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# A BILL FOR AN ACT

RELATING TO THE BANK OF THE STATE OF HAWAII.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 BANK OF THE STATE OF HAWAII

6 § -1 Bank of the State of Hawaii; established. (a) The  
7 bank of the State of Hawaii shall be established.

8 (b) The purposes of the bank of the State of Hawaii shall  
9 be to:

10 (1) Support economic development by increasing access to  
11 capital for businesses and farms within the State in  
12 partnership with local financial institutions;

13 (2) Provide support and stability to the local financial  
14 sector, and not in any way to compete with community  
15 banks, credit unions, or other financial institutions;

16 (3) Provide stability to the local housing market and  
17 reduce the number of wrongful and fraudulent  
18 foreclosures conducted by trustees of securitized



1 instruments that lack adequate legal standing to  
2 collect on certain mortgage loans;

3 (4) Reduce the costs paid by the State for basic banking  
4 services; and

5 (5) Return profits, beyond those necessary to accomplish  
6 the mission and continued sound operation of the bank,  
7 to the general fund.

8 § -2 **Board of the bank; powers and duties.** (a) The  
9 board of the bank of the State of Hawaii shall operate, manage,  
10 and control the bank of the State of Hawaii. The board shall  
11 locate and maintain places of business of the bank and adopt and  
12 enforce rules, orders, and bylaws for the transaction of the  
13 bank's business.

14 (b) The board shall consist of the governor, the director  
15 of finance, the director of labor and industrial relations, the  
16 director of business, economic development, and tourism, and the  
17 chairperson of the board of land and natural resources. The  
18 powers of the board and the functions of the bank shall be  
19 implemented through actions taken and policies and rules adopted  
20 by the board.

21 (c) The governor shall act as chairperson of the board.  
22 The board shall adopt rules requiring the holding of regular



1 meetings and specifying the means for providing notice of the  
2 meetings.

3 (d) Three members of the board shall constitute a quorum  
4 to transact business and exercise all rights, duties, and powers  
5 of the board.

6 (e) A special meeting may be called at any time upon  
7 notice by the governor or by a majority of the members of the  
8 board.

9 (f) The board shall appoint a president of the bank. The  
10 person appointed as president shall have extensive experience in  
11 banking. The board may appoint and employ any subordinate  
12 officers, employees, and agents as the board considers  
13 necessary, and shall define the duties, designate the titles,  
14 and fix the compensation of all those persons. The board may  
15 designate the president or other officers or employees as its  
16 agent in respect to the functions of the bank, subject to the  
17 supervision, limitation, and control of the board.

18 (g) The board may remove and discharge any person  
19 appointed in the exercise of the powers granted under this  
20 chapter.

21 § -3 **Advisory board of directors; appointment and**  
22 **duties.** (a) To enlist the help of private enterprise and to



1 encourage active exercise of the purposes for which the bank of  
2 the State of Hawaii was established, the bank of the State of  
3 Hawaii board shall appoint an advisory board of directors that  
4 shall consist of eight members.

5 (b) The members of the advisory board shall include  
6 representatives of the State's financial, business,  
7 agricultural, housing, and public labor sectors. At least two  
8 members shall be officers of banks, the majority of the stock of  
9 which shall be owned by residents of this State.

10 (c) The bank of the State of Hawaii board shall appoint a  
11 chairperson, vice-chairperson, and secretary from the advisory  
12 board members. The term of office of members of the advisory  
13 board of directors shall be set by the bank of the State of  
14 Hawaii board, but shall not exceed four years.

15 (d) The advisory board shall:

16 (1) Meet regularly with the management officers of the  
17 bank to review the bank's operations and finances to  
18 determine whether recommendations should be made by  
19 the advisory board to the bank of the State of Hawaii  
20 board relating to improved management performance,  
21 better customer service, and overall improvement in



1 internal methods, procedures, and operating policies  
2 of the bank;

3 (2) Make recommendations to the bank of the State of  
4 Hawaii board relating to the establishment of  
5 additional objectives for the operation of the bank;

6 (3) Make recommendations to the bank of the State of  
7 Hawaii board concerning the appointment of officers of  
8 the bank;

9 (4) Meet regularly with the bank of the State of Hawaii  
10 board to present any recommendations concerning the  
11 bank; and

12 (5) Participate on loan committees.

