DAVID Y. IGE
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, 2017 at 3:00 p.m.
State Capitol, Room 308

In consideration of
S.B. 1244, S.D. 2, H.D. 1
RELATING TO AFFORDABLE HOUSING.

The HHFDC ***supports the intent*** of sections 4, 6, 7, and 8 of S.B. 1244, S.D. 2, H.D. 1 as long as it does not replace priorities requested in the Executive Budget. We defer to the appropriate departments or agencies with respect to the remainder of the bill.

With respect to the definition of "qualified nonprofit housing trust," in Part I of the bill, the Department of Commerce and Consumer Affairs (DCCA) provided comments before the Senate Committees on Housing and Government Operations, that its Business Registration Division does not have a registration solely for associations. DCCA also noted that its business registration rules prohibit the registration of business entity names or trade names that contain the word "trust" in it unless the entity is a financial institution subject to Chapter 412, HRS.

We also note for the record, that, if adopted, Part I of S.B. 1244, S.D. 2, H.D. 1 would require the approval of the Federal Housing Administration (FHA), Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac). Their approval is needed to ensure that they are willing to purchase mortgages on homes that are subject to this material change to the existing buy back restriction. Without these assurances, lenders might not be willing to write mortgage loans on HHFDC-assisted for-sale developments.

Part II of the bill would further decouple the State Low-Income Housing Tax Credit (LIHTC) program from the Federal LIHTC program by deleting language relating to the application of the at-risk rule and passive activity loss limitation, thereby allowing individuals and small corporations to invest in State LIHTCs. We defer to the Department of Taxation on the overall merits of these proposed changes to the State LIHTC.

HHFDC supports the addition of 1.0 full-time equivalent position to help administer this program.

Thank you for the opportunity to provide written comments on this measure.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honoluludpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR

KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
ACTING DEPUTY DIRECTOR

March 31, 2017

The Honorable Sylvia Luke, Chair
and Members of the Committee on Finance
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Committee Members:

Subject: Senate Bill No. 1244, SD 2, HD 1
Relating to Affordable Housing

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 1244, SD 2, HD 1, which would authorize a qualified nonprofit housing trust to repurchase affordable housing units developed with government assistance when a government entity waives its first right of refusal to repurchase the property.

We understand the intent of the Bill and support it. However, we do not believe that the City needs this enabling legislation. We recommend that the County portion of the Bill be deleted. Of deep concern is this Bill's vague language on the length of time a nonprofit housing trust must keep a unit affordable once it has repurchased these units.

If this Bill must proceed, we recommend the following amendment to Section 3, 46-15, (d), of this Bill:

"Any law to the contrary notwithstanding, a county may waive its right to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument, and may transfer that right of repurchase to a qualified nonprofit housing trust for the purpose of maintaining the unit as affordable for as long as [practicable] <u>otherwise required by the county program</u>."

Again, we could support this Bill with the recommended amendment.

Thank you for the opportunity to testify.

Very truly yours,

Kathy K. Sokugawa
Acting Director

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Modify Low-Income Housing Credit

BILL NUMBER: SB 1244, HD-1

INTRODUCED BY: House Committee on Housing

EXECUTIVE SUMMARY: Part II of this bill seeks to make the State low-income housing credit more valuable by decoupling from the federal at-risk rules and passive activity loss limitations. As a policy matter, if it is considered desirable to offer incentives to develop such projects, consideration should be given to attacking the root causes of why such projects are prohibitively expensive, such as the permitting process.

SYNOPSIS: Amends HRS section 235-110.8 so that the federal at-risk rules under IRC section 42 and the federal passive activity limitations under IRC section 469 do not apply with respect to investments in buildings and projects claiming credit.

EFFECTIVE DATE: January 1, 2050, and shall apply to qualified low-income buildings awarded credits beginning after December 31, 2017.

STAFF COMMENTS: Act 216, SLH 1988, adopted for Hawaii purposes the federal low-income rental housing credit that was part of the Tax Reform Act of 1986. The credit was enacted to offset the repeal of tax shelters and other incentives to build rental housing under prior law, such as accelerated depreciation, capital gains preference, certain tax-exempt bonds, and to specifically target low-income rentals.

While this is just one incentive to encourage developers to build affordable housing, consideration should be given to a number of strategies including the debt financing, partnerships with financial institutions who could then turn around and sell the credits, and the use of federal private activity bonds. Finally, one of the greatest contributors to the cost of housing in Hawaii is the draconian maze of permitting and regulatory processes in order to bring those homes to market. While those regulatory guidelines are to insure the health and safety of the public, streamlining the process would accelerate the time needed to secure those permits thereby reducing the cost of financing. This savings would go a long way toward reducing the final cost of the house to the consumer. For example, for one housing project on Kauai, it took nearly five years to secure the necessary permits to build 14 affordable homes.

Digested 3/29/2017

Hawai'i Association of REALTORS®
808-733-7060
808-737-4977
1259 A'ala Street, Suite 300
Honolulu, HI 96817

March 31, 2017

The Honorable Sylvia Luke, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

RE: S.B. 1244, S.D.2, H.D.1, Relating to Affordable Housing

HEARING: Friday, March 30, 2017, at 3:00 p.m.

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee.

I am Myoung Oh, Director of Government Affairs, submitting written testimony on behalf of the Hawaiʻi Association of REALTORS® ("HAR"), the voice of real estate in Hawaiʻi, and its 9,200 members. HAR **supports** S.B. 1244, S.D.2, H.D.1 which authorizes qualified nonprofit housing trusts to repurchase affordable units developed with government assistance when a government entity waives its first right of refusal to repurchase the unit and authorizes counties to waive a first right of refusal to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument.

