

Act 221

Further attempts were made to eliminate Act 221 credits ([SB2001](#), [SB2401](#)) during the 2010 session. Here are Senator Fukunaga's April 27, 2010 floor remarks speaking in opposition of SB 2401:

"...The House's amendment to S.B. 2401, S.D. 1 [has] raised numerous constitutional concerns, which means that if adopted, the bill will be challenged immediately on the following grounds: It violates due process protections, depriving Hawai'i taxpayers of property without due process in violation of the U.S. and the Hawai'i constitutions, and effectively confiscates the credits for three years. It raises a serious issue of whether the Legislature is effectuating a property taking without just compensation, again in violation of the U.S. and the Hawai'i constitutions. It violates the contracts clause, stating that 'no state shall pass any law impairing the obligation of contracts in violation of the U.S. Constitution.'"

"...Equally importantly, this bill sends the clear message to everyone that Hawai'i's financial commitments will not be honored if we find ourselves in a fiscal crunch. For example, investment companies that have issued Hawai'i bonds rated by Moody's will be at risk since portions of their cash flows were derived from the contractual flow of tax credits from the State of Hawai'i to investors as promised pursuant to Act 221. If payments are missed for any reason, the Hawai'i securities would be downgraded from investment grade to junk bonds. As pointed out in a recent commentary in the *Honolulu Advertiser*, the state legislature's retroactive delay or elimination of the ability of an investor to claim an authorized and approved state tax credit will have an immediate and chilling impact on the investor community's willingness to make future investments in that state. The long-term effects of such an action will then spread far beyond the state, potentially harming the state's national reputation as investors and businesses lose faith in a state's willingness to honor its commitments. With our state dropping in rank from number 33 to number 47 in the April 2010 Municipal Credit Research State of the States Report, such a loss of reputation and investor confidence comes at a time when our state is being identified as having very high economic debt levels, poor business climate, and falling home prices..."

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