

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

ISAAC W. CHOY
DIRECTOR OF TAXATION

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: Isaac W. Choy, Director
Department of Taxation

Date: March 4, 2021
Time: 10:00 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 659, S.D. 1, Relating to Low-Income Housing Tax Credit

The Department of Taxation (Department) supports the intent of S.B. 659, S.D. 1, and provides the following comments for your consideration.

S.B. 659, S.D. 1, is effective upon approval and applies to taxable years beginning after December 31, 2020. The bill amends the Low-Income Housing Tax Credit (LIHTC) provided under Hawaii Revised Statutes (HRS) 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;
- Allowing individuals or entities to be admitted to the partnership after the end of the taxable year, but before the individual or entity files its tax return;
- Extending the sunset date of the changes made by Act 129, Session Laws of Hawaii 2016, from December 31, 2021 to December 31, 2027;
- 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 generally a taxpayer's attributes are set on the final day of the taxable year. Acquisition of an interest in an entity such as a partnership does not apply retroactively. As such the Department strongly suggests that the amendment to subsection (b) that allows individuals or entities to be admitted to the partnership after the end of the taxable year, but before the individual or entity files its tax return be deleted. It is unclear why this provision is necessary and whether it supports the intent of increasing the availability of low-income housing in Hawaii.

In order to address these concerns, the Department respectfully requests that the following amendments be made to this measure:

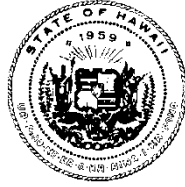
Amend page 2, lines 1 through 6 to read: "credit under this section may be allocated by the partnership or limited liability company taxpayer in any manner agreed to by the partners or members parties regardless of whether the individual or entity to receive the credit is deemed to be a partner or member for federal income tax purposes, so long as the individual or entity is deemed to be a partner or member pursuant to applicable state law."

Delete page 2, lines 9 through 15: "For individuals or entities that are deemed to be a partner or member of the taxpayer pursuant to applicable state law, those individuals or entities shall have been admitted to the taxpayer pursuant to applicable state law, on or prior to the date of filing respective tax return, including any amendments thereto, with respect to the year of the tax credit."

Finally, the Department notes that it is unclear to which buildings the special tax treatment proposed by this measure will apply. As such, the Department strongly suggests that line 21 on page 7 be amended to read: "(j) For any qualified low-income building placed in service under this section taxable years beginning after December 31, 2020:"

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

DAVID Y. IGE
GOVERNOR



DENISE ISERI-MATSUBARA
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

March 4, 2021 at 10:00 a.m.
State Capitol, Room 211

In consideration of
S.B. 659, S.D. 1
RELATING TO AFFORDABLE HOUSING.

The HHFDC **supports the intent** of S.B. 659, S.D. 1, **with amendments proposed by the Department of Taxation**. The measure amends the income tax law with respect to the State Low-Income Housing Tax Credit (LIHTC) to increase the value of the State LIHTC. Increasing the value of the State LIHTC will make affordable rental housing developments more feasible to build.

The bill also extends the sunset date of amendments to the State LIHTC made in Act 129, SLH 2016 to December 31, 2027. HHFDC supports this provision. Act 129, SLH 2016, amended the calculation of the State LIHTC by amending the applicable period over which the credit may be claimed from ten to five years to increase the attractiveness of the State LIHTC, and generate more equity to finance affordable rental housing development. Act 129 currently has a sunset date of December 31, 2021.

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

SB-659-SD-1

Submitted on: 3/2/2021 10:21:21 AM

Testimony for WAM on 3/4/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Carney	Testifying for EAH Housing	Support	No

Comments:

EAH Housing is in STRONG SUPPORT of SB659 SD1 which will increase the pool of investors of State LIHTCs and extend the sunset date of the 5 year utilization cycle to 12/31/27. Both will hopefully increase the value of the State LIHTC which is critical to the production of low-income rental housing.

