

JAN 25 2023

A BILL FOR AN ACT

RELATING TO LIMITED-PROFIT HOUSING ASSOCIATIONS.

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

1 PART I

2 SECTION 1. Chapter 201, Hawaii Revised Statutes, is
3 amended by adding a new section to be appropriately designated
4 and to read as follows:

5 "§201- Limited-profit housing council. (a) There is
6 established the limited-profit housing council within the
7 department of business, economic development, and tourism for
8 administrative purposes, to oversee and administer the
9 establishment and governance of limited-profit housing
10 associations in the State.

11 (b) The council shall consist of the following members:

12 (1) State auditor or the auditor's designee, who shall
13 serve as the chair;

14 (2) The director of the department of business, economic
15 development and tourism or the director's designee;

16 (3) The attorney general or their designee;



- 1 (4) The commissioner of financial institutions or their
2 designee;
- 3 (5) The director of taxation or their designee;
- 4 (6) The chairs of the standing committees of the senate
5 and house of representatives with subject matter
6 jurisdiction over housing or their designees;
- 7 (7) A representative from the city and county of
8 Honolulu's office of housing with experience in
9 affordable housing development;
- 10 (8) A representative from the county of Maui's housing
11 division with experience in affordable housing
12 development;
- 13 (9) A representative from the county of Kauai's housing
14 agency with experience in affordable housing
15 development; and
- 16 (10) A representative from the county of Hawaii's office of
17 housing and community development with experience in
18 affordable housing development.
- 19 (c) Meetings shall be open to the public and subject to
20 chapter 92. The chair shall determine how often the council



1 shall meet; provided that the council meets at least once a
2 calendar year.

3 (d) The department shall provide administrative support to
4 the council and hire an administrator without regard to chapter
5 76, who shall be responsible for the day-to-day operations of
6 the council.

7 (e) The council may adopt rules under chapter 91 necessary
8 to establish and govern limited-profit housing associations in
9 the State."

10 PART II

11 SECTION 2. The Hawaii Revised Statutes is amended by
12 adding a new chapter to be appropriately designated and to read
13 as follows:

14 "CHAPTER

15 LIMITED-PROFIT HOUSING ASSOCIATIONS

16 § -1 Purpose. The purpose of this chapter is to create
17 long-term affordable housing in the State through the
18 establishment of limited-profit housing associations. Every
19 limited-profit housing association shall have the primary
20 purpose of providing long-term affordable housing in the State.
21 This includes devoting and reinvesting its assets, including its



1 shareholders' equity, to generate affordable housing and
2 regularly auditing its business operations to ensure that it is
3 aligned with this primary purpose. This chapter authorizes a
4 designation and code of conduct for an association to offer
5 entrepreneurs and investors a sustainable option to develop
6 long-term affordable housing in the State.

7 § -2 Definitions. As used in this chapter:

8 "Contractor" means any general engineering, general
9 building, or specialty contractor, any subcontractor, or any
10 person, who by oneself or through others offers to undertake, or
11 holds oneself out as being able to undertake, or does undertake
12 to alter, add to, subtract from, improve, enhance, or beautify
13 any realty or construct, alter, repair, add to, subtract from,
14 improve, move, wreck, or demolish any building, highway, road,
15 railroad, excavation, or other structure, project, development,
16 or improvement, or do any part thereof, including the erection
17 of scaffolding or other structures or works in connection
18 therewith.

19 "Financial relationship" means a relationship between a
20 person and a contractor, where:



- 1 (1) The person is, or has been within the last three
2 years, an employee of a contractor, its parent
3 company, or its subsidiaries;
- 4 (2) The person is related by blood, marriage, or adoption
5 to; is a party to a civil union with; is a reciprocal
6 beneficiary or household member of; or resides with a
7 contractor or an officer or director of a contractor,
8 its parent company, or its subsidiaries; or
- 9 (3) The person or an association of which the person is a
10 director, officer, or manager or in which the person
11 owns beneficially or of record five per cent or more
12 of the outstanding equity interests or the outstanding
13 shares of a contractor, its parent company, or its
14 subsidiaries.

15 "Limited-profit housing association" or "association" means
16 a domestic corporation, incorporated under chapter 414, that is
17 approved by the limited-profit housing supervisory board to
18 practice as a limited-profit housing association and whose
19 status as a limited-profit housing association has not been
20 terminated as provided in this chapter.