According to the Department of Business, Economic Development and Tourism, nearly 66,000 housing units are needed to meet long-term demand over the next ten years. Hawaiʻi needs more homes and rentals, especially affordable ones, to meet today's needs of our working individuals and families.

This measure would enable qualified nonprofit housing trusts to repurchase affordable units to ensure that the affordable units will permanently remain in the affordable housing pool.

With the limited amount of developable land, lack of needed infrastructure, and high rent and housing costs, it makes sense to preserve the affordability of those units for as long as possible.

Mahalo for the opportunity to submit written testimony in support of this measure.

Testimony of
Christopher Delaunay, Government Relations Manager
Pacific Resource Partnership

HOUSE OF REPRESENTATIVES
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

NOTICE OF HEARING

DATE: Friday, March 31, 2017
TIME: 3:00 pm
PLACE: Conference Room 308

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee:

PRP **supports** SB 1244, SD2, HD1, relating to an Affordable Housing, which authorizes qualified nonprofit housing trusts to repurchase affordable units developed with government assistance when a government entity waives its first right of refusal to repurchase the unit. This measure authorizes counties to waive a first right of refusal to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument and specifies that certain provisions of the Internal Revenue Code related to at-risk rules, and deductions, and passive activity loss limitations do not apply with respect to the State Low-income Housing Tax Credit (LIHTC). This measure also appropriates funds to establish one position to oversee the Low-Income Housing Tax Credit Program.

The shortage of affordable housing units for working moderate-and lower-income households is at a crisis level negatively affecting families throughout the State, including many in the 80%-140% AMI range. This measure is another tool to help tackle the problem of affordable housing for Hawaii's residents.

We respectfully request your support on SB 1244, SD2, HD1. Thank you for this opportunity to testify.

(Continued From Page 1)

<u>About PRP</u>
Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.

Chamber *of* Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Finance
Friday, March 31, 2017 at 3:00 P.M.
Conference Room 211, State Capitol

RE: HOUSE BILL 1244 SD2 HD1 RELATING TO AFFORDABLE HOUSING

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** SB 1244 SD2 HD1, which authorizes qualified nonprofit housing trusts to repurchase affordable units developed with government assistance when a government entity waives its first right of refusal to repurchase the unit; authorizes counties to waive a first right of refusal to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument; specifies that certain provisions of the Internal Revenue Code related to at-risk rules, and deductions, and passive activity loss limitations do not apply with respect to the State Low-income Housing Tax Credit; appropriates funds to establish one position to oversee the Low-Income Housing Tax Credit Program.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We would recommend that the bill be amended to provide one definition for a "qualified nonprofit housing trust." As currently worded, the definitions in Chapter 46-15.1 HRS and Chapter 201H-1 are consistent, but slightly different from the definition provided in Chapter 206E-2 HRS. To avoid confusion, we would recommend having a similar definition in each section of the Statue. Finally, we would also recommend that some consideration be given to the nonprofit having some past performance, background, status or familiarity in managing and maintaining affordable housing.

If the concerns we raise can be addressed, we would support the passage of this bill. Thank you for the opportunity to provide our comments on this matter.

1132 Bishop Street, Suite 2105 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369

Testimony by InState Partners
In Support of SB 1244 SD2 HD1
Relating to Affordable Housing
House Committee on Finance
Friday, March 31, 2017, 3:00 PM, CR 308

The Honorable Sylvia Luke, Chair and Committee Members, Committee on Finance:

My name is Ryan Brennan, with InState Partners, testifying in strong support of SB 1244 SD2 HD1 Relating to Affordable Housing.

SB 1244 SD2 HD1 sends a strong message that this legislature is serious about providing housing by authorizing qualified nonprofit housing trusts to repurchase affordable units built with government assistance and allowing counties to waive a first right of refusal to repurchase privately developed affordable housing units developed through a unilateral agreement or similar instrument. These legislative tools provide the additional steps that are needed to help tackle the problem of affordable housing for Hawaii's residents.

Equally as important is the ability to provide for more opportunities for private resources to help with the building of housing. We strongly support the amendments made by the previous committee to include provisions of HB 1335 HD1 Relating to Low-Income Housing Tax Credit into this measure.

Low-income housing tax projects would not be feasible without the federal and State low-income housing tax credits ("LIHTCs"). LIHTCs are necessary to subsidize the cost of the projects without which there would not be sufficient incentives for developers to assume the risk of these projects. This is why Hawaii has adopted the federal LIHTCs to be taken against Hawaii taxes. Last year, the Legislature recognized the importance of the LIHTCs by enacting Act 129, which expanded the incentives for Hawaii investors by accelerating the period over which the Hawaii tax credits can be taken from 10 to 5 years, and by matching the federal tax credit rate, rather than just 50% of the federal credit rate.

The purpose of the provisions is to build on the incentives provided under Act 129 by decoupling from the at-risk and passive activity loss limitations under federal income tax law. These federal tax limitations only permit large corporations to benefit from the credit, excluding most Hawaii individual and small businesses from participating, and therefore expand the investor pool to be more inclusive of the typical Hawaii investor.

We urge you to pass SB 1244 SD2 HD1. Thank you for this opportunity to testify.