Kevin R. Carney (PB)

Vice President, Hawaii



TESTIMONY IN SUPPORT OF SB659 SD1

HAWAII STATE SENATE
COMMITTEE ON WAYS AND MEANS

Thursday, March 4, 2021 at 10:00 AM

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

My name is Christopher Abbott and I am a Vice President at Bank of Hawaii and manage the affordable housing initiatives at the bank.

Bank of Hawaii supports SB659 SD1 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 December 31, 2027 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 last month, 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 SD1.

Sandra-Ann Y.H. Wong

Attorney at Law, a Law Corporation

1050 Bishop Street, #514

Honolulu, Hawaii 96813

**TESTIMONY IN SUPPORT OF SB 659, SD1
SENATE COMMITTEE ON WAYS AND MEANS
THURSDAY, MARCH 4, 2021 at 10 A.M.**

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

On behalf of Dowling Company, Inc., thank you for the opportunity to provide testimony in support of SB 659, SD1.

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.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Low-Income Housing Credit, Allocations

BILL NUMBER: SB 659, SD1

INTRODUCED BY: Senate Committee on Housing

EXECUTIVE SUMMARY: 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. Extends increases made to the low-income housing tax credit from 12/31/21 to 12/31/27.

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. 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 applicable state law 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.

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: Taxable years beginning after December 31, 2020.

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 3/2/2021



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 659 SD1 Relating to Low-Income Housing Tax Credit – In Support, Request
Amendments**
March 4, 2021; 10:00 AM; Via Videoconference

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran 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 SD1, which 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 and extends increases made to the low-income housing tax credit from 12/31/21 to 12/31/27.

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 to address concerns raised by the Department of Taxation:

- **Line 1 of page 2 – replace “taxpayer” with “the partnership or limited liability company”;**
- **Line 2 of page 2 - replace “parties” with “partners or members”; and**
- **Delete lines 9-15 on page 2, beginning with “For individuals or entities that . . . “**

Thank you for all your efforts to address Hawaii’s affordable housing crisis. We ask for your support in passing SB 659 SD1 with our requested amendments.

Steven W. Colón
President – Hawaii Division

Jeff Weiss
President, Hunt Capital Partners, LLC



Mobile: 808.428.8717
Email: lindaschatz@schatzcollaborative.com
Schatzcollaborative.com

March 2, 2021

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

Re: SB 659, SD1 – IN SUPPORT

Aloha Chair Dela Cruz,

One of Hawaii's most important affordable housing tools is at a crossroads. The state's affordable housing tax credit has proven to be an incredible driver of unit production since its inception, but the credit needs to be preserved and reformed to create more units at its current funding level.

SB 659 SD1 is aimed primarily at ensuring that the maximum amount of equity is raised from the sale of these credits. By amending the rules which currently preclude individuals and other closely held C-corps from investing in these credits, more taxpayers will be able to purchase the credits. Driving up demand for the credits will drive up pricing and result in more money being paid for credits. Higher credit pricing will result in more units built – without increasing the amount of credits issued by the state of Hawaii.

Additionally, SB 659 SD1 seeks to clarify the partnership structuring rules for Hawaii taxpayers as well as the administrative process by which these Hawaii taxpayers claim the credits. Strengthening the confidence of current taxpayers and expanding the market of purchasers will help to establish balance in the credit market and result in more affordable units for Hawaii.

We all know that Hawaii suffers from one of the worst housing affordability problems in the country. Given the events of this very difficult past year, this problem will only get worse. Due to limited state funding availability, the need for private equity investment is more critical than ever. To secure this funding, we respectfully request you schedule and pass out SB 659 SD1 so we can address this ever expanding issue.

Thank you again for the opportunity to share my testimony. If there are any questions, or if additional information is needed, please do not hesitate to contact me at (808)428-8717.

Warmest Regards,

A handwritten signature in black ink that reads "Linda Schatz". The signature is fluid and cursive.

Linda Schatz
Principal

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

SB659 SD1—Relating to Low-Income Housing Tax Credit

Thursday, March 4, 2021
10:00 A.M.
Conference Room 211

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

Pacific Resource Partnership (PRP) writes in strong support of SB659 SD1.