13 § -4 Deposits of public funds. (a) The bank of the  
14 State of Hawaii may accept deposits of public funds. Except as  
15 otherwise provided in section -5, the bank may not accept  
16 deposits of private funds. All income earned by the bank for  
17 its own account on public funds shall be credited to, and become  
18 a part of, the revenues and income of the bank.

19 (b) Whenever any public funds are deposited in the bank,  
20 the official having control of the public funds and the sureties  
21 on the bond of the official shall be exempt from all liability



1 by reason of loss of any of the funds while deposited in the  
2 bank.

3 (c) The bank shall pay interest on deposits of public  
4 funds at a rate comparable to rates paid by private depositories  
5 of public funds and may offer other financial products to the  
6 department of budget and finance on a competitive basis.

7 (d) The department of budget and finance shall deposit  
8 into the bank moneys from the general fund in an amount that the  
9 department of budget and finance determines is necessary to  
10 allow the bank to fulfill its duties under this chapter.

11 § -5 Powers of the bank. The bank of the State of  
12 Hawaii may:

13 (1) Make, purchase, guarantee, or hold loans:

14 (A) To state chartered or federally chartered lending  
15 agencies or institutions or other financial  
16 institutions;

17 (B) That are insured or guaranteed in whole or in  
18 part by the United States, its agencies, or  
19 instrumentalities;

20 (C) Obtained as security pledged for, or originated  
21 in the restructuring of, any other loan properly  
22 originated or participated in by the bank; or



- 1 (D) To instrumentalities of the State;
- 2 (2) Purchase participation interests in loans made or held
- 3 by banks, bank holding companies, state chartered or
- 4 federally chartered lending agencies or institutions,
- 5 or any other financial institution or entity that
- 6 provides financial services and meets underwriting
- 7 standards that are generally accepted by state or
- 8 federal financial regulatory agencies;
- 9 (3) Invest its funds in conformity with policies of the
- 10 bank of the State of Hawaii board and the department
- 11 of budget and finance;
- 12 (4) Buy and sell federal funds;
- 13 (5) Lease, assign, sell, exchange, transfer, convey,
- 14 grant, pledge, or mortgage all real and personal
- 15 property, title to which has been acquired in any
- 16 manner;
- 17 (6) Perform all acts and do all things necessary,
- 18 convenient, advisable, or desirable to carry out the
- 19 powers expressly granted or necessarily implied in
- 20 this chapter through or by means of its president,
- 21 officers, agents, or employees or by contracts with
- 22 any person, firm, or corporation;



- 1           (7) Purchase, guarantee, or hold loans originated by  
2           financial institutions doing business in this State;
- 3           (8) Make loans in the form of participation loans to  
4           qualified persons residing in or doing business in  
5           this State where the originator of the loan is a  
6           private financial institution;
- 7           (9) Act as a custodian bank for financial institutions  
8           organized under the laws of this State and accept  
9           deposits from the financial institutions in connection  
10          with this function;
- 11          (10) Issue bank stock loans to financial institutions  
12          organized under the laws of this State;
- 13          (11) For financial institutions that make the bank a  
14          reserve depository, perform the functions and render  
15          the services of a clearinghouse, including all  
16          facilities for providing domestic and foreign exchange  
17          and may rediscount paper, on terms prescribed by the  
18          bank of the State of Hawaii board;
- 19          (12) Enter into contractual agreements with local financial  
20          institutions to provide mortgage servicing for  
21          properties subject to the short-sale program for  
22          problematic mortgages under section           -13; and





1           (13) Enter into contractual agreements with local financial  
2                   institutions for the purpose of supporting the  
3                   availability of mortgage servicing by licensees  
4                   maintaining an office in the State pursuant to section  
5                   454M-5.

