HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

H.B. NO. 1531

A BILL FOR AN ACT

RELATING TO SAVINGS PROGRAMS.

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

SECTION 1. The legislature finds that the high cost of housing in Hawaii makes it extremely difficult for families to save enough money to make a down payment on their first home.

The purpose of this Act is to establish a homeownership savings program.

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

"CHAPTER

HOMEOWNERSHIP SAVINGS PROGRAM

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

"Account" or "homeownership account" means an individual savings account established in accordance with this chapter.

"Account owner" means the individual who enters into a homeownership savings agreement pursuant to this chapter.

"Financial organization" means an organization authorized to do business in the State that is:

(1) Certified as an insurer by the insurance commissioner;

(2) Licensed or chartered as a financial institution by the commissioner of financial institutions;

(3) Chartered by an agency of the federal government;

(4) Subject to the jurisdiction and regulation of the securities and exchange commission of the federal government; or

(5) Any other entity otherwise authorized to act in this State as a trustee pursuant to the Employee Retirement Income Security Act of 1974, as may be amended from time to time.

"First principal residence" means a residential property that, upon purchase, shall be owned and occupied as the only home by an account owner.

"Homeownership savings agreement" means an agreement between the director of finance or a financial organization and the account owner.

"Management contract" means the contract executed by the director of finance and a financial organization selected to act as a depository and manager of the program.

"Nonqualified withdrawal" means a withdrawal from an account that is not used to make a down payment on the account owner's first principal residence.

"Program" means the homeownership savings program.

"Program manager" means a financial organization selected by the director of finance to act as a depository and manager of the program.

"Qualified withdrawal" means withdrawal from an account to make a down payment on the account owner's first principal residence.

§ -2 Homeownership savings program established. There is established the homeownership savings program. The purpose of this program is to enable persons to save for the down payment on their first principal residence.

§ -3 Functions and powers of the director of finance. (a) The director of finance shall implement the program under the terms and conditions established by this chapter.

(b) The director of finance may enter into homeownership savings agreements with account owners pursuant to this chapter.

(c) The director of finance may implement the program through the use of financial organizations as account depositories and managers. Under the program, individuals may establish accounts directly with an account depository.

(d) The director of finance may solicit proposals from financial organizations to act as program managers. Financial organizations submitting proposals shall describe the investment instruments that will be held in accounts. The director of finance shall select as program managers the financial organizations from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this State, based on the following factors:

(1) The financial stability and integrity of the financial organization;

(2) The safety of the investment instruments being offered;

(3) The ability of the investment instruments to track the expected increasing costs of homeownership;

(4) The ability of the financial organization to satisfy recordkeeping and reporting requirements;

(5) The financial organization's plan for promoting the program and the resources it is willing to allocate to promote the program;

(6) The fees, if any, proposed to be charged to persons for opening accounts;

(7) The minimum initial deposit and minimum contributions that the financial organization will require;

(8) The ability of financial organizations to accept electronic withdrawals, including payroll deduction plans; and

(9) Other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses to operate the program.

(e) The director of finance may enter into a management contract of up to ten years with a financial organization. The management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with the requirements of section -4;

(2) Keep adequate records of each account, keep each account segregated from each other account, and provide the director of finance with the information necessary to prepare the statements required by section -4;

(3) Compile information contained in statements required to be prepared under section -4 and provide the compilations to the director of finance;

(4) If there is more than one program manager, provide the director of finance with the information necessary to determine compliance with section -4;

(5) Provide the director of finance or designee access to the books and records of the program manager to the extent needed to determine compliance with the contract;

(6) Hold all accounts for the benefit of the account owner;

(7) Be audited at least annually by a firm of independent certified public accountants selected by the program manager, and provide the results of the audit to the director of finance;

(8) Provide the director of finance with copies of all regulatory filings and reports related to the program made by it during the term of the management contract or while it is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the director of finance, the results of any periodic examination of the manager by any state or federal banking, insurance, or securities commission, except to the extent that the report or reports may not be disclosed under applicable law or the rules of the commission; and

(9) Undertake to provide the information required by rule 15c2-12(b)(5) under the Securities Exchange Act of 1934 pursuant to a continuing disclosure certificate for the benefit of the account owners.

(f) The director of finance may select more than one financial organization and investment instrument for the program.

(g) The director of finance may require an audit to be conducted of the operations and financial position of the program manager at any time if the director of finance has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program manager.

(h) During the term of any contract with a program manager, the director of finance shall conduct an examination of the manager and its handling of accounts. The examination shall be conducted at least biennially if the manager is not otherwise subject to periodic examination by the commissioner of financial institutions, the Federal Deposit Insurance Corporation, or other similar entity.

(i) The director of finance may establish a nominal fee for an application for a homeownership account.

