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DEPARTMENT OF LAND AND NATURAL RESOURCES  
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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Testimony of  
DAWN N. S. CHANG  
Chairperson**

**Before the Senate Committee on  
HOUSING**

**Tuesday, February 14, 2023  
1:01 PM**

**State Capitol, Conference Room 225 and Videoconference**

**In consideration of  
SENATE BILL 1145  
RELATING TO AFFORDABLE HOUSING**

Senate Bill 1145 proposes to include an additional provision, which requires “the preliminary plans and specifications for the project shall include a restrictive covenant that the percentage of units of the projects that are designated as affordable housing, as described in the submitted project application, shall be affordable housing in perpetuity”, as a condition to utilizing broad exemptions afforded under Hawaii Revised Statutes (HRS) §201H-38(a). **The Department of Land and Natural Resources (Department) respectfully offers the following comments.**

The specific amendments proposed in Senate Bill 1145 are not problematic. However, the Department would like to express concerns regarding the existing provision under HRS §201H-38(a) by which the Corporation is exempt “from all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, constructions standards for subdivision, development and improvement of land, and the construction of dwelling units...”. The State and four counties participate in the National Flood Insurance Program (NFIP) and are subject to compliance with federal regulations set forth with the National Flood Insurance Act of 1968 (42 U.S.C. §§4001).

Pursuant to Title 44 of the Code of Federal Regulations (CFR) §59.24, the Federal Emergency Management Agency (FEMA) could suspend the State or county from the NFIP for failing to adequately administer and enforce floodplain development regulations, which require permits for all work within Special Flood Hazard Areas (A or V zones) identified on FEMA’s Flood Insurance Rate Maps (FIRMS). Any State or county law that is not consistent with the NFIP jeopardizes continued eligibility and participation. The unintended consequences of program suspension, include but not limited to:

- No federal flood insurance can be sold or renewed in non-participating communities.
- Certain forms of Federal Disaster Assistance (including mitigation grants) will not be available in the event of a Presidential Disaster Declaration.

Furthermore, unregulated development within floodplains also increases the risk to life and property from flooding.

Mahalo for the opportunity to comment on this measure.

JOSH GREEN, M.D.  
GOVERNOR



DENISE ISERI-MATSUBARA  
EXECUTIVE DIRECTOR

**STATE OF HAWAII**  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM  
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IN REPLY PLEASE REFER TO:

Statement of  
**DENISE ISERI-MATSUBARA**  
Hawaii Housing Finance and Development Corporation  
Before the

**SENATE COMMITTEE ON HOUSING**

February 14, 2023 at 1:01 p.m.  
State Capitol, Room 225

In consideration of  
**S.B. 1145**  
**RELATING TO AFFORDABLE HOUSING.**

HHFDC offers comments on S.B. 1145, which requires that housing projects that receive any exemptions under Section 201H-38, Hawaii Revised Statutes (commonly referred to as 201H Projects) be subject to a restrictive covenant that require affordable units to be affordable in perpetuity.

HHFDC shares the concern about high rents; however, HHFDC suggests obtaining feedback from developers on these restrictive covenants related to perpetuity to ensure they are willing to build projects with these conditions and can secure financing. Each housing project has defined lifecycles and eventually require large capital infusions to extend the life of the building. Therefore, rental project owners require flexibility when seeking financing for these improvements. Additionally, for for-sale projects, units with such restrictive covenants would be challenging to sell and inhibit homeowners from building equity in their homes.

Thank you for the opportunity to provide testimony.

**SB-1145**

Submitted on: 2/12/2023 7:25:48 PM

Testimony for HOU on 2/14/2023 1:01:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support SB1145.

**SB-1145**

Submitted on: 2/12/2023 8:54:42 PM

Testimony for HOU on 2/14/2023 1:01:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Tim Streitz	Individual	Support	Written Testimony Only

Comments:

Thank you for working to fix the broken 201H law. I have witnessed in my neighborhood how developers manipulate the good intentions of the law by requesting enormous exemptions, which cause significant conflicts with the project site's established zoning and neighborhood character, while contributing little towards affordable housing at the lower end of the range, such as 80 to 100 percent of the area median income. We must demand more affordably priced units in order to use this 201H process. Otherwise, developers can still provide housing units as allowed under the existing zoning.

Keeping affordable units as such in perpetuity is good and will result in a larger affordable housing stock.

Please also consider incorporating these items into the bill:

- Counties should have at least 90 days to review and approve the requested exemptions because these are complex projects that need to address community concerns. They are similar to zone changes since they can change allowed land use, height, floor area ratio, and other regulations.
- Require a larger percentage of affordable units be required to utilize the 201H process (i.e., more than 50 percent).
- Cap the amount of exemptions that can be sought over the property's existing zoning height and density so as not to drastically deviate from the character established by the zoning and long-range plans of those communities.

Narrowing the parameters of exemptions allowed and affordability required will provide better guidance toward desirable products that are more broadly acceptable.