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# A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

1 PART I

2 SECTION 1. The legislature finds that the shortage of  
3 safe, decent, and sanitary housing has been a persistent problem  
4 in Hawaii for decades. Almost 50 years ago, in 1970, the Hawaii  
5 state legislature recognized the need to address the severe  
6 shortfall of affordable housing and passed H.B. No. 397, as  
7 amended, which was enacted into law as Act 105, Session Laws of  
8 Hawaii 1970, and codified as chapter 359A, Hawaii Revised  
9 Statutes. This enabling legislation expanded the powers of the  
10 then Hawaii Housing Authority to provide for-sale affordable  
11 housing units to the general public, in addition to providing  
12 affordable rental housing units. This legislation was the  
13 predecessor to what is today known as the Hawaii housing finance  
14 and development corporation.

15 In Act 105, the legislature noted "a critical shortage of  
16 housing units for lower and middle income residents" and  
17 emphasized the importance of affordable housing to the fabric of



1 society. Act 105 also cited studies indicating that the high  
2 cost of housing is the result of multiple factors, including  
3 "the cost and availability of land, the cost of development, the  
4 cost and availability of financing, the cost added by government  
5 regulation, the cost and availability of labor and materials,  
6 the inflationary state of the economy", and "conflicting  
7 priorities in our pluralistic society".

8 The legislature further finds that, almost a half century  
9 after Act 105, the shortage of affordable housing still exists  
10 and has grown to crisis proportions. With the limited amount of  
11 developable land and the lack of needed infrastructure, we find  
12 median prices for single family homes on Oahu hovering at around  
13 \$750,000. Recent studies show a need for 60,000 housing units  
14 by the year 2020. It is necessary, therefore, for the  
15 legislature to take steps to preserve existing affordable  
16 housing units for as long as possible. This has not been the  
17 case in recent years relative to government-assisted or mandated  
18 affordable housing units. Because of the lack of financial or  
19 other resources, government agencies have often opted to waive  
20 their right of first refusal to repurchase housing units that  
21 are sold within the designated restriction period.



1           The intent of this Act is to create a pool of affordable  
2 housing units that will remain permanently affordable through  
3 the purchase and management of the units by the housing trust.

4           The purpose of this Act is to:

5           (1) Allow the Hawaii community development authority to  
6 waive a right to repurchase a reserved or workforce  
7 unit and transfer the right of repurchase to a  
8 qualified nonprofit housing trust;

9           (2) Allow the counties to waive their right of first  
10 refusal to repurchase certain privately-developed  
11 affordable housing units and transfer that right of  
12 repurchase to a qualified nonprofit housing trust;

13           (3) Allow the Hawaii housing finance and development  
14 corporation to waive its first option to repurchase  
15 certain real property and transfer the right of  
16 repurchase to a qualified nonprofit housing trust;

17           (4) Amend the means of calculating the maximum price for  
18 the Hawaii housing finance and development  
19 corporation's first option to purchase real property;

20           (5) Amend the low-income housing tax credit so that  
21 federal at-risk rules, deductions limited to amount at



1 risk, and passive activity loss limitations do not  
2 apply relative to investments in buildings and  
3 projects claiming credit; and

4 (6) Appropriate funds to establish one full-time  
5 equivalent (1.00 FTE) position to oversee the low-  
6 income housing tax credit.

7 SECTION 2. Chapter 206E, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10 "§206E- Reserved and workforce housing units; transfer  
11 to qualified nonprofit housing trust. (a) Any law to the  
12 contrary notwithstanding, the authority may authorize a  
13 designated qualified nonprofit housing trust to administer the  
14 covenants and rules related to the reserved housing and  
15 workforce housing programs. Additionally, the authority may  
16 waive its right to repurchase a reserved or workforce housing  
17 unit during the restriction period and may transfer that right  
18 of repurchase to a qualified nonprofit housing trust for the  
19 purpose of maintaining the reserved or workforce housing unit as  
20 an affordable housing unit. If the repurchase rights are  
21 transferred to a qualified nonprofit housing trust, the



1 restrictions prescribed in this chapter or in rules adopted by  
2 the authority shall be automatically extinguished and shall not  
3 attach in subsequent transfers of title; provided further that  
4 the qualified nonprofit housing trust shall establish new  
5 perpetual buyback restrictions to effectuate the long-term  
6 affordability of a housing unit.

