DAVID Y. IGE
GOVERNOR

DENISE ISERI-MATSUBARA
INTERIM 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
DENISE ISERI-MATSUBARA
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON HOUSING
February 11, 2020 at 10:15 a.m.
State Capitol, Room 423

In consideration of
H.B. 2527
RELATING TO THE LOW-INCOME HOUSING TAX CREDIT.

The HHFDC ***supports*** H.B. 2527. This bill proposes changes to the State Low-Income Housing Tax Credit (LIHTC) to increase the amount of equity generated by the sale of the LIHTC for affordable rental housing developments.

Under existing law, large corporations or financial institutions with Hawaii income tax liability can purchase the State LIHTC. This relatively small pool of investors limits the demand for the State LIHTC, and, therefore, the equity that can be generated for affordable rental housing projects through the sale of the State LIHTC.

By eliminating the applicability of the at-risk and passive activity loss limitations to State LIHTC investors, this bill would expand the pool of Hawaii taxpayers that can invest in the State LIHTC and increase its pricing, thereby generating more equity towards the affordable rental housing projects.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR

RONA M. SUZUKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
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To: The Honorable Tom Brower, Chair;
The Honorable Scot Z. Matayoshi, Vice Chair;
and Members of the House Committee on Housing

From: Rona M. Suzuki, Director
Department of Taxation

Re: **H.B. 2527, Relating to the Low-Income Housing Tax Credit**
Date: Tuesday, February 11, 2020
Time: 10:15 A.M.
Place: Conference Room 423, State Capitol

The Department of Taxation (Department) provides the following comments on H.B. 2527.

H.B. 2527 amends the low-income housing tax credit (LIHTC) to eliminate conformity to several Internal Revenue Code (IRC) sections. The bill is effective upon approval and applies to low-income buildings placed in service after December 31, 2020.

H.B. 2527 eliminates conformity to the following IRC provisions:

- Sections 42(k) and 465 relating to the at-risk rules;
- Section 453 relating to the installment method;
- Section 469 relating to the passive activity loss (PAL) limitations; and
- Section 704 relating to partner's distributive share for state allocations.

The Department notes that section 704 of the IRC already does not apply to the LIHTC through section 235-2.45(d)(e), Hawaii Revised Statutes.

The Department is able to administer the bill with its current effective date.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

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

SUBJECT: INCOME, Low-Income Housing Credit, Passive Activity Loss and At-Risk Rules

BILL NUMBER: HB 2527

INTRODUCED BY: HASHEM, BROWER, DECOITE, HASHIMOTO, TOKIOKA, WOODSON, YAMASHITA

EXECUTIVE SUMMARY: Specifies that certain provisions of the Internal Revenue Code related to at-risk rules and deductions and to passive activity loss do not apply to low-income housing tax credit allocations after 12/31/2020.

SYNOPSIS: Amends section 235-110.8, HRS, to state that for any qualified low-income building that receives an allocation after December 31, 2020:

(1) Section 453 (with respect to the installment method), section 465 (with respect to deductions limited to amount at risk), and section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall not be operative with respect to investments made in buildings and projects claiming the credit under this section; provided that this paragraph shall not apply to investments made in a building if the building ceases to be a qualified low-income building as defined under section 42(c) of the Internal Revenue Code;

(2) All allocations to partners of their distributive shares of income, loss, and deductions under chapter 235 shall be made in proportion to the partner's allocation of low-income housing credits under this section;

(3) The amount of state credits allocated by HHFDC for the qualified low-income building shall not exceed fifty per cent of the amount of federal credits allocated to the building; and

(4) The state depreciation basis of the qualified low-income building shall not exceed the federal depreciation basis of the building.

EFFECTIVE DATE: Taxable years beginning after December 31, 2020; sunsets on July 1, ____.

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.

