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## A BILL FOR AN ACT

RELATING TO NEW MARKET TAX CREDITS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the business  
2 community, nonprofit organizations, and other entrepreneurs  
3 require a functional, service-oriented agency that is readily  
4 available to provide business counseling, financial backing, and  
5 general support to foster real community-based economic  
6 development for the various products and services demonstrating  
7 and embracing Hawaii's diversified economy.

8           The Hawaii community-based economic development technical  
9 and financial assistance program in the department of business,  
10 economic development, and tourism, was established for this  
11 purpose. The program was established by the legislature in Act  
12 111, Session Laws of Hawaii 1990, and codified as chapter 210D,  
13 Hawaii Revised Statutes, to provide financial assistance to  
14 community-based businesses and enterprises through low-interest  
15 loans and grants to qualifying applicants.

16           There are various programs provided by the federal  
17 government, nonprofits, and foundations, and there are



1 opportunities provided by public-private partnerships that  
2 further these goals. These programs and partnerships can be  
3 used to provide a portion of the funding needed by economic  
4 development projects. The project funding provided by Hawaii  
5 will be made more efficient and more effective if it is provided  
6 in the form most compatible with such programs and in the manner  
7 most suitable to optimize all sources of funding. To achieve  
8 this, some modifications are necessary to the types of financial  
9 products offered by the community-based economic development  
10 program and the manner in which those products are provided  
11 along with an increase in the total amount that may be provided  
12 for an individual project and borrower.

13 The purpose of this Act is to:

- 14 (1) Add the definition of "community development entity"  
15 to allow financing to be provided by Hawaii through a  
16 structure that facilitates the use of federal new  
17 market tax credits;
- 18 (2) Expand the methods of delivering funding to a project  
19 by providing loans to capitalize a community  
20 development entity and to provide guarantees or other  
21 credit enhancements that will facilitate private



1 lenders' participation in new markets tax credit  
2 financing; and

3 (3) Adjust loan maximums and establish guarantees or  
4 credit enhancements to reflect current available  
5 funding and facilitate monetization of existing  
6 project assets for purposes of new markets tax credit  
7 financing.

8 SECTION 2. Section 210D-2, Hawaii Revised Statutes, is  
9 amended by adding a new definition to be appropriately inserted  
10 and to read as follows:

11 "Community development entity" has the same meaning as in  
12 section 45D(c)(1) of the Internal Revenue Code of 1986, as  
13 amended."

14 SECTION 3. Section 210D-8, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§210D-8 Powers and duties.** The department shall have the  
17 necessary powers to carry out the purposes of this chapter,  
18 including the following:

19 (1) With advice from the council, prescribe the  
20 qualifications for eligibility of applicants for



- 1            loans, [~~and~~] grants[+], guarantees, and credit  
2            enhancements;
- 3            (2) With advice from the council, establish preferences  
4            and priorities in determining eligibility for  
5            financial assistance;
- 6            (3) Establish the conditions, consistent with the purpose  
7            of this chapter, for the awarding of financial  
8            assistance;
- 9            (4) Provide for inspection at reasonable hours of  
10           facilities, books, and records of a community-based  
11           organization that has applied for or has been awarded  
12           financial assistance and require the submission of  
13           progress and final reports;
- 14           (5) Provide loans, [~~and~~] grants[+], guarantees, and credit  
15           enhancements for community-based economic development  
16           activities and community-based enterprises for  
17           purposes consistent with this chapter;
- 18           (6) Provide, participate in, and acquire loans used to  
19           capitalize entities that make financing available for  
20           activities and enterprises, including community  
21           development entities;



- 1        [~~(6)~~] (7) Determine the necessity for and the extent of  
2                    security required [~~in a loan;~~] for loans, guarantees,  
3                    and credit enhancements;
- 4        [~~(7)~~] (8) Prescribe and provide appropriate management  
5                    counseling and monitoring of business activities;
- 6        [~~(8)~~] (9) Administer the Hawaii community-based economic  
7                    development revolving fund;
- 8        [~~(9)~~] (10) Include in its budget for subsequent fiscal  
9                    periods amounts necessary to effectuate the purposes  
10                   of this chapter;
- 11       [~~(10)~~] (11) Participate in loans made to qualified persons  
12                   by private lenders;
- 13       [~~(11)~~] (12) Establish interest rates chargeable by the State  
14                   for [~~direct and participation~~] loans; [and]
- 15       (13) Establish interest rates, fees, and charges chargeable  
16                   by the State for guarantees and credit enhancements;  
17                   and
- 18       [~~(12)~~] (14) Adopt rules pursuant to chapter 91 to implement  
19                   this chapter."