7 (b) A qualified nonprofit housing trust shall report the  
8 status and use of its housing units to the authority by November  
9 30 of each calendar year.

10 (c) The authority shall submit to the legislature no later  
11 than twenty days prior to the convening of each regular session,  
12 an annual report on the status, use, and disposition of  
13 qualified nonprofit housing trusts under its jurisdiction."

14 SECTION 3. Section 46-15.1, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§46-15.1 Housing; county powers** (a) Any law to the  
17 contrary notwithstanding, any county shall have and may exercise  
18 the same powers, subject to applicable limitations, as those  
19 granted the Hawaii housing finance and development corporation  
20 pursuant to chapter 201H insofar as those powers may be  
21 reasonably construed to be exercisable by a county for the



1 purpose of developing, constructing, and providing low- and  
2 moderate-income housing; provided that no county shall be  
3 empowered to cause the State to issue general obligation bonds  
4 to finance a project pursuant to this section; provided further  
5 that county projects shall be granted an exemption from general  
6 excise or receipts taxes in the same manner as projects of the  
7 Hawaii housing finance and development corporation pursuant to  
8 section 201H-36; and provided further that section 201H-16 shall  
9 not apply to this section unless federal guidelines specifically  
10 provide local governments with that authorization and the  
11 authorization does not conflict with any state laws. The powers  
12 shall include the power, subject to applicable limitations, to:

- 13 (1) Develop and construct dwelling units, alone or in  
14 partnership with developers;
- 15 (2) Acquire necessary land by lease, purchase, exchange,  
16 or eminent domain;
- 17 (3) Provide assistance and aid to a public agency or other  
18 person in developing and constructing new housing and  
19 rehabilitating existing housing for elders of low- and  
20 moderate-income, other persons of low- and moderate-  
21 income, and persons displaced by any governmental



- 1           action, by making long-term mortgage or interim  
2           construction loans available;
- 3           (4) Contract with any eligible bidders to provide for  
4           construction of urgently needed housing for persons of  
5           low- and moderate-income;
- 6           (5) Guarantee the top twenty-five per cent of the  
7           principal balance of real property mortgage loans,  
8           plus interest thereon, made to qualified borrowers by  
9           qualified lenders;
- 10          (6) Enter into mortgage guarantee agreements with  
11          appropriate officials of any agency or instrumentality  
12          of the United States to induce those officials to  
13          commit to insure or to insure mortgages under the  
14          National Housing Act, as amended;
- 15          (7) Make a direct loan to any qualified buyer for the  
16          downpayment required by a private lender to be made by  
17          the borrower as a condition of obtaining a loan from  
18          the private lender in the purchase of residential  
19          property;
- 20          (8) Provide funds for a share, not to exceed fifty per  
21          cent, of the principal amount of a loan made to a



1 qualified borrower by a private lender who is unable  
2 otherwise to lend the borrower sufficient funds at  
3 reasonable rates in the purchase of residential  
4 property; and

5 (9) Sell or lease completed dwelling units.

6 For purposes of this section, a limitation is applicable to  
7 the extent that it may reasonably be construed to apply to a  
8 county.

9 (b) Each county shall recognize housing units developed by  
10 the department of Hawaiian home lands and issue affordable  
11 housing credits to the department of Hawaiian home lands. The  
12 credits shall be transferable and shall be issued on a one-  
13 credit for one-unit basis, unless the housing unit is eligible  
14 for additional credits as provided by adopted county ordinances,  
15 rules, or any memoranda of agreement between a county and the  
16 department of Hawaiian home lands. In the event that credits  
17 are transferred by the department of Hawaiian home lands,  
18 twenty-five per cent of any monetary proceeds from the transfer  
19 shall be used by the department of Hawaiian home lands to  
20 develop units for rental properties. Credits shall be issued  
21 for each single-family residence, multi-family unit, other





