

JOSH GREEN, M.D.
GOVERNOR



DENISE ISERI-MATSUBARA
EXECUTIVE DIRECTOR

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

IN REPLY PLEASE REFER TO:

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

SENATE COMMITTEE ON WAYS AND MEANS

February 28, 2023 at 10:00 a.m.
State Capitol, Room 211

In consideration of
S.B. 1145 SD1
RELATING TO AFFORDABLE HOUSING.

HHFDC has **serious concerns** with S.B. 1145 SD1 because it requires housing projects that receive any exemption under Section 201H-38, Hawaii Revised Statutes (commonly referred to as 201H Projects), be subject to a restrictive covenant that requires affordability in perpetuity.

This measure may have unintended consequences and adversely impact the development of affordable for-sale housing projects. Developers may be unwilling to assume the risk of building for-sale projects under HRS 201H if market demand is uncertain and they will focus on building only market-rate housing instead. Buyers may be reluctant to purchase units with a perpetual affordability restriction, as they will not have any opportunity to build equity and move up the housing ladder.

A good example of this is Sky Ala Moana. The 84 affordable units were offered for sale with a restriction that prevented owners from reselling their units for 30 years. The developer reported that they could not generate any interest for eight months. Now that they are in their ninth month, they were allowed to reduce the term to 10 years. To subject all 201H affordable units to a perpetual restriction may mean an end to affordable for-sale condominiums.

The majority of for-sale housing projects are privately financed with much less government subsidy compared to affordable rental projects. As such, a perpetual affordability restriction is disproportionate to the benefit that for-sale projects receive through 201H-38.

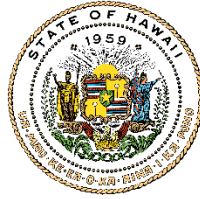
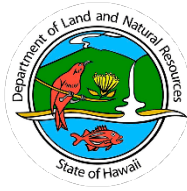
Because the need for housing is so great, we need to ensure developers are willing to build projects with whatever conditions are being proposed so they can determine if they are able to secure financing.

As for rental projects, each one has a defined lifecycle and eventually will require large capital infusions to extend the life of the building. Therefore, rental project owners require flexibility when seeking financing for these improvements.

Thank you for the opportunity to provide testimony.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
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DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONSERVATION AND COASTAL LANDS
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
WAYS AND MEANS

Tuesday, February 28, 2023
10:00 AM
State Capitol, Conference Room 211

In consideration of
SENATE BILL 1145, SENATE DRAFT 1
RELATING TO AFFORDABLE HOUSING

Senate Bill 1145, Senate Draft 1 (SB 1145, SD1) proposes to require Hawaii Housing Finance and Development Corporation (Corporation) housing projects to include a restrictive covenant that the percentage of units of the housing project that are designated as affordable housing, as described in the submitted housing project application, be affordable housing units in perpetuity. **The Department of Land and Natural Resources (Department) offers the following comments and suggested amendments.**

The specific amendments proposed in SB 1145, SD1 are not problematic. However, the Department would like to express concerns regarding the existing provision under Hawaii Revised Statutes (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.

The Department expressed similar comments in testimony for Senate Bill 551, Senate Draft 1. The Senate Committee on Housing acknowledged the Department's concerns with existing exemption language in HRS §201H-38(a) and accepted our recommended amendments.

The Department recommends that HRS §201H-38(a) be amended to add a paragraph as follows:

(5) The development is not within a special flood hazard area as identified on the current Federal Emergency Management Agency's flood insurance rate maps.

Mahalo for the opportunity to comment on this measure.



February 27, 2023

Senator Donovan Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Members of the Committee on Ways and Means

RE: **SB 1145 SD1 – RELATING TO AFFORDABLE HOUSING**
Hearing date – February 28, 2023 at 10:00 A.M.

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran and members of the committee,

Thank you for allowing NAIOP Hawaii to submit testimony in **OPPOSITION TO SB 1145 – RELATING TO AFFORDABLE HOUSING**. NAIOP Hawaii is the Hawaii chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders and other professionals.