(j) The director of finance may enter into contracts for the services of consultants for rendering professional and technical assistance and advice and any other contracts that are necessary and proper for the implementation of the program.

(k) The director of finance may adopt rules to implement the program pursuant to chapter 91.

§ -4 Program requirements; homeownership account. (a) A homeownership account may be opened by any person who desires to save money for the down payment on the purchase of the person's first principal residence. The person shall be considered the account owner as defined in section -1. An application for an account shall be in the form prescribed by the program and shall contain the following:

(1) The name, address, and social security number or employer identification number of the account owner;

(2) A certification relating to no excess contributions; and

(3) Other information as the program may require.

(b) Any person or entity, regardless of whether the person or entity is the account owner, may make contributions to the account after the account is opened.

(c) Contributions to accounts may be made only in cash.

(d) An account owner may withdraw all or part of the balance from an account on sixty days' notice or a shorter period as may be authorized under rules governing the program. The rules shall include provisions to generally enable the determination of whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may require one or more of the following:

(1) An account owner seeking to make a qualified withdrawal shall provide certifications of the account owner's anticipated purchase of the account owner's first principal residence and the required down payment amount; and

(2) Withdrawals not meeting the requirements of this section shall be treated as nonqualified withdrawals by the program manager, and if the withdrawals are subsequently deemed qualified withdrawals within a reasonable time period as specified by the director of finance, the account owner shall seek any refund of penalties directly from the program.

(e) In the case of any nonqualified withdrawal from an account, an amount equal to ten per cent of the portion of the withdrawal constituting income shall be collected as a penalty and paid to the homeownership savings program trust fund.

(f) The program shall provide separate accounting for each designated beneficiary.

(g) No account owner shall be permitted to direct the investment of any contributions to an account or the earnings on it.

(h) An account owner shall not use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.

(i) Contributions in excess of those reasonably necessary to provide for the down payment on the purchase of the account owner's first principal residence shall not be allowed.

(j) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, the distribution shall be reported to the account owner, or the distributee, to the extent required by federal law or regulation.

Statements shall be provided to each account owner at least once each year within sixty days after the end of the twelve-month period to which they relate. The statement shall identify the contributions made during a preceding twelve-month period, the total contributions made to the account through the end of the period, the value of the account at the end of the period, distributions made during the period, and any other information that the director of finance requires to be reported to the account owner.

Statements and information relating to accounts shall be prepared and filed to the extent required by federal and state tax law.

(k) An annual fee may be imposed upon the account owner for the maintenance of the account.

(l) A minimum length of time as determined by the director of finance may be required of the account before distributions for homeownership can be made.

(m) The program shall disclose in writing the following information to each account owner and prospective account owner of a homeownership account:

(1) The terms and conditions for purchasing a homeownership account;

(2) The person or entity entitled to terminate the homeownership savings agreement;

(3) The terms and conditions under which money may be wholly or partially withdrawn from the program, including any reasonable charges and fees that may be imposed for withdrawal; and

(4) The probable tax consequences associated with contributions to and distributions from accounts.

§ -5 Program limitations; homeownership account. (a) Nothing in this chapter shall be construed to guarantee that amounts saved pursuant to the program will be sufficient to cover the down payment on the anticipated purchase of an account owner's first principal residence.

(b) Nothing in this chapter shall create or be construed to create any obligation of the director of finance, the State, or any agency or instrumentality of the State to guarantee for the benefit of any account owner with respect to:

(1) The rate of interest or other return on any account;

(2) The payment of interest or other return on any account; or

(3) The repayment of the principal of any account.

The director of finance shall provide by rule that every homeownership savings agreement, contract, application, deposit slip, or other similar document that may be used in connection with a contribution to an account clearly indicate that the account is not insured by the State and neither the principal deposited nor the investment return is guaranteed by the State.

§ -6 Homeownership savings program trust fund. (a) There is established the homeownership savings program trust fund. The director of finance shall have custody of the fund. All payments from the fund shall be made in accordance with this chapter.

(b) The fund shall consist of a trust account and an operating account. The trust account shall include amounts received by the homeownership savings program pursuant to homeownership savings agreements, administrative charges, fees, and all other amounts received by the program from other sources, and interest and investment income earned by the fund. The director of finance, from time to time, shall make transfers from the trust account to the operating account for the immediate payment of obligations under homeownership savings agreements, operating expenses, and administrative costs of the homeownership savings program.

(c) The director of finance, as trustee, shall invest the assets of the fund in securities that constitute legal investments under state laws relating to the investment of trust fund assets by trust companies, including those authorized by article 8 of chapter 412. Trust fund assets shall be kept separate and shall not be commingled with other assets, except as provided in this chapter. The director of finance may enter into contracts to provide for investment advice and management, custodial services, and other professional services for the administration and investment of the program.

