NEIL ABERCROMBIE
GOVERNOR

CRAIG K. HIRAI
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Craig K. Hirai
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON FINANCE
March 31, 2014 at 2:00 p.m.
State Capitol, Room 308

In consideration of
S.B. 2266, S.D. 1, H.D. 1
RELATING TO HOUSING.

The HHFDC ***supports the intent*** of S.B. 2266, S.D. 1, H.D. 1, provided that its passage does not replace or adversely affect priorities indicated in the Executive Supplemental Budget.

Part I of the H.D.1 would allow HHFDC to certify for exemption from general excise taxes mixed use projects that provide affordable housing in location efficient areas, defined as on State or County lands within walking distance of rail transit stations. HHFDC believes that this would provide a valuable incentive. The proposed exemption would promote efficient and affordable housing in mixed-use developments near transit stations.

Parts II and III would provide additional funds for the Rental Housing Trust Fund and the Dwelling Unit Revolving Fund. Additional funding for the Rental Housing Trust Fund would allow the HHFDC to finance the development of more affordable rental housing units. An infusion of funds into the Dwelling Unit Revolving Fund would allow the fund to be used as a funding mechanism for infrastructure improvements, such as sewer and water that are needed to support the development of new affordable housing developments statewide.

Thank you for the opportunity to testify.

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2266 S.D. 1, H.D. 1

March 31, 2014

RELATING TO HOUSING

Senate Bill No. 2266, S.D.1, H.D.1, authorizes, among other things, the issuance of general obligation bonds and the appropriation of funds for deposit into the rental housing trust fund and the dwelling unit revolving fund, for the purposes of financing affordable rental housing development and infrastructure development.

The Department has technical comments on this bill. Federal tax law requires, among other things, that tax-exempt general obligation bond proceeds be used to finance projects/programs that serve public purposes. As private entities will derive the benefit from this legislation, tax-exempt general obligation bonds cannot be used for this purpose. The State would need to issue taxable general obligation bonds at a higher cost in order to fund the rental housing trust fund and dwelling unit revolving fund.

In addition, as funding for these programs is not in the proposed Executive Budget, should this bill proceed or pass the Legislature, an amount for the corresponding annual debt service will need to be included in the Legislature's version of the budget.

Thank you for the opportunity to provide our testimony on this bill.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 **TAX FOUNDATION OF HAWAII** Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exempt mixed-use project in a location-efficient area

BILL NUMBER: SB 2266, HD-1

INTRODUCED BY: House Committee on Housing

BRIEF SUMMARY: Adds a new section to HRS chapter 201H to allow the Hawaii housing finance and development corporation (HHFDC) to approve and certify any qualified person or firm involved in the development of affordable housing in a newly constructed, or moderately or substantially rehabilitated, mixed-use project within a location-efficient area for the purposes of receiving the general excise tax exemption under HRS sections 201H-36 and 237-29 in taxable years beginning after December 31, 2015. Requires any claim for the exemption to be filed with the HHFDC and forwarded to the department of taxation.

Defines "location-efficient" as meaning one or more contiguous parcels of land aggregating five or more acres that are owned by the state or county, one parcel of which is located within half a mile of a rail transit station. Defines "mixed-use project" for purposes of the measure.

Amends HRS sections 237-8.6(d) and 238-2.6© to provide that the county surcharge on state tax shall be imposed on such projects subject to the general excise tax exemption.

Makes other nontax amendments to facilitate discussion between state and county agencies regarding the potential impacts of the rail transit system as it relates to population growth and housing.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS: Our comments relate to the general excise tax exemption that used to be in SB 2267 and that has been moved into SB 2266, HD 1. Currently, the HHFDC may certify affordable rental housing projects under HRS 201H-36 as qualifying for the exemption under HRS 237-29. This measure proposes to extend the general excise tax exemption to any qualified person or firm involved in the development of affordable housing in a mixed-use project within a location-efficient area. Thus, it would appear that the exemption would not only be applicable to development of affordable housing but also to the rest of the project.

The bill provides that certified amounts are exempt from general excise or use tax but are *not* exempt from the Honolulu county surcharge. This is curious, and adds complexity to the system because the surcharge is presently designed to apply only to amounts subject to the general excise or use tax at the 4% retail rate. (We suspect that a redesign of Forms G-45 and G-49 could be required, with the attendant administrative costs.)

Digested 3/30/14

Testimony to the House Committee on Finance
Monday, March 31, 2014 at 2:00 P.M.
Conference Room 308, State Capitol

RE: SENATE BILL 2266 SD1 HD1 RELATING TO HOUSING

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

The Chamber **supports** SB 2266 SD1 HD1 as it would provide for government assistance in developing affordable rentals in Hawaii. SB 2266 SD1 HD1 would authorize the issuance of general obligation bonds and the appropriation of funds for deposit into the rental housing trust fund and the dwelling unit revolving fund for the purposes of financing affordable rental housing development and infrastructure development.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber, along with other business groups, has consistently advocated for the government to create incentives that would bring private developers in to address public needs such as affordable rentals. Affordable rentals, especially for those at the lower income level, require some type of government subsidy. The traditional model has been through direct funding, providing land and/or developing infrastructure for the project. HUD low income tax credit program is another example of how government subsidies have been used successfully to develop affordable rentals. The authorization of mixed-use developments in this measure will provide additional support to continue the development of affordable rentals in Hawaii.