6           §   -6 **Income; excess earnings.** Except as otherwise  
7 provided, as soon as possible after the end of each calendar  
8 year, the bank of the State of Hawaii board shall determine the  
9 amount of income, if any, earned by the bank of the State of  
10 Hawaii in that calendar year that is in excess of amounts  
11 necessary to pay for expenses of administering the activities of  
12 the bank. The amount of the excess shall be transferred to the  
13 general fund.

14           §   -7 **Rulemaking powers.** (a) The bank of the State of  
15 Hawaii board shall adopt rules to:

- 16           (1) Ensure the safety and soundness of the bank of the  
17                   State of Hawaii that, to the extent possible, reflect  
18                   applicable standards for safety and soundness set  
19                   forth in 12 C.F.R. part 364;
- 20           (2) Specify the bank's powers and permissible investments  
21                   and activities;
- 22           (3) Authorize specific services that the bank may provide;

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1 (4) Specify limits for loans and other obligations the  
2 bank makes or undertakes;

3 (5) Specify reserve requirements;

4 (6) Effectuate a short-sale program for the purpose of  
5 purchasing owner-occupied residential property in  
6 conformity with section -13; and

7 (7) Establish other requirements that the board considers  
8 necessary.

9 (b) The department of commerce and consumer affairs shall  
10 examine the bank no less than once each calendar quarter to  
11 verify that the bank is complying with the rules that the board  
12 adopted under subsection (a). The department shall report the  
13 results of the examination to the board and to the legislature.  
14 The department's report shall be a public record subject to  
15 disclosure.

16 (c) The state auditor shall audit the accounts and  
17 financial affairs of the bank no less than once every two years.

18 **§ -8 Deposits; guaranteed by State; exempt from**  
19 **taxation.** (a) All deposits in the bank of the State of Hawaii  
20 shall be guaranteed by the State.



1 (b) The deposits and any income earned by the bank of the  
2 State of Hawaii shall not be subject to state or local taxes of  
3 any kind.

4 § -9 **Civil actions.** (a) Civil actions may be brought  
5 as provided in this section against the State on account of  
6 claims for relief asserted to have arisen out of transactions  
7 connected with the operation of the bank of the State of Hawaii.

8 (b) In an action brought under this section, the State  
9 shall be designated as the State of Hawaii, doing business as  
10 the bank of the State of Hawaii.

11 (c) An action brought under this section may be brought in  
12 the same manner and shall be subject to the same laws as other  
13 civil actions. The action shall be brought in a circuit court  
14 in the State.

15 § -10 **Public officials; exemption from liability.**

16 Whenever any public funds are deposited in the bank of the State  
17 of Hawaii, the public official who deposited the funds and the  
18 sureties on any bond of the public official shall be exempt from  
19 liability by reason of loss of any of the funds while the funds  
20 are deposited in the bank of the State of Hawaii.

21 § -11 **Conduct of business; execution of instruments.**

22 (a) All business of the bank of the State of Hawaii shall be



1 conducted under the name of the bank of the State of Hawaii.  
2 Title to property pertaining to the operation of the bank shall  
3 be obtained and conveyed in the name of the bank of the State of  
4 Hawaii, doing business as the bank of the State of Hawaii.

5 (b) Instruments shall be executed in the name of the State  
6 of Hawaii. Within the scope of authority granted by the bank of  
7 the State of Hawaii board, the president of the bank may execute  
8 instruments on behalf of the bank, including any instrument  
9 granting, conveying, or otherwise affecting any interest in or  
10 lien upon real or personal property.

11 (c) Other officers or employees of, and legal counsel to,  
12 the bank may execute instruments on behalf of the bank when  
13 authorized by the board.

14 § -12 **Certain records confidential.** (a) The following  
15 records of the bank of the State of Hawaii shall be confidential  
16 and shall not be disclosed:

17 (1) Commercial or financial information of a customer of  
18 the bank, whether obtained directly or indirectly,  
19 other than routine credit inquiries concerning  
20 information that is required to be disclosed in  
21 accordance with due legal process;



1 (2) Internal or interagency memoranda or letters that  
2 would not be available by law to a party other than in  
3 litigation with the bank; and

4 (3) Except as provided in section -7, information that  
5 is contained in or related to a report of an  
6 examination or operating or condition reports prepared  
7 by, on behalf of, or for the use of, a state or  
8 federal agency responsible for the regulation or  
9 supervision of any bank activity.

