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GOVERNOR OF
HAWAII

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
LABOR, CULTURE AND THE ARTS

Tuesday, March 12, 2019
2:45 P.M.
State Capitol, Conference Room 224

In consideration of
HOUSE BILL 1533, HOUSE DRAFT 1
RELATING TO HISTORIC PRESERVATION

House Bill 1533, House Draft 1 proposes to amend Chapter 235, Hawaii Revised Statutes (HRS), creating a tax credit for certified rehabilitation of certified historic buildings. Tax incentives for rehabilitation of historic buildings have been proven to be enormously effective in preserving important buildings, ensuring their continuing economic viability, revitalizing communities, especially historic downtowns, preserving community character, and promoting heritage tourism. The Department believes that tax credit programs such as this can make an important contribution to the comprehensive state historic preservation program established by Chapter 6E, HRS. **The Department of Land and Natural Resources (Department) supports this measure and recommends amendments.**

In its 2018 report on the federal historic tax credit program, the National Park Service (NPS) prepared in collaboration with Rutgers University (copy attached for your reference), notes that NPS certified 1,035 completed historic rehabilitation projects. The report documents $6.5 billion in rehabilitation investment during federal fiscal year 2017 (the last year for which figures are available), helped create 106,900 jobs, and $6.2 billion of gross domestic product.

If this measure is enacted, Hawaii will join the 38 states that already provide tax credits for the rehabilitation of historic structures. The nature of each state program is different, so it is difficult to extract information from them that could be directly useful in evaluating the effect of the program proposed in this measure. All states report that their programs are successful both in giving new life and continuing utility to significant historic structures, leveraging private investment at between $4 and $5 per tax credit dollar, contributing significant positive economic impact to affected communities. At between 4 and 9 years, depending on the state and the level of the credit, generating revenue to the state exceeding the decrease in revenue due to the tax credit by between $4 and $5 per tax credit dollar. Since the credit is paid out after the project is completed, the revenue payback begins from taxes on wages, goods, and services, before the credit is claimed.

Testimony before the House Committees on Housing and Finance suggested that this measure needs to be revised to reflect the amendments recommended by the Department of Taxation and to make additional clarifying revisions based on other testimony. Similar testimony was provided by the Department of Taxation to this Committee (Labor, Culture and the Arts) and the Senate Committee on Ways and Means on Senate Bill 1394 Senate Draft 1, which has an identical purpose but is drafted differently. Accordingly, the Department recommends that this measure be amended by replacing its contents in its entirety and replace it with language as follows:

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

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235-   Historic preservation income tax credit.** (a) Notwithstanding any law to the contrary, there shall be allowed to each taxpayer subject to tax imposed by this chapter an income tax credit for substantial rehabilitation of a certified historic structure that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the tax credit is properly claimed. The amount of the tax credit for substantial rehabilitation of a certified historic structure that is certified by qualified professional staff of the department of land and natural resources' state historic preservation division, shall be:

(1) Twenty-five per cent of the qualified rehabilitation expenditures; or

(2) Thirty per cent of the qualified expenditures in the event that:

(A) At least twenty per cent of the units are affordable rental housing;

(B) At least ten per cent of the units are affordable homeownership units; or;

(C) In structure with mixed residential and non-residential uses, at least thirty per cent of the total square footage of the structure is for affordable rental housing, affordable homeownership units, or both.

(b) The tax credit allowed under this section shall be available in the taxable year in which the substantially rehabilitated certified historic structure is placed into service. In the case of projects completed in phases, the tax credit shall be prorated to the substantially rehabilitated identifiable portion of the certified historic structure placed into service during that taxable year.

(c) In the case of a partnership, S corporation, estate, trust, or any developer of a rehabilitated certified historic structure, the tax credit allowable shall be as provided under subsection (b) for the taxable year. The cost upon which the credit is computed shall be determined at the entity level and the distribution and share of the tax credit shall be determined pursuant to section 704(b) of the Internal Revenue Code.

If a deduction is taken under section 179 (with respect to the election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of qualified expense for which the deduction is taken.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of the credit allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.

(d) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of the credit over the liability may be used as a credit against the taxpayer's income tax liability in subsequent years until either the credit is exhausted, or for a period of ten years, whichever is earlier. All claims—for the tax credit under this section, including any amended claims, 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 comply with foregoing provision shall constitute a waiver of the right to claim the credit.

