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# A BILL FOR AN ACT

RELATING TO SUSTAINABLE AFFORDABLE HOUSING.

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

1           SECTION 1. The legislature finds that the cost of living  
2 in Hawaii has been and continues to be high. A significant  
3 contributing factor to the high cost of living is the high cost  
4 of housing, and the high cost of land contributes significantly  
5 to the high cost of housing. For this and other reasons, there  
6 continues to be a shortage of affordable housing in many areas  
7 of the State, notwithstanding significant declines in housing  
8 prices nationally. The legislature further finds that efforts  
9 of both the public and private sectors to provide affordable  
10 housing are undermined if the initial purchasers of such housing  
11 are allowed to re-sell their dwellings without limitations on  
12 resale prices. Such efforts are likely to benefit only the  
13 initial purchasers but fail to address the need for sustained  
14 affordability.

15           SECTION 2. Chapter 201H, Hawaii Revised Statutes, is  
16 amended by adding a new section to be appropriately designated  
17 and to read as follows:



1        "§201H- Sustainable affordable housing developed on  
2 state land. (a) With respect to any residential property  
3 developed on land purchased or leased from the State of Hawaii  
4 or any department, agency, or instrumentality thereof, after the  
5 date of enactment of this law, not less than        per cent of the  
6 total residential floor area in the development shall constitute  
7 affordable housing and shall be sold pursuant to sustainable  
8 affordable leases.

9        (b) For purposes of this section:

10       "Affordable housing" has the same meaning as in section  
11 201H-57.

12       "Sustainable affordable lease" has the same meaning as in  
13 section 516-1, regardless of whether the housing is in a  
14 sustainable affordable development as defined therein.

15       (c) The restrictions prescribed in this section shall be  
16 automatically extinguished under the same circumstances as  
17 described in section 201H-47(e).

18       (d) The provisions of this section shall be incorporated  
19 in any deed, lease, agreement of sale, or any other instrument  
20 of conveyance issued by the seller of the dwelling unit."

21       SECTION 3. Section 201H-47, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           "§201H-47 Real property; restrictions on transfer; waiver  
2 of restrictions. (a) The following restrictions shall apply to  
3 the transfer of real property developed and sold under this  
4 chapter, whether in fee simple or leasehold:

5           (1) For a period of ten years after the purchase, whether  
6 by lease, assignment of lease, deed, or agreement of  
7 sale, if the purchaser wishes to transfer title to the  
8 real property, the corporation shall have the first  
9 option to purchase the real property at a price that  
10 shall not exceed the sum of:

11           (A) The original cost to the purchaser, as defined in  
12 rules adopted by the corporation;

13           (B) The cost of any improvements added by the  
14 purchaser, as defined in rules adopted by the  
15 corporation; and

16           (C) Simple interest on the original cost and capital  
17 improvements to the purchaser at the rate of one  
18 per cent a year;

19           (2) The corporation may purchase the real property either:

20           (A) By conveyance free and clear of all mortgages and  
21 liens; or

1 (B) By conveyance subject to existing mortgages and  
2 liens.

3 If the real property is conveyed in the manner  
4 provided in subparagraph (A), it shall be conveyed to  
5 the corporation only after all mortgages and liens are  
6 released. If the real property is conveyed in the  
7 manner provided in subparagraph (B), the corporation  
8 shall acquire the property subject to any first  
9 mortgage created for the purpose of securing the  
10 payment of a loan of funds expended solely for the  
11 purchase of the real property by the seller; and any  
12 mortgage or lien created for any other purpose  
13 provided that the corporation has previously consented  
14 to it in writing.

15 The corporation's interest created by this  
16 paragraph shall constitute a statutory lien on the  
17 real property and shall be superior to any other  
18 mortgage or lien except for:

19 (i) Any first mortgage created for the purpose  
20 of securing the payment of a loan of funds  
21 expended solely for the purchase of the real  
22 property by the seller;



- 1           (ii) Any mortgage insured or held by a federal  
2           housing agency; and  
3           (iii) Any mortgage or lien created for any other  
4           purpose; provided that the corporation has  
5           previously consented to it in writing.

6           The amount paid by the corporation to the seller shall  
7           be the difference, if any, between the purchase price  
8           determined by paragraph (1)(A) to (C), and the total  
9           of the outstanding principal balances of the mortgages  
10          and liens assumed by the corporation;

- 11          (3) A purchaser may refinance real property developed and  
12          sold under this chapter provided that the purchaser  
13          shall not refinance the real property within ten years  
14          from the date of purchase for an amount in excess of  
15          the purchase price as determined by paragraph (1)(A)  
16          to (C);

- 17          (4) After the end of the tenth year from the date of  
18          purchase or execution of an agreement of sale, the  
19          purchaser may sell the real property [~~and sell or~~  
20          ~~assign the property free from any price restrictions;~~]  
21          for total consideration that does not exceed the  
22          maximum resale price; provided that the purchaser



