

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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February 26, 2015

The Honorable Jill N. Tokuda, Chair  
and Members of the Committee on Ways  
and Means  
Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Tokuda and Committee Members:

SUBJECT: Senate Bill No. 785, SD1  
Relating to Affordable Housing on Hawaiian Home Lands

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 785, SD1, which makes permanent the affordable housing credit program under the Department of Hawaiian Home Lands (DHHL).

The City strongly supports an increase in the inventory of affordable housing units. The City also recognizes the challenges faced by DHHL in fulfilling its obligations to its beneficiaries. However, we testified in opposition to this program at its inception in 2009. This program costs the State of Hawaii nothing. In fact, it creates credit value that DHHL can sell to developers who have an obligation to fulfill affordable housing requirements imposed by the counties. It undermines the ability of the counties to provide new affordable housing to all its residents within county-defined income need groups, on a time schedule commensurate with private sector construction, and in geographic areas where the counties believe affordable housing is needed.

In the six years since this mandatory credit program was adopted as Act 141 (2009, Session Laws of Hawaii), the City and County of Honolulu awarded more than 700 affordable housing credits to DHHL. If this program continues, we expect about 300 more in the near future. These are high figures compared to the total amount of affordable housing otherwise delivered; in high-construction years, the private sector delivers about 600 affordable housing units annually.

The goal should not be to redirect the resources and/or opportunities from one branch of government at the expense of another. We all need to work together in addressing the affordable housing shortage.

The Honorable Jill N. Tokuda, Chair  
and Members of the Committee on Ways  
and Means  
Hawaii State Senate  
Hawaii State Capitol  
RE: Senate Bill No. 785, SD1  
February 26, 2015  
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As you may know, the City is focusing on encouraging affordable housing in the rail corridor. This DHHL program dampens the county's ability to do so, in that credits for housing in Nanakuli can be substituted for housing that would have been delivered in the corridor. Moreover, the DHHL credits represent single-family dwellings, and the City is promoting denser, "infill," multi-family projects.

We do have ongoing conversations with DHHL about the opportunities that transit-oriented development (TOD) represents to DHHL in fulfilling its mission, whether as an independent housing developer or in partnership with other developers and landowners. We are encouraged by these conversations in recent months. To allow the credit program to continue would appear to be a disincentive to TOD.

Lastly, please note that DHHL can already participate in our affordable housing program without this credit law. They would receive the same benefits that private housing developers receive. Namely, for qualifying units, the DHHL would receive a higher benefit ratio than one credit for one housing unit. The credit value is increased for larger units and those that are kept in the affordable sales range for a longer period of time. Units that are located in the rail corridor can also receive bonus credits.

In summary, we believe Act 141 benefits the DHHL at the cost of the counties' programs. It infringes on home rule and the counties' ability to administer their affordable housing programs. If Act 141 cannot be held, we ask that you amend it by making it an optional program, subject to compliance with county programs.

Thank you for this opportunity to testify.

Very truly yours,



George I. Atta, FAICP  
Director

GIA:et

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII



JOBIE M. K. MASAGATANI  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

SHAN S. TSUTSUI  
LT. GOVERNOR  
STATE OF HAWAII

WILLIAM J. AILA, JR.  
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879  
HONOLULU, HAWAII 96805

TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS  
IN SUPPORT OF

**SB 785 SD 1, RELATING TO AFFORDABLE HOUSING ON HAWAIIAN HOME LANDS**

February 26, 2015

Aloha Chair Tokuda, Vice Chair Kouchi, and Members of the Committees:

The Department of Hawaiian Home Lands (DHHL) supports this bill that makes permanent provisions for affordable housing credits to be requested by DHHL and received from each county for units developed on Hawaiian home lands, and amends HRS Section 46-15.1, HRS, to clarify provisions of this program.

The Department supports the intent of Section 1, and strongly supports the repeal of the sunset of this program provided for in Section 2 and Section 3. This language in Section 2 and Section 3 is identical to a bill that is part of the Governor's administrative package by request of our department. While we continue to analyze the Senate Draft 1 requirement for investment into rentals, on first review, we are open to this new provision.

Affordable housing credits have afforded the department greater opportunities to gain resources to develop homesteads and, thus, meet our mission to return native Hawaiians to our trust lands. Since Act 141 was passed by the legislature in 2009, this program has been very

successful for DHHL, but it is set to repeal in 2015. By making this program permanent, DHHL can continue to form private-public partnerships through the exchange of credits creating resources for the department, and DHHL can earn these resources without requiring any state funds.

During the interim since the last legislative session, our department has executed a memorandum of agreement with the County of Kauai to smooth implementation of this program and to address concerns related to home rule previously raised by this county. We are also currently working on a memorandum of agreement with the City and County of Honolulu to achieve the same goal.

Thank you for your consideration of our testimony.



**Hawaiian Homelands**  
**Assembly**

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**Annie Au Hoon**  
Administrator

February 25, 2015

To: **Sen. Jill N. Tokuda, Chair**  
**Sen. Ronald D. Kouchi, Vice Chair & Members of the**  
**Committee on Ways and Means**

From: **Kali Watson**  
**Chairman of Statewide Economic/Housing Committees**  
**SCHHA**  
**Honolulu, Hawaii 96792**

Re: **Hearing on SB 785 SD1 Relating to Affordable Housing On Hawaiian**  
**Home Lands**  
February 26, 2015 at 1:00 pm  
Conference Room 211, State Capitol

**TESTIMONY IN SUPPORT**

Dear Chairperson Tokuda & Vice Chair Kouchi of Ways and Means Committee and Members:

Thank you for the opportunity to provide testimony in support to SB 785 SD1 relating to affordable housing credits. This bill makes permanent affordable housing credits generated by projects built on DHHL lands, which can then be used by private developers to satisfy their affordable housing requirements imposed by the various counties across the State. This allows DHHL and affordable housing developers on DHHL lands to generate money for their existing and future projects. With over 26,000 people on DHHL's waiting lists, such private sector subsidies are desperately needed to help support the building of more affordable housing for native Hawaiians, for both homeowners and renters. Moreover, the bill mandates that a percentage of the revenue be used by DHHL to develop rental units. With many beneficiaries unable to afford large mortgages, the alternative housing provides shelter to the less fortunate.

