

DAVID Y. IGE  
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CRAIG K. HIRAI  
DIRECTOR  
  
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EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON FINANCE  
ON  
SENATE BILL NO. 659, S.D. 2, H.D. 2

**April 1, 2021**  
**1:30 p.m.**  
**Via Videoconference**

RELATING TO LOW-INCOME HOUSING TAX CREDIT

The Department of Budget and Finance (B&F) offers comments on Senate Bill (S.B.) No. 659, S.D. 2, H.D. 2.

S.B. No. 659, S.D. 2, H.D. 2, amends the Low-Income Housing Tax Credit (LIHTC) by allowing the tax credit to be allocated among the partners or members of the partnership or limited liability company earning the credit in any manner agreed to by the partners or members; and extends the sunset date of the changes to the LIHTC established in Act 129, SLH 2016, from December 31, 2021, to an unspecified date.

B&F is concerned that the proposed amendments to the LIHTC would decrease revenues to the State general fund and impact the State's share of direct federal aid from the American Rescue Plan Act of 2021 (ARPA). Provisions of the ARPA specifically state:

*"A state or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such state or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that*

*reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.”*

B&F notes that any reduction in State tax revenues could result in reduced ARPA funding. Hawai'i's estimated allocation of ARPA funds is in excess of \$1.6 billion and is critical to mitigating the negative financial impacts the COVID-19 pandemic has had on the State budget.

B&F defers to the Department of Taxation regarding the implementation of this bill.

Thank you for your consideration of our comments.

DAVID Y. IGE  
GOVERNOR

JOSH GREEN M.D.  
LT. GOVERNOR



ISAAC W. CHOY  
DIRECTOR OF TAXATION

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
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**LATE**

To: The Honorable Sylvia Luke, Chair;  
The Honorable Ty J.K. Cullen, Vice Chair;  
and Members of the House Committee on Finance

From: Isaac W. Choy, Director  
Department of Taxation

Date: April 1, 2021  
Time: 1:30 P.M.  
Place: Via Video Conference, State Capitol

**Re: S.B. 659, S.D. 2, H.D. 2, Relating to Low-Income Housing Tax Credit**

The Department of Taxation (Department) supports the intent of S.B. 659, S.D. 2, H.D. 2, and provides the following comments for your consideration.

S.B. 659, S.D. 2, H.D. 2, has a defective effective date of December 1, 2050 and otherwise applies to taxable years beginning after December 31, 2020. The bill amends the Low-Income Housing Tax Credit (LIHTC) provided under Hawaii Revised Statutes section 235-110.8 by:

- Allowing the LIHTC to be allocated among the partners of the taxpayer in any manner chosen by the parties regardless of whether the partner is deemed a partner for federal income tax purposes;
- Extending the sunset date of the changes made by Act 129, Session Laws of Hawaii 2016, from December 31, 2021 to an unspecified date;
- Allowing the LIHTC to be claimed for the first year based on the carryover allocation letter or section 42(m) letter if Form 8609 has not been received by the taxpayer;
- Relaxing the installment method, at-risk, and passive activity loss rules for qualified low-income buildings placed in service after December 31, 2020;
- Limiting the relaxation of the installment method, at-risk, and passive activity loss rules to buildings that maintain their status as qualified low-income buildings; and
- Prohibiting the state deductions and expenses claimed by all Hawaii taxpayers on Hawaii income tax returns from exceeding the amount of deductions and expenses claimed by all taxpayers on federal returns.

The Department notes that P.L. 117-2, commonly known as the American Rescue Plan Act of 2021 (ARPA), provides State Coronavirus Fiscal Recovery Funds with certain limitations.

Specifically, Section 9901 of the ARPA prohibits these funds from being used to, “either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.” The “covered period” is defined as beginning on March 3, 2021 and ending on the last day of the state’s fiscal year in which the State’s stimulus funds are completely expended.

If the State fails to comply with this restriction on use of funds, it is required to repay an amount equal to the lesser of: (1) the amount of the applicable reduction to net tax revenue attributable to such violation; and (2) the amount of funds received by such state under Section 9901 of the ARPA.

