

JAN 28 2009

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# A BILL FOR AN ACT

RELATING TO HOUSING.

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

1 SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended  
2 by adding a new section to be appropriately designated and to  
3 read as follows:

4 "§46- Affordable housing requirement; subdivision or  
5 building permit stage. (a) For the purposes of this section:

6 "Affordable housing unit" means a dwelling unit, the rent  
7 or purchase price of which is affordable to a low- or moderate-  
8 income family for a minimum period, as determined by the  
9 applicable county.

10 "Eligible project" means a project on a discrete parcel of  
11 land that will be developed for either of the following:

12 (1) A building for a commercial, industrial, resort, or  
13 commercial-, industrial-, or resort-emphasis mixed  
14 use; or

15 (2) A multi-family dwelling.

16 "Eligible subdivision" means a subdivision or consolidation  
17 of land that will result in separate parcels zoned for



1 residential, commercial, industrial, resort, or commercial-,  
2 industrial-, or resort-emphasis mixed use.

3 (b) Each county shall have the power to require a  
4 subdivider applying for an eligible subdivision approval to  
5 provide a certain number of affordable housing units within or  
6 outside the subdivision as a condition of the issuance of the  
7 final subdivision approval, and may:

- 8 (1) Impose the affordable housing requirement only upon a  
9 subdivider of an eligible subdivision that will have a  
10 minimum number of parcels specified by the county; or  
11 (2) Allow a subdivider to pay the county cash in lieu of  
12 providing the required number of affordable dwelling  
13 units;

14 provided that any requirement imposed under this subsection  
15 shall only be imposed upon approval of the requirement by the  
16 land use commission.

17 A county shall not impose an affordable housing requirement  
18 under this subsection upon a subdivider who previously has had  
19 imposed upon the subdivider or predecessor landowner an  
20 affordable housing exaction as a condition for reclassification  
21 or rezoning of the land proposed to be subdivided.

1        (c) Each county shall have the power to require a  
2 developer of an eligible project to provide a certain number of  
3 affordable housing units within or outside the project as a  
4 condition of issuance of the first building permit for the  
5 project, and may:

6        (1) Impose the affordable housing requirement only upon an  
7 eligible project that will have a minimum number of  
8 dwelling units specified by the county; or

9        (2) Allow a developer to pay the county cash in lieu of  
10 providing the required number of affordable dwelling  
11 units;

12 provided that any requirement imposed under this subsection  
13 shall only be imposed upon approval of the requirement by the  
14 land use commission.

15        A county shall not impose an affordable housing requirement  
16 under this subsection upon a developer who previously has had  
17 imposed upon the developer or predecessor landowner an  
18 affordable housing exaction as a condition for reclassification,  
19 rezoning, or subdivision of the land upon which the project is  
20 situated.

21        (d) Any affordable housing requirement imposed by a county  
22 upon an eligible subdivision or eligible project shall have a



1 rational nexus with the eligible subdivision or eligible  
2 project. The county shall establish a formula for determining  
3 the affordable housing requirement to be imposed upon different  
4 types or sizes of eligible subdivisions or eligible projects.  
5 The formula shall be established by ordinance and shall be  
6 presumed valid in any administrative or judicial proceeding  
7 unless the preponderance of the evidence shows that the county  
8 clearly abused its discretion in establishing the formula.

9 (e) A county imposing an affordable housing requirement  
10 under this section shall require the subdivider or developer to  
11 enter into an agreement binding the subdivider or developer, as  
12 well as any successor, to comply with the affordable housing  
13 requirement. The county shall require the subdivider or  
14 developer to enter into the agreement before the issuance of the  
15 final subdivision approval or building permit. The agreement  
16 shall be enforceable through appropriate judicial action."