1 residential unit, whether for purposes of sale or rental, or if  
2 allowed under the county's affordable housing programs, vacant  
3 lot, developed by the department of Hawaiian home lands. The  
4 credits may be applied county-wide within the same county in  
5 which the credits were earned to satisfy affordable housing  
6 obligations imposed by the county on market-priced residential  
7 and non-residential developments. County-wide or project-  
8 specific requirements for housing class, use, or type; or  
9 construction time for affordable housing units shall not impair,  
10 restrict, or condition the county's obligation to apply the  
11 credits in full satisfaction of all county requirements, whether  
12 by rule, ordinance, or particular zoning conditions of a  
13 project. Notwithstanding any provisions herein to the contrary,  
14 the department may enter into a memorandum of agreement with the  
15 county of Kauai to establish, modify, or clarify the conditions  
16 for the issuance, transfer, and redemption of the affordable  
17 housing credits in accordance with county affordable housing  
18 ordinances or rules. Notwithstanding any provisions herein to  
19 the contrary, the department may enter into a memorandum of  
20 agreement with the city and county of Honolulu to establish,  
21 modify, or clarify the conditions for the issuance, transfer,



1 and redemption of the affordable housing credits in accordance  
2 with county affordable housing ordinances or rules. At least  
3 half of the affordable housing credits issued by the city and  
4 county of Honolulu shall be subject to a memorandum of agreement  
5 pursuant to this subsection.

6 For purposes of this section, "affordable housing  
7 obligation" means the requirement imposed by a county,  
8 regardless of the date of its imposition, to develop vacant  
9 lots, single-family residences, multi-family residences, or any  
10 other type of residence for sale or rent to individuals within a  
11 specified income range.

12 (c) Any law to the contrary notwithstanding, any county  
13 may:

14 (1) Authorize and issue bonds under chapter 47 and chapter  
15 49 to provide moneys to carry out the purposes of this  
16 section or section 46-15.2, including the satisfaction  
17 of any guarantees made by the county pursuant to this  
18 section;

19 (2) Appropriate moneys of the county to carry out the  
20 purposes of this section;



- 1 (3) Obtain insurance and guarantees from the State or the  
2 United States, or grants from either;
- 3 (4) Designate, after holding a public hearing on the  
4 matter and with the approval of the respective  
5 council, any lands owned by it for the purposes of  
6 this section;
- 7 (5) Provide interim construction loans to partnerships of  
8 which it is a partner and to developers whose projects  
9 qualify for federally assisted project mortgage  
10 insurance, or other similar programs of federal  
11 assistance for persons of low and moderate income; and
- 12 (6) Adopt rules pursuant to chapter 91 as are necessary to  
13 carry out the purposes of this section.
- 14 (d) Any law to the contrary notwithstanding, a county may  
15 waive its right to repurchase a privately-developed affordable  
16 housing unit built pursuant to a unilateral agreement or similar  
17 instrument, and may transfer that right of repurchase to a  
18 qualified nonprofit housing trust for the purpose of maintaining  
19 the unit as affordable for as long as practicable.
- 20 For the purposes of this subsection, "qualified nonprofit  
21 housing trust" means a corporation, association, or other duly



1 chartered organization that is registered and in good standing  
2 with the State; that is recognized by the Internal Revenue  
3 Service as a charitable or otherwise tax-exempt organization  
4 under section 501(c)(3) of the Internal Revenue Code of 1986, as  
5 amended; and that has the capacity, resources, and mission to  
6 carry out the purposes of this section as determined by the  
7 county in which the housing unit is located.

8 (e) A qualified nonprofit housing trust shall report the  
9 status and use of its housing units to its respective county by  
10 November 30 of each calendar year.

11 (f) Each county shall submit to the legislature no later  
12 than twenty days prior to the convening of each regular session,  
13 an annual report on the status, use, and disposition of  
14 qualified nonprofit housing trusts under its jurisdiction.

15 [~~(d)~~] (g) The provisions of this section shall be construed  
16 liberally so as to effectuate the purpose of this section in  
17 facilitating the development, construction, and provision of  
18 low- and moderate-income housing by the various counties.

19 [~~(e)~~] (h) For purposes of this section, "low and moderate  
20 income housing" means any housing project that meets the



1 definition of "low- and moderate-income housing project" in  
2 section 39A-281."