(e) The state historic preservation division shall develop rules pursuant to chapter 91 for the approval of rehabilitation of certified historic structures for which the tax credit under this section is sought. These standards and criteria shall take into account whether the rehabilitation of a certified historic structure will preserve the historic character of the property.

(f) Following the completion of rehabilitation of a certified historic structure, the owner shall notify the state historic preservation division that the rehabilitation has been completed. The owner shall provide the state historic preservation division with documentation of the costs incurred in rehabilitating the historic property and shall submit certification of the costs incurred in rehabilitating the historic property. The state historic preservation division shall review the rehabilitation and verify that the rehabilitation project complied with the rehabilitation plan. The administrator of the state historic preservation division shall certify in writing that the rehabilitation has been completed in accordance with the approved rehabilitation plan, and provide that certification to both the project proponent and the director of taxation.

(g) The director of taxation shall prepare any forms that may be necessary to claim the tax credit under this section. The director may also require the taxpayer to furnish reasonable information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(h) The aggregate amount of the tax credits claimed for qualified tax credits claimed for qualified rehabilitation projects not exceed:

(1) $ for the 2020 tax year;

(2) $ for the 2021 tax year;

(3) $ for the 2022 tax year;

(4) $ for the 2023 tax year; and

(5) $ for the 2024 tax year and every year thereafter.

(i) On an annual basis, the state historic preservation division, in consultation with the department of taxation, shall determine the information necessary to enable a quantitative and qualitative assessment of the outcomes of the tax credit to be determined. Each taxpayer claiming this credit shall, no later than the last day of the taxable year following the close of the tax year in which qualified costs were expended, submit a written, certified statement to the state historic preservation division containing the qualified rehabilitation expenditures incurred by the taxpayer and any other information the state historic preservation division or department of taxation may require.

Any taxpayer failing to submit information to the state historic preservation division in a manner prescribed by the state historic preservation division prior to the last day of the taxable year following the close of the tax year in which the qualified costs were expended shall not be eligible to receive the tax credit for those expenses, and any credit already claimed for that taxable year shall be recaptured in total. The amount of the recaptured tax credit shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs.

All information in the statement submitted under this section shall be a public document, except for information that is otherwise exempt from public disclosure in accordance with chapter 92F.

(j) Recapture of a previously claimed tax credit shall be required from any taxpayer who received the credit if any of the following occur:

(1) The projected qualified expenditures do not materialize;

(2) The qualified rehabilitation plans do not proceed in a timely manner and in accordance with the approved plans;

(3) In the case of the thirty per cent tax credit, less than twenty per cent of the units qualify as affordable rental housing; or

(4) In the case of the thirty per cent tax credit, less than ten per cent of the units qualify as affordable homeownership units.

Any credit under this section shall be recaptured following the close of the taxable year for which the credit is claimed if the department of land and natural resources notifies the department that the taxpayer has failed to comply with the requirements of this section or its related rules promulgated by the state historic preservation division.

(k) On an annual basis, the state historic preservation division, in consultation with the department of taxation, shall submit a report to the legislature at least twenty days prior to the convening of each regular legislative session evaluating the effectiveness of the tax credit. The report shall include findings and recommendations to improve the effectiveness of the tax credit to further encourage the rehabilitation of historic properties.

(l) For the purposes of this section:

"Affordable homeownership units" means housing that meets the guidelines published by the United States Department of

Housing and Urban Development for the year in which the units are initially offered for sale.

"Affordable rental housing" means rental housing that meets the guidelines published by the United States Department of Housing and Urban Development for the year in which the units are put into service.

"Certified historic structure" means any structure that is:

(1) Individually listed in the Hawaii register of historic places or the national register of historic places;

(2) Located in a historic district listed in the Hawaii register of historic places or the national register of historic places and certified by the state historic preservation division as contributing to the significance of the historic district; or

(3) A structure that the state historic preservation division has determined is eligible for inclusion in the Hawaii register of historic places, and which is listed in that register by the date of certification by the administrator of the state historic preservation division in accordance with subsection (f).

"Qualified rehabilitation expenditures" means any costs incurred for the physical rehabilitation, renovation or construction of a certified historic structure pursuant to a rehabilitation plan; provided that the term shall not include the owner's personal labor.

"Qualified staff" means a staff person meeting the Secretary of the Interior's Professional Qualification Standards for an architectural historian or historic architect.

"Rehabilitation plan" means any construction plans and specification for the proposed rehabilitation of a historic structure in sufficient detail for evaluation of compliance with the rules adopted by the state historic preservation division.

