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# A BILL FOR AN ACT

RELATING TO DOWN PAYMENTS.

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

1 PART I

2 SECTION 1. The legislature finds that Hawaii loses many of  
3 its residents via the process of relocation. The primary reason  
4 for this phenomenon often stems from financial burden. Hawaii  
5 consistently ranks as one of the most expensive states in which to  
6 reside, with a cost of living that far outstrips other cities and  
7 towns in America. Many residents are forced to leave to seek a  
8 better life elsewhere for themselves and for their families.

9 The negative impact of this relocation process results in an  
10 economic, social, and cultural burden for the state of Hawaii.  
11 Likewise, the resulting loss of children, parents, aunts/uncles,  
12 grandparents, and other members of the immediate and extended  
13 family unit is traumatic, especially when the impetus for the move  
14 is based upon financial necessity. This practice is disruptive  
15 and fragments the important concept of *Ohana* (family) in the life  
16 and culture of our unique island state, which erodes kinship  
17 support networks among existing residents and may even impact



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1 family-planning decisions for younger generations when considering  
2 their ability to clothe, feed, and educate future progeny.

3 Economically, Hawaii is hemorrhaging potential talent within  
4 our workforce. Young or skilled workers leave to accept superior  
5 career opportunities far from home. Failure to take appropriate  
6 action to stem this loss represents a danger to Hawaii's economic  
7 stability.

8 The purpose of this act is to incentivize the return of  
9 Hawaii residents who have relocated to the mainland or elsewhere  
10 and to galvanize and strengthen economic, social, and cultural  
11 growth in Hawaii.

12 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is amended  
13 by adding a new section to be appropriately designated and to read  
14 as follows:

15 "§201H- Qualified returning resident down payment program;  
16 established. (a) There is established the qualified returning  
17 resident down payment program to be administered by the  
18 corporation. The program shall provide qualified returning  
19 residents matching funds to assist with meeting down payment  
20 requirements associated with the purchase of real property.



1        (b) In addition to meeting the requirements of a qualified  
2 returning resident as defined in subsection (d) of this section,  
3 the following additional criteria must be met prior to any funds  
4 being disbursed:

5        (1) The real property sought for purchase must be a single-  
6 family residential structure, condominium, town home, or  
7 other similar type of residence designed for single  
8 family occupancy; and

9        (2) The qualified returning resident must occupy the real  
10 property on a full-time basis as their primary residence  
11 for no less than two years calculated from the date of  
12 closing.

13        (c) The total amount of assistance provided to a qualified  
14 returning resident under this program shall not exceed ten percent  
15 of the property value or fifty thousand dollars, whichever is  
16 less.

17        (d) For the purpose of this section, a "qualified returning  
18 resident" must meet all of the following conditions:

19        (1) Graduation from a high school within the State of Hawaii  
20 and accredited by the Hawaii Department of Education or,  
21 while residing within the State of Hawaii, satisfied the



1           requirements as set forth by the Hawaii department of  
2           education for meeting the minimum qualifications  
3           necessary for high school graduation equivalency; and  
4           (2) Ceased residency in the State of Hawaii for the express  
5           purpose of attending a four-year course of study leading  
6           to baccalaureate degree at a college or university  
7           recognized as properly accredited by the United States  
8           Department of Education's Office of Postsecondary  
9           Education."

10           SECTION 3. Chapter 201H, Hawaii Revised Statutes, is amended  
11 by adding a new section to be appropriately designated and to read  
12 as follows:

13           "§201H- Qualified returning resident down payment program  
14 special fund. (a) There is established in the state treasury a  
15 special fund to be known as the qualified returning resident down  
16 payment program special fund. All taxes collected under chapter  
17 235- (relating to real estate investment trusts) in each calendar  
18 year shall be deposited in the qualified returning resident down  
19 payment program special fund. The director of finance shall  
20 transfer any moneys appropriated for the purpose of the qualified  
21 returning resident down payment program.





1 corporation to go untaxed in Hawaii costing the state valuable tax  
2 dollars that could be used to the benefit of both our residents  
3 and those former residents wishing to return.