{00255857.1}

Hawai'i HomeOwnership Center
NeighborWorks® HomeOwnership Center

1259 Aala Street, Suite 201
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Fax: (808) 523-9502
www.hihomeownership.org

March 30, 2017

The Honorable Sylvia Luke, Chair
The Honorable Ty J. K. Cullen, Vice Chair
House Committee on Finance
State Capitol, Room 306
Honolulu, Hawaii 96813

Re: SB 1244, S.D. 2, H.D. 1 Relating to Affordable Housing

Hearing: Friday, March 31, 2017; 3:00 pm
State Capitol, Conference Room 308

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

I am Dennis Oshiro, Executive Director of the Hawaii HomeOwnership Center, testifying in **strong support** of S.B. 1244, S.D. 2, H.D. 1, Relating to Affordable Housing. This bill would enable a qualified nonprofit housing trust to repurchase affordable units developed with government assistance when a government entity elects to waive its right to repurchase those units. The purpose of this bill is to ensure that affordable units remain affordable for Hawaii residents for as long as practicable.

As the bill's findings point out, the shortage of safe, decent and sanitary housing has been a persistent problem in Hawaii for decades, and today it has grown to crisis proportions. With median prices for single family homes on Oahu hovering at around $750,000, and the need for an estimated 60,000 housing units by the year 2020, it is incumbent for the Legislature to take steps to preserve as many existing affordable housing units for as long as possible. One way to preserve affordable units is to ensure that units built with government assistance or built pursuant to developer exactions remain affordable for as long as possible. We have found that affordable units are often lost to the open market when government waives the right to repurchase units that are subject to buyback restrictions. To prevent this from happening, this bill seeks to enable a qualified 501(c)(3) nonprofit housing trust to purchase government-assisted affordable housing units when a government entity waives its right to do so. The unit would then be kept in the housing trust's affordable housing inventory, thereby preserving the affordability of those units for as long as possible.

The Hawaii HomeOwnership Center (HHOC) is a HUD-approved home buyer counseling agency that has been instrumental in assisting 1,550 families to become successful and sustainable new home buyers since 2003. Almost one half of them were in the low income group according to HUD, earning less than 80% of the area median income when they first joined the program. Since inception, HHOC has proven to be flexible in its services provided to meet the current community needs. Aside from home buyer education we have offered foreclosure prevention counseling (now discontinued) to more than 1,000 families in need. In 2009, we established a down payment assistance loan program and have experienced 100% on-time payments to date.

In 2016, sensing a need to preserve affordable homes for present and future home buyers, HHOC Housing and Land Trust was formed by HHOC. SB1244, as amended, is its first step towards forming partnerships with government to achieve this mutual goal.

Upon review of the latest draft of this bill, we would like to suggest the following amendments.

1) It has been pointed out that the term “perpetual” should be removed from the bill because perpetuity for existing structures is inevitably unsustainable. Housing units/projects have a useful economic life, and there comes a point when demolition will offset renovation. We suggest amending SECTIONS 2 and 6 of the bill to delete this term as it applies to buyback provisions.

2) Per the City and County of Honolulu’s recommendation, we suggest that SECTIONS 2, 3 and 6 be amended by adding a provision that the housing trust shall maintain the unit as affordable for as long as practicable or as otherwise required respectively by the HCDA, HHFDC or county program.

3) We would like to suggest that SECTIONS 2, 3 and 6 of the bill be amended by either eliminating the reporting provisions in their entirety, or by making such reports available upon the request of the legislature and/or the government entities.

4) We recommend that the bill take effect upon its approval, with the exceptions stated in the current bill.

A draft of the proposed amendments to the bill as offered in 1) and 2) above are included on the attached. Also attached is a list of additional supporters of this measure.

I strongly urge your support of this measure to be effective upon approval, and thank you for your consideration.

Sincerely,

Dennis Oshiro Cell: 808-220-1645 Email: dennis@hihomeownership.org
Executive Director

PROPOSED AMENDMENTS TO S.B. 1244, S.D. 2, H.D. 1

1) Page 5, lines 3-6 – Change the proviso to read as follows:

"…provided, further that the qualified nonprofit housing trust shall establish new [~~perpetual~~] buyback restrictions [~~in order to effectuate the long-term affordability of a housing unit~~] **for the purpose of maintaining the unit as affordable for as long as practicable, or as otherwise required by the authority**."

Rationale for amendment: This clarifying language would allow HCDA to dictate the minimum length of time that the unit would remain affordable under its Reserved and Workforce Housing Programs.

2) Page 11, lines 14-19 – Amend section (d) to read as follows:

"(d) Any law to the contrary notwithstanding, a county may waive its right to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument, and may transfer that right of repurchase to a qualified nonprofit housing trust for the purpose of maintaining the unit as affordable for as long as [~~practicable~~] **required by the county program**."

Rationale for amendment: This amendment would enable the counties to fashion their individual county-initiated programs as deemed appropriate.

3) Page 26, lines 1-5 – Amend section (j) to read as follows:

"(j) Any law to the contrary notwithstanding, if a housing unit is purchased by a qualified nonprofit housing trust, the housing trust shall establish new [~~perpetual~~] buyback restrictions [~~in order to effectuate the long-term affordability of a housing unit~~] **for the purpose of maintaining the unit as affordable for as long as practicable, or as otherwise required by the corporation**."

Rationale for amendment: This clarifying language would allow HHFDC to dictate the minimum length of time that the unit would remain affordable under its affordable housing program.

