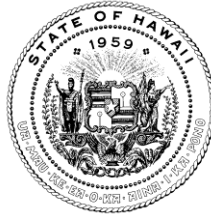


DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
HOUSING**

**Tuesday, March 12, 2019
9:30 A.M.
State Capitol, Conference Room 423**

**In consideration of
SENATE BILL 1394, SENATE DRAFT 2
RELATING TO HISTORIC PRESERVATION**

Senate Bill 1394, Senate Draft 2 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.**

In its 2018 report on the federal historic tax credit program, the National Park Service (NPS) prepared in collaboration with Rutgers University, 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 Senate Bill 1394 Senate Bill 2 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. 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.

Senate Bill 1394 Senate Draft 2 reflects testimony received from the Department of Taxation. Accordingly, the Department strongly supports this measure as currently drafted.

Thank you for the opportunity to comment on this matter.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF TAXATION**

830 PUNCHBOWL STREET, ROOM 221

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Phone: (808) 587-1540 / Fax: (808) 587-1560

Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Tom Brower, Chair
and Members of the House Committee on Housing

Date: Tuesday, March 12, 2019

Time: 9:30 A.M.

Place: Conference Room 423, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 1394, S.D. 2, Relating to Historic Preservation

The Department of Taxation (Department) offers the following comments regarding S.B. 1394, S.D. 2 for the Committee's consideration.

S.B. 1394, S.D. 2 establishes a new nonrefundable tax credit for taxpayers who rehabilitate historic structures pursuant to a rehabilitation plan certified by the Department of Land and Natural Resources' State Historic Preservation Division (SHPD). 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 as part of rehabilitation of a historic structure certified by the SHPD;
- 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;
- Allows unused credit to be carried forward until exhausted, or for ten years, whichever is earlier.
- Requires the SHPD to develop rules for the approval of rehabilitation plans;
- Requires owners of certified historic structures to notify the SHPD when the rehabilitation has been completed and requires the SHPD to review the rehabilitation and verify that it has been completed in accordance with the approved rehabilitation plan;
- Creates an unspecified aggregate cap on the total amount of credits that may be claimed for qualified rehabilitation projects;

- Requires SHPD, in consultation with the Department, to determine the information necessary to enable a quantitative and qualitative assessment of the outcomes of the tax credit to be determined.
- Requires taxpayers to submit a written, certified statement to the SHPD containing their qualified rehabilitation expenses and any other information the SHPD or the Department may require;
- Specifies that all information submitted in the statement to SHPD by taxpayers claiming the credit is public information.
- Provides for recapture of the tax credit if the projected expenditures do not materialize, the rehabilitation plans do not proceed in a timely manner or in accordance with the approved plan, or the amount of affordable units differs from the projected amount;
- Requires the SHPD, in consultation with the Department, submit an annual report to the Legislature;
- 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 Department notes that the Senate made numerous changes to this measure at the Department's recommendation. 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 provide the Department sufficient time to make the necessary form, instructions, and computer system changes.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Historic Preservation Tax Credit

BILL NUMBER: SB 1394, SD-2

INTRODUCED BY: Senate Committee on Ways & Means

EXECUTIVE SUMMARY: Establishes a nonrefundable tax credit based on the qualified rehabilitation expenses of a historic structure. The adoption of this credit would provide tax relief to taxpayers regardless of their need for tax relief. It also would shift the burden of paying for government to the rest of us.

SYNOPSIS: Adds a new section to HRS chapter 235 to allow a credit for rehabilitation of a certified historic property that is certified by the historic preservation division of DLNR.

The credit is to be 25% of the qualified rehabilitation expenditures, or 30% if (A) at least 20% of the units are rental units and qualify as affordable housing, or (B) at least 10% of the units are affordable homeownership units; or (C) in a structure with mixed residential and non-residential uses, at least thirty per cent of the total square footage of the structure is affordable rental housing, affordable homeownership units, or both.

The credit is available in the taxable year in which the substantially rehabilitated structure is placed into service. If completed in phases, the tax credit shall be prorated to the identifiable portion of the building placed into service during that taxable year.

Tax credits that exceed the taxpayer's income tax liability may be carried forward up to 10 years.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of 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.

For a partnership, S corporation, estate, or trust, 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.