4       According to the department of business, economic  
5 development, and tourism, the net annual income for real estate  
6 investment trusts has risen quickly in the last several years from  
7 \$79.9 million in 2012 to \$720.6 million in 2014. Had real estate  
8 investment trusts been subject to the same taxation as other  
9 corporations, they would have generated an additional \$36 million  
10 in state revenue in 2014. The legislature finds it unacceptable  
11 that real estate investment trusts are taking advantage of  
12 Hawaii's tax laws and real estate market to generate enormous  
13 profits that ultimately have little or no benefit to residents  
14 within our state or the infrastructure provided by the state to  
15 support the properties at issue.

16       There are two ways to ensure that Hawaii is paid its fair  
17 share of income taxes from the economic activity generated by real  
18 estate investment trusts. First, real estate investment trusts  
19 will be required to withhold a proportion of dividends  
20 attributable to Hawaii and remit them to the state. Similar to  
21 the way other corporate forms are taxed in Hawaii, this will have



1 the same effect on the real estate investment trust as their  
2 shareholders being taxed in their home states. Instead of the tax  
3 income going to other states, requiring annual tax returns on  
4 dividends ensures that tax income goes to the State for business  
5 activity generated in Hawaii.

6 Second, closing the dividends paid deduction will ensure that  
7 real estate investment trusts cannot use it as a loophole to  
8 escape proper taxation. According to federal law, real estate  
9 investment trusts must distribute at least 90 percent of its  
10 taxable income to shareholders. The dividends paid deduction  
11 allows real estate investment trusts to escape paying taxes on  
12 income generated from doing business in Hawaii. Closing the  
13 loophole ensures that Hawaii receives its share of a real estate  
14 investment trust's taxable income.

15 The purpose of this Act is to require real estate investment  
16 trusts to submit returns based on dividends distributed and income  
17 generated in Hawaii and to repeal the dividend paid deduction for  
18 real estate investment trusts thereby creating a revenue source to  
19 fund the qualified returning resident down payment program special  
20 fund.



1 SECTION 6. Chapter 235, Hawaii Revised Statutes, is amended  
2 by adding a new section to be appropriately designated and to read  
3 as follows:

4 "§235- Real estate investment trust returns; shareholder  
5 agreements; mandatory payments. (a) Each real estate investment  
6 trust shareholder receiving a dividend from the real estate  
7 investment trust shall take into account for purposes of this  
8 chapter a pro rata share of income attributable to the State, to  
9 the extent modified under this chapter, under rules similar to  
10 those adopted pursuant to section 235-122(c). The percentage of  
11 the dividend attributable to the State shall be the same as the  
12 real estate investment trust's overall percentage of income  
13 attributable to the State.

14 Each real estate investment trust shall make a return for  
15 each taxable year, stating specifically:

16 (1) The items of its gross income and the deductions  
17 allowable by this chapter;

18 (2) The name, address, and social security or federal  
19 identification number of each person owning stock in the  
20 real estate investment trust at any time during the  
21 taxable year;





- 1        (3) The number of shares of stock owned by each shareholder
- 2            at all times during the taxable year;
- 3        (4) The income attributable to the State and income not
- 4            attributable to the State with respect to each
- 5            shareholder as determined under this chapter;
- 6        (5) Any modifications required under this chapter;
- 7        (6) The amount of money and other property distributed by
- 8            the real estate investment trust during the taxable year
- 9            to each shareholder;
- 10       (7) The amount of each distribution constituting a dividend
- 11           or capital gain dividend; and
- 12       (8) Any other information that the department, by form or
- 13           rule, may prescribe.

14        The real estate investment trust, on or before the day on  
15 which its return is filed, shall furnish to each person who was a  
16 shareholder during the year a copy of the information shown on the  
17 return as the department may prescribe by form or rule. Any  
18 return filed pursuant to this section, for purposes of sections  
19 235-111 and 235-112, shall be treated as a return filed by the  
20 real estate investment trust under section 235-92.



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1        (b) The department shall permit any real estate investment  
2 trust to file composite returns and to make composite payments of  
3 tax on behalf of some or all of its nonresident shareholders. The  
4 department may permit composite returns and payments to be made on  
5 behalf of resident shareholders.

6        (c) A real estate investment trust shall file with the  
7 department, in the form prescribed by the department, the  
8 agreement of each nonresident shareholder of the real estate  
9 investment trust:

10        (1) To file a return and make timely payment of all taxes  
11 imposed by this State on the shareholder with respect to  
12 the income of the real estate investment trust; and

13        (2) To be subject to personal jurisdiction in this State for  
14 purposes of the collection of unpaid income tax,  
15 together with related interest and penalties.