The following residents join us in submitting this letter of support:

Name	Organization	Home Zip Code
Carol Armstrong	Title Guaranty	96819
Stacey Domingo		96789
Keith Kato	Hawaii Island Community Development Corporation	96781
Crystal Lancaster	Hawaii Association of REALTORS	96782
Joanne Kealoha		96816
Steven Tanaka	Progressive Electric, Co.	96819
Patricia Yee	Old Republic Title	96734
Carla Vierra		96789
Patrick Bullard	H&B Marketing and Hawaii HomeOwnership Center Board Member	96813
Michael Miller		96734
Jeffrey Orig		96818
Lloyd Sueda		96826
Shawn Kelly		96816
Jan Wuerfel		96744
William Rizzo		96821
Quentin Machida		96706
Constance Rosa		96744
Kaitlyn Naquin		96734
Dana Kokubun		96822
Roy Katsuda	Hale Mahaolu	96732
Alan Suzuki		96782
Briand Achong	Greenpath Technologies Inc	96825
Terri Mochizuki		96816
Allison Peterson		96826
Mark Kimoto		96819
Russell Miyashiro		96701
Angela Goya		96789
Chantal Weaver	Spencecliff Corp	96744
Natalie Kiehm		96816
Brian Walther		96814
Dale Tomei		96817
Karl Baker		96813
Yandeyra Nunez		96826
Kristi Kwock		96814
Chu Lan Schubert-Kwock	Chinatown Business & Community Association	96817
Alan Uyeoka		96813

Norman Noguchi	Marcus & Associates, Inc.	96813
Berton Hamamoto	Hawaii Association of REALTORS	96701
Darlean Kiyokane		96817
David Hudson		96822
Jason T. Okuhama	Commercian & Business Lending/Hawaii Alliance for Community Based Economic Development	96813
Kalama Kim	Coldwell Banker Pacific Properties	96707
David Goya		96789
Karl Yoneshige	HawaiiUSA Federal Credit Union	96744
Sarah Kim		96817
Dawn Smith		96814
Lester Shoda		96822
Joni King	East Oahu Realty	96815
Emily Diep		96818
Iris Taniguchi		96817
Byron Chock		96822
Nicole West		96815
Amelia Lee		96826
Carol Hagiwara	Hawaii Association of REALTORS	96789
Daniel Leung	iProperties Hawaii	96818
Jodie Tanga	Pacific Rim Mortgage	96701
Reina Miyamoto		96817
Phyllis Cox	Arch Mortgage Insurance	96734
Debra Wilson		96826
Kaulana Young		96782
Jon Yamaguchi		96818
Victor Brock	Hawaii State Federal Credit Union	96813
Stacey White		96817
Wade Yamanaka		96789
Linda Yadao	Berkshire Hathaway Home Services Hawaii	96791
Richard Williams		96818
Aolani Yamasato-Gragas		96819

DEBARTOLO
DEVELOPMENT

March 31, 2017

The Honorable Sylvia Luke, Chair
and Committee Members
Committee on Finance
Hawaii State Capitol, Rm. 308
Honolulu, HI 96813

Dear Chair Luke and Committee Members:

RE: SB 1244 SD2 HD1 Relating to Affordable Housing

My name is Rich Hartline testifying in strong support of SB1244 SD2 HD1 Relating to Affordable Housing.

DeBartolo Development strongly support measures that will help provide affordable housing. This measure will enable qualified nonprofit housing trusts to repurchase affordable units built with government assistance and allows counties to waive a first right of refusal to repurchase privately developed affordable housing units. Measures such as SB1244 SD2 HD1 are needed to effectively tackle the problem of affordable housing for Hawaii's residents.

We also strongly support the Low Income Housing Tax Credit (LIHTC) provision. The LIHTC provision eliminates the requirement that the federal at risk and passive activity loss limitations apply to Hawaii projects. Elimination of this requirement expands the investor market, permitting developers to command a higher price for tax credits which provides more incentive to produce low income housing.

Federal tax reductions are highly anticipated, which will place LIHTC projects throughout the nation at risk of not being able to attract investors. We believe that the provisions in this measure will offset this anticipated federal tax reduction, allowing projects to continue.

Thank you for this opportunity to provide supportive testimony on this measure.

Sincerely,

Rich Hartline
Vice President of Development

841 Bishop Street, Suite 1070, Honolulu, HI 96813 | PH 808.439.8400 | FX 808.439.8409 | www.debartolodevelopment.com

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

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LATE

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

Date: Friday, March 31, 2017
Time: 3:00 P.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 1244, S.D. 2, H.D. 1, Relating to Affordable Housing

The Department of Taxation (Department) appreciates the intent of the measure to increase low income housing, but opposes the nonconformity to the Internal Revenue Code (IRC) provisions relating to the at risk and passive activity loss (PAL) limitation rules. The Department otherwise defers to the Hawaii Housing Finance and Development Corporation (HHFDC) on the merits of this bill, and provides the following comments on H.B. 1335 for your consideration.

The tax provisions contained in H.D. 1 were added by the House Committee on Housing, and eliminate conformity to the IRC sections 42(k), 465, and 469, related to the at-risk rules and the PAL limitations, such that these provisions do not apply with respect to investments in buildings and projects claiming the credit. The measure has a defective effective date of January 1, 2050, but would otherwise apply to qualified low-income buildings awarded credits after December 31, 2017. It also provides that the tax provisions contained in this measure are not repealed when the changes made to section 235-110.8, Hawaii Revised Statutes (HRS), by Section 4 of Act 129, Session Laws of Hawaii 2016, are repealed on December 31, 2021.

