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**HOUSE COMMITTEE ON FINANCE
TESTIMONY REGARDING SB 2593 SD 1 HD 1
RELATING TO HAWAII HOUSING FINANCE AND DEVELOPMENT CORP**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: MARCH 25, 2010
TIME: 12:30PM
ROOM: 308

This measure, as amended, requires the Department of Taxation to conduct periodic reviews of all housing projects claiming the general excise tax exemption for construction of low-income housing.

The Department of Taxation (Department) **opposes** this measure.

THE DEPARTMENT SUPPORTS COMPLIANCE REVIEWS GENERALLY—As a general matter, the Department supports the compliance function of auditing and reviewing taxpayers who enjoy favorable tax treatment. However, audits and compliance reviews should be prioritized against all other obligations of the Department.

THE DEPARTMENT OPPOSES THIS MANDATE, WHICH COULD EFFECT COLLECTIONS AND REDUCE PRODUCTIVITY—The Department opposes this measure, which requires it to focus its already limited auditing resources on one specific tax exemption. The Department does not have the resources to ensure a periodic review on the basis provided in this measure. The Department believes that, if required to audit each low-income housing project every three years, the general fund may suffer if these reviews do not generate money. Productive auditors would be pulled off of revenue generating cases, potentially with detriment to the general fund. The Department would prefer to direct its resources where the least amount of effort generates the greatest amount of revenue for the general fund.

THE DEPARTMENT IS NOT AN EXPERT IN LOW-INCOME HOUSING PROJECTS—The Department also opposes this measure because it is not an expert in low-income housing development projects. The Department's reviews of these exemptions would take an excessive amount of time for the first reviews in order to learn the industry. The Department believes that the Hawaii Housing Finance and Development Corporation is better suited to handle this task.

TITLE PROBLEM—The Department points out that this bill may have a fatal title problem. The bill relates to the "Hawaii Housing Finance & Development Corporation," however clearly includes amendments dealing with the Department of Taxation. The Department defers to the Attorney General on this issue.

Linda Lingle
GOVERNOR



KAREN SEDDON
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

IN REPLY REFER TO

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Statement of

Karen Seddon

Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON FINANCE

March 25, 2010, 12:30 p.m.

Room 308, State Capitol

In consideration of

S.B. 2593, S.D. 1, H.D. 1

**RELATING TO THE HAWAII HOUSING FINANCE AND DEVELOPMENT
CORPORATION.**

The HHFDC has the following comments on S.B. 2593, S.D. 1, H.D. 1. We agree that it is important to ensure that GET exemption claimants meet program requirements, but we defer to the Department of Taxation regarding the feasibility of the periodic reviews contemplated in the H.D. 1.

However, if the Committee intends to move this bill forward, we ask that the S.D. 1 be amended to be consistent with existing rulemaking authority for the GET exemption program for certified or approved housing projects, as follows:

1. Page 5, lines 3-8 of the S.D. 1, which create a new subsection (f) in section 201H-36, Hawaii Revised Statutes (HRS), should be deleted; and
2. A new section should be added placing similar language in section 237-29, HRS, to read as follows:

"SECTION 3. Section 237-29, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The director of taxation and the Hawaii housing finance and development corporation shall adopt rules pursuant to chapter 91 for the purpose of this section, including any time limitation for the exemptions~~[-]~~ and penalties for claimants who have received a general excise tax exemption without meeting or continuing to meet the appropriate eligibility criteria in every taxable year during which the claimant has received a general excise tax exemption."

Thank you for the opportunity to testify.

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SUBJECT: MISCELLANEOUS, Periodic review of certified housing projects

BILL NUMBER: SB 2593, HD-1

INTRODUCED BY: House Committee on Housing

BRIEF SUMMARY: Amends HRS section 201H-36 to require the department of taxation to conduct periodic reviews of all housing projects for which a claimant has received a general excise tax exemption at least once every three years following the close of the taxable year for which a claimant received the exemption. Each periodic review shall determine whether the housing project has met the eligibility criteria for each tax year the claimant has received an exemption.

