

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

SENATE COMMITTEE ON WAYS AND MEANS

February 20, 2020 at 10:35 a.m.
State Capitol, Room 211

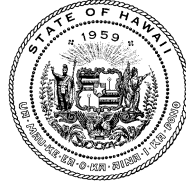
In consideration of
S.B. 2694, S.D. 1
RELATING TO THE LOW-INCOME HOUSING TAX CREDIT.

The HHFDC supports S.B. 2694, S.D. 1. 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.

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 the pricing, thereby generating more equity towards the affordable rental housing projects.

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

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
FAX NO: (808) 587-1560

To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Rona M. Suzuki, Director
Department of Taxation

Re: **S.B. 2694, S.D. 1, Relating to the Low-Income Housing Tax Credit**

Date: Thursday, February 20, 2020

Time: 10:35 A.M.

Place: Conference Room 211, State Capitol

The Department of Taxation (Department) provides the following comments on S.B. 2694, S.D. 1.

S.B. 2694, S.D. 1, amends the low-income housing tax credit (LIHTC) to eliminate conformity to several Internal Revenue Code (IRC) sections:

- 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 limitations; and
- Section 704 relating to the 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 (HRS).

The bill is effective upon approval and applies to low-income buildings placed in service after December 31, 2019.

As indicated in our "*Tax Credits Claimed by Hawaii Taxpayers, Tax Year 2017*" report, the LIHTC was claimed on 49 tax returns, totaling \$24 million.

S.B. 2694, S.D. 1, extends the deadline that the LIHTC must be claimed from 12 months to 24 months. The Department notes that this would be the only credit with a 2-year window to make claims.

S.B. 2694, S.D. 1, subsection (i) provides that the LIHTC, a nonrefundable credit, must be used to reduce tax liability first. This is a deviation from the general rule contained in section 235-91.5, HRS, which establishes that refundable credits are used to reduce tax liability before nonrefundable credits are applied. The Department **prefers that the credit hierarchy established in section 235-91.5 be maintained for consistency in administration.**

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, Allow Allocations of Low-Income Housing Tax Credit

BILL NUMBER: SB 2694, SD-1

INTRODUCED BY: Senate Committee on Housing

EXECUTIVE SUMMARY: Changes tax credit allocation for partnerships and corporations. Makes inoperative at risk and passive activity loss rules with respect to certain low-income housing projects. 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 section 235-110.8, HRS, to provide that the low-income housing tax credit may be 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 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.

Also provides that for a low-income building placed in service under this section 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 investments made in buildings and projects claiming the credit under the section; provided that this paragraph shall not apply to investments made in a building if such 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 the distributive shares of income, lost, and deductions under chapter 235 shall be made in accordance with the written agreement of the partners or members;

(3) In no event shall the total amount of state credits allocated by the corporation for the qualified low-income building exceed fifty per cent of the total amount of federal credits allocated to the building for the ten-year federal credit period; and

(4) In no event shall the state depreciation basis of the qualified low-income building exceed the federal depreciation basis of such building.

EFFECTIVE DATE: 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.

STAFF COMMENTS: While this bill generally is just one incentive to encourage developers to build affordable housing, consideration should be given to many 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 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.

Making the state credit very dissimilar from the federal low-income housing tax credit under IRC 42 would add a layer of complexity and hamper enforcement of the rules by the Department of Taxation because the Department would be less able to apply federal enforcement actions, such as those directed against tax shelter partnerships, to structures set up to exploit the state credit.

Digested 2/17/2020



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

Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair
Committee on Ways and Means

RE: **SB 2694 SD1 Relating to the Low-Income Housing Tax Credit – In Support**
February 20, 2020; 10:35 a.m.; conference room 211

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran and members of the committee:

Hunt Companies – Hawaii and Hunt Capital Partners, LLC are in strong support of SB 2694 SD1, which changes the tax credit allocation for partnerships and corporations, and makes inoperative at risk and passive activity loss rules with respect to certain low-income building.

SB 2694 SD1 will allow for the Hawaii low-income housing tax credit program to serve even more Hawaii residents at little to no additional cost to the State. Affordable housing developers use Hawaii tax credits to raise equity. Under the program, rents in these units stay well below market for up to 60 years. This bill aims to expand the market of tax credit buyers and in turn, increase the price paid for these credits. A broader and more competitive marketplace for these tax credits will compel higher equity pricing and result in more affordable units in Hawaii. SB 2694 SD1 also clarifies the process by which individual credit buyers may enter into project partnerships in order to more flexibly claim tax credits and provide an extended safe harbor period in which to claim the credit should unforeseen delays occur.