The Department first notes that it always prefers conformity to the IRC where possible, as this provides clear guidance to both the Department and to taxpayers, since there is substantial guidance issued in the form of rules and regulations issued by the Internal Revenue Service (IRS), as well as court decisions regarding the various sections of the IRC. Conformity greatly minimizes the burden on the Department and taxpayers, thereby assisting compliance with Hawaii's tax law.

Both the at-risk (IRC section 465) and PAL (IRC section 469) rules apply only to:

- Individuals (including partners and S corporation shareholders);
- Estates;

- Trusts (other than grantor trusts);
- Personal service corporations; and
- Closely held corporations.

Currently, losses from activities that exceed the amount the taxpayer has at risk are disallowed for the current year, but are carried forward until the taxpayer increases the amount that he has at risk, at which time the losses up to that amount may be utilized. Similarly, losses from passive activities that exceed the income from passive activities are disallowed for the current year, but are carried forward until they may be used against passive income or the interest in the activity has been disposed of. If the relaxation of the at-risk and PAL rules applies, taxpayers would be able to immediately use any losses to offset income up to the full extent of ordinary income.

As described above, the at-risk and PAL rules apply to individuals, S corporation shareholders and closely held corporations, but do not apply to large corporations. The reason that these rules do not apply to large corporations is because, as a matter of law, corporate officers, directors, and controlling shareholders owe a duty to the corporation to protect the interests of all shareholders, which a court will enforce through the shareholders. See e.g. In re Reading Co., 711 F.2d 509, 517 (3d Cir. 1983); Gateway Tech., Inc. v. MCI Telecom. Corp., 64 F.3d 993 (5th Cir. 1995). In a small closely held corporation, this limiting factor is not generally present since the interests of the shareholders are more closely aligned, whereas in large corporations, a diverse range of interests will prevent taking abusive positions.

The Department is seriously concerned that relaxation of these rules will simply lead to transactions having no economic substance, and which simply are schemes that reduce tax without changing the value of the user's income or assets; these types of schemes substantially burden the Department. As noted in the 2003 report by the Government Accountability Office:

> "[Tax] shelters are complex transactions that manipulate many parts of the tax code or regulations and are typically buried among 'legitimate' transactions reported on tax returns. Because these transactions are often composed of many pieces located in several parts of a complex tax return, they are essentially hidden from plain sight, which contributes to the difficulty of determining the scope of the abusive shelter problem. Often lacking economic substance or a business purpose other than generating tax benefits, abusive shelters are promoted by some tax professionals, often in confidence, for significant fees, sometimes with the participation of tax-indifferent parties, such as foreign or tax-exempt entities. They may involve unnecessary steps and flow-through entities, such as partnerships, which make detection of these transactions more difficult."
>
> See also Black & Decker Corp. v. United States, 436 F.3d 431, 442–43 (4th Cir. 2006)

Congress originally enacted the at-risk provisions as part of the Tax Reform Act of 1976 in order to deter deductions from losses generated by tax shelters. Prior to the enactment, a taxpayer could increase his or her basis in the partnership by utilizing nonrecourse loans for which the individual had no true economic risk. This increase in basis allowed the taxpayer to use investment losses to offset ordinary income. Although the IRS attempted to limit this practice, its attempts were only marginally effective until the enactment of IRC section 465.

Currently, nonrecourse financing is treated as at-risk only if the property is not acquired by the taxpayer from a related person, and the financing is received from a lender in the business of lending (other than the seller of the property) or a government agency. If the at-risk rules are relaxed for the low income housing tax credit (LIHTC), the investor could acquire the property from a related person at a greatly inflated price using nonrecourse liability (such that no individual partner has liability in the event of default), and yet take virtually unlimited losses in connection with the property.

The at-risk rules prevent a taxpayer from artificially increasing basis through the use of subscription promissory notes (whereby an investor promises to pay an amount in the future) which in fact are never paid. See e.g. Zeluck v. Commissioner, 103 TCM (2012), where the taxpayer contributed $310,000 to a partnership in 2001 in the form of $110,000 in cash and a $200,000 note that matured on December 31, 2009. The taxpayer also guaranteed a note that was issued by the partnership up to an amount equal to the note he contributed, giving him an initial at-risk tax basis of $310,000 ($110,000 of cash plus $200,000 of guaranteed debt). In 2001 and 2002, the taxpayer was allocated losses from the partnership that practically eliminated his at-risk tax basis, and in 2003 the partnership terminated. After the partnership terminated, no attempt was made to enforce payment of the taxpayer's note or the partnership's note on which the taxpayer never made any principal payments and failed to make all interest payments.

The PAL rules were enacted as part of the Tax Reform Act of 1986 to address widespread avoidance of tax through the generation of artificial losses from tax shelters and other trades or business for which the taxpayer did not bear sufficient economic risk. The passive activity loss rules focus on the source and character of losses rather than on the taxpayer's wherewithal to recognize such losses. Broadly speaking, the rules operate to prevent taxpayers from offsetting ordinary income from non-passive activities (i.e., wages or businesses they operate) with losses from passive activities in which the taxpayer does not materially participate, thereby insuring that all taxpayers pay a fair share of taxes on ordinary income. It should also be noted that if the PAL limitation rules are relaxed, a taxpayer will be able to shield their ordinary income and yet obtain capital gain treatment, when the interest in the activity is sold.

