
A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

1 SECTION 1. Section 412:5-305, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§412:5-305 Permitted investments.** (a) To the extent
4 specified [~~herein,~~] in this subsection, a bank may invest its
5 own assets in:

6 (1) Securities and obligations of the United States
7 government and any agency of the United States
8 government whose debt obligations are fully and
9 explicitly guaranteed as to the timely payment of
10 principal and interest by the full faith and credit of
11 the United States, including without limitation
12 Federal Reserve Banks, the Government National
13 Mortgage Association, the Department of Veterans
14 Affairs, the Federal Housing Administration, the
15 United States Department of Agriculture, the Export-
16 Import Bank, the Overseas Private Investment



1 Corporation, the Commodity Credit Corporation, and the
2 Small Business Administration;

3 (2) Bonds, notes, mortgage backed securities, and other
4 debt obligations of the Federal Home Loan Mortgage
5 Corporation, the Federal National Mortgage
6 Association, and the Federal Home Loan Banks;

7 (3) Securities and obligations of United States
8 government-sponsored agencies which are originally
9 established or chartered by the United States
10 government to serve public purposes specified by the
11 Congress but whose debt obligations are not explicitly
12 guaranteed by the full faith and credit of the United
13 States, including without limitation Banks for
14 Cooperatives, Federal Agricultural Mortgage
15 Corporation, Federal Farm Credit Banks, Federal
16 Intermediate Credit Banks, Federal Land Banks,
17 Financing Corporation, Resolution Funding Corporation,
18 Student Loan Marketing Association, Tennessee Valley
19 Authority, the United States Postal Service, and
20 securities and obligations of the Federal Home Loan
21 Mortgage Corporation, the Federal National Mortgage



1 Association, and the Federal Home Loan Banks that are
2 not bonds, notes, mortgage backed securities, or other
3 debt obligations of the Federal Home Loan Mortgage
4 Corporation, the Federal National Mortgage
5 Association, and the Federal Home Loan Banks; provided
6 that the total amount invested in obligations of any
7 one issuer shall not exceed twenty per cent of the
8 bank's capital and surplus; and
9 (4) Securities and obligations of quasi-United States
10 governmental institutions, including without
11 limitation the International Bank for Reconstruction
12 and Development (World Bank), the Inter-American
13 Development Bank, the Asian Development Bank, the
14 African Development Bank, the European Investment
15 Bank, and other multilateral lending institutions or
16 regional development institutions in which the United
17 States government is a shareholder or contributing
18 member; provided that the total amount invested in
19 obligations of any one issuer shall not exceed twenty
20 per cent of the bank's capital and surplus.



1 (b) A bank may invest its own assets in bonds, securities,
2 or similar obligations issued by this State or any county of
3 this State, through an appropriate agency or instrumentality.

4 (c) To the extent specified [~~herein~~,] in this subsection,
5 a bank may invest its own assets in bonds or similar obligations
6 issued by any state of the United States other than this State,
7 the District of Columbia, or any territory or possession of the
8 United States, by municipal governments of such states,
9 territories or possessions or by any foreign country or
10 political subdivision of such country; provided[~~7~~] that:

11 (1) The bond, note, or warrant has been issued in
12 compliance with the constitution and laws of any such
13 government;

14 (2) There has been no default in payment of either
15 principal or interest on any of the general
16 obligations of such government for a period of five
17 years immediately preceding the date of the
18 investment; and

19 (3) The total amount invested in such obligations of any
20 one issuer by a bank shall not exceed twenty per cent
21 of the bank's capital and surplus.



1 (d) To the extent specified [~~herein~~₇] in this subsection,
2 a bank may invest its own assets in notes, bonds, and other
3 obligations of any corporation which at the time of the
4 investment is incorporated under the laws of the United States
5 or any state or territory thereof or the District of Columbia;
6 provided₇ that the aggregate amount invested by a bank under
7 this subsection and subsection (e) in any one corporation shall
8 not exceed twenty per cent of the bank's capital and surplus.

9 (e) To the extent specified [~~herein~~₇] in this subsection,
10 a bank may invest its own assets in securities of an investment
11 grade. The term "investment grade" means notes, bonds,
12 certificates of interest or participation, beneficial interests,
13 mortgage or receivable-related securities, and other obligations
14 that are commonly understood to be of investment grade quality,
15 including without limitation those securities that are rated
16 within the four highest grades by any nationally-recognized
17 rating service or unrated securities of similar quality as
18 reasonably determined by the bank in its prudent banking
19 judgment (which may be based in part upon estimates which it
20 believes to be reliable). Investment grade does not include
21 investments which are predominantly speculative in nature. The



1 aggregate amount invested by a bank under this subsection and
2 subsection (d) in any one company or other issuer shall not
3 exceed twenty per cent of the bank's capital and surplus.