10 (b) As used in this section, "customer" means any person  
11 that has transacted or is transacting business with, or has  
12 used, or is using the services of, the bank of the State of  
13 Hawaii, or for which the bank has acted or is acting as a  
14 fiduciary with respect to trust property.

15 § -13 Short-sale program for problematic mortgages. (a)

16 Pursuant to rules adopted under section -7, the bank of the  
17 State of Hawaii shall establish a short-sale program for the  
18 purpose of acquiring title to residential property encumbered by  
19 certain mortgages and connected to promissory notes, the  
20 ownership to which are claimed by securitized trusts that fail  
21 to adequately demonstrate that the trust has the rights of



1 holders in due course under section 490:3-203(b) and articles 3  
2 and 9 of the Uniform Commercial Code generally.

3 Under the short-sale program, the bank of the State of  
4 Hawaii may purchase residential property occupied by one or more  
5 of its title holders; provided that a mortgagee's lien and its  
6 supporting documentation fails to adequately demonstrate that  
7 the mortgagee has the right to collect on the mortgagor's  
8 indebtedness or that the mortgagee has legal authority to  
9 foreclose on a property.

10 (b) An owner-occupant who has been using the subject  
11 property as a primary residence for a continuous period of not  
12 less than two hundred days immediately prior to the date when  
13 the owner-occupant received a letter of default or notice that  
14 the owner-occupant's application for a mortgage modification  
15 under a federally sponsored program has been denied shall be  
16 entitled to apply for consideration into the short-sale program.  
17 The application shall conform to rules adopted pursuant to  
18 section -7 and include copies of:

- 19 (1) The three most recent statements for the mortgage  
20 loan;  
21 (2) The promissory note;  
22 (3) The mortgage agreement; and



1           (4) The letter of default or notice that the owner-  
2           occupant's application for a mortgage modification  
3           under a federally sponsored program has been denied.

4           (c) Within forty-five days of receiving an application  
5           pursuant to subsection (b), the bank of the State of Hawaii  
6           shall review the application and determine whether the property  
7           shall be accepted for further evaluation.

8           If the bank of the State of Hawaii determines that the  
9           property shall be accepted for further evaluation, the bank  
10          shall send notice to the mortgagee and its agents on record at  
11          the bureau of conveyances, including all affiliates that may be  
12          reported pursuant to any affiliate statement recorded pursuant  
13          to sections 454M-5(a)(4)(F) and 667-58(a), and any entities  
14          purporting to represent the mortgagee as reflected in the  
15          mortgage statements provided in the application. The notice  
16          shall describe the short-sale program and include details about  
17          the program's requirements as set forth by rule under section  
18          -7.

19          If the bank of the State of Hawaii determines that the  
20          application shall not be accepted for further evaluation, the  
21          bank shall provide written notification to the applicant stating



1 the reasons for that determination within the forty-five day  
2 review period.

3 (d) Within thirty days of receiving notice under  
4 subsection (c), the mortgagee shall submit a written response to  
5 the bank of the State of Hawaii. The response shall include:

6 (1) A copy of the promissory note, signed by the  
7 mortgagor, including any endorsements, allonges,  
8 amendments, or riders to the note evidencing the  
9 mortgage debt;

10 (2) A copy of the mortgage document and any amendments,  
11 riders, or other documentation evidencing the  
12 mortgagee's right to foreclose and interest in the  
13 property, including any interest as a successor or  
14 assignee; and

15 (3) A certification under penalty of perjury describing  
16 the nature of the mortgagee's legal ownership of the  
17 mortgage loan. The certification shall provide the  
18 following:

19 (A) Information about the chain of possession and the  
20 transfer between all holders in due course of the  
21 mortgage note from the origination of the  
22 mortgage loan to the present mortgagee; provided