How the relaxation of these rules might be used to cause a substantial reduction of taxes paid in a transaction with no economic substance is best illustrated by an example. Suppose a Company A builds an eligible building with a depreciable basis of $1 million, and which generates a net rental loss of $50,000 per year. Company A then sells this same building to related Company B for $10 million, with terms of no money down, and a nonrecourse note for $10 million. For both federal and State tax credit purposes, the eligible credit basis of the building remains at $1 million. For both federal and State tax purposes, the building's depreciation basis in the hands of the subsidiary is the $10 million purported purchase price.

Residential rental real property is generally depreciated over a 27.5 year period, and therefore this $9 million increase in basis will increase the annual net rental loss by an additional $327,273, bringing the annual net rental loss to $377,273. However, for federal tax purposes, a passive investor in the company will generally be able to use only up to $25,000 of this loss (with the excess loss carried forward until it can be used), while for State purposes, elimination of the passive activity loss rules will allow that same person to decrease its taxable State income by the full loss of $377,273. Moreover, if that person only had invested $10,000 in cash in the company, for federal tax purposes, any deduction is further limited by the at risk rules to $10,000 until such time as the taxpayer increases its at-risk basis. Elimination of the at-risk rules for State purposes will allow the taxpayer to claim a proportionate share of the nonrecourse liability in the taxpayer's basis, thereby again allowing it to take full advantage of the deduction.

The Department notes that it does not seem necessary to make IRC section 42(k) inoperative as it applies to all taxpayers, including corporations. IRC section 42(k) makes applicable at-risk rules relating to nonrecourse financing similar to IRC section 49(a)(1), (a)(2), and (b)(1), and contains a recapture provision which requires that any mortgage secured by an interest in the building be repaid at the earlier of certain specified events, including within 90 days of the end of the compliance monitoring period. If the loan is not fully repaid, IRC section 42(k) requires a recapture of credits claimed from the beginning, recalculating the credit by excluding that portion of the mortgage that was not repaid. If the intent of this measure is to allow individuals to invest in low income housing and receive the same tax treatment as corporations then there is no need to make this section inoperative. Furthermore, since the "qualified basis" would be the same for both the federal and State LIHTCs taxpayers that are federally compliant would also be compliant for Hawaii purposes.

The Department notes that with regard to low income housing buildings that are not financed through the use of tax exempt bonds, the LIHTC is already fully subscribed, and no amount of additional incentives can generate additional low income housing using conventional financing. Only projects that are financed with tax exempt bonds are undersubscribed, such that additional inducements may attract additional investors. The Department notes, however, that the LIHTC credit period was shortened 10 to 5 years and it is too early to assess the impact that this change has had on additional projects.

Finally, if the Committee wishes to advance this measure, the Department is able to implement this new credit with the current effective date.

Thank you for the opportunity to provide comments.

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

KAKAAKO
KALAELOA

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LATE

STATEMENT OF

JESSE K. SOUKI, EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE
HOUSE COMMITTEE ON FINANCE

ON
Friday, March 31, 2017
3:00 P.M.
State Capitol, Conference Room 308

in consideration of
SB1244, SD2, HD1 – RELATING TO AFFORDABLE HOUSING

Chair Brower, Vice Chair Nakamura, and members of the committee.

The Hawaii Community Development Authority (HCDA) respectfully offers **comments** on SB1244, SD2, HD1.

As long as this bill does not affect HCDA's right to repurchase affordable units developed with HCDA's assistance, we have no objection to this bill. We recognize the importance of developing more affordable rental housing for low-income families, and bringing more affordable rentals online statewide.

The Legislature may wish to add a requirement that a qualified nonprofit housing trust should report the disposition of the units annually to keep the public apprised of how the trust is managing its units.

Thank you for the opportunity to provide **comments** on this bill.

Hawaiʻi
Construction
Alliance

P.O. Box 179441
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March 29, 2017

LATE

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
and members
House Committee on Finance
Hawaiʻi State Legislature
Honolulu, Hawaiʻi 96813

RE: Support for SB1244 SD2 HD1, Relating to Affordable Housing

Dear Chair Luke, Vice Chair Cullen, and members:

The Hawaiʻi Construction Alliance is comprised of the Hawaiʻi Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawaiʻi Construction Alliance represent 15,000 working men and women in the basic crafts of Hawaiʻi's construction industry.

We write to support SB244 SD2 HD1, which would authorize qualified nonprofit housing trusts to repurchase affordable units developed with government assistance when a government entity waives its first right of refusal to repurchase the unit; authorize counties to waive a first right of refusal to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument; specify that certain provisions of the Internal Revenue Code related to at-risk rules, and deductions, and passive activity loss limitations do not apply with respect to the State Low-income Housing Tax Credit; and appropriate funds to establish one position to oversee the Low-Income Housing Tax Credit Program.

The Hawaiʻi Construction Alliance is extremely concerned about the chronic deficiency of affordable housing across the state. Simply put: the shortage of units for working moderate- and lower-income households is at a crisis level, and is negatively affecting our membership, many of whom fall within the 80-140% AMI "middle income range."

We know that nonprofit housing trusts play an important role in preserving the long-term affordability of low-income housing. Therefore, we are pleased to see that this bill would allow nonprofit housing trusts to administer units in the case where a government agency waives its right to repurchase an affordable housing unit.

We also acknowledge the important role that the Low-Income Housing Tax Credit program plays in helping private developers and non-profit entities to construct and rehabilitate rental units at the lowest and most-difficult-to-finance end of the income spectrum. We understand that Section II of this bill would incentivize further investment in LIHTCs in Hawaiʻi by allowing more Hawaiʻi investors to utilize the tax credits, expanding the investor market, and generating more participation in state bond financed projects.