"Substantial rehabilitation" means that qualified rehabilitation expenditures on a certified historic structure ~~that~~ exceed twenty-five per cent of the assessed value of the structure."

SECTION 2. There is hereby established one temporary position in the state historic preservation division to assist with the establishment and administration of the Hawaii historic preservation income tax credit program. The authorization for this temporary position shall expire at the end of fiscal year ________.

SECTION 3. The department of land and natural resources shall be authorized to collect reasonable fees to defray the expenses incurred as reviewing and certifying plans pursuant to carrying out section 235- , Hawaii Revised Statutes. Fees collected for these purposes shall be deposited into the Hawaii historic preservation special fund established pursuant to section 6E-16, Hawaii Revised Statutes.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $85,000 or so much thereof as may be necessary for fiscal year 2019-2020 and the same sum or so much thereof as may be necessary for fiscal year 2020-2021 for one temporary position in the state historic preservation division to assist with the establishment and administration of the Hawaii historic preservation income tax credit program pursuant to this Act.

The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act, upon its approval, shall apply to the taxable years beginning after December 31, 2019; provided that sections 2, 3 and 4 shall take effect on July 1, 2019.

Thank you for the opportunity to comment on this matter.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LIEUTENANT GOVERNOR

LINDA CHU TAKAYAMA
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To: The Honorable Brian T. Taniguchi, Chair
and Members of the Senate Committee on Labor, Culture and the Arts

Date: Tuesday, March 12, 2019
Time: 2:45 P.M.
Place: Conference Room 224, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 1533, H.D.1, Relating to Historic Preservation

The Department of Taxation (Department) offers the following comments regarding H.B. 1533, H.D. 1, for the Committee's consideration.

H.B. 1533, H.D. 1, establishes a new nonrefundable tax credit for taxpayers who rehabilitate historic structures to create or rehabilitate affordable housing. A summary of key provisions are as follows:

- Adds a new section to Hawaii Revised Statutes (HRS) chapter 235, creating a nonrefundable tax credit for qualified expenses incurred in the certified rehabilitation of a certified historic structure resulting in the creation or rehabilitation of affordable housing units;
- Sets the amount of the credit at 25% of the qualified expenses or 30% if at least twenty percent of the units are for affordable rental housing or at least ten percent are sold for affordable homeownership under affordable housing guidelines;
- Creates a carryforward where a credit 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;
- Creates an unspecified aggregate cap on the total amount of credits that may be certified in taxable years and directs the State Historic Preservation Division to discontinue certifying credits if the cap is reached;
- Requires taxpayers to submit a written, certified statement to the State Historic Preservation Division identifying their qualified expenses and the amount of credits claimed in the previous taxable year;
- Requires the State Historic Preservation Division to certify expenses, maintain records of all qualified expenses, and provide taxpayers certifications of credit amounts;

- Authorizes the Director of Taxation to require proof of the claim for the tax credit; and
- Has a defective effective date of January 1, 2050.

The House made several amendments at the Department's request. The Department appreciates the consideration of its testimony and notes that it can administer this measure as drafted, provided a functional effective date is inserted. If a functional effective date is inserted, the Department respectfully requests that it be made no earlier than taxable years beginning after December 31, 2019. This effective date will allow sufficient time to make the necessary form, instructions, and computer system changes.

Thank you for the opportunity to provide comments.

minatoishi architects

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To: Honorable Brian Taniguchi, Chair of Senate Committee on Labor, Culture and the Arts

From: Lorraine Minatoishi, Ph.D., AIA

Hearing: Senate Committee on Labor, Culture and the Arts at 2:45PM in Room 224.

Subject: Support for HB1533, Draft 1, Relating to Historic Preservation

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Dear Chair Brian Taniguchi,

I am writing in **support of House Bill 1533, Draft 1** which supports historic preservation in Hawaii. I ask that the Senate amend the House version by making it identical to SB1533SD2.

I am an owner of an architectural firm in downtown Honolulu specializing in historic preservation. I have been an advocate for preserving our cultural heritage for over 20 years and have a Ph.D. in historic preservation. Through my research and professional work in this field, I have seen the positive impacts of preserving historic buildings. Not only do owners see the value, but also the public appreciates the effort it takes to resist the urge to demolish buildings that are "old". These older buildings preserve a town's character, feel and give it a sense of place.