Thank you for the opportunity to express our views on this matter.

1132 Bishop Street, Suite 402 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369

PHOCUSED

PROTECTING HAWAII'S OHANA, CHILDREN, UNDER SERVED, ELDERLY AND DISABLED

TO: Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair
Representative Aaron Ling Johanson, Vice Chair
Members, House Committee on Finance

FROM: Scott Morishige, Executive Director, PHOCUSED

HEARING: **Monday, March 31, 2014 at 2:00 p.m.. in Conf. Rm. 308**

Testimony in Support of SB2266 SD1 HD1, Relating to Housing.

Thank you for the opportunity to provide testimony in support of SB2266 SD1 HD1. PHOCUSED is a coalition of health, housing, human services agencies and individual advocates committed to strengthening policies and programs to support the marginalized and underserved in Hawaii. In particular, PHOCUSED **strongly supports** Part II **of this bill**, which authorizes the issuance of General Obligation (GO) bonds to be deposited into the Rental Housing Trust Fund (RHTF).

As a community, it is critical that we support the development of housing, which is both safe and affordable for Hawaii's residents. Last week, the National Low Income Housing Coalition (NLIHC) released a report finding that while Hawaii has the highest rents in the nation, the median hourly wage of a Hawaii renter is only $13.86 – less than half of what is needed to afford a 2 bedroom unit at Fair Market Rent. The conclusion of this and other recent statistics about Hawaii's high housing costs and high rate of homelessness is clear – Housing is simply not affordable for low-income households in our community, and more needs to be done. The development of new affordable rental housing is critical to our community's ability to provide homes for the most vulnerable in our community, including our seniors and families with young children in the home.

The RHTF has a proven record of creating new affordable rental units in Hawaii. As of June 30, 2013, **4,567 rental units** had been created with the assistance of the RHTF and other leveraged funding. Currently, the conveyance tax is the only source of dedicated funding to the RHTF – in FY13, proceeds from the conveyance tax resulted in $16.4 million to the RHTF. More funding is needed so that the RHTF can help to create the level of affordable inventory needed to address Hawaii's housing crisis.

PHOCUSED strongly urges your support of this bill and an increase in funding to support new affordable housing development for Hawaii's residents. If you have any questions, please do not hesitate to contact PHOCUSED at 521-7462 or by e-mail at admin@phocused-hawaii.org.

200 N. Vineyard Blvd, Bldg B Honolulu, HI 96817 P: 808.521.7462
www.phocused-hawaii.org admin@phocused-hawaii.org

finance1

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 31, 2014 7:54 AM
To: FINTestimony
Cc: lfinlays@my.hpu.edu
Subject: *Submitted testimony for SB2266 on Mar 31, 2014 14:00PM*

SB2266
Submitted on: 3/31/2014
Testimony for FIN on Mar 31, 2014 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Laura	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Finance
Monday, March 31, 2014 at 2:00 P.M.
State Capitol - Conference Room 308

RE: SENATE BILL NO. 2266 SD1 HD1, RELATING TO HOUSING
(Revised)

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, and members of the committee:

The Chamber **strongly supports** SB 2266 SD1 HD1, which proposes to authorize an exemption from the general excise tax but not from county surcharges for development of mixed-use projects in location-efficient areas. Require certain state agencies to enter into memoranda of understanding with DBEDT to develop mixed-use projects. Authorize the issuance of general obligation bonds to finance development of affordable rental housing and infrastructure. Appropriate funds to the rental housing trust fund and dwelling unit revolving fund.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

We understand the intent of providing additional funding for affordable rentals and infrastructure development. Limitations on funding from HUD's Low Income Housing Tax Credit (LIHTC) and the HHFDC's various trust funds restrict our ability to develop more subsidized housing projects in Hawaii.

As amended, the bill allows HHFDC to consider other non-traditional ways to fund affordable housing projects, such as allowing for revenue generating uses on portions of an affordable housing project. Section §201H-44 HRS currently provides for commercial, industrial, and other uses in connection with the development of any dwelling units. HHFDC may also develop commercial, industrial, and other properties if it determines that the uses can be an integral part of the development . . . HHFDC may also designate any portions of the development for commercial, industrial, or other use and shall have all the powers granted under this chapter with respect thereto, including the power to bypass statutes, ordinances, charter provisions, and rules of any government agency pursuant to section 201H-38.