1 "Limited-profit housing council" or "council" means the
2 council established pursuant to section 201- .

3 "Limited-profit housing supervisory board" or "supervisory
4 board" means the county-level board established pursuant to
5 section 46- .

6 § -3 Establishment; standards of conduct; termination.

7 (a) A domestic corporation, incorporated under chapter 414, may
8 establish itself as a limited-profit housing association upon
9 approval from its limited-profit housing supervisory board. If
10 a corporation that is not a limited-profit housing association
11 is a party to a merger, consolidation, or division, or is the
12 exchanging corporation in a share exchange, and the surviving,
13 new, or any resulting corporation in the merger, consolidation,
14 division, or share exchange is to be a limited-profit housing
15 association, then the plan of merger, consolidation, division,
16 or share exchange shall not be effective unless approved by the
17 supervisory board.

18 (b) The corporation shall, upon approval of its limited-
19 profit housing association status, include in its articles or
20 amend its articles to include a statement that the corporation's
21 primary purpose is to provide long-term affordable housing in



1 the State and that the corporation shall devote its assets,
2 including its shareholders' equity, to generate affordable
3 housing and regularly check and monitor its business operations
4 to ensure that it is aligned with this primary purpose.

5 (c) All directors and officers of an association shall be
6 independent of and shall have no financial relationship with any
7 contractors.

8 (d) The director of an association shall not be personally
9 liable for monetary damages for any action taken as a director
10 if the director performed the duties of the director's office in
11 compliance with the general standards of conduct pursuant to
12 section 414-221.

13 (e) The officer of an association shall not be personally
14 liable for monetary damages for any action taken as an officer
15 if the officer performed the duties of the position in
16 compliance with the general standards of conduct pursuant to
17 section 414-233.

18 (f) An association that is noncompliant with this chapter
19 shall, upon proper notice, have its status as a limited-profit
20 housing association revoked by its supervisory board.



1 (g) An association may elect to terminate its status as a
2 limited-profit housing association and cease to be subject to
3 this chapter upon approval from its supervisory board. If a
4 plan of merger, consolidation, division, or share exchange would
5 have the effect of terminating the status of a corporation as a
6 limited-profit housing association, the plan shall not be
7 effective unless it is approved by its supervisory board.

8 § -4 Leasehold purchase prices; rental prices. (a)

9 Limited-profit housing associations shall only charge a fixed
10 price for the use of its affordable housing units. The fixed
11 price shall be at a level neither higher or lower than necessary
12 to cover the costs for constructing and operating the building,
13 while considering the actual and reasonable costs of managing
14 the affordable housing units, including the formation of
15 reserves. The fixed price shall be based on the following
16 factors:

- 17 (1) Construction expenses, including the financing of the
18 affordable housing units;
- 19 (2) Operating expenses and management costs; and
- 20 (3) Replacement reserves.



1 (b) If a tenant or buyer of an affordable housing unit
2 that is built by an association disagrees with the cost of the
3 affordable housing unit, they may have the amount of the fixed
4 price reviewed by a court of law.

5 § -5 **Asset management.** (a) The revenues generated by a
6 limited-profit housing association shall be reserved and placed
7 in a revolving fund where the moneys shall be used only for
8 limited business activities as provided under section -6.

9 (b) The association may only distribute its profits once a
10 year. The profit distributed may not exceed the permissible
11 interest rate for shareholder equity as determined by the
12 council.

13 (c) The dividend paid to a member or shareholder that
14 withdraws from the association shall be only the amount of the
15 nominal value of the member's or shareholder's capital
16 contribution.

17 § -6 **Limited business activities.** (a) Limited-profit
18 housing associations shall primarily construct and manage
19 affordable housing. Additional primary activities of an
20 association include the large-scale renovation and management of
21 the affordable housing of other limited-profit housing



1 associations. All activities performed under this subsection
2 shall be performed under the name of the association.

3 (b) An association may conduct other secondary business
4 activities, including:

5 (1) The construction of public housing, private homes, and
6 homes built for third parties;

7 (2) The construction of commercial premises, garages, and
8 parking lots;

9 (3) The construction of community facilities for the
10 residents of its affordable housing projects and the
11 residential public in general;

12 (4) Improvements in the general housing environment of the
13 State;

14 (5) Special renovation activities, including urban
15 renewal, sanitation, and renovation for third parties;

16 (6) Legal transactions relating to the affordable housing
17 units owned by the limited-profit housing association;

18 (7) Bank transactions relating to the construction of
19 affordable housing;

20 (8) The purchase of building materials and furnishings;
21 and



1 (9) Participation in other limited-profit building
2 associations, loan associations, and building
3 societies;
4 provided that the scope of these activities is connected and
5 related to the primary business activities described in
6 subsection (a).