4 (f) To the extent specified [~~herein,~~] in this subsection,
5 a bank may purchase, hold, convey, sell, or lease real or
6 personal property as follows:

7 (1) The real property in or on which the business of the
8 bank is carried on, including its banking offices;
9 other space in the same property to rent as a source
10 of income; permanent or vacation residences or
11 recreational facilities for its officers and
12 employees; other real property necessary to the
13 accommodation of the bank's business, including but
14 not limited to parking facilities, data processing
15 centers, and real property held for future banking use
16 where the bank in good faith expects to use the
17 property as bank premises; provided that if the bank
18 ceases to use any real property and improvements
19 thereon for one of the foregoing purposes, it shall,
20 within five years thereafter, sell the real property,
21 cease to carry it or them as an asset, or transfer the



1 real property to an operating subsidiary of the bank;
2 provided further that the bank's investment in such
3 operating subsidiary shall not exceed fifteen per cent
4 of the bank's tier one capital; provided further, such
5 property shall not without the approval of the
6 commissioner exceed seventy-five per cent of the
7 bank's capital and surplus;

8 (2) Personal property used in or necessary to the
9 accommodation of the bank's business, including but
10 not limited to furniture, fixtures, equipment, vaults,
11 and safety deposit boxes. The bank's investment in
12 furniture and fixtures shall not without the approval
13 of the commissioner exceed twenty-five per cent of the
14 bank's capital and surplus;

15 (3) Personal property and fixtures which the bank acquires
16 for purposes of leasing to third parties, and such
17 real property interests as shall be incidental
18 thereto;

19 (4) Such real property or tangible personal property as
20 may come into its possession as security for loans or
21 in the collection of debts; or as may be purchased by



1 or conveyed to the bank in satisfaction of or on
2 account of debts previously contracted in the course
3 of its business, when such property was held as
4 security by the bank; and

5 (5) The seller's interest under an agreement of sale, as
6 that term is defined in sections 501-101.5, and 502-
7 85, including without limitation the reversionary
8 interest in the real estate and the right to income
9 under the agreement of sale, with or without recourse
10 to the seller.

11 Except as otherwise authorized in this section any tangible
12 personal property acquired by a bank pursuant to subsection
13 (f) (4) shall be disposed of as soon as practicable and shall not
14 without the written consent of the commissioner be considered a
15 part of the assets of the bank after the expiration of two years
16 from the date of acquisition.

17 Except as otherwise authorized in this section any real
18 property acquired by a bank pursuant to subsection (f) (4) shall
19 be sold or exchanged for other real property by the bank within
20 five years after title thereto has vested in it by purchase or



1 otherwise, or within such further time as may be granted by the
2 commissioner.

3 Any bank acquiring any real property in any manner other
4 than provided by this section shall immediately, upon receiving
5 notice from the commissioner, charge the same to profit and
6 loss, or otherwise remove the same from assets, and when any
7 loss impairs the capital and surplus of the bank the impairment
8 shall be made good in the manner provided in this chapter.

9 For purposes of this subsection, "tier one capital" has the
10 same meaning as "tier 1 capital" as set forth in title 12 Code
11 of Federal Regulations section 325.2(v).

12 (g) A bank may own or control:

13 (1) Operating subsidiaries, or the parent of the operating
14 subsidiary, as set forth in this article;

15 (2) A corporation, partnership, or limited liability
16 company, organized and existing for the ownership of
17 real or personal property used or which the bank in
18 good faith expects to be used in the bank's business
19 or used for a permissible purpose under title 12 Code
20 of Federal Regulations part 362;



- 1 (3) The capital stock of the Federal National Mortgage
2 Association, the Student Loan Marketing Association,
3 Federal Home Loan Mortgage Corporation, or of any
4 other corporation organized for substantially the same
5 purposes; provided that this subsection shall be
6 deemed to authorize subscription for as well as
7 purchase of the stock;
- 8 (4) A small business investment company operating under
9 the Federal Small Business Investment Act of 1958;
- 10 (5) Bank service corporations, subject to the Bank Service
11 Company Act, 12 United States Code sections 1861-1862;
- 12 (6) A corporation whose stock is acquired or purchased to
13 save a loss on a preexisting debt secured by such
14 stock; provided, that the stock shall be sold within
15 twelve months of the date acquired or purchased, or
16 within such further time as may be granted by the
17 commissioner;
- 18 (7) An international banking corporation established
19 pursuant to article 5A or an Edge corporation or an
20 Agreement corporation established or authorized



1 pursuant to section 25a of the Federal Reserve Act, 12
2 United States Code section 631;
3 (8) A captive insurance company incorporated under the
4 laws of the United States, or any state or territory
5 thereof, or the District of Columbia;
6 (9) A company transacting a business of insurance or the
7 sale of annuities pursuant to the authority conferred
8 in section 412:5-205.5; and
9 (10) A company engaging in securities activities pursuant
10 to the authority conferred in section 412:5-205.7.
11 (h) To the extent specified [~~herein,~~] in this subsection, a
12 bank may invest its own assets in limited partnerships, limited
13 liability partnerships, limited liability companies, or
14 corporations formed to invest in residential properties that will
15 qualify for the low income housing tax credit under section 42 of
16 the Internal Revenue Code of 1986, as amended, and under chapters
17 235 and 241[+] with the prior approval of the commissioner;
18 provided that the [~~total~~] aggregate amount invested by a bank
19 under this subsection [~~in any one limited partnership, limited~~
20 ~~liability partnership, limited liability company, or corporation]~~
21 shall not [~~, without the prior approval of the commissioner,~~]



1 exceed [~~two~~] fifteen per cent of the bank's capital and surplus
2 [~~and the~~]; provided further that the bank may apply to the
3 commissioner for approval to allow for the aggregate amount
4 invested under this subsection [~~shall not, without the prior~~
5 approval of the commissioner, exceed five] to be no more than
6 twenty per cent of the bank's capital and surplus. In no case
7 shall the aggregate amount invested by a bank under this
8 subsection exceed [~~ten~~] twenty per cent of the bank's capital and
9 surplus.