The HHFDC shall adopt rules pursuant to HRS chapter 91 and shall include, but not be limited to, penalties for claimants who have received a general excise tax exemption without meeting the appropriate eligibility criteria.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS: HRS section 237-29 provides a general excise tax exemption for the planning, design, financing, construction, sale, or lease of a certified housing project. The proposed measure would require the department of taxation to periodically review the housing projects to ensure that they meet the eligibility requirements to qualify for the exemption. Since any tax exemption results in a reduction of tax revenues by the amount of the exemption, periodic reviews of any tax exemption should be done on a timely basis. In the case of an affordable housing project, HHFDC should require the owners or managers of such projects to re-certify all families claiming to meet the income requirements on an annual basis. Many projects which claim to be affordable housing projects have had families living in the project for a number of years without re-qualification as to the need of the subsidized unit. This is blatantly unfair to families who may be on the waiting list for that subsidized unit. Not doing so brings into question the validity of the general excise tax exemption.

Digested 3/23/10



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March 23, 2010

The Honorable Marcus R. Oshiro, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

RE: S.B. 2593, S.D.1, H.D.1, Relating to the Hawaii Housing Finance and Development Corporation

HEARING: Thursday, March 25, 2010 at 12:30 p.m.

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee:

I am Craig Hirai, the Chair of the Subcommittee on Taxation and Finance, here to testify on behalf of the Hawaii'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii'i, and its 8,800 members in Hawaii'i. HAR offers the following **comments** with respect to S.B. 2593, S.D.1, H.D.1, which requires the Department of Taxation ("DoTax") to conduct periodic reviews of housing projects certified for a General Excise Tax ("GET") exemption to determine whether the housing projects have met eligibility criteria required by law and rule.

HAR has historically supported mechanisms to help increase the supply of low and moderate income affordable housing such as the Rental Housing Trust Fund Program, which can help integrate the use of mixed-income and mixed-use projects, special purpose revenue bonds, low-interest loans, block grants, low-income housing tax credit programs and deferred loan programs to provide rental housing opportunities. Rental Housing Trust Fund projects qualify for and benefit from the GET exemption under HRS §§ 201H-36 and 237-29.

HRS § 46-15.1(a) allows counties to grant county projects an exemption from GET "in the same manner as projects of the Hawaii housing finance and development corporation pursuant to [HRS] section 201H-36;"

In order to: (i) apply the changes to HRS §201H-36 in S.B. 2593, S.D.1, H.D.1, in a thorough and consistent manner with respect to HHFDC and county approved projects; (ii) avoid "forum shopping" for this GET exemption on new projects as a result of what may be perceived to be easier county compliance standards under HRS §46-15.1(a); and (iii) ensure uniform application of these GET exemption rules; HAR respectfully suggests that the Committee consider amending HRS §46-15.1(a) as a part of S.B.2593, S.D.1, H.D.1, as follows:

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§46-15.1 Housing; county powers. (a) Any law to the contrary notwithstanding, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the Hawaii housing finance and development corporation pursuant to chapter 201H insofar as those powers may be reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing low- and moderate-income housing; provided that no county shall be empowered to cause the State to issue general obligation bonds to finance a project pursuant to this section; provided further that county projects shall be granted an exemption from general excise or receipts and use taxes in the same manner as projects of the Hawaii housing finance and development corporation pursuant to [section] sections 201H-36, 237-29 and 238-3(j) and the rules thereunder; and provided further that section 201H-16 shall not apply to this section unless federal guidelines specifically provide local governments with that authorization and the authorization does not conflict with any state laws. The powers shall include the power, subject to applicable limitations, to:

HAR also respectfully suggests that this Committee review Sections 3 and 4 of H.B. 2595, H.D.1, S.D.1, Relating to General Excise Tax, which is currently pending decision making before the Senate Committee on Ways and Means. HAR believes these provisions address this matter in a more thorough, consistent and uniform manner, including Sections 1 and 2, which clearly set forth penalties for noncompliance.

Mahalo for the opportunity to testify.