
A BILL FOR AN ACT

RELATING TO STATE FINANCES.

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

1 SECTION 1. The legislature finds that the Housing and
2 Economic Recovery Act of 2008 added section 146(i)(6) to the
3 Internal Revenue Code of 1986, as amended, which authorized the
4 "recycling" of multifamily private activity bond volume cap to
5 finance new affordable rental housing projects. Jurisdictions
6 such as New York City and California have established bond
7 volume cap recycling programs in order to use this existing
8 authority under the Internal Revenue Code to preserve and more
9 efficiently use their tax-exempt private activity bond volume by
10 allowing an authorized private activity bond issuer to secure an
11 instrument of indebtedness with a trustee, fiscal agent, or bank
12 that holds the debt for an affordable housing project. The
13 proceeds of that instrument of indebtedness are then deemed to
14 be used to repay a prior tax-exempt private activity bond issue,
15 the loan pursuant to the prior tax-exempt issue is deemed to
16 have been repaid from an alternative source, and the repayment
17 is deemed to have been transferred to the issuer to make a new



1 loan to another borrower. Under the bond volume cap recycling
2 strategy, the jurisdiction's volume cap is not spent but can
3 instead be recycled once, with certain requirements and
4 limitations, to finance other affordable rental housing projects
5 and leverage other tax incentives like the low-income housing
6 tax credit.

7 Given the critical need to create more affordable housing
8 opportunities within the State, the legislature further finds
9 that laying the foundation for a bond volume cap recycling
10 program now is prudent so that the Hawaii housing finance and
11 development corporation and counties can use the bond volume cap
12 recycling strategy when conditions are favorable.

13 The purpose of this Act is to statutorily establish
14 authorization for the Hawaii housing finance and development
15 corporation and counties to implement a bond volume cap
16 recycling program for affordable rental housing.

17 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
18 amended by adding a new section to part III, subpart A, to be
19 appropriately designated and to read as follows:

20 "§201H- Authorization to secure lines of credit or
21 other instruments of indebtedness. The corporation, subject to



1 legislative approval, may secure a line of credit or other
2 instrument of indebtedness to be used to meet the requirements
3 of federal tax law for the bond volume cap recycling program;
4 provided that the term of the authorized line of credit or other
5 instrument of indebtedness shall correspond to each fiscal
6 biennium budget period."

7 SECTION 3. Section 39B-2, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§39B-2 Allocation of annual state ceiling.** (a) The
10 annual state ceiling shall be allocated for each calendar year
11 in the following proportions:

- 12 (1) An amount equal to fifty per cent of the annual state
13 ceiling to the State;
- 14 (2) An amount equal to 37.55 per cent of the annual state
15 ceiling to the city and county of Honolulu;
- 16 (3) An amount equal to 5.03 per cent of the annual state
17 ceiling to the county of Hawaii;
- 18 (4) An amount equal to 2.41 per cent of the annual state
19 ceiling to the county of Kauai; and
- 20 (5) An amount equal to 5.01 per cent of the annual state
21 ceiling to the county of Maui.



1 (b) The department, with the approval of the governor, may
2 assign all or any part of the allocation of the State to any
3 issuer or any county for a specific calendar year or years. At
4 the request of the department, any issuer or county to which any
5 part of the State's allocation has been assigned shall return
6 all or part of the assignment, in which case the department may
7 provide for its reassignment.

8 (c) The department may request return of all or any part
9 of the allocations of one or more counties made pursuant to
10 subsection (a), and may assign and reassign the allocation to
11 any other county or issuer for a specified calendar year or
12 years.

13 (d) A county, by resolution of its governing body, or any
14 issuer, by written certificate of the issuer, may request
15 additional allocations of the annual state ceiling from, or
16 assign all or any part of its portion of the allocation of the
17 annual state ceiling to, the State for a specified calendar year
18 or years. Before requesting an additional allocation of the
19 annual state ceiling for a specific calendar year or years under
20 this subsection, a county shall have applied all of its
21 allocation of the annual state ceiling for the specified



1 calendar year or years as evidenced by a certificate of the
 2 issuer or the director of finance of a county, as applicable,
 3 under section 39B-3. If a county assigns all or any part of its
 4 private activity bond allocation for a specific calendar year or
 5 years to the State under this subsection, the assigned portion
 6 shall be applied to a project or projects located in the
 7 assigning county; provided that pursuant to a cooperative
 8 agreement with the department and Hawaii housing finance and
 9 development corporation under subsection (e), the private
 10 activity bond allocation may be awarded to projects located in
 11 other counties.