1           that descriptions of each transaction that  
2           effectuated a transfer of the mortgage note shall  
3           include:  
4           (i) The names of the individuals involved;  
5           (ii) The principal employers and the employers'  
6           state of incorporation for the individuals  
7           involved;  
8           (iii) The authority conferred to the individuals;  
9           (iv) The dates on which the mortgage note was  
10          negotiated; and  
11          (v) The manner in which the note was endorsed;  
12          (B) Information about the assignment or transfer of  
13          each mortgage agreement, including:  
14          (i) The entities assigned the rights to enforce  
15          the mortgage agreement;  
16          (ii) The individuals who signed documentation to  
17          effectuate the transfer;  
18          (iii) Their titles;  
19          (iv) Their principal employers;  
20          (v) The state of incorporation of those  
21          employers;



1 (vi) A description of the authority conferred to  
2 the individuals;

3 (vii) The dates on which the mortgage agreements  
4 were assigned or transferred;

5 (viii) The manner of the assignment or transfer;  
6 and

7 (ix) A description of the extent to which the  
8 mortgage agreement transfers or assignments  
9 coincided with the negotiations or transfers  
10 of the mortgage note; and

11 (C) The bureau of conveyances document number for  
12 every assignment or transfer of the mortgage note  
13 or mortgage agreement recorded and a copy of each  
14 filing.

15 The mortgagee's response shall provide an explanation for  
16 any failure to provide any of the items enumerated in this  
17 subsection.

18 Failure to respond to a notice received under subsection  
19 (c) within seventy-five days shall result in an automatic  
20 referral to the department of the attorney general and the  
21 department of commerce and consumer affairs for investigation  
22 pursuant to subsection (f), as well as to the attorney general



1 of the state within which the mortgagee is incorporated. The  
2 automatic referral shall operate as an automatic stay on any  
3 foreclosure action pursuant to subsection (f).

4 (e) At any time after receiving notice under subsection  
5 (c), a mortgagee may elect to participate in the program as a  
6 qualified mortgagee pursuant to rules adopted under  
7 section -7.

8 (f) Within forty-five days of receiving the mortgagee's  
9 response pursuant to subsection (d), the bank of the State of  
10 Hawaii shall make a determination whether to refer the subject  
11 mortgage loan to the department of the attorney general, the  
12 department of commerce and consumer affairs, and the attorney  
13 general of the state within which the mortgagee is incorporated  
14 for a legal investigation and possible action for the purpose of  
15 determining the mortgagee's legal authority to collect on the  
16 mortgage indebtedness and enforce the mortgage agreement;  
17 provided that if no document was filed or recorded respecting a  
18 given assignment or transfer of the mortgage note or mortgage  
19 agreement, or such filing or recording occurred more than  
20 months after the assignment or transfer, the bank of  
21 the State of Hawaii shall make the referral.



1           Written notification of the referral for legal  
2 investigation shall operate as a stay of any foreclosure  
3 proceeding under chapter 667, and may be filed or recorded, as  
4 appropriate, at the land court or bureau of conveyances.

5           Upon a stay pursuant to this subsection, a mortgagee shall  
6 not foreclose upon a mortgage until the department of the  
7 attorney general or the department of commerce and consumer  
8 affairs releases the stay by recording at the bureau of  
9 conveyances, or as otherwise provided by law or court order.

10           If the bank of the State of Hawaii determines that a  
11 referral for investigation is not warranted, the bank shall  
12 promptly notify the mortgagee and the owner-occupant applicant  
13 by the forty-five day period that the subject property is no  
14 longer being evaluated by the short-sale program. The notice  
15 may be recorded at the bureau of conveyances to release the stay  
16 of any foreclosure activity.

17           Nothing in this subsection shall be construed as preventing  
18 a mortgagee from filing a claim in circuit court to lift the  
19 stay by order.

