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IN REPLY REFER TO

Statement of
Karen Seddon
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON FINANCE

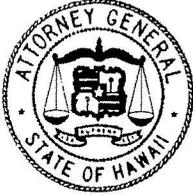
March 2, 2009, 1:30 p.m.
Room 308, State Capitol

In consideration of
H.B. 1592
RELATING TO HOUSING.

The Hawaii Housing Finance and Development Corporation (HHFDC) **opposes** H.B. 1592. Subject to the availability of funds, the HHFDC currently leverages its funds such as the Dwelling Unit Revolving Fund and the Rental Housing Trust Fund, with other funding sources. As such, we do not believe this bill is necessary.

We defer to the Department of the Attorney General and the Department of Budget and Finance with respect to specific legal and fiscal issues raised by this bill.

Thank you for the opportunity to testify.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

H.B. NO. 1592, RELATING TO HOUSING.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Monday, March 2, 2009 **TIME:** 1:30 PM

LOCATION: State Capitol, Room 308

TESTIFIER(S): Mark J. Bennett, Attorney General
or Craig Y. Iha, Deputy Attorney General

Chair Oshiro and Members of the Committee:

This bill presents constitutional concerns under article VII, section 4, of the Hawaii State Constitution, which requires that all uses of public money or credit be made for a public purpose. This bill also presents constitutional concerns under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, which requires preferences such as those created by this bill to rationally further a legitimate state interest.

This bill would allow the Hawaii Housing Finance and Development Corporation (HHFDC) to provide matching public funds and loan guarantees for housing projects that are partly financed by labor unions. Article VII, section 4, of the Hawaii State Constitution states that "[n]o tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose." Although the bill states a "purpose" in section 1, the bill does not identify or articulate the public purpose served by specifically requiring HHFDC to provide matching public funds for union-financed housing projects. Further, the bill does not state any public purpose for requiring HHFDC to use public credit to guarantee loans by private financial institutions in such projects. Nor does the bill state any public purpose for the

Department of Budget and Finance (B&F) to "maintain a balance of state funds equaling the investment on deposit with the private financial institution."

This bill also grants preferences for the purchase or rental of units in housing projects to labor union members. Membership in a labor union does not implicate any suspect classifications for purposes of constitutional equal protection analysis. Thus, the preferences for union members created by this bill must only meet a "rational basis" standard of constitutional review to comply with the Equal Protection Clause. KNG Corp. v. Kim, 107 Haw. 73, 83 (2005). The preferences for union members - which are not granted to the public at large or to members of other organizations that may provide funding for affordable housing projects - must therefore "rationally further[] a legitimate state interest" to pass constitutional muster. Id. To address this concern, we recommend the bill set forth the State's interest in providing a preference for union members.

We also note that the use of the word "may" on page 1, line 9, of the bill indicates that the funding provisions of this measure are permissive and not mandatory. However, the bill states on page 2, lines 16 and 22, that HHFDC "shall" provide matching funds and loan guarantees for union-financed projects. Similarly, the bill contains a reference on page 3, line 1, to situations in which HHFDC is "required" to provide loan guarantees. The bill should be clarified so that the funding provisions cannot be construed as mandatory requirements on HHFDC or B&F.



HB 1592 (HSCR515) Relating to Housing

House Committee on Finance

March 2, 2009
308

1:30 p.m.

Room

The Office of Hawaiian Affairs supports the purpose and intent of HB 1592 (HSCR 515).

The growing affordable housing problem is one of the most critical issues faced by our communities, especially our Native Hawaiian communities. This issue seems to have many of our families struggling to find adequate housing and to make ends meet.

OHA recognizes housing is the highest cost item for our families and more needs to be done to address the affordable housing issue or our families will continue to move down the economic and social ladder.

Policies addressing the need to develop and create partners to do affordable rentals and affordable for sale units timely in the urban cores need to be adopted. The resources obtained need to be able to devote full time attention to this process to expedite project reviews.

OHA also advocates a commitment to reestablishing the relationship between the art of building and the making of community, through citizen-based participatory planning and design. Therefore, the resources obtained to devote full time attention to the process of developing partners to do affordable rentals and for sale units timely need to include the related communities.

We recognize that physical solutions by themselves will not solve social and economic problems, but neither can economic vitality, community stability, and environmental health be sustained without a coherent and supportive physical framework.

Mahalo nui loa for the opportunity to provide this testimony.