16        If the real estate investment trust fails to timely file the  
17 agreements required by paragraphs (1) and (2) on behalf of each of  
18 its nonresident shareholders, then the real estate investment  
19 trust, at the times set forth in subsection (d), shall pay to this  
20 State on behalf of each nonresident shareholder in respect of whom  
21 an agreement has not been timely filed an amount equal to the



1 highest marginal tax rate in effect under section 235-75 (if the  
2 shareholder is a corporation) or 235-51 (for any other  
3 shareholder), multiplied by the amount of the shareholder's pro  
4 rata share of the income attributable to the State as reflected on  
5 the real estate investment trust's return for the taxable period.  
6 A real estate investment trust shall be entitled to recover a  
7 payment made pursuant to the preceding sentence from the  
8 shareholder on whose behalf the payment was made.

9 (d) The agreements required to be filed pursuant to  
10 subsection (c) shall be filed at the following times:

11 (1) At the time the annual return is required to be filed  
12 for the first taxable period for which the real estate  
13 investment trust became subject to this chapter; and

14 (2) At the time the annual return is required to be filed  
15 for any taxable period in which the real estate  
16 investment trust had a nonresident shareholder on whose  
17 behalf such an agreement has not been previously filed.

18 (e) Any amount paid by the real estate investment trust to  
19 this State pursuant to subsection (b) or (c) shall be considered  
20 to be a payment by the shareholder on account of the income tax  
21 imposed on the shareholder for the taxable period.



1        (f) Any officer of any real estate investment trust who  
 2 willfully fails to provide any information, file any return or  
 3 agreement, or make any payment as required by this section or by  
 4 section 231-15.6 shall be guilty of a misdemeanor.

5        (g) All moneys collected pursuant to this section shall be  
 6 deposited into the qualified returning resident down payment  
 7 program special fund established under section §201H- , (known  
 8 as the qualified returning resident down payment program).

9        (h) As used in this section, a "real estate investment  
 10 trust" means a corporation for which a valid election under  
 11 section 856 of the Internal Revenue Code, as amended, is in  
 12 effect."

13        SECTION 7. Section 235-2.3, Hawaii Revised Statutes, is  
 14 amended by amending subsection (b) to read as follows:

15        (b) The following Internal Revenue Code subchapters, parts  
 16 of subchapters, sections, subsections, and parts of subsections  
 17 shall not be operative for the purposes of this chapter, unless  
 18 otherwise provided:

19        (1) Subchapter A (sections 1 to 59A) (with respect to  
 20 determination of tax liability), except section 1(h)(2)  
 21 (relating to net capital gain reduced by the amount



1 taken into account as investment income), except  
2 sections 2(a), 2(b), and 2(c) (with respect to the  
3 definition of "surviving spouse" and "head of  
4 household"), except section 41 (with respect to the  
5 credit for increasing research activities), except  
6 section 42 (with respect to low-income housing credit),  
7 except sections 47 and 48, as amended, as of December  
8 31, 1984 (with respect to certain depreciable tangible  
9 personal property), and except section 48(d)(3), as  
10 amended, as of February 17, 2009 (with respect to the  
11 treatment of United States Department of Treasury grants  
12 made under section 1603 of the American Recovery and  
13 Reinvestment Tax Act of 2009). For treatment, see  
14 sections 235-110.91, 235-110.7, and 235-110.8;

15 (2) Section 78 (with respect to dividends received from  
16 certain foreign corporations by domestic corporations  
17 choosing foreign tax credit);

18 (3) Section 86 (with respect to social security and tier 1  
19 railroad retirement benefits);