The state's affordable housing tax credit has proven to be an incredible driver of unit production since its inception, however the credit needs to be preserved and reformed in order to create more units at its current funding level.

SB659 SD1 is aimed primarily at ensuring that the maximum amount of equity is raised from the sale of these credits. By amending the rules which currently preclude individuals and other closely held C-corps from investing in these credits, more taxpayers will be able to purchase the credits. Driving up demand for the credits will drive up pricing and result in more money being paid for credits. Higher credit pricing will result in more units built –without increasing the amount of credits issued by the state of Hawaii.

Additionally, SB659 SD1 seeks to clarify the partnership structuring rules for Hawaii taxpayers as well as the administrative process by which these Hawaii taxpayers claim the credits. Strengthening the confidence of current taxpayers and expanding the market of purchasers will help to establish balance in the credit market and result in more affordable units for Hawaii.

Given Hawaii's need to build more affordable housing and the limited state funding available to do so, the need for private equity investment is more critical than ever. To secure this funding, we respectfully request your favorable decision on this measure. Thank you for this opportunity to submit written testimony.





MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 211
THURSDAY, MARCH 4, 2021 AT 10:00 A.M.**

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

SUPPORT SB659 SD1 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 SD1.

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.



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

March 3, 2021

The Honorable Senator Donovan Dela-Cruz
The Honorable Senator Gilbert Keith-Agaran
Senate Committee on Ways and Means

RE: **SB659 SD1 – Relating to Low-Income Housing Tax Credit**
Hearing date: March 4, 2021 at 10:00AM

Aloha Chair Dela-Cruz, and Members of the Committee,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii in **SUPPORT** of SB659, SD1. 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, SD1 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 12/31/21 to 12/31/27.

NAIOP Hawaii appreciates the intent of SB659, SD1, 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', written over a horizontal line.

Catherine Camp, President
NAIOP Hawaii



17 West Lockwood Avenue
St. Louis, MO 63119

p: 314-968-2205

Testimony of Sugar Creek Capital

Senate Committee on Ways & Means

Thursday, March 4, 2021
10:00 a.m.
State Capitol, Conference Room 211

On the following measure:
S.B. 659 SD1, RELATING TO THE LOW-INCOME HOUSING TAX CREDIT

Aloha Chair Dela Cruz, Vice-Chair Keith-Agaran 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.

After further discussion with the Department of Taxation, **Sugar Creek Capital testifies in support of SB 659 SD1 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 SB 659 SD1 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:

These proposed amendments aim to provide clarification to the LIHTC process and ensure alignment with the tax code.

- Page 2, (b), line 1-4: amend the following:

“...credit under this section may be allocated by the taxpayer [the partnership or limited liability company] in any manner agreed to by the parties [partners or members] regardless of whether the individual or entity to receive the credit is deemed to be a partner or member for federal income tax purposes...”

- Page 2, (b), lines 9 - 15: delete the following:

~~“For individuals or entities that are deemed to be a partner or member of the taxpayer pursuant to applicable state law, those individuals or entities shall have been admitted to the taxpayer pursuant to applicable state law on or prior to the date of filing their respective tax return, including any amendments thereto, with respect to the year of the tax credit.”~~

We respectfully request this Committee pass SB 659 SD1 out with the proposed amendments so we can continue to address the incredible housing need in Hawaii.

Mahalo for the opportunity to provide testimony.

LATE

SB-659-SD-1

Submitted on: 3/3/2021 8:27:30 PM
Testimony for WAM on 3/4/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Faith Action HousingNOW! Chair Foo Pham	Testifying for Faith Action HousingNOW!	Support	No

Comments:

Faith Action HousingNOW! supports SB 659. We need to support and expand low-income housing tax credits. They are a vital subsidy to produce much need low-income housing for people who cannot afford rents at market rates. Over half of our state's housing shortage is needed by Hawai'i residents who are defined as low-income by the U.S. Department of Housing and Urban Development. Without LIHTC, our community won't even be able to make marginal differences to help bring housing stability to our fellow human beings.