It is our hope that if this bill passes, Hawaiʻi would see more investment in LIHTCs to help to alleviate the massive housing need for low-income families.

Thank you for the opportunity to provide these comments in **support of SB1244 SD2 HD1**.

Mahalo,

Tyler Dos Santos-Tam
Executive Director
Hawaiʻi Construction Alliance
execdir@hawaiiconstructionalliance.org

LATE

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Testimony to the House Committee on Finance
Friday, March 31, 2017
3:00 pm
Conference Room 308

RE: S.B. 1244 SD2 HD1 – Relating to Affordable Housing

Chair Luke, Vice-Chair Cullen, and members of the committee:

My name is Gladys Quinto Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII is in support of the intent of S.B. 1244, S.D. 2, H.D. 1, which proposes to, among other things:

(1) Allow the Hawaii Community Development Authority (HCDA) to waive a right to repurchase a reserved or workforce unit and transfer the right of repurchase to a qualified nonprofit housing trust;

(2) Allow the counties to waive their right of first refusal to repurchase certain privately-developed affordable housing units and transfer that right of repurchase to a qualified nonprofit housing trust;

(3) Allow the Hawaii Housing Finance and Development Corporation (HHFDC) to waive its first option to repurchase certain real property and transfer the right to repurchase to a qualified nonprofit housing trust; and

(4) Amend the means of calculating the maximum price for HHFDC's first option to purchase real property.

We would recommend that the bill be amended to provide one definition for a "qualified nonprofit housing trust." As currently worded, the definitions in Chapter 46-15.1 HRS and Chapter 201H-1 are consistent, but slightly different from the definition provided in Chapter 206E-2 HRS. To avoid confusion, we would recommend having a similar definition in each section of the Statue. Finally, we would also recommend that some consideration be given to the nonprofit having some past performance, background, status or familiarity in managing and maintaining affordable housing.

If the concerns we raise can be addressed, we would support the passage of S.B. 1244, S.D. 2, H.D. 1. Thank you for the opportunity to provide our comments on this matter.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 30, 2017 4:10 PM
To: FINTestimony
Cc: monkie.problem@gmail.com
Subject: *Submitted testimony for SB1244 on Mar 31, 2017 15:00PM*

LATE

SB1244
Submitted on: 3/30/2017
Testimony for FIN on Mar 31, 2017 15:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Garris	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.

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From:	mailinglist@capitol.hawaii.gov
To:	FINTestimony
Cc:	monkie.problem@gmail.com
Subject:	*Submitted testimony for SB1244 on Mar 31, 2017 15:00PM*
Date:	Thursday, March 30, 2017 4:10:24 PM

SB1244
Submitted on: 3/30/2017
Testimony for FIN on Mar 31, 2017 15:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Garris	Individual	Support	No

Comments:

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HAWAII OPERATING ENGINEERS
INDUSTRY STABILIZATION FUND

Affiliated AFL-CIO
OPEIU - 3 - AFL-CIO (3)

Uniting our strengths and working together for a better tomorrow.

LATE

March 30, 2017

House Committee on Finance
Honorable Sylvia Luke, Chair
Honorable Ty Cullen, Vice Chair
Honorable Members of the House committee on Finance

RE: **SUPPORT OF S.B. 1244 SD2 HD1 RELATING TO HOUSING**

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee,

My name is Pane Meatoga III and I am the Community Liaison representing the Hawaii Operating Engineers Industry Stabilization Fund (HOEISF). We are a labor management fund representing 4000 unionized members in the heavy engineering site work and 500 general contractors specializing in heavy site and vertical construction.

Hawaii Operating Engineers Industry Stabilization Fund **supports** S.B. 1244 SD2 D1, Relating to Housing, which authorizes qualified nonprofit housing trusts to repurchase affordable units developed with government assistance when a government entity waives its first right of refusal to repurchase the unit. Authorizes counties to waive a first right of refusal to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument

The shortage of affordable housing has grown to crisis proportions. With the limited amount of developable land and the lack of needed infrastructure, we find median prices for single family homes on Oahu hovering at around $750,000. Recent studies show a need for 60,000 housing units by the year 2020. It is necessary, therefore, for the legislature to take steps to preserve existing affordable housing units for as long as practicable. This has not been the case in recent years relative to government-assisted or mandated affordable housing units. Because of the lack of financial or other resources, government agencies have often opted to waive their right of first refusal to repurchase housing units that are sold within the designated restriction period.

This bill will create a pool of affordable housing units that will remain affordable for as long as practicable, through the purchase and management of the units by the housing trust.

Hawaii Operating Engineers Industry Stabilization Fund **supports** S.B. 1244, SD2, HD1 and recommends its passage.

Sincerely,

Pane Meatoga III
Community Liaison
Hawaii Operating Engineers Industry Stabilization Fund

STANFORD CARR DEVELOPMENT, LLC

LATE

March 31, 2017

House of Representatives
Committee on Finance
Representative Syliva Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

RE: SB 1244, SD2, HD1, Relating to Affordable Housing

The Honorable Chair Sylvia Luke, Vice Chair Ty Cullen and members of the Committee:

Stanford Carr Development, LLC submits this testimony in strong support of S.B. No. 1244, S.D. 2, H.D. 1, which specifies that certain provisions of the Internal Revenue Code (IRC) related to at-risk rules, deductions limited to amount at risk, and passive activity loss limitations do not apply with respect to the State Low-Income Housing Tax Credit (LIHTC) as well as appropriates funds to establish one position to oversee the Low-Income Housing Tax Credit Program. The proposed decoupling from at-risk and passive activity loss limitations under the IRC will expand the investor pool and strengthen the market for State LIHTC's.

