U.S.C. § 1437i(b). By

changing “which” to “the”, the bill appears to exempt: (1) all income earned by a nonprofit entity constituting a public housing agency under 42 U.S.C. § 1437a, regardless of whether the income is earned in connection with a low-income housing project; and (2) all obligations, including interest, issued by a nonprofit entity constituting a public housing agency under 42 U.S.C. § 1437a, regardless of the purpose of the obligations. If this is not the intent, the Department suggests leaving the language in its current form.

Third, the Department notes that the term “qualifying person or firm” in section 2 is ambiguous, as it is not defined in section 201H-37, HRS, or in other sections of the chapter. If “qualifying person or firm” is intended to mean a person that is exempt from general excise taxes under section 201H-36, HRS, the Department suggests clarifying such.

Finally, the Department notes that the penalty imposed in section 2 on a person that fails to complete a rental housing project is measured by exemptions taken by others. Specifically, the penalty will be in an amount no less than the sum of: (1) the amount of income received by the nonprofit public housing agency in connection with the project; and (2) the amount of obligations, including interest, issued by the public housing agency. If the “qualifying person or firm” in section 2 is the person that receives an exemption under section 201H-36, HRS, the person may be penalized twice for the same conduct under section 1 and section 2.

Thank you for the opportunity to provide comments.