(d) The director of finance shall provide for the administration of the fund, including maintaining participant records and accounts, and providing annual audited reports. The director of finance may enter into contracts for administrative services, including reports.

(e) All administrative fees, costs, and expenses, including investment fees and expenses, shall be paid from the operating account of the fund and, notwithstanding any other law to the contrary, may be made without appropriation or allotment.

§ -7 Tax reporting. The director of finance or the program manager of the homeownership savings program, or a designee, shall file a report annually, with the director of taxation, setting forth the names and identification numbers of account owners and distributees of homeownership accounts, the amounts contributed to the accounts, the amounts distributed from the accounts, and the nature of the distributions as qualified withdrawals or as withdrawals other than qualified withdrawals, and any other information that the director of taxation may require regarding the taxation under this chapter of amounts contributed to or withdrawn from the accounts."

SECTION 3. Section 235-7, Hawaii Revised Statutes, is amended to read as follows:

"**§235-7 Other provisions as to gross income, adjusted gross income, and taxable income.** (a) There shall be excluded from gross income, adjusted gross income, and taxable income:

(1) Income not subject to taxation by the State under the Constitution and laws of the United States;

(2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;

(3) Any compensation received in the form of a pension for past services;

(4) Compensation paid to a patient affected with Hansen's disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen's disease;

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(5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;

(6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this chapter not to repeal or supersede any express exemption or exclusion;

(7) Income received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii National Guard as compensation for performance of duty, equivalent to pay received for forty-eight drills (equivalent of twelve weekends) and fifteen days of annual duty, at an:

(A) E-1 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2004;

(B) E-2 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2005;

(C) E-3 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2006;

(D) E-4 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2007; and

(E) E-5 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2008;

(8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country; provided that the

tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft that are documented or registered under the laws of the United States;

(9) The value of legal services provided by a legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;

(10) Amounts paid, directly or indirectly, by a legal service plan to a taxpayer as payment or reimbursement for the provision of legal services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;

(11) Contributions by an employer to a legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents;

(12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3; provided that amounts retained

by the acting utility for collection or other costs shall not be included in this exemption;

(13) Amounts received in the form of a cable surcharge by an electric utility company acting on behalf of a certified cable company under section 269-134; provided that any amounts retained by that electric utility company for collection or other costs shall not be included in this exemption; [~~and~~]

(14) One hundred per cent of the gain realized by a fee simple owner from the sale of a leased fee interest in units within a condominium project, cooperative project, or planned unit development to the association of owners under chapter 514A or 514B, or the residential cooperative corporation of the leasehold units.

For purposes of this paragraph:

"Fee simple owner" shall have the same meaning as provided under section 516-1; provided that it shall include legal and equitable owners;

"Legal and equitable owner", and "leased fee interest" shall have the same meanings as provided under section 516-1; and

"Condominium project" and "cooperative project" shall have the same meanings as provided under section 514C-1[~~.~~];

(15) Interest accrued on a homeownership account established pursuant to chapter   ; and

(16) Distributions received by an account owner under the homeownership savings program established pursuant to chapter   ; provided that the distribution constitutes a qualified withdrawal, as defined in section   -1.

(b) There shall be included in gross income, adjusted gross income, and taxable income:

(1) Unless excluded by this chapter relating to the uniformed services of the United States, cost-of-living allowances and other payments exempted by section 912 of the Internal Revenue Code, but section 119 of the Internal Revenue Code nevertheless shall apply; and

(2) Unless expressly exempted or excluded as provided by subsection (a)(6), interest on the obligations of a State or a political subdivision thereof.

(c) The deductions of or based on dividends paid or received, allowed to a corporation under chapter 1, subchapter B, part VIII of the Internal Revenue Code, shall not be allowed. In lieu thereof there shall be allowed as a deduction the entire amount of dividends received by any corporation upon the shares of stock of a national banking association, qualifying dividends, as defined in section 243(b) of the Internal Revenue Code, received by members of an affiliated group, or dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (Public Law 85-699) upon shares of stock qualifying under paragraph (3), seventy per cent of the amount received by any corporation as dividends:

(1) Upon the shares of stock of another corporation, if at the date of payment of the dividend at least ninety-five per cent of the other corporation's capital stock is owned by one or more corporations doing business in this State and if the other corporation is subjected to an income tax in another jurisdiction (but

subjection to federal tax does not constitute subjection to income tax in another jurisdiction); and

(2) Upon the shares of stock of a bank or insurance company organized and doing business under the laws of the State;

(3) Upon the shares of stock of another corporation, if at least fifteen per cent of the latter corporation's business, for the taxable year of the latter corporation preceding the payment of the dividend, has been attributed to this State.