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- 1           (4) Section 91 (with respect to certain foreign branch  
2           losses transferred to specified 10-percent owned foreign  
3           corporations);
- 4           (5) Section 103 (with respect to interest on state and local  
5           bonds). For treatment, see section 235-7(b);
- 6           (6) Section 114 (with respect to extraterritorial income).  
7           For treatment, any transaction as specified in the  
8           transitional rule for 2005 and 2006 as specified in the  
9           American Jobs Creation Act of 2004 section 101(d) and  
10          any transaction that has occurred pursuant to a binding  
11          contract as specified in the American Jobs Creation Act  
12          of 2004 section 101(f) are inoperative;
- 13          (7) Section 120 (with respect to amounts received under  
14          qualified group legal services plans). For treatment,  
15          see section 235-7(a)(9) to (11);
- 16          (8) Section 122 (with respect to certain reduced uniformed  
17          services retirement pay). For treatment, see section  
18          235-7(a)(3);
- 19          (9) Section 135 (with respect to income from United States  
20          savings bonds used to pay higher education tuition and  
21          fees). For treatment, see section 235-7(a)(1);



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- 1 (10) Section 139C (with respect to COBRA premium assistance);
- 2 (11) Subchapter B (sections 141 to 150) (with respect to tax
- 3 exemption requirements for state and local bonds);
- 4 (12) Section 151 (with respect to allowance of deductions for
- 5 personal exemptions). For treatment, see section 235-
- 6 54;
- 7 (13) Section 179B (with respect to expensing of capital costs
- 8 incurred in complying with Environmental Protection
- 9 Agency sulphur regulations);
- 10 (14) Section 181 (with respect to special rules for certain
- 11 film and television productions);
- 12 (15) Section 196 (with respect to deduction for certain
- 13 unused investment credits);
- 14 (16) Section 199 (with respect to the U.S. production
- 15 activities deduction);
- 16 (17) Section 199A (with respect to qualified business
- 17 income);
- 18 (18) Section 222 (with respect to qualified tuition and
- 19 related expenses);
- 20 (19) Sections 241 to 247 (with respect to special deductions
- 21 for corporations). For treatment, see section 235-7(c);



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- 1       (20) Section 250 (with respect to foreign-derived intangible  
2           income and global intangible low-taxed income);
- 3       (21) Section 267A (with respect to certain related party  
4           amounts paid or accrued in hybrid transactions or with  
5           hybrid entities);
- 6       (22) Section 280C (with respect to certain expenses for which  
7           credits are allowable). For treatment, see section 235-  
8           110.91;
- 9       (23) Section 291 (with respect to special rules relating to  
10          corporate preference items);
- 11      (24) Section 367 (with respect to foreign corporations);
- 12      (25) Section 501(c)(12), (15), (16) (with respect to exempt  
13          organizations); except that section 501(c)(12) shall be  
14          operative for companies that provide potable water to  
15          residential communities that lack any access to public  
16          utility water services;
- 17      (26) Section 515 (with respect to taxes of foreign countries  
18          and possessions of the United States);
- 19      (27) Subchapter G (sections 531 to 565) (with respect to  
20          corporations used to avoid income tax on shareholders);





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- 1       (28) Subchapter H (sections 581 to 597) (with respect to
- 2           banking institutions), except section 584 (with respect
- 3           to common trust funds). For treatment, see chapter 241;
- 4       (29) Section 642(a) and (b) (with respect to special rules
- 5           for credits and deductions applicable to trusts). For
- 6           treatment, see sections 235-54(b) and 235-55;
- 7       (30) Section 646 (with respect to tax treatment of electing
- 8           Alaska Native settlement trusts);
- 9       (31) Section 668 (with respect to interest charge on
- 10          accumulation distributions from foreign trusts);
- 11       (32) Subchapter L (sections 801 to 848) (with respect to
- 12          insurance companies). For treatment, see sections
- 13          431:7-202 and 431:7-204;
- 14       (33) Section 853 (with respect to foreign tax credit allowed
- 15          to shareholders). For treatment, see section 235-55;
- 16       (34) Section 853A (with respect to credits from tax credit
- 17          bonds allowed to shareholders);
- 18       (35) Section 857(b)(2)(B) (with respect to the deduction for
- 19          dividends paid by real estate investment trusts);
- 20          provided that the deduction shall remain available for
- 21          dividends generated from trust-owned housing that is



1           affordable to households with incomes at or below one  
2           hundred per cent of the median family income, as  
3           determined by the United States Department of Housing  
4           and Urban Development;

5       ~~[(35)]~~ (36) Subchapter N (sections 861 to 999) (with respect to  
6           tax based on income from sources within or without the  
7           United States), except sections 985 to 989 (with respect  
8           to foreign currency transactions). For treatment, see  
9           sections 235-4, 235-5, and 235-7(b), and 235-55;