The Department cautions that the enactment of any tax measure resulting in a revenue loss during the covered period may result in the State having to repay an amount equal to the projected revenue loss from the State Coronavirus Fiscal Recovery Funds that Hawaii receives.

Thank you for the opportunity to provide testimony regarding this measure.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Low-Income Housing Credit, Allocations

BILL NUMBER: SB 659, HD2

INTRODUCED BY: House Committee on Consumer Protection & Commerce

EXECUTIVE SUMMARY: Allows the low-income housing tax credit to be allocated among the partners or members of the partnership or limited liability company earning the credit in any manner agreed to by the partners or members. Extends the increases made to the low-income housing tax credit from 12/31/2021 to an unspecified date.

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 applicable state law purposes, 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.

Requires the claimant to include a copy of form 8609 issued by the corporation with respect to the building; provided that if a taxpayer has not received form 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.

Amends section 235-110.8, HRS, to state that for any qualified low-income building that is placed in service 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;
- (2) All allocations to partners of their distributive shares of income, loss, and deductions under chapter 235 shall be made in accordance with the written agreement of the partners or members;
- (3) The total amount of state credits allocated by the corporation for the qualified low-income building shall not exceed fifty per cent of the amount of federal credits allocated to the building for the ten-year federal credit period; and
- (4) The deductions and expenses claimed by all Hawaii taxpayers on Hawaii income tax returns shall not exceed the deductions and expenses claimed by all taxpayers on federal returns.

In addition, any building that ceases to be a qualified low-income building is disqualified.

EFFECTIVE DATE: 7/1/2050.

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 ability of a taxpayer to realize a benefit from 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.

### American Rescue Plan Act Prohibition

The American Rescue Plan Act of 2021, signed into law by President Biden on March 11, 2021, contains provisions disqualifying or restricting federal aid that otherwise could be available to the State if new or extended tax incentives are enacted after March 3, 2021. Section 9901 of the Act enacts a new section 602(c)(2)(A) in Title VI of the Social Security Act which states:

A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.

Section 602(g)(1) defines the “covered period” as beginning on March 3, 2021 and ending on the last day of the State’s fiscal year in which all federal aid dollars are either spent, returned, or recovered against the State by the Treasury.

The bill overall appears to be a revenue loser and for that reason appears to be problematic because of the language of the American Rescue Plan Act quoted above.

Digested 3/30/2021



# MAUI

CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON FINANCE  
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 308  
THURSDAY, APRIL 1, 2021 AT 1:30 P.M.**

To The Honorable Sylvia Luke, Chair;  
The Honorable Ty J.K. Cullen, Vice Chair; and  
Members of the Committee on Finance,

**SUPPORT SB659 SD2 HD2 RELATING TO  
THE LOW-INCOME HOUSING TAX CREDIT**

Aloha, my name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing to share our support of SB659 SD2 HD2.

The Maui Chamber of Commerce strongly supports affordable housing and rentals. We appreciate that this bill will expand the market for low-income housing tax credits, thus driving up demand and increasing their price, which will provide more funding for the creation of new low-income housing units. Low-income housing tax credits are critical to getting more affordable housing and rentals built and without this bill, we understand fewer units will get built each year. We cannot afford to lose potential units as we are in a housing crisis.

Mahalo for your consideration of our testimony and ask that you please pass this bill.

Sincerely,

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.





TESTIMONY IN SUPPORT OF SB659 SD2 HD2

HAWAII STATE HOUSE OF REPRESENTATIVES  
COMMITTEE ON FINANCE

April 1, 2021

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

My name is Christopher Abbott and I lead the affordable housing initiatives at Bank of Hawaii.

Bank of Hawaii supports SB659 SD2 HD2 which, among its provisions, clarifies when and how members or partners of a taxpayer may claim the state low-income housing tax credit, specifies the application of tax provisions with respect to buildings or projects in service in 2021 and later, and extends to a date to be determined the sunset date of the state low-income housing tax credit finance tool created by Act 129, Session Law of Hawaii 2016.

This bill would bring additional financial support for the development of affordable housing across the state and would help address the affordable housing crisis in Hawaii, especially during this economic downturn. The provisions to broaden the definition of members or partners of a taxpayer which may claim the state low-income housing tax credit would come at little to no cost to the State, while simultaneously supporting the pricing of the state low income housing tax credit to project sponsors.