20           (g) Terms and conditions for owner-occupants and qualified  
21 mortgagees participating in the program shall be set forth by  
22 rule under section -7; provided that:



- 1           (1) Should the mortgagee agree to participate in the  
2                    program, the stay on any foreclosure process and the  
3                    referral for investigation made pursuant to subsection  
4                    (f) shall be withdrawn;
- 5           (2) Should the owner-occupant decline the offer purchase  
6                    price under paragraph (3), the stay on any foreclosure  
7                    process and the referral for investigation made  
8                    pursuant to subsection (f) shall be withdrawn;
- 9           (3) Upon agreement by the owner-occupant and the qualified  
10                   mortgagee, the bank of the State of Hawaii may offer  
11                   to purchase the subject property from the owner-  
12                   occupant for a price that shall not exceed seventy-  
13                   five per cent of the principal balance due on the  
14                   mortgage loan at the time of the mortgagee's election  
15                   to participate;
- 16           (4) The amount of the purchase price of the property shall  
17                   be paid to the qualified mortgagee and shall be deemed  
18                   to fully satisfy the subject mortgage debt and release  
19                   the lien held by the mortgage;
- 20           (5) The former owner-occupant shall be permitted to rent  
21                   the property for a minimum period of six months from  
22                   the date of transfer at a rate that shall be based



- 1           upon an independent appraisal of the fair-market rent  
2           for the property;
- 3           (6) The former owner-occupant shall be required to consult  
4           with an approved housing counselor or an approved  
5           budget and credit counselor as defined under chapter  
6           667;
- 7           (7) Upon the recommendation of an approved housing  
8           counselor or an approved budget and credit counselor,  
9           the bank of the State of Hawaii may offer to sell the  
10          subject property back to the former owner-occupant,  
11          subject to a mortgage with a principal that is no more  
12          than ninety per cent of the prior mortgagee's mortgage  
13          loan balance; provided that the payment plan is  
14          reasonable and affordable to the mortgagor; and
- 15          (8) The owner-occupant shall:
- 16                (A) Be prohibited from selling the property for a  
17                period of                months; and
- 18                (B) Shall agree that, upon any resale of the property  
19                to a subsequent purchaser, the owner-occupant  
20                shall pay the bank of the State of Hawaii a share  
21                of the appreciation represented by the proportion  
22                of the mortgage loan to the subsequent sale



1 price; provided that the property is sold for  
2 fair market value at a price approved of by the  
3 bank of the State of Hawaii.

4 (h) Pursuant to rules adopted under section -7, the  
5 bank of the State of Hawaii shall provide grants to approved  
6 housing counselors and approved budget and credit counselors, as  
7 defined under chapter 667, that are based within the State for  
8 the purposes of subsection (g)."

9 SECTION 2. Section 36-1, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§36-1 Responsibility for moneys.** [~~The~~] Except for moneys  
12 deposited with the bank of the State of Hawaii, the director of  
13 finance shall be responsible for the safekeeping of all moneys  
14 paid into the treasury, and for the proper disbursement and  
15 appropriation thereof, pursuant to the laws; and the director  
16 shall be liable therefor on the director's official bond,  
17 provided that in case of the larceny or embezzlement of any  
18 moneys, by any officer of the director's department, or other  
19 persons, the director shall be allowed to give that fact, and  
20 that the director had no collusive knowledge thereof, in  
21 evidence, and the establishment of these facts shall discharge  
22 the director from responsibility."



1 SECTION 3. Section 38-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "depository" to read as  
3 follows:

4 "Depository includes the bank of the State of Hawaii, any  
5 federally insured national or state bank, savings and loan  
6 association, or financial services loan company; or federal or  
7 state credit union insured by the national credit union  
8 administration authorized to do business in this State."

9 SECTION 4. Section 412:1-109, Hawaii Revised Statutes, is  
10 amended by amending the definition of "depository institution"  
11 to read as follows:

12 ""Depository institution" means a financial institution  
13 that is authorized to accept deposits under its chartering or  
14 licensing authority and includes the bank of the State of  
15 Hawaii, a bank, savings bank, savings and loan association,  
16 depository financial services loan company, credit union, or  
17 intra-Pacific bank."

18 SECTION 5. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.





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1 SECTION 6. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Calvin K. Day

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

JAN 19 2012



# H.B. NO. 2103

**Report Title:**

Financial Institutions; State Bank; Mortgage Foreclosure

**Description:**

Establishes the bank of the State of Hawaii. Directs the state bank to develop a program to acquire residential property in situations where the mortgagor is an owner-occupant and the mortgagee is a securitized trust that cannot adequately demonstrate that it is a holder in due course.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