20       SECTION 4. Section 210D-9, Hawaii Revised Statutes, is  
21       amended to read as follows:



1           "~~§210D-9 Loans [; limitation and terms]~~. Loans made under  
2 this chapter shall be [~~for the purposes and in accordance with~~  
3 ~~the terms specified in paragraphs (1) and (2) and shall be made~~  
4 ~~only to applicants who meet the eligibility requirements~~  
5 ~~specified therein.] limited to the following:~~

6           (1) Community-based enterprise establishment and  
7           improvement loans may be made to provide for:

8           (A) The start-up costs, purchase or improvement of a  
9           community-based enterprise or working capital;

10           and

11           (B) The purchase, construction, or improvement of  
12           facilities; [~~and]~~

13           (2) Operating loans may be made to carry on and improve an  
14           existing enterprise, including:

15           (A) The purchase of equipment; and

16           (B) The payment of production and marketing expenses  
17           including materials, labor, and services[~~-~~]; or

18           (3) Loans to entities that capitalize community  
19           development entities that use the proceeds to make  
20           loans to borrowers.



1       ~~[The loans shall be for an amount not to exceed \$250,000~~  
2 ~~and for a term not to exceed ten years.]"~~

3       SECTION 5. Section 210D-10, Hawaii Revised Statutes, is  
4 amended to read as follows:

5       "**§210D-10 Terms and limitations of loans[-], guarantees,**  
6 **and credit enhancements.** ~~[Loans shall be made to qualified~~  
7 ~~applicants with the]~~ The following terms and conditions[+] shall  
8 apply:

- 9       (1) The amount of the outstanding balance on all loans,  
10       guarantees, and other credit enhancements issued under  
11       this chapter to any one applicant at any one time  
12       shall not exceed [~~\$250,000;~~] \$5,000,000;
- 13       (2) The maximum term of a loan, guarantee, or credit  
14       enhancement shall not exceed ten years;
- 15       (3) Each loan shall bear simple interest at a rate of not  
16       less than three and not more than six per cent a year,  
17       depending on the nature of the loan; ~~[and]~~
- 18       (4) Interest rates for guarantees and credit enhancements  
19       shall not be more than the market rate for similar  
20       instruments; and




1        [~~4~~] (5) The commencement date for the repayment of the  
2                first installment on principal and interest of each  
3                loan may be deferred by the director of business,  
4                economic development, and tourism for a period not to  
5                exceed two years."

6                SECTION 6. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8                SECTION 7. This Act shall take effect upon its approval.

9

INTRODUCED BY: 

JAN 29 2015





# H.B. NO. 1397

**Report Title:**

Economic Development; New Markets Tax Credits; Loans; Community Development Entity

**Description:**

Expands methods for delivering funding to a community development entity by allowing guarantees and credit enhancements. Increases total maximum funding amounts from \$250,000 to \$5,000,000.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*





**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

DAVID Y. IGE  
GOVERNOR

LUIS P. SALAVERIA  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

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Statement of  
**LUIS P. SALAVERIA**  
**Director**

Department of Business, Economic Development, and Tourism  
Before the

**HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS**

Friday, February 12, 2016

10:30 am

State Capitol, Conference Room 312

In consideration of

**HB 1397**

**RELATING TO THE NEW MARKET TAX CREDITS.**

Chair Kawakami, Vice-Chair Kong, and Members of the Committee on Economic Development and Business.

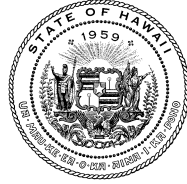
The Department of Business, Economic Development, and Tourism (DBEDT) appreciates the intent of this bill, which is to promote economic development and leverage available federal funding sources, but we are concerned about the cost implications this proposal could have on the department's and overall State's resources. We defer to the Department of Budget and Finance for the overall impact to the State's budget.

This bill does not provide the necessary funding for loan guarantees within the Community-Based Economic Development (CBED) Revolving Fund or for staff with the necessary expertise to administer complex financial instruments such as the Federal government's New Market Tax Credits.

Thank you for the opportunity to testify.

DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
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MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

JOSEPH K. KIM  
DEPUTY DIRECTOR

To: The Honorable Derek S.K. Kawakami, Chair  
and Members of the House Committee on Economic Development and Business

Date: Friday, February 12, 2016  
Time: 10:30 A.M.  
Place: Conference Room 312, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 1397, Relating to New Market Tax Credits.