3 SECTION 4. Section 201H-1, Hawaii Revised Statutes, is  
4 amended by adding a new definition to be appropriately inserted  
5 and to read as follows:

6 "Qualified nonprofit housing trust" means a corporation,  
7 association, or other duly chartered organization that is  
8 registered and in good standing with the State; is recognized by  
9 the Internal Revenue Service as a charitable or otherwise tax-  
10 exempt organization under section 501(c)(3) of the Internal  
11 Revenue Code of 1986, as amended; and has the capacity,  
12 resources, and mission to carry out the purposes of this chapter  
13 as determined by the corporation."

14 SECTION 5. Section 206E-2, Hawaii Revised Statutes, is  
15 amended by adding three new definitions to be appropriately  
16 inserted and to read as follows:

17 "Qualified nonprofit housing trust" means a corporation,  
18 association, or other duly chartered organization that is  
19 registered and in good standing with the State; is recognized by  
20 the Internal Revenue Service as a charitable or otherwise tax-  
21 exempt organization under section 501(c)(3) of the Internal



1 Revenue Code of 1986, as amended; and has the capacity and  
2 resources as determined by the authority to carry out the  
3 requirements of the reserved housing and workforce housing  
4 programs.

5 "Reserved housing" means housing designated for residents  
6 in the low-income or moderate-income ranges who meet such  
7 eligibility requirements as the authority may adopt by rule.

8 "Workforce housing" means new residential projects where at  
9 least seventy-five per cent of the residential units are set  
10 aside for purchase or rent for residents in the low-income or  
11 moderate-income ranges who meet such eligibility requirements as  
12 the authority may adopt by rules and that do not require  
13 financial assistance for design and construction from federal,  
14 state, or county government agencies."

15 SECTION 6. Section 201H-47, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§201H-47 Real property; restrictions on transfer; waiver**  
18 **of restrictions.** (a) The following restrictions shall apply to  
19 the transfer of real property developed and sold under this  
20 chapter, whether in fee simple or leasehold:



- 1           (1) For a period of ten years after the purchase, whether  
2           by lease, assignment of lease, deed, or agreement of  
3           sale, if the purchaser wishes to transfer title to the  
4           real property, the corporation shall have the first  
5           option to purchase the real property at a price that  
6           shall not exceed the sum of:
- 7           (A) The original cost to the purchaser, as defined in  
8           rules adopted by the corporation;
- 9           (B) The cost of any improvements added by the  
10          purchaser, as defined in rules adopted by the  
11          corporation; [~~and~~]
- 12          (C) Simple interest on the original cost and capital  
13          improvements to the purchaser at the rate of one  
14          per cent a year; and
- 15          (D) The corporation's share of net appreciation in  
16          the real property, as determined under rules  
17          adopted pursuant to chapter 91, when applicable;
- 18          (2) The corporation may purchase the real property either:
- 19          (A) By conveyance free and clear of all mortgages and  
20          liens; or



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

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

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

19 (i) Any first mortgage created for the purpose  
20 of securing the payment of a loan of funds





1                   expended solely for the purchase of the real  
2                   property by the seller;

3                   (ii) Any mortgage insured or held by a federal  
4                   housing agency; and

5                   (iii) Any mortgage or lien created for any other  
6                   purpose; provided that the corporation has  
7                   previously consented to it in writing.

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

13               (3) A purchaser may refinance real property developed and  
14               sold under this chapter; provided that the purchaser  
15               shall not refinance the real property within ten years  
16               from the date of purchase for an amount in excess of  
17               the purchase price as determined by paragraph (1)(A)  
18               to (C); provided further that the purchaser shall  
19               obtain the corporation's written consent if any  
20               restriction on the transfer of the real property  
21               remains applicable;



- 1           (4) After the end of the tenth year from the date of  
2           initial purchase or execution of an agreement of sale,  
3           the purchaser may sell the real property and sell or  
4           assign the property free from any price restrictions;  
5           provided that the purchaser shall be required to pay  
6           to the corporation the sum of:
- 7           (A) The balance of any mortgage note, agreement of  
8           sale, or other amount owing to the corporation;
- 9           (B) Any subsidy or deferred sales price made by the  
10          corporation in the acquisition, development,  
11          construction, and sale of the real property, and  
12          any other amount expended by the corporation not  
13          counted as costs under section 201H-45 but  
14          charged to the real property by good accounting  
15          practice as determined by the corporation whose  
16          books shall be prima facie evidence of the  
17          correctness of the costs;
- 18          (C) Interest on the subsidy or deferred sales price,  
19          if applicable, and any other amount expended at  
20          the rate of seven per cent a year computed as to  
21          the subsidy or deferred sales price, if



