
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 mortgagees, as defined in



1 chapter 667, 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 for continued sound operation of the
7 bank, 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 of the bank of the State of Hawaii shall
15 consist of the governor; the director of finance; the director
16 of labor and industrial relations; the director of business,
17 economic development, and tourism; and the chairperson of the
18 board of land and natural resources. The powers of the board
19 and the functions of the bank shall be implemented through
20 actions taken and policies and rules adopted 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 of the board may be called at any
7 time upon notice by the governor or by a majority of the members
8 of the board.

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

18 (g) The board may remove and discharge any person
19 appointed in the exercise of its 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 board of the bank of
3 the State of Hawaii shall appoint an advisory board of directors
4 that shall consist of eight members.

5 (b) The members of the advisory board of directors shall
6 include representatives of the State's financial, business,
7 agricultural, housing, and public labor sectors. At least two
8 members shall be officers of banks or credit unions incorporated
9 in the State.

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

16 (d) The advisory board of directors shall:

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



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

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

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

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

12 (5) Participate on loan committees, pursuant to rules
13 adopted by the board of the bank of the State of
14 Hawaii under section -7.

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

21 (b) Whenever any public funds are deposited in the bank,
22 the official having control of the public funds and the sureties



1 on the bond of the official shall be exempt from all liability
2 by reason of loss of any of the funds while deposited in the
3 bank.

4 (c) The bank shall pay interest on deposits of public
5 funds at a rate comparable to rates paid by private depositories
6 of public funds and, as determined by the board of the bank of
7 the State of Hawaii, may offer other financial products to the
8 department of budget and finance.

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

13 **§ -5 Powers of the bank.** The bank of the State of
14 Hawaii may:

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

16 (A) To state chartered or federally chartered lending
17 agencies or institutions or other financial
18 institutions;

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



- 1 (C) Obtained as security pledged for or originated in
2 the restructuring of, any other loan properly
3 originated or participated in by the bank; or
4 (D) To instrumentalities of the State;
- 5 (2) Purchase participation interests in loans made or held
6 by banks, bank holding companies, state chartered or
7 federally chartered lending agencies or institutions,
8 or any other financial institution or entity that
9 provides financial services and meets underwriting
10 standards that are established by the board of the
11 bank of the State of Hawaii and that are generally
12 accepted by state or federal financial regulatory
13 agencies;
- 14 (3) Invest its funds in conformity with policies of the
15 board of the bank of the State of Hawaii and the
16 department of budget and finance;
- 17 (4) Buy and sell federal funds;
- 18 (5) Lease, assign, sell, exchange, transfer, convey,
19 grant, pledge, or mortgage all real and personal
20 property, title to which has been acquired in any
21 manner;



- 1 (6) Perform all acts and do all things necessary,
2 convenient, advisable, or desirable to carry out the
3 powers expressly granted or necessarily implied in
4 this chapter through or by means of its president,
5 officers, agents, or employees or by contracts with
6 any person, firm, or corporation;
- 7 (7) Purchase, guarantee, or hold loans originated by
8 financial institutions doing business in this State;
- 9 (8) Make loans in the form of participation loans to
10 qualified persons residing in or doing business in
11 this State where the originator of the loan is a
12 private financial institution;
- 13 (9) Act as a custodian bank for financial institutions
14 organized under the laws of this State and accept
15 deposits from the financial institutions in connection
16 with this function;
- 17 (10) Issue bank stock loans to financial institutions
18 organized under the laws of this State;
- 19 (11) For financial institutions that make the bank a
20 reserve depository, perform the functions and render
21 the services of a clearinghouse, including all
22 facilities for providing domestic and foreign exchange



1 and may rediscount paper, on terms prescribed by the
2 board of the bank of the State of Hawaii;
3 (12) Enter into contractual agreements with local financial
4 institutions to provide mortgage servicing for
5 properties subject to the short-sale program for
6 problematic mortgages under section -13; and
7 (13) Enter into contractual agreements with local financial
8 institutions for the purpose of supporting the
9 availability of mortgage servicing by licensees
10 maintaining an office in the State pursuant to section
11 454M-5.