As the Hawaii Housing Finance and Development Corporation noted in testimony earlier this year, this legislation would support efforts to maximize the value of the State Low Income Housing Tax Credit, which would increase the available equity and the feasibility of the construction and operation of affordable rental housing developments across the State.

Thank you for the opportunity to submit testimony in support of SB659 SD2 HD2.

**Sandra-Ann Y.H. Wong**

*Attorney at Law, a Law Corporation*

*1050 Bishop Street, #514*

*Honolulu, Hawaii 96813*

**TESTIMONY IN SUPPORT OF SB 659, HD2  
HOUSE COMMITTEE ON FINANCE  
THURSDAY, APRIL 1, 2021 at 1:30 P.M.**

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

On behalf of Dowling Company, Inc., thank you for the opportunity to provide testimony in support of SB 659, HD2.

Dowling Company, Inc. supports this measure because it 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.

Thank you for the opportunity to testify in support of this measure.



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

Representative Sylvia Luke, Chair  
Representative Ty Cullen, Vice Chair  
Committee on Finance

RE: **SB 659 SD2 HD2 Relating to Low-Income Housing Tax Credit – In Support, Request Amendments**  
Agenda #1; April 1, 2021; 1:30 PM; Via Videoconference

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

Hunt Companies – Hawaii and Hunt Capital Partners LLC appreciate this opportunity to submit testimony in strong support of SB 659 SD2 HD2, which among other things, allows the low-income housing tax credit to be allocated among the partners or members of the partnership or limited liability company earning the credit in any manner agreed to by the partners or members and extends the increases made to the low-income housing tax credit from 12/31/21 to an unspecified date.

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.

We respectfully request your consideration of the following amendments:

1. Page 10, Section 4, Line 10: **amend the effective date to take effect upon its approval;** and
2. Page 10, Section 4, Line 15: **Reinstate the repeal date of December 31, 2027 for Act 129, Session Laws of Hawaii 2016**

Thank you for all your efforts to address Hawaii’s affordable housing crisis. We ask for your support in passing SB 659 SD2 HD2 with our requested amendments.

Steven W. Colón  
President – Hawaii Division

Jeff Weiss  
President, Hunt Capital Partners, LLC

**Testimony of Sugar Creek Capital  
House Committee on Finance**

**Thursday, April 1, 2021  
1:30 p.m.**

**State Capitol, Conference Room 308**

**On the following measure:**

**S.B. 659, SD2 HD2- RELATING TO THE LOW-INCOME HOUSING TAX CREDIT**

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

Sugar Creek Capital specializes in state low-income housing tax credit investments that benefit working families and fixed-income seniors across the state and the country.

**Sugar Creek Capital testifies in support of S.B. 659, SD2 HD2 with amendments.**

Key Points about LIHTC:

- Hawaii's state affordable housing tax credit is a long-standing, proven tool that allows for thousands of Hawaii residents to live with dignity.
- The proposed measures in S.B. 659 SD2, HD2 will allow for this program to serve even more Hawaii residents at little to no cost to the state.
- Affordable housing developers use Hawaii tax credits to raise equity from investors. With these tax credit equity investments, rents in these units stay well below market rate rents far into the future.
- Affordable housing tax credit investors sell these credits to Hawaii taxpayers who then in turn use them to offset their tax liability.

Proposed Amendments:

The proposed amendments aim to ensure the credit is extended, there is no break in the application of the statute, and federal funding is not placed in jeopardy.