1 shall be required to pay to the corporation the [sum  
2 of:

3 ~~(A) The balance of any mortgage note, agreement of  
4 sale, or other amount owing to the corporation;~~

5 ~~(B) Any subsidy or deferred sales price made by the  
6 corporation in the acquisition, development,  
7 construction, and sale of the real property, and  
8 any other amount expended by the corporation not  
9 counted as costs under section 201H-45 but  
10 charged to the real property by good accounting  
11 practice as determined by the corporation whose  
12 books shall be prima facie evidence of the  
13 correctness of the costs;~~

14 ~~(C) Interest on the subsidy or deferred sales price,  
15 if applicable, and any other amount expended at  
16 the rate of seven per cent a year computed as to  
17 the subsidy or deferred sales price, if  
18 applicable, from the date of purchase or  
19 execution of the agreement of sale, and as to any  
20 amount expended, from the date of expenditure;  
21 provided that the computed interest shall not  
22 extend beyond thirty years from the date of~~



1 ~~purchase or execution of the agreement of sale of~~  
2 ~~the real property. If any proposed sale or~~  
3 ~~transfer will not generate an amount sufficient~~  
4 ~~to pay the corporation the sum as computed under~~  
5 ~~this paragraph, the corporation shall have the~~  
6 ~~first option to purchase the real property at a~~  
7 ~~price that shall not exceed the sum as computed~~  
8 ~~under paragraphs (1) and (2); and~~

9 ~~(D) The] corporation's share of appreciation in the~~  
10 ~~real property as determined under rules adopted~~  
11 ~~pursuant to chapter 91, when applicable[; and~~

12 ~~(5) Notwithstanding any provision above to the contrary,~~  
13 ~~pursuant to rules adopted by the corporation, the~~  
14 ~~subsidy or deferred sales price described in paragraph~~  
15 ~~(4) (B) and any interest accrued pursuant to paragraph~~  
16 ~~(4) (C) may be paid, in part or in full, at any time].~~

17 The same resale requirements shall apply to each successive  
18 owner.

19 (b) For a period of ten years after the purchase, whether  
20 by lease, assignment of lease, deed, or agreement of sale, if  
21 the purchaser wishes to transfer title to the real property, and  
22 if the corporation does not exercise the option to purchase the



1 real property as provided in subsection (a), then the  
2 corporation shall require the purchaser to sell the real  
3 property to a "qualified resident" as defined in section  
4 201H-32, [~~and upon the terms that preserve the intent of this~~  
5 ~~section and sections 201H-49 and 201H-50, and in accordance with~~  
6 ~~rules adopted by the corporation.~~] for total consideration that  
7 does not exceed the maximum resale price, and the same resale  
8 requirements shall apply to each successive owner.

9 (c) The corporation may waive the restrictions prescribed  
10 in subsection (a) or (b) if:

11 (1) The purchaser wishes to transfer title to the real  
12 property by devise or through the laws of descent to a  
13 family member who would otherwise qualify under rules  
14 established by the corporation;

15 (2) The sale or transfer of the real property would be at  
16 a price and upon terms that preserve the intent of  
17 this section without the necessity of the State  
18 repurchasing the real property; provided that, in this  
19 case, the purchaser shall sell the unit or lot and  
20 sell or assign the property to a person who is a  
21 "qualified resident" as defined in section 201H-32;  
22 and provided further that the purchaser shall pay to





1 the corporation its share of appreciation in the unit  
2 as determined in rules adopted pursuant to chapter 91,  
3 when applicable; or

4 (3) The sale or transfer is of real property subject to a  
5 sustainable affordable lease as defined in section  
6 516-1.

7 (d) The corporation may release the restrictions  
8 prescribed in subsection (a) or (b) if the real property is  
9 financed under a federally subsidized mortgage program and the  
10 restrictions would jeopardize the federal government's ability  
11 to recapture any interest credit subsidies provided to the  
12 homeowner.

13 (e) The restrictions prescribed in this section and  
14 sections 201H-49 to 201H-51 shall be automatically extinguished  
15 and shall not attach in subsequent transfers of title when a  
16 mortgage holder or other party becomes the owner of the real  
17 property pursuant to a mortgage foreclosure, foreclosure under  
18 power of sale, or a conveyance in lieu of foreclosure after a  
19 foreclosure action is commenced; or when a mortgage is assigned  
20 to a federal housing agency. Any law to the contrary  
21 notwithstanding, a mortgagee under a mortgage covering real  
22 property or leasehold interest encumbered by the first option to



1 purchase in favor of the corporation, prior to commencing  
2 mortgage foreclosure proceedings, shall notify the corporation  
3 in writing of:

4 (1) Any default of the mortgagor under the mortgage within  
5 ninety days after the occurrence of the default; and

6 (2) Any intention of the mortgagee to foreclose the  
7 mortgage under chapter 667;

8 provided that the mortgagee's failure to provide written notice  
9 to the corporation shall not affect the mortgage holder's rights  
10 under the mortgage. The corporation shall be a party to any  
11 foreclosure action, and shall be entitled to all proceeds  
12 remaining in excess of all customary and actual costs and  
13 expenses of transfer pursuant to default, including liens and  
14 encumbrances of record; provided that the person in default  
15 shall be entitled to an amount which shall not exceed the sum of  
16 amounts determined pursuant to subsection (a)(1)(B) and (C).