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

20 **§ -7 Rulemaking powers.** (a) The board of the bank of
21 the State of Hawaii shall adopt rules to:



- 1 (1) Ensure the safety and soundness of the bank of the
2 State of Hawaii that, to the extent possible, reflect
3 applicable standards for safety and soundness set
4 forth in 12 C.F.R. part 364;
- 5 (2) Specify the bank's powers and permissible investments
6 and activities;
- 7 (3) Authorize specific services that the bank may provide;
- 8 (4) Specify limits for loans and other obligations the
9 bank makes or undertakes;
- 10 (5) Specify reserve requirements;
- 11 (6) Effectuate a short-sale program for the purpose of
12 purchasing owner-occupied residential property in
13 conformity with section -13; and
- 14 (7) Establish other requirements that the board considers
15 necessary.
- 16 (b) The department of commerce and consumer affairs shall
17 examine the bank no less than once each calendar quarter to
18 verify that the bank is complying with the rules adopted
19 pursuant to subsection (a). The department of commerce and
20 consumer affairs shall report the results of the examination to
21 the board of the bank of the State of Hawaii and to the



1 legislature. The report shall be a public record subject to
2 disclosure pursuant to chapter 92.

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

5 **§ -8 Deposits; guaranteed by State; exempt from**
6 **taxation.** (a) All deposits in the bank of the State of Hawaii
7 shall be guaranteed by the State.

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

11 **§ -9 Civil actions.** (a) Civil actions may be brought
12 as provided in this section against the State on account of
13 claims for relief asserted to have arisen out of transactions
14 connected with the operation of the bank of the State of Hawaii.

15 (b) In an action brought under this section, the State
16 shall be designated as the State of Hawaii, doing business as
17 the bank of the State of Hawaii.

18 (c) An action brought under this section may be brought in
19 the same manner and shall be subject to the same laws as other
20 civil actions. The action shall be brought in a circuit court
21 in the State.



1 **§ -10 Public officials; exemption from liability.**

2 Whenever any public funds are deposited in the bank of the State
3 of Hawaii, the public official who deposited the funds and the
4 sureties on any bond of the public official shall be exempt from
5 liability by reason of loss of any of the funds while the funds
6 are deposited in the bank of the State of Hawaii.

7 **§ -11 Conduct of business; execution of instruments.**

8 (a) All business of the bank of the State of Hawaii shall be
9 conducted under the name of the bank of the State of Hawaii.
10 Title to property pertaining to the operation of the bank shall
11 be obtained and conveyed in the name of the bank of the State of
12 Hawaii, doing business as the bank of the State of Hawaii.

13 (b) Instruments shall be executed in the name of the State
14 of Hawaii. Within the scope of authority granted by the board
15 of the bank of the State of Hawaii, the president of the bank
16 may execute instruments on behalf of the bank, including any
17 instrument granting, conveying, or otherwise affecting any
18 interest in or lien upon real or personal property.

19 (c) Other officers or employees of, and legal counsel to,
20 the bank may execute instruments on behalf of the bank when
21 authorized by the board of the bank of the State of Hawaii.



1 **§ -12 Certain records confidential.** (a) The following
2 records of the bank of the State of Hawaii shall be confidential
3 and shall not be disclosed:

4 (1) Commercial or financial information of a customer of
5 the bank, whether obtained directly or indirectly,
6 other than information disclosed in routine credit
7 inquiries concerning information that is required to
8 be disclosed in accordance with due legal process;

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

12 (3) Except as provided in section -7, information that
13 is contained in or related to a report of an
14 examination or operating or condition reports prepared
15 by, on behalf of, or for the use of, a state or
16 federal agency responsible for the regulation or
17 supervision of any bank activity.

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



1 **§ -13 Purchase program for distressed residential**
2 **properties encumbered by problematic mortgages.** (a) Pursuant
3 to rules adopted under section -7, the bank of the State of
4 Hawaii shall establish a purchase program for the purpose of
5 acquiring title to residential property encumbered by certain
6 mortgages and connected to promissory notes.