We understand that by bundling commercial or other revenue generating parcels to be included in the 201H process allows for private developers to recoup funds that normally would have been provided by the traditional LIHTC or HHFDC funds. The concept is to have the commercial or revenue properties generate lease rents that would allow private investors to recoup their investment in the affordable housing component of the project over time.

Thank you for the opportunity to express our views on this matter.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1530
FAX NO: (808) 587-1584

LATE

To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Monday, March 31, 2014
Time: 2:00 p.m.
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2266 S.D. 1, H.D. 1, Relating to Housing

The Department of Taxation (Department) provides the following comments regarding S.B. 2266 S.D. 1, H.D. 1, for your consideration. The Department defers to the Hawaii Housing Finance and Development Corporation (HHFDC) on the merits of this measure, but has several concerns regarding the tax exemption and on the issuance of tax-exempt bonds, which may be deemed to be for a non-public purpose. These provisions will require additional resources in order for the Department to administer and enforce the provisions of this measure.

Among other things, S.B. 2266 S.D. 1, H.D. 1 creates an exemption from the general excise tax, but not from the Honolulu county surcharge, for development of mixed-use projects in location-efficient areas and authorizes the issuance of general obligation bonds to finance the development of affordable rental housing and infrastructure. The Department's comments are directed to these provisions only. The measure has a defective effective date of July 1, 2050.

First, with respect to the general excise tax exemption for the development of mixed-use projects in location-efficient areas, the Department notes that the definition of “location-efficient area” is exceptionally broad. It is defined as "one or more contiguous parcels of land aggregating five or more acres that are owned by the State or a county, at least one parcel of which is located within half a mile of a proposed rail station". The breadth of this definition is important because if HHFDC determines that a taxpayer qualifies for the tax exemption, such certification or approval to the taxpayer involved in the development of a mixed-use project is entitled to exclude revenues generated in the entire mixed-use project. Since a mixed-use project may include commercial, cultural, institutional, or industrial uses, the loss of general excise tax revenues will likely be substantial.

Second, with respect to the provision regarding the provision authorizing issuance of general obligation bonds to finance the development of affordable rental housing and infrastructure, the Department notes that the Internal Revenue (IRS) is carefully examining situations involving the use of tax-exempt bonds used to finance organizations on whose behalf the bonds are issued to determine whether private interests are being benefitted by such issuance to an impermissible degree.

Tax exempt bonds generally bear a lower interest rate than taxable debt. Under the Tax Reform Act of 1986 (Act), government bond issues are treated differently than "private activity bonds" as defined by the Act. Governmental bonds are tax-exempt, subject to general requirements, and derive their exemption from Internal Revenue Code (IRC) § 103(a). The interest on private activity bonds is only tax-exempt if the bond is a "qualified private activity bond" as defined in IRC § 103(b). Governmental bonds are less regulated because the proceeds are used by a governmental unit for governmental purposes, such as schools and roads. Qualified private activity bonds are highly regulated because the proceeds are used by private parties to finance an activity that the governmental unit desires to encourage but is not an essential government activity. The difference between governmental bonds and private activity bonds is set forth in IRC § 141. The principal test concerns whether there is private use of a bond financed facility.

The word "private" has been held to mean the antonym of "public"--used to distinguish a private individual from the general public, and is intended to limit the scope of those persons who personally profit from an organization to the intended beneficiaries of the allowable activities. See *Kemper Military School v. Crutchley*, 274 F. 125, 127 (W.D. Mo. 1921). Thus, the capacity in which an individual derives financial benefit will determine whether prohibited inurement exists. Whether an impermissible benefit has been conferred on someone is treated essentially as a question of fact.

State and local government bonds are private activity bonds, if they meet either: (1) both the private business use test of IRC § 141(b)(1) and the private security or private payment test of IRC § 141(b)(2); or (2) the private loan financing test of IRC § 141(c). Generally, the private business use test and the private security or payment test are met if more than 10% of the proceeds of the bond issue are used in a private business (including use by the federal government), and more than 10% of the debt service on the bonds is secured by an interest in property "used in a private trade or business" or derived from payments with respect to such property. Bonds meet the private loan financing test if more than the lesser of $5,000,000 or 5% of the proceeds of the bonds are used to make loans to any persons other than state and local government units. Finally, under IRC § 141(d), bonds are treated as private activity bonds if more than the lesser of $5,000,000 or 5% of the proceeds of the bonds are used to acquire output property that prior to the acquisition was used by, or held for use by, nongovernment persons.

The Department defers to the appropriate agency as to whether the bonds will be classified as governmental bonds or private activity bonds. The Department notes, however, that if the IRS classifies a bond issuance as a private activity bond, such bonds would lose their tax-exempt status for federal tax purposes, thereby creating a situation where the State may be liable to bond purchasers for failure of the tax-exempt nature of the bonds, which is usually the primary motivation of tax-exempt bond purchasers.

Thank you for the opportunity to provide comments.