12 (e) In order to facilitate the construction of new rental
 13 housing projects, the department and Hawaii housing finance and
 14 development corporation may enter into a cooperative agreement
 15 with a county to coordinate the award of private activity bonds
 16 and low-income housing tax credits for new rental housing
 17 projects in the county. The agreement shall, except as provided
 18 under federal law, be exempt from all statutes, [~~ordinances,~~
 19 ~~charter provisions,~~] charter provisions, ordinances and rules of
 20 any government agency relating to the award of private activity
 21 bonds and low-income housing tax credits.



1 (f) The Hawaii housing finance and development corporation
2 or a county may establish a bond volume cap recycling program
3 pursuant to section 146(i)(6) of the Internal Revenue Code of
4 1986, as amended. Under the program, if the repayment of a loan
5 financed by an issue of which ninety-five per cent or more of
6 the net proceeds are used to provide projects described in
7 section 142(d) of the Internal Revenue Code of 1986, as amended,
8 and the repayment is used to provide a new loan for any project
9 so described, any bond that is issued to refinance the issue
10 shall be treated as a refunding issue to the extent the
11 principal amount of the refunding issue does not exceed the
12 principal amount of the bonds refunded.

13 (g) The department and Hawaii housing finance and
14 development corporation may enter into a cooperative agreement
15 with a county to facilitate and coordinate the establishment and
16 implementation of a bond volume cap recycling program. The
17 agreement shall be exempt from all statutes, charter provisions,
18 ordinances, and rules of any government agency relating to the
19 award of private activity bonds except federal law, subsection
20 (f), this subsection, and section 39B-5(2)."



1 SECTION 4. Section 39B-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~f~~]§39B-5[~~f~~] **Semi-annual report status or use of**
4 **allocation.** In addition to the report required by
5 section 39B-4, within thirty days of the end of each fiscal and
6 calendar year, each county or any issuer shall submit a report
7 to the department and [~~the~~] Hawaii housing finance and
8 development corporation on [~~the~~]:

9 (1) The status or use of its portion of the allocation of
10 the annual state ceiling, including any carryforward
11 allocation, that has not been applied to an issuance
12 of a qualified private bond[~~r~~]; and

13 (2) The status or use of its portion of the allocation of
14 the annual state ceiling previously applied to an
15 issuance of a qualified private bond and used to
16 provide a new loan under the bond volume cap recycling
17 program pursuant to section 39B-2(f) and section
18 146(i)(6) of the Internal Revenue Code of 1986, as
19 amended,

20 as evidenced by a certificate of the issuer or [~~the~~] director of
21 finance of a county, as applicable."



1 SECTION 5. Section 201H-202, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§201H-202 **Rental housing revolving fund.** (a) There is
4 established the rental housing revolving fund to be administered
5 by the corporation.

6 (b) An amount from the fund, to be set by the corporation
7 and authorized by the legislature, may be used for
8 administrative expenses incurred by the corporation in
9 administering the corporation's housing finance programs;
10 provided that fund moneys shall not be used to finance
11 day-to-day administrative expenses of projects allotted fund
12 moneys.

13 (c) The following may be deposited into the fund:
14 appropriations made by the legislature, conveyance taxes
15 pursuant to section 247-7, private contributions, repayment of
16 loans, interest, other returns, and moneys from other sources.

17 (d) The fund shall be used to provide loans or grants for
18 the development, pre-development, construction, acquisition,
19 preservation, and substantial rehabilitation of rental housing
20 units. Permitted uses of the fund may include but are not
21 limited to planning, design, land acquisition, costs of options,



1 agreements of sale, downpayments, equity financing, capacity
2 building of nonprofit housing developers, or other housing
3 development services or activities as provided in rules adopted
4 by the corporation pursuant to chapter 91. The rules may
5 provide for a means of recapturing loans or grants made from the
6 fund if a rental housing project financed under the fund is
7 refinanced or sold at a later date. The rules may also provide
8 that moneys from the fund shall be leveraged with other
9 financial resources to the extent possible.