This bill will expand Hawaii's LIHTC program, the most effective tool in the production and preservation of workforce rental housing. Established as part of the Tax Reform Act of 1986, the LIHTC program provides tax incentives to encourage investment in the development, acquisition and rehabilitation of workforce rental housing serving households earning 60 percent of the area median income (AMI) and below. The tax credit is most often sold to qualified investors in exchange for an equity investment in a project. This equity investment reduces the debt burden on the tax credit property, making it financially feasible to offer lower, more affordable rents.

To augment the Federal LIHTC, Hawaii has a State LIHTC which equates to 50 percent of the amount of Federal LIHTC received. However, the equity generated from the sale of State LIHTC's is limited. Only a handful of financial institutions who operate in the islands are currently qualified to purchase such tax credits and therefore very little competition exists resulting in an artificially lower price paid for LIHTC's. Passage of this bill would expand the market for State LIHTC's and allow individuals and small businesses to participate in and benefit from the program. Greater participation in the State LIHTC Program will create a more competitive market for such credits and place upward pressure on their pricing thereby maximizing the equity generated for the development of workforce rental housing projects.

Stanford Carr Development employed the use of LIHTC's to help finance the construction of Franciscan Vistas Ewa and Halekauwila Place. Located in the heart of Kakaako and comprised of 204-units, Halekauwila Place provides workforce rental housing to those families earning 60% AMI and below which equates to a family of four earning approximately \$60,000 a year paying only \$1,357 a month for a two-bedroom unit. Furthermore, Franciscan Vistas is a 149-unit independent senior living community located in Ewa and reserved for those elderly individuals earning between 30 and 60 percent AMI which equates to paying \$540 a month for a one-bedroom ADA unit. Had this bill been enacted at the time of Franciscan Vistas and Halekauwila Place's construction, less mortgage debt would have been required and perhaps more units could have been constructed.

In closing, we applaud the legislature in their efforts to encourage the development of much needed workforce housing for the residents of Hawaii. The passage of SB 1244, SD2, HD1 will further facilitate the production of such workforce housing by expanding the pool of investors eligible to

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participate in State's LIHTC Program thereby maximizing the amount of equity generated through the sale such credits.

Respectfully submitted,
STANFORD CARR DEVELOPMENT, LLC

Stanford S. Carr

LAND USE RESEARCH
FOUNDATION OF HAWAII
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LATE

March 31, 2017

Representative Sylvia Luke, Chair
Representative Ty K.K. Cullen, Vice Chair
Senate Committee on Finance

Support of Intent, Comments, Concerns, and Proposed Amendments to Comments, Concerns relating to SB 1244, SD2, HD1 Relating to Affordable Housing (Authorizes qualified nonprofit housing trusts to repurchase affordable units developed with government assistance when a government entity waives its first right of refusal to repurchase the unit. Authorizes counties to waive a first right of refusal to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument. Specifies that certain provisions of the Internal Revenue Code related to at-risk rules, and deductions, and passive activity loss limitations do not apply with respect to the State Low-income Housing Tax Credit. Appropriates funds to establish one position to oversee the Low-Income Housing Tax Credit Program.)

FIN Hearing: Friday, March 31, 2017, at 3:00 p.m., in Conf. Rm. 308

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF supports the intent of SB 1244, SD2, HD1 and commends the Hawaii Home Ownership Center and other proponents of this measure, for attempting to provide a process for qualified nonprofits to repurchase and resell affordable housing units when government agencies waive their first right of refusal to repurchase affordable housing units. LURF has, however, **comments, concerns and suggested amendments** relating to this measure, among other things:

- **Delete the terms *"permanently"* or *"in perpetuity"; and* replace with *"as required by the Hawaii Community Development Authority, Hawaii Housing Finance Development Corporation or county program, or as long as reasonably practicable."* (Sections 2 and 6)** Government agencies, financial institutions, real estate professionals and others recognize that housing structures and units have a *"useful economic life"* and will not last forever, "permanently" or "in perpetuity." According to the National Association of Home Builders, the actual life span of an individual house structure and major components will depend greatly on the type and quality of materials used, quality of installation, level of maintenance, weather and climate conditions and intensity of use. The reality is that housing structures will age and at some point may need to be demolished. Thus, the terms *"permanently"* or *"in perpetuity"* should be deleted and replaced with *"as required by the Hawaii Community Development Authority, Hawaii Housing Finance Development Corporation or county program, or as long as reasonably practicable."*

- **Delete the provisions which *"automatically extinguish"* the restrictions prescribed in Chapters 201H and 206E, Hawaii Revised Statutes and government agency rules, county unilateral agreements or similar county instruments, upon transfer of the repurchase rights to a qualified nonprofit. (Sections 2 and 6).** It is important to maintain the restrictions prescribed in Chapters 201H and 206E, Hawaii Revised Statutes (HRS) and the rules adopted by the Hawaii Community Development Authority (HCDA) and the Hawaii Housing Finance and Development Corporation (HHFDC), and county unilateral agreements or similar county instruments; and said requirements should not be extinguished by upon transfer of the repurchase rights to a qualified nonprofit. That being said, the nonprofit should also be authorized to include additional restrictions which effectuate the long-term affordability of the housing unit.

Conclusion. LURF respectfully urges this Committee to **favorably consider this measure** and to **adopt LURF's proposed amendments**.

Thank you for the opportunity to provide comments relating to this measure.