

MAR 10 2022

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# SENATE RESOLUTION

URGING THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION TO COMBAT HOSTILE AND HARMFUL ACTIONS BY PROFIT-DRIVEN INVESTORS AND AGGREGATORS PARTICIPATING IN THE STATE'S LOW-INCOME HOUSING TAX CREDIT PROGRAM.

1           WHEREAS, many nonprofit housing development organizations in  
2 the State and throughout the nation have a mission to keep  
3 housing affordable in perpetuity; and

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5           WHEREAS, creating affordable housing and keeping housing  
6 permanently affordable will help address the 50,000 housing unit  
7 shortage in the State; and

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9           WHEREAS, in the case of Low-Income Housing Tax Credit  
10 (LIHTC) Program projects, nonprofit developers apply for these  
11 tax credits from the State and then sell the tax credits to  
12 banks or other institutions with high tax liabilities, with  
13 proceeds from the sale of the LIHTC tax credits funding the  
14 construction or renovation of buildings; and

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16           WHEREAS, an investor who purchases LIHTC tax credits  
17 maintains some ownership in the project during a fifteen-year  
18 compliance period in which the investor receives the tax  
19 benefits; and

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21           WHEREAS, a nonprofit developer may exercise the right of  
22 first refusal to purchase the entire project at the end of the  
23 fifteen-year compliance period from the investor at a minimal  
24 cost to maintain permanent affordability; and

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26           WHEREAS, however, predatory investors seeking to make a  
27 profit sell LIHTC properties at market rate after the compliance  
28 period ends, after taking advantage of the tax credit benefits  
29 received during this same period; and



# S.R. NO. 71

1           WHEREAS, predatory investors have been manipulating the  
2 LIHTC Program for personal profit by devising methods to hold on  
3 to the LIHTC affordable housing beyond the fifteenth year and  
4 then selling the property at market rate, thereby blocking a  
5 nonprofit organization's right of first refusal; and  
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7           WHEREAS, by blocking the right of first refusal, predatory  
8 investors attempt to extract more profit out of affordable  
9 housing development, which is beyond what the LIHTC Program was  
10 designed to offer; and  
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12           WHEREAS, predatory actors are often not the original  
13 investor partners, but rather are predatory agents called  
14 aggregators who buy up ownership interest in LIHTC projects from  
15 original investors with the expectation that they will be able  
16 to block property transfer to nonprofits at year fifteen and  
17 then sell the buildings at market rate; and  
18

19           WHEREAS, aggregators use a variety of tactics to block the  
20 right of first refusal of nonprofit organizations by disputing  
21 different aspects of the property transfer in lengthy and  
22 expensive court battles; and  
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24           WHEREAS, disputes over project transfers drain the  
25 resources of nonprofit organizations, as resource-strapped  
26 nonprofit organizations do not have the capacity to fight these  
27 legal battles; and  
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29           WHEREAS, protecting the right of first refusal of nonprofit  
30 organizations participating in the LIHTC Program is of critical  
31 importance, especially amid the housing and homelessness crises  
32 in the State; and  
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34           WHEREAS, to maintain the integrity and intent of the LIHTC  
35 Program, which was established to help finance the development  
36 or substantial rehabilitation of affordable rental housing, it  
37 is imperative to end the predatory practice of aggregators that  
38 undermine the goals of LIHTC, take advantage of the investor  
39 interests they already hold in LIHTC projects, and  
40 systematically challenge nonprofit organizations' project  
41 transfer rights under the LIHTC Program; now, therefore,  
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# S.R. NO. 71

1 BE IT RESOLVED by the Senate of the Thirty-first  
 2 Legislature of the State of Hawaii, Regular Session of 2022,  
 3 that the Hawaii Housing Finance and Development Corporation is  
 4 urged to combat hostile and harmful actions by profit-driven  
 5 investors and aggregators participating in the State's Low-  
 6 Income Housing Tax Credit Program; and

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 8 BE IT FURTHER RESOLVED that the Hawaii Housing Finance and  
 9 Development Corporation is urged to combat these actions by  
 10 amending the 2023/2024 Qualified Application Plan for the LIHTC  
 11 Program to qualify and confirm the ability of nonprofit  
 12 developers to exercise their contracted right of first refusal or  
 13 purchase options; and

14  
 15 BE IT FURTHER RESOLVED that the Hawaii Housing Finance and  
 16 Development Corporation is also urged to amend LIHTC regulatory  
 17 agreements to eliminate processes and tactics that prevent  
 18 nonprofit organizations from exercising their right of first  
 19 refusal; and

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 21 BE IT FURTHER RESOLVED that Hawaii's congressional  
 22 delegation is requested to work on federal legislation that  
 23 strengthens the right of first refusal in LIHTC projects and  
 24 addresses predatory corporations that profiteer off existing  
 25 affordable LIHTC housing that was developed using public  
 26 resources; and

27  
 28 BE IT FURTHER RESOLVED that certified copies of this  
 29 Resolution be transmitted to each member of Hawaii's  
 30 congressional delegation and Executive Director of the Hawaii  
 31 Housing Finance and Development Corporation.

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OFFERED BY:                     *MM D-CA*                    

**By Request**