7 Under the purchase program, the bank of the State of Hawaii
8 may purchase residential property occupied by one or more
9 persons who hold title to the property if the mortgagee's lien
10 and its supporting documentation fail to adequately demonstrate
11 that the mortgagee has the right to collect on the mortgagor's
12 indebtedness or that the mortgagee has legal authority to
13 foreclose on a property.

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



- 1 (1) The three most recent statements for the mortgage
- 2 loan;
- 3 (2) The promissory note;
- 4 (3) The mortgage agreement; and
- 5 (4) The letter of default or notice that the owner-
- 6 occupant's application for a mortgage modification
- 7 under a federally sponsored program has been denied.

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

12 If the bank of the State of Hawaii determines that the
13 property shall be accepted for further evaluation, within the
14 forty-five day review period, the bank shall send notice to the
15 mortgagee and its agents on record at the bureau of conveyances,
16 including all affiliates that may be reported pursuant to any
17 affiliate statement recorded pursuant to sections 454M-
18 5(a)(4)(F) and 667-58(a), and any entities purporting to
19 represent the mortgagee as reflected in the mortgage statements
20 provided in the application. The notice shall describe the
21 purchase program and include details about the program's



1 requirements as set forth by rules adopted pursuant to
2 section -7.

3 If the bank of the State of Hawaii determines that the
4 application shall not be accepted for further evaluation, the
5 bank shall provide written notification to the applicant stating
6 the reasons for that determination within the forty-five day
7 review period.

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

- 11 (1) A copy of the promissory note, signed by the
12 mortgagor, including any endorsements, allonges,
13 amendments, or riders to the note evidencing the
14 mortgage debt;
- 15 (2) A copy of the mortgage document and any amendments,
16 riders, or other documentation evidencing the
17 mortgagee's right to foreclose and interest in the
18 property, including any interest as a successor or
19 assignee; and
- 20 (3) A certification under penalty of perjury describing
21 the nature of the mortgagee's legal ownership of the
22 mortgage loan that includes:



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



- 1 (iv) Their principal employers;
- 2 (v) The state of incorporation of those
- 3 employers;
- 4 (vi) A description of the authority conferred to
- 5 the individuals;
- 6 (vii) The dates on which the mortgage agreements
- 7 were assigned or transferred;
- 8 (viii) The manner of the assignment or transfer;
- 9 and
- 10 (ix) A description of the extent to which the
- 11 mortgage agreement transfers or assignments
- 12 coincided with the negotiations or transfers
- 13 of the mortgage note; and
- 14 (C) The bureau of conveyances document number for
- 15 every assignment or transfer of the mortgage note
- 16 or mortgage agreement recorded and a copy of each
- 17 filing.

18 The mortgagee's response shall provide an explanation for

19 any failure to provide any of the items enumerated in this

20 subsection.

21 Failure to respond to a notice received under subsection

22 (c) within seventy-five days shall result in an automatic



1 referral to the department of the attorney general and the
2 department of commerce and consumer affairs for investigation
3 pursuant to subsection (f), as well as to the attorney general
4 of the state within which the mortgagee is incorporated. An
5 automatic referral pursuant to this subsection shall pursuant to
6 subsection (f) operate as an automatic stay on any foreclosure
7 action.

8 (e) At any time after receiving notice under subsection
9 (c), a mortgagee may elect to participate in the purchase
10 program as a qualified mortgagee pursuant to rules adopted under
11 section -7.

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



1 agreement, or such filing or recording occurred more than
2 months after the assignment or transfer, the bank of
3 the State of Hawaii shall make the referral.

4 Written notification of the referral for legal
5 investigation pursuant to this section shall operate as a stay
6 of any foreclosure proceeding under chapter 667, and may be
7 filed or recorded, as appropriate, at the land court or bureau
8 of conveyances.

9 Upon a stay pursuant to this subsection, a mortgagee shall
10 not foreclose upon a mortgage subject to the stay until the
11 department of the attorney general or the department of commerce
12 and consumer affairs releases the stay by recording a release at
13 the bureau of conveyances, or as otherwise provided by law or
14 court order.