The Department of Taxation (Department) appreciates the intent of H.B. 1397, defers to the Department of Business, Economic Development, and Tourism (DBEDT) on the merits of this bill, and provides the following comments regarding this measure for your consideration.

Among other things, H.B. 1397 establishes adds a definition of "Community Development Entity" (CDE) to Section 210D-2, Hawaii Revised Statutes, to allow financing to be provided to businesses in Hawaii through a structure that facilitates the use of the federal New Market Tax Credit (NMTC). The measure is effective upon approval.

The NMTC Program was enacted by Congress as part of the Community Renewal Tax Relief Act of 2000, and is found in section 45D of the Internal Revenue Code (IRC), permitting individual and corporate taxpayers to receive a credit against federal income taxes for making Qualified Equity Investments (QEIs) in qualified CDEs. These investments are expected to result in the creation of jobs and material improvement in the lives of residents of low-income communities.

Examples of expected projects include financing of small businesses, improving community facilities such as daycare centers, and increasing home ownership opportunities. A "low-income community" is defined as any population census tract where the poverty rate for such tract is at least 20%, or in the case of a tract not located within a metropolitan area, median family income for such tract does not exceed 80% of statewide median family income, or in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80% of the greater of statewide median family income or the metropolitan area median family income. As part of the American Jobs Creation Act of 2004, section 45D(e)(2) IRC, was amended to provide that targeted populations may be treated as low-income communities.

The NMTC program is intended to attract capital to low income communities by providing private investors with a federal tax credit for investments made in businesses or economic development projects located in distressed communities in the nation. A NMTC investor receives a tax credit equal to 39 percent of the total Qualified Equity Investment (QEI) made in a CDE, with the credit taken over a seven-year period: 5 percent annually for the first three years; and 6 percent in years four through seven. If an investor redeems a NMTC investment before the seven-year term has run its course, all credits taken to date are recaptured with interest.

It should be first noted that the NMTC has been extended through 2019 under the Protecting Americans from Tax Hikes Act of 2015. The NMTC is a highly technical credit. Generally speaking, the CDE must first enter into an allocation agreement with the Community Development Financial Institutions Fund (CDFI), which specifies the terms of the NMTC allocation under section 45D(f)(2), IRC. The CDE must provide notice to any investor who makes a QEI in the CDE at its original issue that the equity investment is in fact a QEI entitling the investor to claim the NMTC, and must be provided by the CDE to the taxpayer no later than 60 days after the date the investor makes the equity investment in the CDE. The notice must contain the amount paid to the CDE for the QEI at its original issue and the CDE's taxpayer identification number. (Treas. Reg. §1.45D-1(g)(2)(A).)

Under section 45D(c)(1), IRC, a CDE is any domestic corporation or partnership:

1. Whose primary mission is serving or providing investment capital for low-income communities or low-income persons;
2. That maintains accountability to residents of low-income communities through their representation on any governing board or advisory board of the CDE; and
3. Has been certified as a CDE by the CDFI Fund.

Therefore, before any credits can be allocated, it is imperative that any CDE created by this measure be certified by the CDFI fund. The CDFI Fund is responsible for establishing the credit application process, eligibility guidelines, and a scoring model for ranking applicants requesting allocations of NMTC. The CDFI Fund, in turn, grants credit authority to the CDE- i.e. the ability to issue a specific amount of NMTC in exchange for equity investments. The CDE must then invest substantially all of the cash in low-income communities within 12 months of receiving the funds.

Because making loans and ranking eligible businesses for funding is not a function of the Department, and one in which it has no expertise, the Department has no objection to this measure provided that it is administered by DBEDT.

Thank you for the opportunity to provide comments.

DATE: February 12, 2016  
10:30 am  
Conference Room 312

TO: Chair Derek S.K. Kawakami, Vice-Chair Sam Satoru Kong and Members  
of the House Committee on Economic Development & Business

MEASURE: HB1397

SUBJ: Testimony in Strong Support of HB1397

Good morning Chair Kawakami, Vice Chair Kong, and House Committee on Economic Development and Business Members. My name is Bob Hall, Partner with Pacific Growth Associates, and I submit testimony in strong support of HB1397.

Community Based Organizations (CBOs) in Hawaii have played an important role in bringing about social and economic improvement to our communities. CBOs support our well-being by means of providing economic, educational, environmental, health care, and housing services within their respective communities. They are catalytic in nurturing local, sustainable initiatives. Most seek grant and private funding year round for operational support and key community projects. Many also seek Legislative support each year through State Grant-in-Aid.