SB 1145 requires the Hawaii Housing Finance and Development Corporation's (HHFDC) projects to include a restrictive covenant that states that the units designated as affordable housing, as described in the submitted project application, shall remain as affordable housing in perpetuity.

The measure would mandate that all units in a 201H project be designated as an affordable housing unit permanently. While we understand the intent of this measure to preserve housing affordability long-term, we are concerned that this may have adverse impacts on affordable housing projects. NAIOP Hawaii believes the current HHFDC rules requiring affordability restrictions over 30-60 years meets this intent and is balanced.

Requiring a covenant in perpetuity may negatively affect the marketability of units and prevent projects from continuing. Once built, a perpetual restriction will deter reinvestment in and maintenance of affordable projects over the long term, leading to blight as projects age. This will be even more acute with respect to for-sale homes. Residents who live in them will have less incentive to enhance, let alone, maintain their homes over the long term if they cannot fully reap the benefits of long-term appreciation to move up the housing ladder.

Senator Donovan Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Members of the Committee on Ways and Means
February 27, 2023
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In general, the idea of perpetual restrictions are typically unfavorable. As a matter of principle, we should not be deciding today something that will apply a hundred years or more from now. We are unable to predict the life duration of a building or the land which a building sits on may not be suitable for housing in the next 100 to 200 years.

Accordingly, NAIOP Hawaii opposes this measure as it is unnecessary for 201H projects and encumbers Hawaii lands in perpetuity. Thank you for the opportunity to testify on this measure.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read "Camp", written in a cursive style.

Jennifer Camp, President
NAIOP Hawaii



STANFORD CARR DEVELOPMENT, LLC

February 27, 2023

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
and Members of the Senate Committee on Ways and Means

Re: Testimony – SB 1145, SD1 Relating to Affordable Housing
Hearing: February 28, 2023, at 10:00 AM
Conference Room 211

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members:

Stanford Carr Development (SCD) is writing to **oppose** SB 1145, SD1, which proposes to mandate a restrictive covenant in perpetuity on all affordable housing constructed within the guidelines of HRS §201H-38.

We support the intent to address the shortage of affordable housing, but object to the additional level of regulation. As documented by the University of Hawaii Economic Research Organization's report Measuring the Burden of Housing Regulation in Hawaii, Hawaii as a state has the highest median home prices **and** the highest level of regulation. Similarly, on the county level, onerous regulation and high home prices go hand in hand.

Evidence of the unintended consequences of regulation include the efforts of Maui County to overhaul the Maui Code of Ordinances, Chapter 2.96 Residential Workforce Housing Policy to impose a 25-year shared appreciation encumbrance. The mandate failed as it flat-lined the amount of new development until 2014 when the 25-year encumbrance was repealed.

Another example of failed over regulation is found within the initial requirements of the Affordable Housing Fund (AHF) of the City and County of Honolulu (City) that mandated an affordability period in perpetuity. Developers and lenders alike refused to utilize the AHF based on the perpetuity requirement. In 2016, the City offered voters a Charter Amendment to remove the perpetuity restriction. Subsequently, the fund is oversubscribed.

In addition to historical examples of failed efforts, Avalon Development reports that currently the Sky Ala Moana, the first affordable for-sale program with the 30-year buyback, was unable to generate any interest for eight months. As allowed, in the ninth month the buyback will be reduced to a 10-year buyback. A perpetuity encumbrance is not marketable and will result in the same outcomes as Maui County – housing will not be developed.

Young people are leaving Hawaii, giving up on any hope of owning an initial home and moving up the housing ladder. This type of legislation will further impose socialistic policy to our community rather than building more inventory which is what is fundamentally needed.

We ask that you consider a no vote on additional housing regulation. Thank you for the opportunity to offer comments on this measure.

Respectfully,

A handwritten signature in black ink, appearing to read 'Stanford S. Carr', with a horizontal line extending from the end of the signature.