Requires the director of taxation to prepare any forms necessary to claim a credit, may require a taxpayer to furnish reasonable information to validate a claim for the credit, and adopt rules pursuant to HRS chapter 91. Requires claims for the credit, including any amended claims, to be filed on or before the end of the twelfth month following the taxable year for which the credit is claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the tax credit.

The aggregate amount of tax credits claimed shall not exceed \$_____ for the 2020 tax year, \$_____ for the 2021 tax year, \$_____ for the 2022 tax year, \$_____ for the 2023 tax year, and \$_____ for the 2024 tax year and every year thereafter.

Provides that 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 structure and shall submit certification of the costs incurred in rehabilitating the historic structure. 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.

Provides that 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. If this information is not submitted, the taxpayer 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. A recaptured tax credit shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs.

Provides for recapture of a previously claimed tax 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 less than ten per cent of the units qualify as affordable homeownership units. Also provides that recapture shall occur if the department of land and natural resources notifies the department of taxation that the taxpayer has failed to comply with the law or its related rules promulgated by the state historic preservation division.

Defines "qualified rehabilitation expenditures" as any costs incurred for the physical construction involved in the certified rehabilitation of a certified historic structure; provided that for projects involving mixed residential and non-residential uses, at least thirty per cent of the total square footage of the rehabilitation is placed into service for residential use. "Qualified rehabilitation expenditures" shall not include the owner's personal labor.

Defines "rehabilitation plan" as 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.

Defines "substantial rehabilitation" as the qualified rehabilitation expenditures of a historic structure that exceed twenty-five per cent of the assessed value of the structure.

EFFECTIVE DATE: July 1, 2050.

STAFF COMMENTS: Lawmakers need to keep in mind two things. First, the tax system is the device that raises the money that they, lawmakers, like to spend. Using the tax system to shape social policy merely throws the revenue raising system out of whack, making the system less than reliable as there is no way to determine how many taxpayers will avail themselves of the credit and in what amount. The second point to remember about tax credits is that they are nothing more than the expenditure of public dollars, but out the back door. If, in fact, these

dollars were subject to the appropriation process, would taxpayers be as generous about the expenditure of these funds when our kids are roasting in the public school classrooms, there isn't enough money for social service programs, or our state hospitals are on the verge of collapse?

If lawmakers want to subsidize the rehabilitation of certified historic buildings, then a direct appropriation would be more accountable and transparent.

Furthermore, the additional credit would require changes to tax forms and instructions, reprogramming, staff training, and other costs that could be massive in amount. A direct appropriation may be a far less costly method to accomplish the same thing.

Finally, the credit is directed to persons who might have no need for financial assistance.

Technical changes that are needed in the bill as it is now drafted include the following:

- The bill does not clearly task either the historic preservation division or the department of taxation with keeping track of the aggregate cap on the credit, and does not provide direction as to what to do if the claims exceed the cap.
- There is no longer a need for (k)(1) because projected qualified expenditures are no longer creditable (they were in prior drafts of this bill). Recapture conditions (k)(2) and (3) are difficult to verify. Consider changing subsection (k) to the following:

(k) 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.

Digested 3/11/2019

HISTORIC HAWAII FOUNDATION

TO: Rep. Tom Brower, Chair
Rep. Scot Z. Matayoshi, Vice Chair
Committee on Housing

FROM: Kiersten Faulkner, Executive Director
Historic Hawaii Foundation

Committee: Tuesday, March 12, 2019
9:30 a.m.
Conference Room 423

RE: SB 1394 SD2, Relating to Historic Preservation

On behalf of Historic Hawaii Foundation, I am writing in **support for SB 1394 SD2**. 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. SB 1394 SD2 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 SB 1394 SD2



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(808) 942-7474

To: Honorable Tom Brower, Chair the House Committee on Housing
From: Lorraine Minatoishi, Ph.D., AIA
Hearing: House Housing Committee on Tuesday at 9:45 in Room 423
Subject: Support for SB1394 Senate Draft 2, Relating to Historic Preservation

Dear Chair Tom Brower,

I am writing in **support of SB1394, Draft 2**, which supports historic preservation in Hawaii. I recommend that the House accept the Senate draft SB1394 Draft 2, as written.

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.

SB1394, Draft 2 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. SB1394, Draft 2 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 SB1394, Draft 2 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 SB1394, Draft 2.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lorraine', with a stylized flourish at the end.

Lorraine Minatoishi, Ph.D., AIA