On the federal level, the tax credits and losses attributable to such a project are limited by a series of complex rules, including:

At-Risk Rules

For individuals, estates, trusts, and closely held C corporations, deductions of business- or investment-related losses from an activity for a tax year are limited to the amount the taxpayer is at risk. The amount at risk includes: (1) the amount of money and the adjusted basis of property contributed to an activity; (2) amounts borrowed with respect to the activity to the extent the taxpayer is personally liable for repayment or has pledged property, other than property used in the activity, as security for the borrowed amount; and (3) generally, amounts borrowed with respect to the activity of holding real property for which no person is personally liable for repayment (qualified nonrecourse financing). The amount at risk is also increased by the excess of items of income from an activity for the tax year over items of deduction from the activity for the tax year.

Unlike a partner's tax basis, the amount at risk can go negative, although not from recognition of losses. The consequence of a negative at-risk amount is the potential for at-risk recapture, which is the recognition of previously deducted losses as income in a year in which a taxpayer's amount at risk is negative, often as the result of a distribution. Recognition of at-risk recapture increases a partner's amount at risk.

Passive Activity Loss Rules

Passive activity loss rules are a set of IRS rules that prohibit using passive losses to offset earned or ordinary income. Passive activity loss rules prevent investors from using losses incurred from income-producing activities in which they are not materially involved.

Being materially involved with earned or ordinary income-producing activities means the income is active income and may not be reduced by passive losses. Passive losses can be used only to offset passive income.

The key issue with passive activity loss rules is material participation. According to IRS Topic No. 425, "material participation" is involvement in the operation of a trade or business activity on a "regular, continuous, and substantial basis." If the taxpayer does not materially participate in the activity that is producing the passive losses, then those losses can only be matched against passive income. If there is no passive income, then no loss can be deducted. However, rental activities, including real estate rental activities, are considered passive activities even if there is material participation ("real estate professionals" cannot benefit from this exception).

Passive activity losses can only be applied in the current year, and if they exceed passive income they can be carried forward without limitation; they cannot be carried back.

In general, passive activity loss rules are applied at the individual level, but they also extend to virtually all businesses and rental activity in various reporting entities, except C corporations, to deter abusive tax shelters.

The proposal here is to make these rules inapplicable to investments in low-income housing projects.

While this is just one incentive to encourage developers to build affordable housing, consideration should be given to several strategies including 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 required to bring those homes to market. While those regulatory guidelines are to ensure 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.

Digested 2/9/2020

HOUSE COMMITTEE ON HOUSING
State Capitol, Conference Room 423
415 South Beretania Street
10:15 AM

February 11, 2020

RE: HOUSE BILL NO. 2527, RELATING TO THE LOW-INCOME HOUSING TAX CREDIT

Chair Brower, Vice Chair Matayoshi, and members of the committee:

My name is Dwight Mitsunaga, 2020 President 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. Our members build the communities we all call home.

BIA Hawaii is in strong support of H.B. 2527, which specifies that certain provisions of the Internal Revenue Code related to at-risk rules and deductions and to passive activity loss do not apply to low-income housing tax credit allocations after 12/31/2020.

We understand that the bill proposes to expand the Hawaii State Low Income Housing Tax Credit (LIHTC) investor rules from just C corporations to include local companies and individuals, with the intent to broaden the pool of investors.

We appreciate the opportunity to provide our comments on this matter.

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House Committee on Housing
The Honorable Tom Brower, Chair
The Honorable Scot Z. Matayoshi, Vice Chair
Tuesday, February 11, 2020
10:15 AM, State Capitol Room 423

Statement of the Hawaii Regional Council of Carpenters – Support for HB2527

Aloha Chair Brower, Vice Chair Matayoshi, and Members of the Committee:

The Hawaii Regional Council of Carpenters supports HB2527, Relating to the Low-Income Housing Tax Credit, which would specify that certain provisions of the Internal Revenue Code related to at-risk rules and deductions and to passive activity loss do not apply to low-income housing tax credit allocations after 12/31/2020.

The Hawaii Regional Council of Carpenters has worked extensively over the past several years to advocate for more affordable housing, particularly rental housing. We are extremely concerned about the chronic deficiency of affordable housing across the state, which is at a crisis level.

We 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. HB2527 would incentivize further investment in LIHTCs in Hawaii by allowing more Hawaii 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, Hawaii 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 HB2527.