The Hawaii Community Based-Economic Development (CBED) Technical and Financial Assistance Program, facilitated by DBEDT, was established to provide financial assistance to community-based businesses and enterprises through low-interest loans and grants to qualifying applicants. HB1397 provides yet another financing “tool” utilizing public-private partnerships that can optimize a wide variety of funding sources.

HB1397 will serve as a “tool” that enables CBOs to utilize CBED financing as leverage to bring forth further equity through the federal New Markets Tax Credit (NMTC). Essentially, those who receive \$1.00 in CBED financing could leverage each dollar through a NMTC transaction and create an additional \$.39 in equity. HB 1397 also adds guarantees and credit enhancements to the program’s current loan and grants provisions of §201D-8. This change compliments the intent and purpose of the CBED Technical and Financial Assistance Program and establishes leveraging opportunities through programs such as the federal NMTC program as another financing opportunity.

The federal NMTC program is currently the largest federal economic development incentive program. The program was enacted as part of the Community Renewal Tax Relief Act of 2000 to encourage investment in low-income communities. Economic incentives are important in helping low-income census tracts recover from the recession, since these areas usually have the most difficulty generating new capital.

NMTCs are a tax credit, not a tax deduction. A tax credit can be given to the IRS instead of making a cash payment for taxes owed by the investor. The investor is typically a bank

or insurance company. NMTC is very flexible and can be used for a wide range of purposes. Most types of businesses, including not-for-profit businesses are eligible for NMTC subsidy. The program has supported a wide variety of community and economic development initiatives including restaurants, childcare facilities, community centers, charter schools, supermarkets, shopping centers, manufacturing and industrial facilities, health care centers, and mixed-use buildings with affordable housing.

Pacific Growth Associates (PGA) is a strong advocate for successful CBOs. Over the past 4 years, PGA has facilitated over \$50 million in private equity through the NMTC Program, which in turn has built 3 Federally Qualified Health Centers (1 FQHC is located on Hawaiian Home Lands), 1 business and retail incubator with a commercial kitchen, and 1 Community Center on Hawaiian Home Lands.

PGA strongly supports HB1397 and its intended results, as it will further assist CBOs meet their mission and in turn improve the well-being of our communities.

Respectfully Submitted,

Bob Hall, Partner  
Pacific Growth Associates

kong2 - Christie

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From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, February 10, 2016 5:46 PM  
To: edbtestimony  
Cc: dkanealii02@gmail.com  
Subject: Submitted testimony for HB1397 on Feb 12, 2016 10:30AM

**HB1397**

Submitted on: 2/10/2016

Testimony for EDB on Feb 12, 2016 10:30AM in Conference Room 312

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diane Kanealii	Kailapa Community Association	Support	No

Comments: Please support this bill to help communities become self sufficient and build our economic development engines therefore becoming less reliant on State funds.

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From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, February 10, 2016 10:11 PM  
To: edbtestimony  
Cc: dshaw@lanaicommunityhealthcenter.org  
Subject: Submitted testimony for HB1397 on Feb 12, 2016 10:30AM

**HB1397**

Submitted on: 2/10/2016

Testimony for EDB on Feb 12, 2016 10:30AM in Conference Room 312

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diana Shaw	Lanai Community Health Center	Support	No

Comments: I strongly support this bill and urge that it be passed. Specifically, the key components of this bill are: • Amends 210D-2 by inserting "community development entity" as defined in section 45D(c)1 of Internal Revenue Code. This would enable financing thru a structure that facilitates use of NMTCs. • Amends 201D-8 by allowing guarantees and credit enhancements along with loans and grants. This will help for leveraging. • Amends 210D-10 by increasing maximum loan, guarantee and credit enhancement amounts from \$250,000 to \$5,000,000. NMTC have have our new health care facility a reality. They are a critical component of a successful capital campaign, especially targeted for low income areas. Please support this bill. Diana Shaw, Executive Director, Lanai Community Health Center, Lanai City, HI - A federally qualified health center and 501c3

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kong2 - Christie

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From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, February 09, 2016 4:53 PM  
To: edbtestimony  
Cc: rustonu@gmail.com  
Subject: \*Submitted testimony for HB1397 on Feb 12, 2016 10:30AM\*

**HB1397**

Submitted on: 2/9/2016

Testimony for EDB on Feb 12, 2016 10:30AM in Conference Room 312

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ruston Utu	Individual	Support	No

Comments:

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