17 SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
18 amended by adding a new section to be appropriately designated  
19 and to read as follows:

20 "§235- Anti-speculation; capital gains tax. (a) In  
21 addition to the capital gains tax imposed under this chapter,  
22 there shall be an anti-speculation capital gains tax on the net



1 capital gains realized by a seller of real property, less  
2 commissions, fees, and other charges, if any, related to the  
3 sale. The tax shall be as follows:

4 (1) If the real property was held by the seller for less  
5 than six months prior to the sale, the tax shall be  
6 sixty per cent of the capital gains tax owed;

7 (2) If the real property was held by the seller for at  
8 least six months but less than twelve months prior to  
9 the sale, the tax shall be thirty per cent of the  
10 capital gains tax owed; or

11 (3) If the real property was held by the seller for at  
12 least twelve months but not more than twenty-four  
13 months, the tax shall be fifteen per cent of the  
14 capital gains tax owed.

15 (b) This section shall not apply to:

16 (1) Real property sold to provide affordable rental  
17 housing for a period of not less than ten years to a  
18 resident earning less than one hundred forty per cent  
19 of the median Hawaii income, as determined by the  
20 department;

21 (2) A principal residence sold by reason of a change in  
22 place of employment, health, or unforeseen



1 circumstances, as exempted under section 121(c)(2) of  
2 the Internal Revenue Code; or

3 (3) Amounts realized from properties that are  
4 involuntarily converted (destroyed, stolen, seized,  
5 requisitioned, or condemned), as exempted under  
6 section 1033 of the Internal Revenue Code.

7 (c) The sale of unimproved real property shall be subject  
8 to taxation under this section, unless otherwise prohibited  
9 under this section.

10 (d) The tax realized pursuant to this section shall be  
11 deposited into an escrow account to be forwarded to the  
12 department. The department shall deposit all such tax  
13 realizations into the rental housing trust fund under section  
14 201H-202.

15 (e) This section shall not apply to properties that  
16 qualify the seller for a county homeowner's exemption or to  
17 military personnel selling property as a result of military  
18 relocation orders."

19 SECTION 3. Section 88-119, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "§88-119 Investments. Investments may be made in:



- 1           (1) Real estate loans and mortgages. Obligations (as  
2           defined in section 431:6-101) of any of the following  
3           classes:
- 4           (A) Obligations secured by mortgages of nonprofit  
5           corporations desiring to build multirental units  
6           (ten units or more) subject to control of the  
7           government for occupancy by families displaced as  
8           a result of government action;
- 9           (B) Obligations secured by mortgages insured by the  
10          Federal Housing Administration;
- 11          (C) Obligations for the repayment of home loans made  
12          under the Servicemen's Readjustment Act of 1944  
13          or under Title II of the National Housing Act;
- 14          (D) Other obligations secured by first mortgages on  
15          unencumbered improved real estate owned in fee  
16          simple; provided that the amount of the  
17          obligation at the time investment is made therein  
18          shall not exceed eighty per cent of the value of  
19          the real estate and improvements mortgaged to  
20          secure it, and except that the amount of the  
21          obligation at the time investment is made therein  
22          may exceed eighty per cent but no more than



1           ninety per cent of the value of the real estate  
2           and improvements mortgaged to secure it; provided  
3           further that the obligation is insured or  
4           guaranteed against default or loss under a  
5           mortgage insurance policy issued by a casualty  
6           insurance company licensed to do business in the  
7           State. The coverage provided by the insurer  
8           shall be sufficient to reduce the system's  
9           exposure to not more than eighty per cent of the  
10          value of the real estate and improvements  
11          mortgaged to secure it. The insurance coverage  
12          shall remain in force until the principal amount  
13          of the obligation is reduced to eighty per cent  
14          of the market value of the real estate and  
15          improvements mortgaged to secure it, at which  
16          time the coverage shall be subject to  
17          cancellation solely at the option of the board.  
18          Real estate shall not be deemed to be encumbered  
19          within the meaning of this subparagraph by reason  
20          of the existence of any of the restrictions,  
21          charges, or claims described in section 431:6-  
22          308;