For these reasons, we urge the committee to pass SB 2694 SD1. Thank you for all your efforts to address Hawaii's affordable housing crisis.

Steven W. Colón
President – Hawaii Division

Jeff Weiss
President, Hunt Capital Partners, LLC

Testimony of
Pacific Resource Partnership

Senate Committee on Ways and Means
The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair

SB 2694 SD1

Thursday, February 20, 2020
10:35 A.M.
Conference Room 211

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

Pacific Resource Partnership (PRP) writes in support of SB 2694 SD1, which changes the tax credit allocation for partnerships and corporations and makes inoperative at risk and passive activity loss rules with respect to certain low-income projects.

PRP understands the important role the LIHTC program plays in assisting affordable housing developers to build affordable rental housing in the State of Hawaii. SB 2694 SD1 is intended to encourage the expansion of the pool of potential applicants that could qualify for the state LIHTC. The intent of this measure would be to make the state LIHTC more attractive and improve demand, thereby generating more equity for low-income affordable rental housing projects in Hawaii.

Given the above, PRP respectfully requests your committee's favorable action on SB 2694 SD1. Thank you for this opportunity to testify.





HAWAII REGIONAL COUNCIL OF CARPENTERS

Senate Committee on Ways and Means
The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair

Thursday, February 20, 2020
10:35 AM, State Capitol Room 211

Statement of the Hawaii Regional Council of Carpenters – Support for SB2694, SD1

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

The Hawaii Regional Council of Carpenters supports SB2694, SD1, Relating to the Low-Income Housing Tax Credit, which would change tax credit allocation for partnerships and corporations and make inoperative at-risk and passive activity loss rules with respect to certain low-income housing.

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. SB2694, SD1 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 SB2694, SD1.

STATE HEADQUARTERS & BUSINESS OFFICES

OAHU: 1311 Houghtailing Street, Honolulu Hawaii 96817-2712 • Ph. (808) 847-5761 Fax (808) 440-9188
HILO OFFICE: 525 Kilauea Avenue, Room 205, Hilo, Hawaii 96720-3050 • Ph. (808) 935-8575 Fax (808) 935-8576
KONA OFFICE: 75-126 Lunapule Road, Kailua-Kona, Hawaii 96740-2106 • Ph. (808) 329-7355 Fax (808) 326-9376
MAUI OFFICE: 330 Hookahi Street, Wailuku, Maui 96793-1449 • Ph. (808) 242-6891 Fax (808) 242-5961
KAUAI OFFICE: Kuhio Medical Ctr Bldg., 3-3295 Kuhio Hwy, Suite 201, Lihue, Kauai 96766-1040 • Ph. (808) 245-8511 Fax (808) 245-8911



17 West Lockwood Avenue
St. Louis, MO 63119

p: 314-968-2205

LATE

Testimony of Sugar Creek Capital

Before the
Senate Committee on Ways & Means

Thursday, February 20, 2020
10:35 a.m.
State Capitol, Conference Room 211

On the following measure:

S.B. 2694 SD1, RELATING TO THE LOW-INCOME HOUSING TAX CREDIT

Chair Dela Cruz, Vice-Chair Keith-Agaran 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.

Sugar Creek submits testimony in **strong support** of SB 2694 SD1, which will enhance the value of the tax credits for the state, and allow for greater private equity investment in low-income housing.

SB 2694 SD1 accomplishes several critical goals:

- Allows for the Hawaii low-income housing tax credit program to serve even more Hawaii residents at little to no additional cost to the State.
- Clarifies the process by which individual credit buyers may enter project partnerships to claim tax credits and changes the tax credit allocation for partnerships and corporations;
- Provides an extended safe harbor period in which to claim the credit should unforeseen delays occur.



17 West Lockwood Avenue
St. Louis, MO 63119

p: 314-968-2205

- Makes inoperative at risk and passive activity loss rules with respect to certain low-income buildings.

For these reasons, we respectfully request the committee pass SB 2694 SD1 un-amended.

Mahalo for the opportunity to provide testimony.