STATE HEADQUARTERS & BUSINESS OFFICES

OAHU: 1311 Houghtailing Street, Honolulu Hawaii 96817-2712 • Ph. (808) 847-5761 Fax (808) 440-9188
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KAUAI OFFICE: Kuhio Medical Ctr Bldg., 3-3295 Kuhio Hwy, Suite 201, Lihue, Kauai 96766-1040 • Ph. (808) 245-8511 Fax (808) 245-8911

STANFORD CARR DEVELOPMENT, LLC

• February 10, 2020

House of Representatives
Committee on Finance
Representative Mark Hashem. Chair

RE: H.B. No. 2527, Relating to the Low-Income Housing Tax Credit

Stanford Carr Development, LLC submits this testimony in strong support of H.B. No. 2527 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). 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, Halekauwila Place and most recently Hale Kewalo. Located in the heart of Kakaako and comprised of 127 units, Hale Kewalo provides workforce rental housing to those families earning between 30 and 60 AMI which equates to paying $678 a month for a one-bedroom unit. Had this bill been enacted at the time of Franciscan Vistas, Halekauwila Place and Hale Kewalo's construction, the increased value of these State LIHTCS would reduce the amount of Rental Housing Revolving Funds necessary to bridge the equity gap.

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 H.B. No. 2527 will further facilitate the production of such workforce housing by expanding the pool of investors eligible to participate in State's LIHTC Program thereby maximizing the amount of equity generated through the sale such credits.

Respectfully submitted,

Stanford S. Carr

ALAKEA CORPORATE TOWER • 1100 ALAKEA STREET, 27TH FLOOR • HONOLULU, HAWAII 96813
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LATE

HB-2527
Submitted on: 2/10/2020 4:07:19 PM
Testimony for HSG on 2/11/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Harry Saunders	Castle & Cooke Hawaii	Support	No

Comments:

Castle & Cooke Homes Hawaii, Inc. supports HB 2527 and SB 2694. Passage of these bills will help to finance more affordable housing in Hawaii.

Thank you fo ryour consideration and support.

Sincerely,

Harry Saunders, President

SUGAR CREEK CAPITAL
A forward approach.
17 West Lockwood Avenue
St. Louis, MO 63119
p: 314-968-2205

LATE

Testimony of Sugar Creek Capital

Before the
House Committee on Housing

Tuesday, February 11, 2020
10:15 a.m.
State Capitol, Conference Room 423

On the following measure:
H.B. 2527, RELATING TO THE LOW-INCOME HOUSING TAX CREDIT

Chair Brower, Vice-Chair Matayoshi and Members of the Committee:

My name is Lou Bosso, and I am the State Equity Director for Sugar Creek Capital. Sugar Creek Capital specializes in state low-income housing tax credit investments that benefit working families and fixed-income seniors.

While we **support the intent** of HB 2527, we propose several key amendments to enhance the value of the tax credits for the state, and allow for greater private equity investment in low-income housing.

The proposed amendments include:

1. Provide an extended safe harbor period of 24 months in which to claim the credit should unforeseen delays occur.

2. Amendments to provide the investment partnership the ability to utilize greater flexibility in its allocation of the Hawaii State LIHTCs amongst partners.

3. Technical amendments for clarity and reference.

The full draft of our proposed amendments is attached.

Mahalo for the opportunity to provide testimony.

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HOUSE OF REPRESENTATIVES
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

H.B. NO. 2527

A BILL FOR AN ACT

RELATING TO THE LOW-INCOME HOUSING TAX CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII

SECTION 2. 1. Section 235-110.8, Hawaii Revised Statutes, is amended to read as follows:

"**§235-110.8 Low-income housing tax credit.** (a) As modified herein, section 42 (with respect to low-income housing credit) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section. A taxpayer owning a qualified low-income building who has been awarded a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, shall also be eligible for the credit provided in this section.