Stanford S. Carr



LATE

February 25, 2023

Senator Donovan Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Members of the Committee on Ways and Means

RE: **SB 1145, SD1 – RELATING TO AFFORDABLE HOUSING**
Hearing date – February 28, 2023 at 10:00 AM

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran and members of the committee,

My name is Moe Mohanna and I am President of Highridge Costa Development Company (“HCDC”). Thank you for allowing me to submit testimony in **OPPOSITION TO SB 1145, SD1 – RELATING TO AFFORDABLE HOUSING**. HCDC is an affordable housing developer with significant experience in Hawaii. We currently have over 2,300 affordable rental units in planning, development or operation on Oahu, Maui and the Big Island, including downtown Honolulu, Kapolei, Waipahu, Kihei and Waimea. HCDC works closely with various state and local agencies to bring low- and moderate-income housing to Hawaii’s communities.

SB 1145 would require that all units developed or financed under the Hawaii Housing Finance and Development Corporation’s affordable housing programs under Chapter 201H be restricted to affordable housing use forever. While we respect the intent of this measure to preserve housing affordability long-term, we believe the current HHFDC rules requiring affordability restrictions over 30-60 years meets this intent and is balanced. This measure will likely have greater adverse impacts than positive benefits on affordable housing and on residents. Requiring a covenant in perpetuity will negatively affect the value of units. This will make affordable projects difficult to finance, market and ultimately prevent these projects from being built. Once built, a perpetual restriction will deter reinvestment in and maintenance of affordable projects over the long term, leading to blight as projects age. This will be even more acute with respect to for-sale homes. Residents who live in them will have less incentive to enhance, let alone, maintain their homes over the long term if they cannot fully reap the benefits of long term appreciation to move up the housing ladder.

In general, the perpetual use restrictions are unfavorable. Over time, houses and buildings deteriorate and while it is difficult to precisely predict the life duration of any particular building, we know it will not last forever. In many cases it may last more than several decades. In addition, over the very long term, the land upon which a building sits may no longer be suitable for housing due to environmental, economic or societal changes. We have to be very careful about imposing restrictions on future unborn generations when the future circumstances are so unknown.

Accordingly, we urge you to defer SB 1145, SD1.

Mahalo for your consideration,

Moe Mohanna, President
Highridge Costa Development Corporation

LATE



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON
WAYS AND MEANS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 211
TUESDAY, FEBRUARY 28, 2023 AT 10:00 A.M.**

To The Honorable Senator Donovan M. Dela Cruz, Chair
The Honorable Senator Gilbert S.C. Keith-Agaran, Vice Chair
Members of the committee on Ways and Means

COMMENTS ON SB1145 SD1 RELATING TO AFFORDABLE HOUSING

The Maui Chamber of Commerce would like offer **COMMENTS on SB1145 SD1** which requires that Hawai'i housing finance and development corporation housing projects include a restrictive covenant that states that the units designated as affordable housing, as described in the submitted project application, shall remain as affordable housing in perpetuity

Affordable housing and rentals are one of our top priorities. The Chamber has repeatedly advocated for as many tools as possible to assist in producing affordable housing. While we appreciate the intent and always want to look for more tools, we are concerned about housing in perpetuity as it does not allow for our resident homebuyers to gain wealth and eventually move up and out of those homes as are able to after a certain period of time. We have also heard of instances where it was tough to sell affordable homes in perpetuity.

The Chamber feels that for a rental project and houses in Hawaiian Homes it makes sense and works. However, for purchase or fee ownership, we think the deed restriction should be no more than 15 to 20 years. To offer residents to move up.

We would also note that there is no mention of how to administer the "in perpetuity" part of the bill. There are several programs from which the legislature can model the language after. One of note on Maui is the Na Hale O Maui affordable housing buyback program. We would suggest the legislature consult with them as to how to make "in perpetuity" work.

Mahalo for the opportunity to offer **COMMENTS on SB1145 SD1**.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



February 28, 2023

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Ways and Means Committee members,

Housing Hawai'i's Future is a movement led by young locals who will create opportunities for Hawai'i's next generation by ending the workforce housing shortage.

On behalf of Housing Hawai'i's Future, I write in STRONG OPPOSITION of SB 1145.