However, except for national bank dividends, the deductions under this subsection are not allowed when they would not have been allowed under section 243 of the Internal Revenue Code, as amended by Public Law 85-866, by reason of subsections (b) and (c) of section 246 of the Internal Revenue Code. For the purposes of this subsection fifteen per cent of a corporation's business shall be deemed to have been attributed to this State if fifteen per cent or more of the entire gross income of the corporation as defined in this chapter (which for the purposes of this subsection shall be computed without regard to source in the State and shall include income not taxable by reason of the fact that it is from property not owned in the State or from a trade or business not carried on in the State in whole or in part), under section 235-5 and the other provisions of this chapter, shall have been attributed to the State and subjected to assessment of the taxable income therefrom (including the determination of the resulting net loss, if any).

(d) (1) For taxable years ending before January 1, 1967, the net operating loss deductions allowed as carrybacks and carryovers by the Internal Revenue Code shall not be allowed. In lieu thereof the net operating loss deduction shall consist of the excess of the deductions allowed by this chapter over the gross income, computed with the modifications specified in paragraphs (1) to (4) of section 172(d) of the Internal Revenue Code, and with the further modification stated in paragraph (3) hereof; and shall be allowed as a deduction in computing the taxable income of the taxpayer for the succeeding taxable year;

(2) (A) With respect to net operating loss deductions resulting from net operating losses for taxable

years ending after December 31, 1966, the net operating loss deduction provisions of the Internal Revenue Code shall apply; provided that there shall be no net operating loss deduction carried back to any taxable year ending prior to January 1, 1967;

(B) In the case of a taxable year beginning in 1966 and ending in 1967, the entire amount of all net operating loss deductions carried back to the taxable year shall be limited to that portion of taxable income for such taxable year which the number of days in 1967 bears to the total days in the taxable year ending in 1967; and

(C) The computation of any net operating loss deduction for a taxable year covered by this subsection shall require the further modifications stated in paragraphs (3), (4), and (5) of this subsection;

(3) In computing the net operating loss deduction allowed by this subsection, there shall be included in gross income the amount of interest which is excluded from

gross income by subsection (a), decreased by the amount of interest paid or accrued which is disallowed as a deduction by subsection (e). In determining the amount of the net operating loss deduction under this subsection of any corporation, there shall be disregarded the net operating loss of such corporation for any taxable year for which the corporation is an electing small business corporation;

(4) No net operating loss carryback or carryover shall be allowed by this chapter if not allowed under section 172 of the Internal Revenue Code;

(5) The election to relinquish the entire carryback period with respect to a net operating loss allowed under section 172(b)(3)(C) of the Internal Revenue Code shall be operative for the purposes of this chapter; provided that no taxpayer shall make such an election as to a net operating loss of a business where such net operating loss occurred in the taxpayer's business prior to the taxpayer entering business in this State; and

(6) The five-year carryback period for net operating losses for any taxable year ending during 2001 and 2002 in section 172(b)(1)(H) of the Internal Revenue Code as it read on December 31, 2008, shall not be operative for purposes of this chapter; and

(7) The election for the carryback for 2008 or 2009 net operating losses of small businesses as provided in section 172(b)(1)(H) of the Internal Revenue Code as it read on December 31, 2009, shall not be operative for purposes of this chapter.

(e) There shall be disallowed as a deduction the amount of interest paid or accrued within the taxable year on indebtedness incurred or continued, (1) to purchase or carry bonds the interest upon which is excluded from gross income by subsection (a); or (2) to purchase or carry property owned without the State, or to carry on trade or business without the State, if the taxpayer is a person taxable only upon income from sources in the State.

(f) Losses of property as the result of tidal wave, hurricane, earthquake, or volcanic eruption, or as a result of flood waters overflowing the banks or walls of a river or stream, or from any other natural disaster, to the extent of the amount deductible, under this chapter, not compensated for by insurance or otherwise, may be deducted in the taxable year in which sustained, or at the option of the taxpayer may be deducted in equal installments over a period of five years, the first such year to be the calendar year or fiscal year of the taxpayer in which such loss occurred.

(g) The following annual deductions from gross income shall be allowed for contributions to a homeownership account established pursuant to chapter   :

(1) Up to $ for individual taxpayers;

(2) Up to $ for married couples filing separate returns; provided that each spouse may claim a deduction up to $; and

(3) Up to $ for married couples filing joint returns, individuals filing as the head of households, or individuals filing as surviving spouses.

If the amount of the deduction exceeds the taxpayer's taxable income for the taxable year the contribution is made, the excess deduction may be used as a deduction against the taxpayer's

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taxable income in subsequent tax years until the excess deduction is exhausted."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that section 3 shall apply to taxable years beginning after December 31, 2016.

INTRODUCED BY: _______________

By Request

JAN 25 2017

H.B. NO. 1531

Report Title:
Homeownership Savings Program

Description:
Establishes a homeownership savings program to enable persons to save for the down payment on their first principal residence.

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