- Page 10, Section 2, Line 1-7 : amend the following:

**“SECTION 4. This Act, upon its approval, shall take effect on January 1, 2017, and shall apply to qualified low-income buildings awarded credits after December 31, 2016; provided that this Act shall be repealed on December 31, \_\_\_\_\_ [2027], and section 235-110.8, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.”**

- Page 10, Section 4, Line 10 & 15 : amend the following:

**“This Act shall take effect on July 1, 2050 upon approval; provided that section 1 of this Act shall apply to taxable years beginning after December 31, 2020; provided further that 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 reenacted on December 31, 2027, pursuant to section 4 of Act 129, Session Laws of Hawaii 2016, as amended by section 2 of this Act.**

- Adding a new section:

**“SECTION 5. If there is a determination that any provision of this Act would directly or indirectly result in a reduction of net tax revenue of the State in violation of Section 602(c)(2)(A) of the American Rescue Plan Act of 2021 (the “ARP Act”), then such provision shall be deemed repealed during the covered period as defined under the ARP Act, but shall be automatically re-enacted upon expiration of the covered period.”**

We respectfully request this Committee pass S.B. 659, SD2 HD2 out with the proposed amendments, so we can continue to address the incredible housing need in Hawaii. Mahalo for the opportunity to provide testimony.

▪ April 1, 2021

The Honorable Sylvia Luke, Chair  
The Honorable Ty J.K. Cullen, Vice Chair  
And Members Of The House Committee On Finance

**RE: Testimony In Support Of SB 659, SD2, HD2 Relating To Low-Income Housing Tax Credit  
Thursday, April 1, 2021; 1:30PM; House Conference Room 308 Via Videoconference**


Dear Chair Luke, Vice Chair Cullen and Committee Members,

My name is Stanford S. Carr and I am the President of Stanford Carr Development, LLC. We are a local development firm that has worked to provide increased affordable housing opportunities for our local residents. I am offering testimony in strong support of SB 659, SD2, HD2 which, among its key provisions, would allow the low-income housing tax credit to be allocated among the partners or members of the partnership or limited liability company earning the credit in any manner agreed to by the partners or members; and extend the increases made to the low-income housing tax credit beyond December 31, 2021. I would respectfully ask that the date be extended to December 31, 2027.

This bill will expand the pool of investors and thereby enhance the opportunities for affordable housing developers to raise the necessary equity to finance their projects. Moreover, this measure provides a check and balance mechanism that regulates who and when the State Low-Income Housing Tax Credit (LIHTC) may be taken, and is a good move towards providing more investors an opportunity to participate in the LIHTC program.

Moreover, extending the sunset date of the amendments made to the State LIHTC program under Act 129, SLH 2016 by an additional six years is clearly warranted and necessary. Since its enactment, Act 129 has helped to enhance the value of the State LIHTC and make it more attractive to potential investors which could generate more equity to finance affordable housing projects in the future. This is important because the LIHTC program has been a critical financing tool that has enabled the development of badly needed affordable rental housing in Hawaii.

For all of these reasons, I ask this committee to pass SB866, SD2, HD2. Thank you for the opportunity to submit testimony on this important measure.



Stanford S. Carr

**SB-659-HD-2**

Submitted on: 3/30/2021 1:20:22 PM

Testimony for FIN on 4/1/2021 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
John D. Smith	Individual	Support	No

Comments:

I support this to be passed through legislature.



COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION  
HAWAII CHAPTER

March 31, 2021

The Honorable Representative Sylvia Luke  
The Honorable Representative Ty Cullen  
House Committee on Finance

RE: **SB659 SD2 HD2 – Relating to Low-Income Housing Tax Credit**  
**Hearing date: April 1, 2021 at 1:30PM**

Aloha Chair Luke, and Members of the Committee,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii in **SUPPORT** of SB659, SD2, HD2. NAIOP Hawaii is the local chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders and other professionals. NAIOP Hawaii strongly supports the development of housing for Hawaii residents at all levels of income, especially affordable housing projects.

SB659, SD2, HD2 Allows the low-income housing tax credit to be allocated among the partners or members of the taxpayer earning the credit in any manner by the parties. The measure further extends the increases made to the low-income housing tax credit from 12/31/20 to 12/31/27.

NAIOP Hawaii appreciates the intent of SB659, SD2, HD2 which expands the market of buyers for State tax credits. By growing the market of buyers, the price of credits will increase translating into additional funds flowing to projects. The influx of funding being allocated into affordable housing projects will greatly increase the inventory of affordable rentals. NAIOP appreciates the Legislature's commitment to designing creative policy solutions to assist in the development of more affordable housing.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read "Catherine Camp".

Catherine Camp, President  
NAIOP Hawaii