The Sovereign Councils of the Hawaiian Homelands Assembly, formerly the State Council of Hawaiian Homestead Associations was founded more than 28 years ago to unite homestead communities and to advocate for the beneficiaries of the Hawaiian Homes Commission Act of 1921. The SCHHA is the oldest statewide advocacy organization representing the interests of more than 30,000 beneficiaries and families residing in the communities of the Hawaiian Home Land Trust. Its mission is to promote the self-determination of native Hawaiians and the well being of homestead communities.

I urge you to please pass this measure, SB 785 SD1.

Sincerely,

**Chairman**

Statewide Economic/Housing Committee

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON WAYS AND MEANS

For hearing Thursday, February 26, 2015

Re: SB 785, SD1 RELATING TO AFFORDABLE HOUSING ON HAWAIIAN HOME LANDS.

Makes permanent Act 141, Session Laws of Hawaii 2009, which requires the counties to issue affordable housing credits to DHHL.  
Makes permanent Act 98, Session Laws of Hawaii 2012, which requires the counties to issue affordable housing credits for each residential unit developed by DHHL. Allows credits to be issued for rental units developed by DHHL on a two-credit per one-unit basis and to satisfy affordable housing obligations imposed by the counties, regardless of the date of enactment thereof.

TESTIMONY IN OPPOSITION

A developer who applies for a permit to develop a piece of land by building houses, townhouses, or apartment buildings is often required, as a condition for being granted the permit, to sign an agreement with the county government to set aside a percentage of the housing units as "affordable" housing. That means that for a specified period of years those designated units can be sold only to owner-occupants, or used for rental housing, at prices or rents significantly below what those housing units would otherwise command in the free market.

Some of the alleged purposes of the affordable housing requirement are to ensure that people with low incomes, or ethnicities that might be discriminated against, can nevertheless afford a decent place to live in a multiracial neighborhood, and that ghettos or slums with high crime rates will be avoided by having low-income families dispersed in middle-class neighborhoods.

The concept of government-enforced affordable housing requirements for developers to get permits seems to be inspired by Robin Hood: Take from the rich and give to the poor. Take a landowner's right to develop his land, consistent with normal zoning requirements for safety and environmental protection, and confiscate a portion of the wealth he could expect from developing it in order to provide below-market prices for housing for low-income people. Social justice!

From the perspective of a developer, a requirement to provide affordable housing as a condition of getting a development permit closely resembles paying a bribe -- the main difference is that the bribe is paid in the form of legally allowed and well-publicized extortion of reduced profit rather than being paid secretly as cash in an envelope handed over in a dark alley; and that the extortionist is the elected county government rather than a Mafia hoodlum. Either way, force is being used.

Developers are allowed to buy or sell affordable housing credits among each other in a sort of marketplace, somewhat analogous to air-

pollution credits or carbon credits. Thus a developer who builds a larger number of affordable housing units than required under terms of his permit can sell his surplus credits to a developer whose permit requires more affordable units than he wishes to actually build.

SB785 and SB1100 would badly distort the normal marketplace of affordable housing credits, turning it into a Frankenstein's monster. The Department of Hawaiian Homelands (DHHL) operates a very abnormal collection of neighborhoods where land can only be leased but never owned in fee simple, and where racial segregation is practiced because someone must have at least 50% Hawaiian native blood in order to be granted a lease (or 25% to inherit a lease). Furthermore DHHL is not a normal developer hoping to make a profit; rather, DHHL is heavily subsidized by owning land it was given for free and by receiving operating funds from the government; and DHHL's mission is to develop roads and utilities to enable leaseholders to build housing units at below-market cost in a planned community with rules enforced by a heavy-handed bureaucracy.

Every housing unit developed on DHHL property is likely to satisfy county requirements to be considered "affordable." So under terms of SB785 and SB1100, DHHL would accumulate a huge inventory of credits for affordable housing, which DHHL could then sell to normal free-market developers. SB785 and SB1100 would drop an enormous windfall profit into DHHL, which seemingly materializes out of thin air. But we all know nothing comes for free. So who would pay for DHHL's windfall profit?

It seems obvious that a few of the expected outcomes of SB785 and SB1100 would be as follows. Normal (i.e., for-profit) developers would purchase all the affordable housing credits they need from DHHL and would therefore have no reason to actually build affordable housing. Each county, as a whole, outside the DHHL ghettos, would become increasingly gentrified due to lack of new affordable housing, so that



young people from lower and middle class backgrounds would be under economic pressure to leave Hawaii even more-so than at present.

Money that developers might normally pay to counties in lieu of the affordable housing requirement for a permit would now be paid to DHHL instead, forcing counties to raise taxes or reduce services for those unfortunate folks lacking the required native blood quantum.

I'm not an expert on economics or real estate. Surely the legislature can find experts to advise you on the consequences of SB785 and SB1100. Something seems terribly wrong with this legislation. Please get expert advice from people who have no affiliation with DHHL, OHA, or other racial entitlement institutions.