(b) Each taxpayer subject to the tax imposed by this chapter, who has filed ~~a net] an~~ an income tax return for a taxable year may claim a low-income housing tax credit against the taxpayer's net income tax liability. The amount of the credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year

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in which the credit is properly claimed on a timely basis. A credit under this section may be ~~claimed whether or not the taxpayer claims a federal low-income housing tax credit pursuant to section 42 of the Internal Revenue Code.~~ allocated among the partners or members of the taxpayer earning the credit in any manner agreed to by such parties regardless of whether any such partner or member is deemed a partner for federal income tax purposes as long as the partner or member would be considered a partner for Hawaii state law purposes in accordance with section 425E-301, and may be claimed whether or not the taxpayer [~~claims~~] is eligible to be allocated a federal low-income housing tax credit pursuant to section 42 of the Internal Revenue Code. In addition, any allocation of a tax credit under this section may be made among the partners or members of a taxpayer in accordance with the immediately preceding sentence provided such partners or members have been admitted to the taxpayer in accordance with section 425E-301 on or prior to the date for filing the partner's or member's tax return (including any amendments thereto) with respect to the year of the tax credit.

(c) For any qualified low-income building that receives an allocation prior to January 1, 2017, the amount of the low-income housing tax credit that may be claimed by a taxpayer as provided in subsection (b) shall be fifty per cent of the applicable percentage of the qualified basis of each building located in Hawaii. The applicable percentage shall be

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St. Louis, MO 63119
p: 314-968-2205

calculated as provided in section 42(b) of the Internal Revenue Code.

(d) For any qualified low-income building that receives an allocation after December 31, 2016, the amount of the low-income housing tax credits that may be claimed by a taxpayer as provided in subsection (b) shall be:

(1) For the first five years, equal to the amount of the federal low-income housing tax credits that have been allocated to the qualified low-income building pursuant to section 42(b) of the Internal Revenue Code by the corporation, provided that, if in any year the aggregate amount of credits under this subsection would be such that it would exceed the amount of state credits allocated by the corporation for the qualified low-income building, the credits allowed for that year shall be limited to such amount necessary to bring the total of such state credits (including the current year state credits) to the full amount of state credits allocated to the qualified low-income building by the corporation;

(2) For the sixth year, zero, except that, if, and only if, the amount of credits allowed for the first five years is less than the full amount of state credits allocated by the corporation for the qualified low-income building, an amount necessary to bring the amount of the state credits to the full amount allocated by the corporation for the qualified low-income building; and

(3) For any remaining years, zero.

(e) If a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, has been issued for a qualified low-income building, the amount of

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p: 314-968-2205

the low-income housing tax credits that may be claimed by a taxpayer as provided in subsection (b) shall be equal to fifty per cent of the amount of the federal low-income housing tax credits that would have been allocated to the qualified low-income building pursuant to section 42(b) of the Internal Revenue Code by the corporation had a subaward not been awarded with respect to the qualified low-income building.

(f) For the purposes of this section, the determination of:

(1) Qualified basis and qualified low-income building shall be made under section 42(c);

(2) Eligible basis shall be made under section 42(d);

(3) Qualified low-income housing project shall be made under section 42(g);

(4) Recapture of credit shall be made under section 42(j), except that the tax for the taxable year shall be increased under section 42(j)(1) only with respect to credits that were used to reduce state income taxes; and

(5) [~~Application~~] Except as provided under subsection (j)(1), application of at-risk rules shall be made under section 42(k); of the Internal Revenue Code.

(g) As provided in section 42(e), rehabilitation expenditures shall be treated as a separate new building and their treatment under this section shall be the same as in section 42(e). The definitions and special rules relating to credit period in section 42(f) and the definitions and special

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p: 314-968-2205

rules in section 42(i) shall be operative for the purposes of this section.

(h) The state housing credit ceiling under section 42(h) shall be zero for the calendar year immediately following the expiration of the federal low-income housing tax credit program and for any calendar year thereafter, except for the carryover of any credit ceiling amount for certain projects in progress which, at the time of the federal expiration, meet the requirements of section 42.

(i) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. For the purpose of deducting this tax credit, net income tax liability means net income tax liability reduced] prior to reduction by ~~all~~ any other credits allowed the taxpayer under this chapter.