17 (f) The provisions of this section shall be incorporated  
18 in any deed, lease, agreement of sale, or any other instrument  
19 of conveyance issued by the corporation. In any sale by the  
20 corporation of real property for which a subsidy or deferred  
21 sales price was made by the corporation, the amount of the  
22 subsidy or deferred sales price described in subsection



1 (a) (4) (B), a description of the cost items that constitute the  
2 subsidy or deferred sales price, and the conditions of the  
3 subsidy or deferred sales price shall be clearly stated at the  
4 beginning of the contract document issued by the corporation.

5 (g) This section need not apply to market-priced units in  
6 an economically integrated housing project, except as otherwise  
7 determined by the developer of the units; provided that  
8 preference shall be given to qualified residents in the initial  
9 sale of market-priced units.

10 (h) The corporation is authorized to waive any of the  
11 restrictions set forth in this section in order to comply with  
12 or conform to requirements set forth in federal law or  
13 regulations governing mortgage insurance or guarantee programs  
14 or requirements set forth by federally chartered secondary  
15 mortgage market participants.

16 (i) For purposes of subsection (a) (4) and subsection (b),  
17 the "maximum resale price" shall be the sum of the following  
18 items:

19 (1) The current owner's purchase price for the property;

20 (2) Appreciation on the property as measured by  
21 multiplying the amount in paragraph (1) by the percent  
22 increase in the consumer price index for all urban



1           consumers as determined by the United States  
2           Department of Labor for the applicable county, or if  
3           not published for the county, then for the State, from  
4           the date of the purchase to the date of the contract  
5           for resale; and  
6           (3) The cost of all capital improvements made by the  
7           current owner."

8           SECTION 4. Section 206E-15, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           "**§206E-15 Residential projects; cooperative agreements.**

11           (a) If the authority deems it desirable to develop a  
12 residential project, it may enter into an agreement with  
13 qualified persons to construct, maintain, operate, or otherwise  
14 dispose of the residential project. Sale, lease, or rental of  
15 dwelling units in the project shall be as provided by the rules  
16 established by the authority. The authority may enter into  
17 cooperative agreements with the Hawaii housing finance and  
18 development corporation for the financing, development,  
19 construction, sale, lease, or rental of dwelling units and  
20 projects.

21           (b) The authority may transfer the housing fees collected  
22 from private residential developments for the provision of



1 housing for residents of low- or moderate-income to the Hawaii  
2 housing finance and development corporation for the financing,  
3 development, construction, sale, lease, or rental of such  
4 housing within or without the community development districts.  
5 The fees shall be used only for projects owned by the State or  
6 owned or developed by a qualified nonprofit organization. For  
7 the purposes of this section, "nonprofit organization" means a  
8 corporation, association, or other duly chartered organization  
9 registered with the State, which organization has received  
10 charitable status under the Internal Revenue Code of 1986, as  
11 amended.

12 (c) Any residential project constructed within the  
13 community development district, or outside the district pursuant  
14 to section 206E-4(18), shall meet the following requirements:

15 (1) Not less than twenty per cent of the total residential  
16 floor area in the residential project shall be  
17 reserved housing as defined in section 206E-101 and,  
18 if sold, shall be sold pursuant to sustainable  
19 affordable leases; and

20 (2) The requirement in paragraph (1) shall be increased to  
21 twenty-five per cent with respect to planned



1           developments that are located on lots of three acres  
2           or more or that are part of a master planned area.

3           For purposes of this subsection, "sustainable affordable  
4 lease" has the same meaning as in section 516-1, regardless of  
5 whether the housing is in a sustainable affordable development  
6 as defined therein."

7           SECTION 5. Section 206E-101, Hawaii Revised Statutes, is  
8 amended by amending the definition of "reserved housing" to read  
9 as follows:

10           ""Reserved housing" means housing that is designated for  
11 [~~residents in the low or moderate income ranges~~] and affordable  
12 to households with incomes at or below one hundred forty per  
13 cent of the median family income as determined by the United  
14 States Department of Housing and Urban Development who meet such  
15 other eligibility requirements as the authority may adopt by  
16 rule."

17           SECTION 6. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

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

22           SECTION 8. This Act shall take effect on July 1, 2020.



**Report Title:**

Sustainable Affordable Housing

**Description:**

Requires a portion of housing units in residential developments constructed with state assistance, on land purchased or leased from the State and on land located in a community development district, to be sold pursuant to restrictions that ensure continued affordability over time. Takes effect July 1, 2020.  
(HB1232 HD1)