1 applicable, from the date of purchase or  
2 execution of the agreement of sale, and as to any  
3 amount expended, from the date of expenditure;  
4 provided that the computed interest shall not  
5 extend beyond thirty years from the date of  
6 purchase or execution of the agreement of sale of  
7 the real property. If any proposed sale or  
8 transfer will not generate an amount sufficient  
9 to pay the corporation the sum as computed under  
10 this paragraph, the corporation shall have the  
11 first option to purchase the real property at a  
12 price that shall not exceed the sum as computed  
13 under paragraphs (1) and (2); and

14 (D) The corporation's share of appreciation in the  
15 real property as determined under rules adopted  
16 pursuant to chapter 91, when applicable;

17 (5) Notwithstanding any provision in this section to the  
18 contrary, pursuant to rules adopted by the  
19 corporation, the subsidy or deferred sales price  
20 described in paragraph (4)(B) and any interest accrued



1           pursuant to paragraph (4) (C) may be paid, in part or  
2           in full, at any time; and

3           (6) Notwithstanding any provision in this section to the  
4           contrary, the corporation's share of appreciation in  
5           the real property described in paragraph (4) (D):

6           (A) Shall apply when the sales price of the real  
7           property that is developed and sold under this  
8           chapter is less than the then-current,  
9           unencumbered, fair market value of the real  
10          property as determined by a real property  
11          appraisal obtained prior to the closing of the  
12          sale;

13          (B) Shall be a restriction that runs with the land  
14          until it is paid in full and released by the  
15          corporation, or extinguished pursuant to  
16          subsection ~~[(e)+]~~ (f); and

17          (C) May be paid, in part or in full, at any time  
18          after recordation of the sale.

19          (b) If the corporation waives its first option to  
20          repurchase the real property provided in subsection (a), a  
21          qualified nonprofit housing trust shall have the option to



1 purchase the real property at the price and in the manner set  
2 forth in subsection (a).

3 ~~[(b)]~~ (c) For a period of ten years after the purchase,  
4 whether by lease, assignment of lease, deed, or agreement of  
5 sale, if the purchaser wishes to transfer title to the real  
6 property, and if the corporation or the qualified nonprofit  
7 housing trust selected by the corporation does not exercise the  
8 option to purchase the real property as provided in subsection  
9 (a) ~~[7]~~ or (b) within a reasonable amount of time, then the  
10 corporation shall require the purchaser to sell the real  
11 property to a "qualified resident" as defined in section 201H-  
12 32, and upon the terms that preserve the intent of this section  
13 and sections 201H-49 and 201H-50, and in accordance with rules  
14 adopted by the corporation.

15 ~~[(e)]~~ (d) The corporation may waive the restrictions  
16 prescribed in ~~[subsection]~~ subsections (a) ~~[or (b)]~~ through (c)  
17 if:

18 (1) The purchaser wishes to transfer title to the real  
19 property by devise or through the laws of descent to a  
20 family member who would otherwise qualify under rules  
21 established by the corporation;



- 1           (2) The sale or transfer of the real property would be at  
2           a price and upon terms that preserve the intent of  
3           this section without the necessity of the State  
4           repurchasing the real property; provided that, in this  
5           case, the purchaser shall sell the real property and  
6           sell or assign the real property to a person who is a  
7           "qualified resident" as defined in section 201H-32;  
8           and provided further that the purchaser shall pay to  
9           the corporation its share of appreciation in the real  
10          property as determined in rules adopted pursuant to  
11          chapter 91, when applicable; or
- 12          (3) The sale or transfer is of real property subject to a  
13          sustainable affordable lease as defined in section  
14          516-1.
- 15          ~~[(d)]~~ (e) The corporation may release the restrictions  
16          prescribed in ~~[subsection]~~ subsections (a) ~~[or (b)]~~ through (c)  
17          if the real property is financed under a federally subsidized  
18          mortgage program and the restrictions would jeopardize the  
19          federal government's ability to recapture any interest credit  
20          subsidies provided to the homeowner.