A tax credit under this section that exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a tax credit under this section shall be filed on or before the end of the ~~twelfth~~] twenty-fourth month following the close of the taxable year for which the credit may be claimed[~~.~~] and shall include a copy of form 8609 issued by the corporation with respect to the building; provided, however, that if a taxpayer has not yet received form

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8609 from the corporation with respect to its qualified low-income building at the time the taxpayer files its original tax return claiming the credits under this section, the taxpayer may later amend its tax return to include form 8609. Failure to properly and timely claim the credit shall constitute a waiver of the right to claim the credit. A taxpayer may claim a credit under this section only if the building or project is a qualified low-income ~~housing~~ building or a qualified low-income housing project under section 42 of the Internal Revenue Code.

[~~Section~~] Except as provided under subsection (j)(1), section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall be applied in claiming the credit under this section.

(j) For ~~any qualified~~ a low-income building placed in service under this section ~~that receives an allocation~~ after December 31, 2019:

(1) Section 453 (with respect to the installment method), section 465 (with respect to deductions limited to amount at risk), and section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall not be operative with respect to investments made in buildings and projects claiming the credit under this section~~; provided that~~

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p: 314-968-2205

~~this paragraph shall not apply to investments made in a building if the building ceases to be a qualified low-income building as defined under section 42(c) of the Internal Revenue Code;~~

(2) All allocations to partners or members of their distributive shares of income, loss, and deductions under chapter 235 shall be made in accordance with ~~proportion to~~ the written agreement ~~partner's allocation~~ of the partners or members; and ~~credits under this section;~~

(3) In no event shall the total amount of state credits allocated by the corporation for the qualified low-income building ~~shall not~~ exceed fifty per cent of the total amount of federal credits allocated to the building for the ten-year federal credit period; and

~~(4) The state depreciation basis of the qualified low-income building shall not exceed the federal credit period depreciation basis of the building.~~

[~~(j)~~] (k) In lieu of the credit awarded under this section for a qualified low-income building that has been awarded federal credits that are subject to the state housing credit ceiling under section 42(h)(3)(C) of the Internal Revenue Code, federal credits that are allocated pursuant to section 42(h)(4) of the Internal Revenue Code, or a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, the taxpayer owning the qualified low-income building may make a request to the corporation for a loan under section 201H-86. If the taxpayer elects to receive the loan pursuant to

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St. Louis, MO 63119
p: 314-968-2205

section 201H-86, the taxpayer shall not be eligible for the credit under this section.

[~~(k)~~] (l) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

~~SECTION 3. This Act shall take effect on July 1, 2020, and shall apply to low-income buildings placed in service under this section in taxable years beginning after December 31, 2020; provided that:~~

~~(1) The amendments made to section 235-110.8, Hawaii Revised Statutes, by section 1 of this Act shall not be repealed when that section is repealed and reenacted pursuant to Act 129, Session Laws of Hawaii 2016.; and~~

~~(2) On July 1, , this Act shall be repealed and section 235-110.8, Hawaii Revised Statutes, shall be reenacted in the form in which it read on December 31, 2016, which is the day prior to the effective date of Act 129, Session Laws of Hawaii 2016.~~

SECTION 3. This Act, upon its approval, shall apply to low-income buildings placed in service under this section in taxable years beginning after December 31, 2019; provided that amendments made to section 235-110.8, Hawaii Revised Statutes, by section 1 of this Act shall not be repealed when that section is repealed and reenacted pursuant to Act 129, Session Laws of Hawaii 2016.

INTRODUCED BY: ______________________________

Report Title:
Low-income Housing Tax Credit; Tax; Partnerships; Corporations

Description:
Changes tax credit allocation for partnerships and corporations. Makes inoperative at risk and passive activity loss rules with respect to certain low-income building.

Hunt Companies, Inc.
737 Bishop St., Suite 2750
Honolulu, HI 96813
808-585-7900

LATE

Representative Tom Brower, Chair
Representative Scot Matayoshi, Vice Chair
Committee on Housing

RE: **HB 2527 Relating to the Low-Income Housing Tax Credit – Support, Request Amendments**
February 11, 2020; 10:15 a.m.; conference room 423

Aloha Chair Brower, Vice Chair Matayoshi and members of the committee:

Hunt Companies – Hawaii and Hunt Capital Partners, LLC supports HB 2527, which specifies that certain provisions of the Internal Revenue Code related to at-risk rules and deductions and to passive activity loss do not apply to low-income housing tax credit ("LIHTC") allocations after 12/31/2020.