1           (E) Other obligations secured by first mortgages of  
2           leasehold interests in improved real estate;  
3           provided that:  
4           (i) Each leasehold interest at the time shall  
5           have a current term extending at least two  
6           years beyond the stated maturity of the  
7           obligation it secures; and  
8           (ii) The amount of the obligation at the time  
9           investment is made therein shall not exceed  
10          eighty per cent of the value of the  
11          respective leasehold interest and  
12          improvements, and except that the amount of  
13          the obligation at the time investment is  
14          made therein may exceed eighty per cent but  
15          no more than ninety per cent of the value of  
16          the leasehold interest and improvements  
17          mortgaged to secure it;  
18          provided further that the obligation is insured  
19          or guaranteed against default or loss under a  
20          mortgage insurance policy issued by a casualty  
21          insurance company licensed to do business in the  
22          State. The coverage provided by the insurer

1 shall be sufficient to reduce the system's  
2 exposure to not more than eighty per cent of the  
3 value of the leasehold interest and improvements  
4 mortgaged to secure it. The insurance coverage  
5 shall remain in force until the principal amount  
6 of the obligation is reduced to eighty per cent  
7 of the market value of the leasehold interest and  
8 improvements mortgaged to secure it, at which  
9 time the coverage shall be subject to  
10 cancellation solely at the option of the board;

11 (F) Obligations for the repayment of home loans  
12 guaranteed by the department of Hawaiian home  
13 lands pursuant to section 214(b) of the Hawaiian  
14 Homes Commission Act, 1920; and

15 (G) Obligations secured by second mortgages on  
16 improved real estate for which the mortgagor  
17 procures a second mortgage on the improved real  
18 estate for the purpose of acquiring the  
19 leaseholder's fee simple interest in the improved  
20 real estate; provided that any prior mortgage  
21 shall not contain provisions that might  
22 jeopardize the security position of the



1 retirement system or the borrower's ability to  
2 repay the mortgage loan.

3 The board may retain the real estate, including  
4 leasehold interests therein, as it may acquire by  
5 foreclosure of mortgages or in enforcement of  
6 security, or as may be conveyed to it in satisfaction  
7 of debts previously contracted; provided that all the  
8 real estate, other than leasehold interests, shall be  
9 sold within five years after acquiring the same,  
10 subject to extension by the governor for additional  
11 periods not exceeding five years each, and that all  
12 the leasehold interests shall be sold within one year  
13 after acquiring the same, subject to extension by the  
14 governor for additional periods not exceeding one year  
15 each;

16 (2) Government obligations, etc. Obligations of any of  
17 the following classes:

18 (A) Obligations issued or guaranteed as to principal  
19 and interest by the United States or by any state  
20 thereof or by any municipal or political  
21 subdivision or school district of any of the  
22 foregoing; provided that principal of and



1 interest on the obligations are payable in  
2 currency of the United States; or sovereign debt  
3 instruments issued by agencies of, or guaranteed  
4 by foreign governments;

5 (B) Revenue bonds, whether or not permitted by any  
6 other provision hereof, of the State or any  
7 municipal or political subdivision thereof,  
8 including the board of water supply of the city  
9 and county of Honolulu, and street or improvement  
10 district bonds of any district or project in the  
11 State; and

12 (C) Obligations issued or guaranteed by any federal  
13 home loan bank, including consolidated federal  
14 home loan bank obligations, the Home Owner's Loan  
15 Corporation, the Federal National Mortgage  
16 Association, or the Small Business  
17 Administration;

18 (3) Corporate obligations. Below investment grade or  
19 nonrated debt instruments, foreign or domestic, in  
20 accordance with investment guidelines adopted by the  
21 board;