We believe that affordability is important, but this bill does not promote affordability. Instead, it reduces workforce housing production. It makes the housing crisis worse.

There's no evidence that developers can build 201H projects with restrictive covenants that require affordability in perpetuity. Recent examples indicate that even less restrictive periods (like 30 years) result in a shortage of buyers. Because for sale workforce housing projects rely on presales to raise capital prior to construction, no sales means no construction which means no housing.

If the Senate wants to ensure affordability in perpetuity, it already has a vehicle with which to do so. HHFDC has a dual mandate to CREATE and PRESERVE affordable housing. But its QAP has not been designed to favor the preservation of affordable housing, and affordable projects have lapsed into the market in the past because the state was unwilling to front the capital to ensure affordability. I encourage the proposers of this bill to instead investigate existing methods for ensuring long-term affordability.

Please oppose SB 1145.

Thank you,



Sterling Higa
Executive Director
Housing Hawai'i's Future

sterling@hawaiifuture.org

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hawaiifuture.org

SB-1145-SD-1

Submitted on: 2/24/2023 3:22:52 PM

Testimony for WAM on 2/28/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Arden Okino	Individual	Support	Written Testimony Only

Comments:

According to PayScale, the cost of housing in Honolulu in 2023 is 222% higher than the national average. Having affordable units designated as affordable in perpetuity will help lower-income families potentially have a roof over their heads and get houseless people off the streets. Decreasing the amount of money families spend on housing could increase the amount of money spent on other things such as money towards local communities. As a current high school student, the only way for my voice to be heard is through this process since I am not of voting age. Please support SB1145.

SB-1145-SD-1

Submitted on: 2/25/2023 3:19:32 PM

Testimony for WAM on 2/28/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
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 (AMI). 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.

In the bill, keeping affordable units as such in perpetuity is good and will result in a larger affordable housing stock. However, the definition of "affordable housing" should be changed to a maximum of 100 percent AMI (not 140 percent AMI per reference to Section 201H-57) to actually provide meaningful affordability in exchange for the generous exemptions allowed through the 201H process.

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), especially if allowing the undesirable higher AMI levels.
- 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.

SB-1145-SD-1

Submitted on: 2/25/2023 4:19:55 PM

Testimony for WAM on 2/28/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support SB1145 SD1.

LATE

SB-1145-SD-1

Submitted on: 2/27/2023 11:27:01 AM

Testimony for WAM on 2/28/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Kevin Carney	Testifying for Affordable Housing Connections LLC dba AHC Hawaii	Oppose	Written Testimony Only

Comments:

AHC Hawaii is strongly opposed to the language in SB1145 SD1 related to "affordable in perpetuity", particularly as it relates to for-sale housing. Owning a home is more than having a secure roof over one's head. It is a means of earning equity which can help to secure the family's future. Restrictions such as requiring perpetual affordability severely limit equity growth and the ability to move up the housing ladder. Many seniors take advantage of reverse mortgages as they enter their golden years but if they were in a restricted home this option would not be available to them.

Should such a restriction be placed on a development there must be an exit strategy should the developer not be able to sell the restricted units within a reasonable time period.

Mahalo for the opportunity to express opposition to this bill.

Kevin R. Carney, President & Principal Broker

RB-16444

SB-1145-SD-1

Submitted on: 2/28/2023 9:59:14 AM

Testimony for WAM on 2/28/2023 10:00:00 AM



Submitted By	Organization	Testifier Position	Testify
Christine Camp	Individual	Oppose	Written Testimony Only

Comments:

We ask that you defer action on this matter. We note that any action that mandates perpetual affordability for 201H projects will in effect result in not have any for-sale condo options. Sky Ala Moana required 30-year restricted period and it has turned out to be a failure. Even when the duration was reduced to 20 years, there was no demand for the units priced for those making 199 - 120% of average median income. This bill, if approved, will in essence stop the housing stock that is for-sale condos priced for 100% to 140% of median income, the gap housing. It will affect the middle income families in the most negative way. Please reconsider and do not approve this bill as currently drafted.

Christine Camp, President and CEO

Avalon Development - Co-developer of Sky Ala Moana