The intent of this measure is to broaden the investor base. HB 2527 modifies the Hawaii credit statute to ensure that both individuals and closely held C corporations can participate as investors to the fullest extent possible in the Hawaii tax credit program. A broader and more competitive marketplace for these tax credits will compel higher equity pricing and result in more affordable units in Hawaii.

We respectfully request your consideration of a couple amendments to 1) provide an extended safe harbor period of 24 months in which to claim the credit should unforeseen delays occur and 2) amendment to provide the investment partnership the ability to utilize greater flexibility in its allocation of the Hawaii State LIHTCs amongst partners.

Thank you for all your efforts to address Hawaii's affordable housing crisis. We ask for your support in passing HB 2527 with our requested amendments.

Steven W. Colón
President – Hawaii Division

Jeff Weiss
President, Hunt Capital Partners, LLC

HAWAI'I APPLESEED
CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of the Hawai'i Appleseed Center for Law and Economic Justice
Supporting with Amendments HB2527 – Relating to Low-Income Housing Tax Credit
House Committee on Housing
Tuesday, February 11, 2020, 10:15 AM, House conference room 423

LATE

Dear Chair Brower and the House Committee on Housing,

As advocates for housing affordability, we **support HB2527**, which will create more value per dollar the state invests in low-income housing, however, **we prefer the language in HB2387/SB2695**. Both bills amend the LIHTC investor rules to allow any Hawai'i taxpayer to purchase state low-income housing tax credits (LIHTC), instead of just the few dozen large financial institutions and insurance companies that currently purchase LIHTC. By increasing the number of potential LIHTC investors and competition for the credits, the purchase price of a credit will likely become higher than the current price of about 55 cents per dollar of credit.

Research from the Hawai'i Budget and Policy Center, a project of Hawaii Appleseed, indicates that Hawai'i LITHC sells for less than other states due to supply and demand

State	State LIHTC Price	Pop. (2018)	State Credits[1] Allocated (2018)	Credits per person
Colorado	70-73 cents	5,696,000	$28,489,062	$5.00
Wisconsin	70-71 cents	5,814,000	$39,725,964	$6.83
Nebraska	65-70 cents	1,929,000	$31,800,000	$16.49
Hawai'i	54-58 cents	1,420,000	$40,953,890	$23.31

Other states with LIHTC programs similar to Hawai'i's sell their tax credits for 65-73 cents per credit. If Hawai'i were to increase the price of state LIHTC to 70 cents per dollar this would translate into millions more dollars for low-income projects with little to no-risk for the state.

While we support the changes in HB2527, **we prefer the language in HB2387/SB2695** and would offer the following **amendments**:

1) HB2527 does not extend the time period for claiming the tax credit to twenty-four months instead of the current twelve-month time period.

[1] Colorado: https://www.chfainfo.com/arh/lihtc/LIHC_Documents/2018COStateAHTC_YE_ReportLetter.pdf
Wisconsin: https://www.wheda.com/HTC/2018-program/
Nebraska: https://www.omaha.com/money/nebraska-s-new-state-tax-credit-yields-less-lower cost/article_decc5744-bd4a-5fcf-9fcc-ef48e7303adc.html

<u>HB2387/SB2695</u> amends the language in HRS 235-110.8 (i) to allow for a longer period in which to file the claims. See page 6 line 5, "on or before the twelfth month" should be extended to a "twenty-four" month period.

This allows the agency administering the credits, HHFDC, more time and flexibility to submit the paperwork needed for the investors to claim the credit.

2) HB2527 does not allow state LIHTC investors to opt out of being a partner for federal income tax purposes. However, **<u>HB2387/SB2695</u>** expressly allows state LIHTC purchasers to take part in the state LIHTC program even if they are not considered a partner for federal tax purposes.
Since state LIHTC investors do not take advantage of federal tax partnership benefits such as subtracting depreciation and losses from federal tax liability, they should not have to adhere to the same rules as federal investors.