- 1           (4) Preferred and common stocks. Shares of preferred or  
2           common stock of any corporation created or existing  
3           under the laws of the United States or of any state or  
4           district thereof or of any country;
- 5           (5) Obligations eligible by law for purchase in the open  
6           market by federal reserve banks;
- 7           (6) Obligations issued or guaranteed by the International  
8           Bank for Reconstruction and Development, the Inter-  
9           American Development Bank, the Asian Development Bank,  
10          or the African Development Bank;
- 11          (7) Obligations secured by collateral consisting of any of  
12          the securities or stock listed above and worth at the  
13          time the investment is made at least fifteen per cent  
14          more than the amount of the respective obligations;
- 15          (8) Insurance company obligations. Contracts and  
16          agreements supplemental thereto providing for  
17          participation in one or more accounts of a life  
18          insurance company authorized to do business in Hawaii,  
19          including its separate accounts, and whether the  
20          investments allocated thereto are comprised of stocks  
21          or other securities or of real or personal property or  
22          interests therein;



1           (9)   Interests in real property.   Interests in improved or  
2           productive real property in which, in the informed  
3           opinion of the board, it is prudent to invest funds of  
4           the system.   For purposes of this paragraph, "real  
5           property" includes any property treated as real  
6           property either by local law or for federal income tax  
7           purposes.   Investments in improved or productive real  
8           property may be made directly or through pooled funds,  
9           including common or collective trust funds of banks  
10          and trust companies, group or unit trusts, limited  
11          partnerships, limited liability companies, investment  
12          trusts, title-holding corporations recognized under  
13          section 501(c) of the Internal Revenue Code of 1986,  
14          as amended, similar entities that would protect the  
15          system's interest, and other pooled funds invested on  
16          behalf of the system by investment managers retained  
17          by the system;

18          (10)   Other securities and futures contracts.   Securities  
19          and futures contracts in which in the informed opinion  
20          of the board, it is prudent to invest funds of the  
21          system, including currency, interest rate, bond, and  
22          stock index futures contracts and options on the



1 contracts to hedge against anticipated changes in  
2 currencies, interest rates, and bond and stock prices  
3 that might otherwise have an adverse effect upon the  
4 value of the system's securities portfolios; covered  
5 put and call options on securities; and stock; whether  
6 or not the securities, stock, futures contracts, or  
7 options on futures are expressly authorized by or  
8 qualify under the foregoing paragraphs, and  
9 notwithstanding any limitation of any of the foregoing  
10 paragraphs (including paragraph (4)); [and]

11 (11) Private placements. Investments in institutional  
12 blind pool limited partnerships, limited liability  
13 companies, or direct investments that make private  
14 debt and equity investments in privately held  
15 companies, including but not limited to investments in  
16 Hawaii high technology businesses or venture capital  
17 investments that, in the informed opinion of the  
18 board, are appropriate to invest funds of the system.  
19 In evaluating venture capital investments, the board  
20 shall consider, among other things, the impact an  
21 investment may have on job creation in Hawaii and on  
22 the state economy. The board shall report annually to



1 the legislature on any Hawaii venture capital  
 2 investments it has made; provided that if the board  
 3 determines it is not prudent to invest in any Hawaii  
 4 venture capital investments the board shall report the  
 5 rationale for the decision. The board, by January 1,  
 6 2008, shall develop criteria to determine the amount  
 7 of funds that may be prudently invested in Hawaii  
 8 private placement investments[-]; and

9 (12) Affordable housing development projects."

10 SECTION 4. Section 201H-202, Hawaii Revised Statutes, is  
 11 amended by amending subsection (c) to read as follows:

12 "(c) The following may be deposited into the fund:  
 13 appropriations made by the legislature, private contributions,  
 14 moneys derived from the anti-speculation capital gains taxes  
 15 under section 235- , repayment of loans, interest, other  
 16 returns, and moneys from other sources."

17 SECTION 5. Section 235-51, Hawaii Revised Statutes, is  
 18 amended by amending subsection (f) to read as follows:

19 "(f) [~~If~~] Except as provided under section 235- , if a  
 20 taxpayer has a net capital gain for any taxable year to which  
 21 this subsection applies, then the tax imposed by this section  
 22 shall not exceed the sum of:





1 (1) The tax computed at the rates and in the same manner  
2 as if this subsection had not been enacted on the  
3 greater of:

4 (A) The taxable income reduced by the amount of net  
5 capital gain, or

6 (B) The amount of taxable income taxed at a rate  
7 below 7.25 per cent, plus

8 (2) A tax of 7.25 per cent of the amount of taxable income  
9 in excess of the amount determined under paragraph  
10 (1).

