

---

---

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



1 investments [~~which~~] that are predominantly speculative in  
2 nature. The aggregate amount invested by a bank under this  
3 subsection and subsection (d) in any one company or other issuer  
4 shall not exceed twenty per cent of the bank's capital and  
5 surplus.

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

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



1           within five years thereafter, sell the real property,  
2           cease to carry it or them as an asset, or transfer the  
3           real property to an operating subsidiary of the bank;  
4           provided further that the bank's investment in such  
5           operating subsidiary shall not exceed fifteen per cent  
6           of the bank's tier one capital; provided further[~~7~~  
7           ~~such~~] that the property shall not, without the  
8           approval of the commissioner, exceed seventy-five per  
9           cent of the bank's capital and surplus;

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

17          (3) Personal property and fixtures [~~which~~] that the bank  
18           acquires for purposes of leasing to third parties, and  
19           [~~such~~] real property interests as shall be incidental  
20           thereto;



1           (4) [~~Such real~~] Real property or tangible personal  
 2           property as may come into its possession as security  
 3           for loans or in the collection of debts; or as may be  
 4           purchased by or conveyed to the bank in satisfaction  
 5           of or on account of debts previously contracted in the  
 6           course of its business, when [~~such~~] the property was  
 7           held as security by the bank; and

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

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

20          Except as otherwise authorized in this section, any real  
 21          property acquired by a bank pursuant to subsection (f) (4) shall





1 be sold or exchanged for other real property by the bank within  
2 five years after title thereto has vested in it by purchase or  
3 otherwise, or within [~~such further~~] a later time as may be  
4 granted by the commissioner.

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

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

14 (g) A bank may own or control:

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

17 (2) A corporation, partnership, or limited liability  
18 company, organized and existing for the ownership of  
19 real or personal property used or which the bank in  
20 good faith expects to be used in the bank's business



- 1 or used for a permissible purpose under title 12 Code  
2 of Federal Regulations part 362;
- 3 (3) The capital stock of the Federal National Mortgage  
4 Association, the Student Loan Marketing Association,  
5 Federal Home Loan Mortgage Corporation, or of any  
6 other corporation organized for substantially the same  
7 purposes; provided that this subsection shall be  
8 deemed to authorize subscription for as well as  
9 purchase of the stock;
- 10 (4) A small business investment company operating under  
11 the Federal Small Business Investment Act of 1958;
- 12 (5) Bank service corporations, subject to the Bank Service  
13 Company Act, 12 United States Code sections 1861-1862;
- 14 (6) A corporation whose stock is acquired or purchased to  
15 save a loss on a preexisting debt secured by [~~such~~]  
16 the stock; provided[~~7~~] that the stock shall be sold  
17 within twelve months of the date acquired or  
18 purchased, or within [~~such further~~] a later time as  
19 may be granted by the commissioner;
- 20 (7) An international banking corporation established  
21 pursuant to article 5A or an Edge corporation or an



1 Agreement corporation established or authorized  
2 pursuant to section 25a of the Federal Reserve Act, 12  
3 United States Code section 631;

4 (8) A captive insurance company incorporated under the  
5 laws of the United States, or any state or territory  
6 thereof, or the District of Columbia;

7 (9) A company transacting a business of insurance or the  
8 sale of annuities pursuant to the authority conferred  
9 in section 412:5-205.5; and

10 (10) A company engaging in securities activities pursuant  
11 to the authority conferred in section 412:5-205.7.

12 (h) To the extent specified [~~herein,~~] in this subsection, a  
13 bank may invest its own assets in limited partnerships, limited  
14 liability partnerships, limited liability companies, or  
15 corporations formed to invest in residential properties that will  
16 qualify for the low income housing tax credit under section 42 of  
17 the Internal Revenue Code of 1986, as amended, and under chapters  
18 235 and 241; provided that the [~~total~~] bank may invest in an  
19 aggregate amount [~~invested by a bank under this subsection in any~~  
20 ~~one limited partnership, limited liability partnership, limited~~  
21 ~~liability company, or corporation shall not, without the prior~~



1 ~~approval of the commissioner, exceed two]~~ of up to fifteen per  
2 cent of the bank's capital and surplus [and the] without the prior  
3 approval of the commissioner or any after-the-fact notice. An  
4 eligible bank may apply to the commissioner for approval to allow  
5 for the aggregate amount invested under this subsection [shall  
6 not, without the prior approval of the commissioner, exceed five]  
7 to exceed fifteen per cent of the bank's capital and surplus[~~-~~  
8 ~~In~~]; provided that in no case shall the aggregate amount invested  
9 by a bank under this subsection exceed [ten] twenty per cent of  
10 the bank's capital and surplus.

11 (i) Notwithstanding subsection (h), an eligible bank may  
12 make an investment that exceeds fifteen per cent, but does not  
13 exceed twenty per cent, of the bank's capital and surplus  
14 without prior notification to, or approval by, the commissioner  
15 if the eligible bank submits an after-the-fact notice of the  
16 investment to the commissioner. The after-the-fact notice shall  
17 include:

- 18 (1) A description of the eligible bank's investments;  
19 (2) The amount of the investment;  
20 (3) The percentage of the eligible bank's capital and  
21 surplus represented by the investment that is the



1           subject of the notice and the eligible bank's  
2           aggregate outstanding low-income housing commitments,  
3           including the investment that is the subject of the  
4           notice; and  
5           (4) A statement certifying that the investment complies  
6           with the requirements of subsection (h).  
7           (j) For the purposes of this section:  
8           "Eligible bank" means a bank that:  
9           (1) Is well capitalized;  
10           (2) Has a composite rating of 1 or 2 under the Uniform  
11           Financial Institutions Rating System;  
12           (3) Has a Community Reinvestment Act rating of outstanding  
13           or satisfactory; and  
14           (4) Is not subject to a cease and desist order, consent  
15           order, formal written agreement, or Prompt Corrective  
16           Action directive or, if subject to any such order,  
17           agreement, or directive, is informed in writing by the  
18           commissioner or appropriate federal regulator that the  
19           bank may be treated as an "eligible bank" for purposes  
20           of this subsection.



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

3           SECTION 2. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6           SECTION 3. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8           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 capital and surplus in limited partnerships, limited liability partnerships, limited liability companies, and corporations formed to invest in affordable housing residential properties without the prior approval of the commissioner of financial institutions or an after-the-fact notice. Authorizes an eligible bank to either: apply to the commissioner to allow the aggregate amount invested to exceed fifteen per cent, but no more than twenty per cent, of the bank's capital and surplus; or make an investment exceeding fifteen per cent, but not exceeding twenty per cent, of the bank's capital and surplus without prior notification to, or approval by, the commissioner if the eligible bank submits an after-the-fact notice. Effective 6/30/3000. (HD3)

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