1        [~~e~~] (f) The restrictions prescribed in this section and  
2 sections 201H-49 to 201H-51 shall be automatically extinguished  
3 and shall not attach in subsequent transfers of title when a  
4 qualified nonprofit housing trust becomes the owner of the real  
5 property pursuant to subsection (b); or a mortgage holder or  
6 other party becomes the owner of the real property pursuant to a  
7 mortgage foreclosure, foreclosure under power of sale, or a  
8 conveyance in lieu of foreclosure after a foreclosure action is  
9 commenced; provided that the mortgage is the initial purchase  
10 money mortgage, or that the corporation consented to and agreed  
11 to subordinate the restrictions to the mortgage when originated,  
12 if the mortgage is not the initial purchase money mortgage; or  
13 when a mortgage is assigned to a federal housing agency. Any  
14 law to the contrary notwithstanding, a mortgagee under a  
15 mortgage covering real property or leasehold interest encumbered  
16 by the first option to purchase in favor of the corporation,  
17 prior to commencing mortgage foreclosure proceedings, shall  
18 notify the corporation in writing of:

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



1           (2) Any intention of the mortgagee to foreclose the  
2                   mortgage under chapter 667 forty-five days prior to  
3                   commencing mortgage foreclosure proceedings;  
4 provided that the mortgagee's failure to provide written notice  
5 to the corporation shall not affect the mortgage holder's rights  
6 under the mortgage. The corporation shall be a party to any  
7 foreclosure action, and shall be entitled to its share of  
8 appreciation in the real property as determined under this  
9 chapter in lien priority when the payment is applicable, and if  
10 foreclosure occurs within the ten-year period after the  
11 purchase, the corporation shall also be entitled to all proceeds  
12 remaining in excess of all customary and actual costs and  
13 expenses of transfer pursuant to default, including liens and  
14 encumbrances of record; provided that the person in default  
15 shall be entitled to an amount that shall not exceed the sum of  
16 amounts determined pursuant to subsection (a) (1) (B) and (C).

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





1 the subsidy or deferred sales price described in subsection  
2 (a) (4) (B), a description of the cost items that constitute the  
3 subsidy or deferred sales price, and the conditions of the  
4 subsidy or deferred sales price shall be clearly stated at the  
5 beginning of the contract document issued by the corporation.  
6 In any sale in which the corporation's share of appreciation in  
7 real property is a restriction, the terms of the shared  
8 appreciation equity program shall be clearly stated and included  
9 as an exhibit in any deed, lease, agreement of sale, or any  
10 other instrument of conveyance.

11 [~~(g)~~] (h) This section need not apply to market-priced units  
12 in an economically integrated housing project, except as  
13 otherwise determined by the developer of the units; provided  
14 that preference shall be given to qualified residents in the  
15 initial sale of market-priced units.

16 [~~(h)~~] (i) The corporation is authorized to waive any of the  
17 restrictions set forth in this section in order to comply with  
18 or conform to requirements set forth in federal law or  
19 regulations governing mortgage insurance or guarantee programs  
20 or requirements set forth by federally chartered secondary  
21 mortgage market participants.



1        (j) Any law to the contrary notwithstanding, if real  
2 property is purchased by a qualified nonprofit housing trust  
3 pursuant to subsection (b), the housing trust shall establish  
4 new perpetual buyback restrictions to effectuate the long-term  
5 affordability of a housing unit.

6        (k) A qualified nonprofit housing trust shall report the  
7 status and use of its housing units to the corporation by  
8 November 30 of each calendar year.

9        (l) The corporation shall submit to the legislature no  
10 later than twenty days prior to the convening of each regular  
11 session, an annual report on the status, use, and disposition of  
12 qualified nonprofit housing trusts under its jurisdiction."