15 If the bank of the State of Hawaii determines that a
16 referral for investigation is not warranted, the bank shall
17 promptly notify the mortgagee and the owner-occupant applicant
18 before the end of the forty-five day period that the subject
19 property is no longer being evaluated by the purchase program.
20 The notice may be recorded at the bureau of conveyances to
21 release the stay of any foreclosure activity.



1 Nothing in this subsection shall be construed as preventing
2 a mortgagee from filing a claim in circuit court to lift the
3 stay by order.

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

7 (1) Should the mortgagee agree to participate in the
8 purchase program, the stay on any foreclosure process
9 and the referral for investigation made pursuant to
10 subsection (f) shall be withdrawn;

11 (2) Should the owner-occupant decline the offer purchase
12 price under paragraph (3), the stay on any foreclosure
13 process and the referral for investigation made
14 pursuant to subsection (f) shall be withdrawn;

15 (3) Upon agreement by the owner-occupant and the qualified
16 mortgagee, the bank of the State of Hawaii may offer
17 to purchase the subject property from the owner-
18 occupant for a price that shall not exceed seventy-
19 five per cent of the principal balance due on the
20 mortgage loan at the time of the mortgagee's election
21 to participate;



- 1 (4) The amount of the purchase price of the property shall
2 be paid to the qualified mortgagee and shall be deemed
3 to fully satisfy the subject mortgage debt and release
4 the lien held by the mortgagee;
- 5 (5) The former owner-occupant shall be permitted to rent
6 the property for a minimum period of six months from
7 the date of transfer at a rate that shall be based
8 upon an independent appraisal of the fair-market rent
9 for the property;
- 10 (6) The former owner-occupant shall be required to consult
11 with an approved housing counselor or an approved
12 budget and credit counselor as defined under chapter
13 667;
- 14 (7) Upon the recommendation of an approved housing
15 counselor or an approved budget and credit counselor,
16 the bank of the State of Hawaii may offer to sell the
17 subject property back to the former owner-occupant
18 without the property being subject to a mortgage and
19 for a price that shall not exceed ninety per cent of
20 the prior mortgagee's mortgage loan balance; provided
21 that the payment plan is reasonable and affordable to
22 the owner-occupant; and



1 (8) The owner-occupant shall:

2 (A) Be prohibited from selling the property for a
3 period of months after repurchasing it
4 pursuant to paragraph (7); and

5 (B) Agree that, upon any resale of the property to a
6 subsequent purchaser, the owner-occupant shall
7 pay the bank of the State of Hawaii a share of
8 the appreciation represented by the proportion of
9 the price at which the owner-occupant purchased
10 the property from the bank of the State of Hawaii
11 to the subsequent sale price; provided that the
12 property is sold for fair market value at a price
13 approved of by the bank of the State of Hawaii.

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

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

21 "**§36-1 Responsibility for moneys.** [The] Except for moneys
22 deposited with the bank of the State of Hawaii, the director of



1 finance shall be responsible for the safekeeping of all moneys
2 paid into the treasury, and for the proper disbursement and
3 appropriation thereof, pursuant to the laws; and the director
4 shall be liable therefor on the director's official bond,
5 provided that in case of the larceny or embezzlement of any
6 moneys, by any officer of the director's department, or other
7 persons, the director shall be allowed to give that fact, and
8 that the director had no collusive knowledge thereof, in
9 evidence, and the establishment of these facts shall discharge
10 the director from responsibility."

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

14 "Depository includes the bank of the State of Hawaii, any
15 federally insured national or state bank, savings and loan
16 association, or financial services loan company; or federal or
17 state credit union insured by the national credit union
18 administration authorized to do business in this State."

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



1 ""Depository institution" means a financial institution
2 that is authorized to accept deposits under its chartering or
3 licensing authority and includes the bank of the State of
4 Hawaii, a bank, savings bank, savings and loan association,
5 depository financial services loan company, credit union, or
6 intra-Pacific bank."

7 SECTION 5. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect on July 1, 2112.



Report Title:

Financial Institutions; State Bank; Mortgage Foreclosure

Description:

Establishes the bank of the State of Hawaii. Effective July 1, 2112. (HB2103 HD1)

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