See **HB2387/SB2695** pg. 5 line 1 for exact language exempting state LIHTC investors from federal partnership requirements.

3) **HB2387/SB2695** also allows partners to allocate shares according to a "written agreement among partners" under (j) (2). See pg. 7 line 10.
This provides more flexibility to state LIHTC purchasers, making the credit more attractive to smaller businesses and individuals who might be interested in purchasing smaller amounts of LIHTC than the large financial institutions who currently purchase LIHTC.

With the above amendments so that the bill more closely resembles HB2387, we urge the committee to pass this bill so that any Hawai'i taxpayer can invest in Low Income Housing Tax Credits. Selling LIHTC credits to more investors can only help raise the price of state LIHTC and bring more funding to low-income housing projects.

Mahalo for the opportunity to testify.

LATE

LATE

Testimony to the House Committee on Housing
Tuesday, February 11, 2020 at 10:15 A.M.
Conference Room 423, State Capitol

RE: HB 2527 RELATING TO THE LOW-INCOME HOUSING TAX CREDIT

Chair Brower, Vice Chair Matayoshi and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 2527, which specifies that certain provisions of the Internal Revenue Code related to at-risk rules and deductions and to passive activity loss do not apply to low-income housing tax credit allocations after 12/31/2020.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We understand that the bill proposes to expand the Hawaii State Low Income Housing Tax Credit (LIHTC) investor rules from just C corporations to include local companies and individuals. We support the intent to broaden the pool of investors, which will in turn increase inventory of affordable housing units.

We appreciate the opportunity to express our support of HB 2527.

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February 11, 2020

Representative Tom Brower, Chair
Representative Tod Z. Matayoshi, Vice Chair
House Committee on Housing

Strong Support of HB 2527 RELATING TO THE LOW-INCOME HOUSING TAX CREDIT (Specifies that certain provisions of the Internal Revenue Code related to at-risk rules and deductions and to passive activity loss do not apply to low-income housing tax credit allocations after 12/31/2020.)

HSG Hearing: Tuesday, February 11, 2020, 10:15 a.m., in Conf. Rm 423

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 utility companies. 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 appreciates the opportunity to express its **strong support of HB 2527** and of the LURF members and other homebuilders who are trying to increase the number of housing units for all income levels in Hawaii.

HB 2527. This measure specifies that certain provisions of the Internal Revenue Code related to *at-risk rules and deductions and to passive activity loss* do not apply with respect to claims for the State Low- Income Housing Tax Credit (LIHTC) after December 31, 2020.

LURF's Position. The LIHTC is a valuable tool to assist with the financing of affordable housing projects, because it provides a tax credit for developers and investors to support the development and construction of affordable housing units for low-income home-buyers. Unfortunately, at this time, LIHTCs are difficult to access for many capable affordable housing developers and taxpayers, because the existing laws (and *at-risk rules and deductions to passive activity loss*) have the unintended consequence of disqualifying many potential developers and investors, except for the large corporations or financial institutions.

Thus, these current restrictions in the existing law and rules lower demand for the LIHTCs, and, therefore, reduces the opportunity for more private equity to be generated, for each dollar of State LIHTC that is issued.

This measure is intended to further encourage the expansion of the pool of applicants that could qualify for the LIHTCs, by eliminating the current *at-risk and passive activity loss rules* which presently restrict the number of developers and taxpayers that could qualify for the State LIHTC. This bill would allow affordable rental housing developers to de-couple the State LIHTC from an ownership share in affordable rental project being financed, thereby allowing any Hawaii affordable housing developer or taxpayer with income tax liability to apply for, and use the State LIHTC.

If this measure passes, it will make the State LIHTC a more attractive investment and drastically improve demand for the State LIHTC, therefore, increasing the dollar-per dollar value of equity generated by the State LIHTC for the affordable rental housing projects being developed.

For the reasons set forth above, LURF is **in support of HB 2527**, and respectfully urges your favorable consideration of this bill.