13                        PART II

14        SECTION 7. Section 235-110.8, Hawaii Revised Statutes, is  
15 amended as follows:

16        1. By amending subsection (f) to read:  
17        "(f) For the purposes of this section, the determination  
18 of:

19        (1) Qualified basis and qualified low-income building  
20 shall be made under section 42(c) [+] of the Internal  
21 Revenue Code;



- 1 (2) Eligible basis shall be made under section 42(d) [~~+~~] of  
2 the Internal Revenue Code;
- 3 (3) Qualified low-income housing project shall be made  
4 under section 42(g) [~~+~~] of the Internal Revenue Code;  
5 and
- 6 (4) Recapture of credit shall be made under section  
7 42(j) [~~+~~] of the Internal Revenue Code, except that the  
8 tax for the taxable year shall be increased under  
9 section 42(j)(1) of the Internal Revenue Code, only  
10 with respect to credits that were used to reduce state  
11 income taxes [~~+~~ and
- 12 ~~(5) Application of at-risk rules shall be made under~~  
13 ~~section 42(k) of~~  
14 ~~of the Internal Revenue Code]. "~~

15 2. By amending subsection (i) to read:

16 "(i) The credit allowed under this section shall be  
17 claimed against net income tax liability for the taxable year.  
18 For the purpose of deducting this tax credit, net income tax  
19 liability means net income tax liability reduced by all other  
20 credits allowed the taxpayer under this chapter.



1 A tax credit under this section that exceeds the taxpayer's  
2 income tax liability may be used as a credit against the  
3 taxpayer's income tax liability in subsequent years until  
4 exhausted. All claims for a tax credit under this section shall  
5 be filed on or before the end of the twelfth month following the  
6 close of the taxable year for which the credit may be claimed.  
7 Failure to properly and timely claim the credit shall constitute  
8 a waiver of the right to claim the credit. A taxpayer may claim  
9 a credit under this section only if the building or project is a  
10 qualified low-income housing building or a qualified low-income  
11 housing project under section 42 of the Internal Revenue Code.

12 Section 42(k) (with respect to application of at-risk  
13 rules), section 465 (with respect to deductions limited to  
14 amount at risk), and section 469 (with respect to passive  
15 activity losses and credits limited) of the Internal Revenue  
16 Code shall not be applied [~~in~~] with respect to investments in  
17 buildings and projects claiming the credit under this section."

18 SECTION 8. There is appropriated out of the general  
19 revenues of the State of Hawaii the sum of \$ or so much  
20 thereof as may be necessary for fiscal year 2017-2018 and the  
21 same sum or so much thereof as may be necessary for fiscal year



1 2018-2019 to establish one full-time equivalent (1.00 FTE)  
2 position in the Hawaii housing finance and development  
3 corporation to oversee the low-income housing tax credit  
4 program.

5 The sums appropriated shall be expended by the Hawaii  
6 housing finance and development corporation for the purposes of  
7 this Act.

8 PART III

9 SECTION 9. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 10. This Act does not affect rights and duties  
12 that matured, penalties that were incurred, and proceedings that  
13 were begun before its effective date.

14 SECTION 11. This Act shall take effect on January 1, 2050;  
15 provided that:

16 (1) Part II of this Act shall apply to qualified low-  
17 income buildings awarded credits beginning after  
18 December 31, 2017;

19 (2) The amendments made in section 7 of this Act shall not  
20 be repealed when section 235-110.8, Hawaii Revised  
21 Statutes, is reenacted on December 31, 2021, pursuant



1 to section 4 of Act 129, Session Laws of Hawaii 2016;  
2 and  
3 (3) Section 8 of this Act shall take effect on July 1,  
4 2017.



**Report Title:**

Affordable Housing Units; Transfer; Low-Income Housing Tax Credit; Qualified Nonprofit Housing Trusts

**Description:**

Authorizes qualified nonprofit housing trusts to repurchase affordable units developed with government assistance when a government entity waives its first right of refusal to repurchase the unit. Authorizes counties to waive a first right of refusal to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument. Specifies that certain provisions of the Internal Revenue Code related to at-risk rules, and deductions, and passive activity loss limitations do not apply with respect to the State Low-income Housing Tax Credit. Appropriates funds to establish one position to oversee the Low-Income Housing Tax Credit Program. (SB1244 HD1)

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