10 (e) Moneys available in the fund shall be used for the
11 purpose of providing, in whole or in part, loans or grants for
12 rental housing projects in the following order of priority:

13 (1) Projects or units in projects that are allocated
14 low-income housing credits pursuant to the state
15 housing credit ceiling under section 42(h) of the
16 Internal Revenue Code of 1986, as amended, or projects
17 or units in projects that are funded by programs of
18 the United States Department of Housing and Urban
19 Development and United States Department of
20 Agriculture Rural Development wherein:



1 (A) At least fifty per cent of the available units
2 are for persons and families with incomes at or
3 below eighty per cent of the median family income
4 of which at least five per cent of the available
5 units are for persons and families with incomes
6 at or below thirty per cent of the median family
7 income; and

8 (B) The remaining units are for persons and families
9 with incomes at or below one hundred per cent of
10 the median family income;
11 provided that the corporation may establish rules to
12 ensure full occupancy of fund projects; and

13 (2) Mixed-income rental projects or units in a
14 mixed-income rental project wherein all of the
15 available units are for persons and families with
16 incomes at or below one hundred forty per cent of the
17 median family income.

18 (f) There is established within the fund a bond volume cap
19 recycling program subaccount. The bond volume cap recycling
20 program subaccount shall be maintained as a reserve for the bond



1 volume cap recycling program established pursuant to
2 section 39B-2(f).

3 ~~[(f)]~~ (g) The corporation shall submit an annual report to
4 the legislature no later than twenty days prior to the convening
5 of each regular session describing the projects funded and, with
6 respect to rental housing projects targeted for persons and
7 families with incomes at or below thirty per cent of the median
8 family income, its efforts to develop those rental housing
9 projects, a description of proposals submitted for this target
10 group and action taken on the proposals, and any barriers to
11 developing housing units for this target group.

12 ~~[(g)]~~ (h) For the purposes of this subpart, the applicable
13 median family income shall be the median family income for the
14 county or standard metropolitan statistical area in which the
15 project is located as determined by the United States Department
16 of Housing and Urban Development, as adjusted from time to time.

17 ~~[(h)]~~ (i) The corporation may provide loans and grants
18 under this section; provided that the corporation shall
19 establish loan-to-value ratios to protect the fund from
20 inordinate risk and that under no circumstances shall the rules
21 permit the loan-to-value ratio to exceed one hundred per cent;



1 [and] provided further that the underwriting guidelines include
2 a debt-coverage ratio of [~~not~~] no less than 1.0 to 1.

3 [(+)] (j) For the period commencing July 1, 2005, through
4 June 30, 2009, the fund may be used to provide grants for rental
5 units set aside for persons and families with incomes at or
6 below thirty per cent of the median family income in any project
7 financed in whole or in part by the fund in proportion of those
8 units to the total number of units in the project. At the
9 conclusion of the period described in this subsection, the
10 corporation shall report to the legislature on the number and
11 use of grants provided and whether the grants were an effective
12 use of the funds for purposes of developing rental housing for
13 families at or below thirty per cent of the median family
14 income."

15 SECTION 6. Pursuant to section 201H- , Hawaii Revised
16 Statutes, the Hawaii housing finance and development corporation
17 may secure a line of credit or other instrument of indebtedness,
18 in an amount not to exceed \$150,000,000 during the fiscal
19 biennium beginning July 1, 2023, and ending June 30, 2025, to
20 meet the requirements of federal tax law for the bond volume cap
21 recycling program.



1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect on July 1, 2024.



Report Title:

Department of Budget and Finance; HHFDC; Counties; Bond Volume Cap Recycling Program; Affordable Rental Housing; Rental Housing Revolving Fund; Subaccount; State Debt Limit Exclusion; Private Activity Bonds

Description:

Authorizes the Hawaii Housing Finance and Development Corporation, subject to legislative approval, to secure a line of credit or other instrument of indebtedness for the bond volume cap recycling program. Authorizes the Corporation or a county to establish a bond volume cap recycling program authorized by federal law. Allows the Department of Budget and Finance and Corporation to enter into an agreement with a county for bond volume cap recycling. Establishes a volume cap recycling program subaccount within the Rental Housing Revolving Fund. Requires a county or issuer to submit a report to the Department of Budget and Finance and Corporation on the status or use of its portion of the volume cap that is being recycled. (CD1)

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