11 This subsection shall apply to individuals, estates, and  
12 trusts for taxable years beginning after December 31, 1986."

13 SECTION 6. Section 235-110.8, Hawaii Revised Statutes, is  
14 amended by amending subsection (e) to read as follows:

15 "(e) As provided in section 42(e), rehabilitation  
16 expenditures shall be treated as separate new building and their  
17 treatment under this section shall be the same as in section  
18 42(e).

19 The definitions and special rules relating to credit period  
20 in section 42(f) and the definitions and special rules in  
21 section 42(i) shall be operative for the purposes of this  
22 section[-]; provided that in the case of any qualified low-



1 income housing project placed in service beginning on January 1,  
2 2009, the term "credit period" in section 42(f)(1) of the  
3 Internal Revenue Code shall be deemed to mean with respect to  
4 any building, the period of five taxable years beginning with:  
5       (1) The taxable year in which the building is placed in  
6       service; or  
7       (2) At the election of the taxpayer, the succeeding  
8       taxable year; provided that the election, once made,  
9       shall be irrevocable,  
10 but only if the building is a qualified low-income building as  
11 of the close of the first year of the period."

12       SECTION 7. Section 247-2, Hawaii Revised Statutes, is  
13 amended to read as follows:

14       "**§247-2 Basis and rate of tax.** The tax imposed by section  
15 247-1 shall be based on the actual and full consideration  
16 (whether cash or otherwise, including any promise, act,  
17 forbearance, property interest, value, gain, advantage, benefit,  
18 or profit), paid or to be paid for all transfers or conveyance  
19 of realty or any interest therein, that shall include any liens  
20 or encumbrances thereon at the time of sale, lease, sublease,  
21 assignment, transfer, or conveyance, and shall be at the  
22 following rates:



- 1           (1) Except as provided in paragraph (2):
- 2                 (A) Ten cents per \$100 for properties with a value of
- 3                         less than \$600,000;
- 4                 (B) Twenty cents per \$100 for properties with a value
- 5                         of at least \$600,000, but less than \$1,000,000;
- 6                         and
- 7                 (C) Thirty cents per \$100 for properties with a value
- 8                         of \$1,000,000 or greater; and
- 9           (2) For the sale of a condominium or [~~single-family~~]
- 10                 single-family residence for which the purchaser is
- 11                         ineligible for a county homeowner's exemption on
- 12                         property tax:
- 13                 (A) Fifteen cents per \$100 for properties with a
- 14                         value of less than \$600,000;
- 15                 (B) Twenty-five cents per \$100 for properties with a
- 16                         value of at least \$600,000, but less than
- 17                         \$1,000,000; and
- 18                 (C) [~~Thirty-five cents~~] Seventy cents per \$100 for
- 19                         properties with a value of \$1,000,000 or greater,
- 20 of such actual and full consideration; provided that in the case
- 21 of a lease or sublease, this chapter shall apply only to a lease
- 22 or sublease whose full unexpired term is for a period of five



1 years or more, and in those cases, including (where appropriate)  
2 those cases where the lease has been extended or amended, the  
3 tax in this chapter shall be based on the cash value of the  
4 lease rentals discounted to [~~present-day~~] present-day value and  
5 capitalized at the rate of six per cent, plus the actual and  
6 full consideration paid or to be paid for any and all  
7 improvements, if any, that shall include on-site as well as off-  
8 site improvements, applicable to the leased premises; and  
9 provided further that the tax imposed for each transaction shall  
10 be not less than \$1."