10 (i) Subject to subsection (h), an eligible bank may make
11 an investment authorized under subsection (h) without prior
12 notification to, or approval by, the commissioner if the bank
13 complies with the following after-the-fact notice procedures:

14 (1) An eligible bank shall provide an after-the-fact
15 notification of an investment, within ten business
16 days after the eligible bank makes the investment, to
17 the commissioner;

18 (2) The eligible bank's after-the-fact notice shall
19 include:

20 (A) A description of the eligible bank's investment;

21 (B) The amount of the investment;



- 1 (C) The percentage of the eligible bank's capital and
2 surplus represented by the investment that is the
3 subject of the notice and by the eligible bank's
4 aggregate outstanding low-income housing
5 commitments, including the investment that is the
6 subject of the notice; and
7 (D) A statement certifying that the investment
8 complies with the requirements of subsection (h);
9 (3) A bank that is not an eligible bank but that is at
10 least adequately capitalized, and has a composite
11 rating of at least 3 with improving trends under the
12 Uniform Financial Institutions Rating System, may
13 submit a letter to the commissioner requesting
14 authority to submit after-the-fact notices of its
15 investments. The commissioner shall consider the
16 requests under this paragraph on a case-by-case basis;
17 and
18 (4) Notwithstanding paragraphs (1), (2), and (3), a bank
19 need not submit an after-the-fact notice of an
20 investment if:



- 1 (A) The investment involves properties carried on the
- 2 bank's books as other real estate owned; or
- 3 (B) The commissioner determines that the investment
- 4 is inappropriate for after-the-fact notice.

5 For purposes of this subsection:

6 "Eligible bank" means a bank that is well capitalized; has
7 a composite rating of 1 or 2 under the Uniform Financial
8 Institutions Rating System; has a Community Reinvestment Act
9 rating of outstanding or satisfactory; and is not subject to a
10 cease and desist order, consent order, formal written agreement,
11 or Prompt Corrective Action directive or, if subject to any such
12 order, agreement, or directive, is informed in writing by the
13 commissioner or appropriate federal regulator that the bank may
14 be treated as an "eligible bank" for purposes of this
15 subsection.

16 "Well capitalized" has the same meaning as defined under
17 title 12 Code of Federal Regulations section 6.4.

18 (j) If a bank does not meet the requirements for after-
19 the-fact investment notification set forth in subsection (i),
20 the bank shall submit to the commissioner an investment proposal
21 that includes:



- 1 (1) A description of the bank's investment;
2 (2) The amount of the investment;
3 (3) The percentage of the bank's capital and surplus
4 represented by the proposed investment and by the
5 bank's aggregate outstanding low-income housing
6 investments and commitments, including the proposed
7 investment; and
8 (4) A statement certifying that the investment complies
9 with the requirements of subsection (h).
- 10 In reviewing a proposal, the commissioner shall consider whether
11 the investment satisfies the requirements of subsection (h);
12 whether the investment is consistent with the safe and sound
13 operation of the bank; whether the investment is consistent with
14 the requirements of this section and the commissioner's
15 policies; and other information available. Unless otherwise
16 notified in writing by the commissioner, and subject to
17 subsection (h), the proposed investment shall be deemed approved
18 after thirty calendar days from the date on which the
19 application is complete. The commissioner, by notifying the
20 bank, may extend the period for reviewing the investment
21 proposal. If so notified, the bank may make the investment only



1 with the commissioner's written approval. The commissioner may
2 impose one or more conditions in connection with the approval of
3 an investment under this subsection; provided that all approvals
4 shall be subject to the condition that a bank shall conduct the
5 approved activity in a manner consistent with any published
6 guidance issued by the commissioner and appropriate federal
7 regulator regarding the activity."

8 SECTION 2. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on June 30, 3000.



Report Title:

Affordable Housing; Banks; Assets; Capital and Surplus;
Commissioner of Financial Institutions; Aggregate Investments;
Notice; Approval

Description:

Allows a bank to invest, in aggregate, up to fifteen per cent of the bank's assets in limited partnerships, limited liability partnerships, limited liability companies, and corporations formed to invest in affordable housing residential properties with the approval of the commissioner of financial institutions. Authorizes a bank to apply to the commissioner to invest up to twenty per cent of the bank's assets. Specifies the circumstances in which a bank may make an investment with an after-the-fact notice and when a bank must submit an investment proposal to the commissioner. Effective 6/30/3000. (HD2)

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