10       ~~[(36)]~~ (37) Section 1042(g) (with respect to sales of stock in  
11           agricultural refiners and processors to eligible farm  
12           cooperatives);

13       ~~[(37)]~~ (38) Section 1055 (with respect to redeemable ground  
14           rents);

15       ~~[(38)]~~ (39) Section 1057 (with respect to election to treat  
16           transfer to foreign trust, etc., as taxable exchange);

17       ~~[(39)]~~ (40) Sections 1291 to 1298 (with respect to treatment of  
18           passive foreign investment companies);

19       ~~[(40)]~~ (41) Subchapter Q (sections 1311 to 1351) (with respect  
20           to readjustment of tax between years and special  
21           limitations);



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- 1        [~~(41)~~] (42) Subchapter R (sections 1352 to 1359) (with respect
- 2                    to election to determine corporate tax on certain
- 3                    international shipping activities using per ton rate);
- 4        [~~(42)~~] (43) Subchapter U (sections 1391 to 1397F) (with respect
- 5                    to designation and treatment of empowerment zones,
- 6                    enterprise communities, and rural development investment
- 7                    areas). For treatment, see chapter 209E;
- 8        [~~(43)~~] (44) Subchapter W (sections 1400 to 1400C) (with respect
- 9                    to District of Columbia enterprise zone);
- 10       [~~(44)~~] (45) Section 14000 (with respect to education tax
- 11                    benefits);
- 12       [~~(45)~~] (46) Section 1400P (with respect to housing tax
- 13                    benefits);
- 14       [~~(46)~~] (47) Section 1400R (with respect to employment relief);
- 15       [~~(47)~~] (48) Section 1400T (with respect to special rules for
- 16                    mortgage revenue bonds);
- 17       [~~(48)~~] (49) Section 1400U-1 (with respect to allocation of
- 18                    recovery zone bonds);
- 19       [~~(49)~~] (50) Section 1400U-2 (with respect to recovery zone
- 20                    economic development bonds);



1        [~~50~~] (51) Section 1400U-3 (with respect to recovery zone  
2                facility bonds); and  
3        [~~51~~] (52) Subchapter Z (sections 1400Z-1 to 1400Z-2) (with  
4                respect to opportunity zones)."

5                SECTION 8. Section 235-71, Hawaii Revised Statutes, is  
6 amended by amending subsection (d) to read as follows:

7                "(d) In the case of a real estate investment trust there is  
8 imposed on the taxable income, computed as provided in sections  
9 857 and 858 of the Internal Revenue Code but with the changes and  
10 adjustments made by this chapter (without prejudice to the  
11 generality of the foregoing, the deduction for dividends paid is  
12 limited to such amount of dividends as is attributable to income  
13 taxable under this chapter[+], and for taxable years beginning  
14 after December 31, 2019, no deduction for dividends paid shall be  
15 allowed), a tax consisting in the sum of the following: 4.4 per  
16 cent if the taxable income is not over \$25,000, 5.4 per cent if  
17 over \$25,000 but not over \$100,000, and on all over \$100,000, 6.4  
18 per cent. In addition to any other penalty provided by law any  
19 real estate investment trust whose tax liability for any taxable  
20 year is deemed to be increased pursuant to section 859(b)(2)(A) or  
21 860(c)(1)(A) after December 31, 1978, (relating to interest and



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1 additions to tax determined with respect to the amount of the  
 2 deduction for deficiency dividends allowed) of the Internal  
 3 Revenue Code shall pay a penalty in an amount equal to the amount  
 4 of interest for which such trust is liable that is attributable  
 5 solely to such increase. The penalty payable under this  
 6 subsection with respect to any determination shall not exceed one-  
 7 half of the amount of the deduction allowed by section 859(a), or  
 8 860(a) after December 31, 1978, of the Internal Revenue Code for  
 9 such taxable year.

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

12 SECTION 10. This Act shall take effect on July 1, 2019, and  
 13 shall apply to taxable years beginning after December 31, 2019.  
 14

INTRODUCED BY:


JAN 18 2019



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**Report Title:**

Qualified returning resident down payment program; real estate investment trusts; special fund

**Description:**

Establishes a qualified returning resident down payment program funded by revenues collected from real estate investment trusts.

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