11 SECTION 8. Section 247-7, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§247-7 Disposition of taxes.** All taxes collected under  
14 this chapter shall be paid into the state treasury to the credit  
15 of the general fund of the State, to be used and expended for  
16 the purposes for which the general fund was created and exists  
17 by law; provided that of the taxes collected each fiscal year:

- 18 (1) Ten per cent shall be paid into the land conservation  
19 fund established pursuant to section 173A-5;
- 20 (2) [~~Thirty~~] Fifty per cent shall be paid into the rental  
21 housing trust fund established by section 201H-202;
- 22 and



1           (3) Twenty-five per cent shall be paid into the natural  
2           area reserve fund established by section 195-9;  
3           provided that the funds paid into the natural area  
4           reserve fund shall be annually disbursed by the  
5           department of land and natural resources in the  
6           following priority:

7           (A) To natural area partnership and forest  
8           stewardship programs after joint consultation  
9           with the forest stewardship committee and the  
10          natural area reserves system commission;

11          (B) Projects undertaken in accordance with watershed  
12          management plans pursuant to section 171-58 or  
13          watershed management plans negotiated with  
14          private landowners, and management of the natural  
15          area reserves system pursuant to section 195-3;  
16          and

17          (C) The youth conservation corps established under  
18          chapter 193."

19          SECTION 9. The director of finance is authorized to issue  
20          general obligation bonds in the sum of \$25,000,000 or so much  
21          thereof as may be necessary and the same sum or so much thereof



1 as may be necessary is appropriated for fiscal year 2009-2010 to  
2 be deposited into the rental housing trust fund.

3 SECTION 10. There is appropriated out of the rental  
4 housing trust fund the sum of \$25,000,000 or so much thereof as  
5 may be necessary for fiscal year 2009-2010 and the same sum or  
6 so much thereof as may be necessary for fiscal year 2010-2011  
7 for the planning, development, and construction of affordable  
8 housing in cooperation with private and nonprofit developers.

9 The sums appropriated shall be expended by the housing  
10 finance and development corporation for the purposes of this  
11 Act.

12 SECTION 11. The director of finance is authorized to issue  
13 general obligation bonds in the sum of \$50,000,000 or so much  
14 thereof as may be necessary and the same sum or so much thereof  
15 as may be necessary is appropriated for fiscal year 2009-2010  
16 for deposit into the dwelling unit revolving fund.

17 SECTION 12. There is appropriated out of the dwelling unit  
18 revolving fund the sum of \$ or so much thereof as may  
19 be necessary for fiscal year 2009-2010 and the same sum or so  
20 much thereof as may be necessary for fiscal year 2010-2011 for  
21 housing development programs.



1           The sums appropriated shall be expended by the Hawaii  
2 housing finance and development corporation for the purposes of  
3 this Act.

4           SECTION 13. There is appropriated out of the general  
5 revenues of the State of Hawaii the sum of \$500,000 or so much  
6 thereof as may be necessary for fiscal year 2009-2010 and the  
7 same sum or so much thereof as may be necessary for fiscal year  
8 2010-2011 to assist developers in contracting for third party  
9 review and certification, including but not limited to,  
10 inspections, discretionary permits, and ministerial permits, and  
11 to expedite the development of affordable homes.

12           The sums appropriated shall be expended by the Hawaii  
13 housing finance and development corporation for the purposes of  
14 this Act.

15           SECTION 14. This Act does not affect rights and duties  
16 that matured, penalties that were incurred, and proceedings that  
17 were begun, before its effective date.

18           SECTION 15. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.



# S.B. NO. 1341

1 SECTION 16. This Act shall take effect on July 1, 2009;  
 2 provided that sections 2, 4, 5, and 6 shall apply to taxable  
 3 years beginning after December 31, 2008.

4

INTRODUCED BY: Michelle N. Kedani

*[Signature]*

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Rob. Hubbard





**Report Title:**

Housing

**Description:**

Makes various technical amendments to the affordable housing laws and related tax laws. Appropriates general obligation bonds for affordable housing. Creates an anti-speculation capital gains tax on real property. Authorizes the counties to condition subdivision approval upon affordable housing requirements. Authorizes the employees' retirement system to invest in affordable housing.