The profession of "historic preservation" started in the early 1970s when the federal government created Section 106 of the National Historic Preservation Act and the Secretary of Interior's guidelines for preservation, as well as the Advisory Council on Historic Preservation that speaks directly with the President on historic preservation concerns. At that time, we as a nation agreed that we must protect our important cultural statements- buildings, sites, and landmarks that speak of our past. In the 1960s, America was undergoing huge post-war building boom and many of the early 1900 estates of the Vanderbilts, Rockefellers, and those who built America were being demolished. Two women in New York decided that laws had to be put in place to help curb demolition of important places, or very little of our past would remain. They succeeded on a federal level with establishing Section 106, and Hawaii followed suit by enacting Chapter 6E Hawaii Revised Statutes.

The economy of Hawaii is largely governed by tourism and the push to continually grow this economic engine is fierce. Small quaint one and two story bungalow hotels have been replaced with high-rise hotels. The quaint tiki bars and one story international market place of the past are now high-end shopping centers. The Waikiki of the 1960s is long gone, and what little was left has disappeared in the past few years. Not surprisingly, many tourists now go to Maui and Kauai to search for the "real" Hawaii, and it can still be found. In Feb. 6, 2019 Star-Advertiser newspaper, an article reads: "Kauai condo prices pop like fireworks." It will only be a matter of time before these islands, too, loose much of their past and much of their character. When this happens, where will tourists go?

It is in the interest of our economy to preserve our small towns, and important cultural artifacts. It is good for our people and it is good for our visitors. Hawaii is a very special place, and we must cherish our immigrant forefathers built in the early part of the 1900s.

House Bill 1533, Draft 1 does just that- it encourages homeowners and commercial owners to save what they have and to restore their buildings. Most other states have already enacted tax credit programs for preservation. Hawaii must also; otherwise all of our quaint old towns, our important sites, and our residential neighborhoods will be altered beyond recognition. In Hawaii, historic preservation today is seen as a negative for development. Developers run away from preservation like the plague. They don't see any benefit; rather they see it as an impediment to their projects. House Bill 1533, Draft 1 also provides a higher tax credit for projects with an affordable housing component so the benefit will be two-fold- those historic plantation homes can be rehabilitated and serve as housing for local homeowners.

In most other states, using preservation tax credits and saving the old structures are the only way to make projects pencil out. Tax credits are used as leverage to finance development projects with the banks. And these projects have rehabilitated decrepit areas outside of Portland, Seattle, and others areas, spurring economic growth. When economies slow down, these tax incentives make projects viable.

I support House Bill 1533, Draft 1 as it will help Hawaii's economy, its tourism, will create affordable housing units, and will help to preserve the Hawaii that we cherish. Please support House Bill 1533, Draft 1, while amending the House version by making it identical to SB1533SD2.

Sincerely,

Lorraine Minatoishi, Ph.D., AIA

HISTORIC HAWAI'I FOUNDATION

TO: Senator Brian T. Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair
Committee on Labor, Culture and the Arts

FROM: Kiersten Faulkner, Executive Director
Historic Hawaii Foundation

Committee: Tuesday, March 12, 2019
2:45 p.m.
Conference Room 224

RE: **HB 1533 HB 1, Relating to Historic Preservation**

On behalf of Historic Hawaii Foundation, I am writing in **support for HB 1533 HB1.** The bill would establish a historic preservation tax credit for qualified construction expenses incurred in rehabilitation of historic structures, with a higher level of credit for historic rehabilitation projects that produce affordable housing units.

Preserving and appropriately using historic buildings are ways to enhance community character, provide affordable housing, provide an alternative to sprawl, create jobs, encourage heritage tourism, and generally spur economic development in older neighborhoods and commercial districts. Historic preservation tax credit programs have proved to be successful incentives for rehabilitating older structures and returning them to useful life.

The bill would provide this important incentive to developers, property owners and financial institutions involved in preserving historic buildings and providing affordable housing.

Tax credit programs for rehabilitation of historic properties have been used at the federal level and by 38 other States that have adopted laws creating credits against state taxes to provide incentives for the appropriate rehabilitation of historic buildings. 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 federal historic tax credit available to income-producing historic properties.

National studies have found that historic rehabilitation 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. HB 1533 HB 1 would have the additional community benefit of incentivizing affordable housing.

Most programs include the following basic elements: Criteria establishing which 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, generally involving the state historic preservation office and the state department of taxation.

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.

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. Its members and 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.

Therefore, Historic Hawai'i Foundation supports HB 1533 HB 1.