7 (c) An association may, with written approval from its
8 limited-profit housing supervisory board, perform other housing-
9 related services.

10 (d) Any interruption in building activities by an
11 association shall require the explicit permission of its
12 limited-profit housing supervisory board.

13 § -7 **Records; annual report.** (a) Limited-profit
14 housing associations shall undergo an annual audit by an
15 independent auditor to ensure that they are aligned with the
16 purpose and requirements of this chapter. The independent
17 auditor shall not only conduct a financial audit, but also a
18 performance audit that is aligned with the auditing guidelines
19 that are approved by the limited-profit housing council to
20 ensure that the use and management of the association's



1 resources and capital comply with the purpose and requirements
2 of this chapter.

3 (b) Each limited-profit housing association shall submit a
4 copy of its annual audit to the limited-profit housing
5 supervisory board within five working days of its receipt. Upon
6 review of the annual audit, the supervisory board may order the
7 association to perform remedial actions that are deemed just and
8 proper.

9 (c) The association shall prepare an annual report that
10 includes the annual audit of the association, any orders from
11 the supervisory board, and any actions planned or taken in
12 response to orders from the supervisory board. The association
13 shall post a draft of its annual report on the public section of
14 its website, or make it otherwise available to the public, for a
15 sixty-day public comment period prior to final publication of
16 the annual report. The deadline for commentary shall be
17 published in a publicly accessible manner.

18 (d) The final draft of the annual report shall also
19 include formal responses to all questions, concerns, comments,
20 and suggestions raised through the public comment period
21 required under subsection (c) and shall be sent to each



1 shareholder of the association within one hundred twenty days
2 following the end of the fiscal year.

3 (e) A limited-profit housing association shall post its
4 most recent annual report on the public portion of its website,
5 if any, except that any proprietary information included in the
6 annual report may be omitted from the annual report as posted.
7 If the association does not have a public website, it shall
8 deliver a copy of its most recent annual audit upon request and
9 without charge to any tenant or buyer who requests a copy."

10 SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended
11 by adding a new section to part I to be appropriately designated
12 and to read as follows:

13 "§46- Limited-profit housing supervisory boards;
14 oversight. (a) Each city and county or county shall, by
15 ordinance, establish a limited-profit housing supervisory board
16 that provides oversight to each limited-profit housing
17 association that is located within that city and county or
18 county. Each supervisory board shall consist of the following
19 members:

20 (1) A representative from the city and county or county's
21 office of housing, who shall be the chair;



- 1 (2) A representative from the city and county or county's
2 redevelopment agency created pursuant to section 53-2,
3 if any;
- 4 (3) A representative from the city and county or county's
5 real property tax division; and
- 6 (4) The city and county or county auditor, or their
7 designee.
- 8 (b) Limited-profit housing supervisory boards:
- 9 (1) Shall review and approve or deny a petition from a
10 domestic corporation, incorporated under chapter 414,
11 to practice as a limited-profit housing association
12 within sixty days of receipt and shall secure any
13 additional information that it deems necessary to
14 determine whether the corporation is qualified to
15 practice as a limited-profit housing association;
16 provided that approval or denial of a petition shall
17 be in conformance with the rules adopted by the
18 limited-profit housing council pursuant to section
19 201- ;



- 1 (2) Shall review the annual audits from the associations
2 under its authority to ensure the associations'
3 compliance with chapter _____ ;
- 4 (3) May investigate any association under its authority to
5 ensure that the association is compliant with
6 chapter _____ ;
- 7 (4) May, upon proper notice, order just and proper
8 sanctions against an association, including remedial
9 action to remove or cure any defects, withholding of
10 public funds, and revocation of a domestic
11 corporation's status as a limited-profit housing
12 association; and
- 13 (5) May, upon the request of an association under its
14 authority, terminate the association's status as a
15 limited-profit housing association; provided that the
16 request shall, at the minimum, include a plan of
17 merger, consolidation, division, or share exchange
18 that outlines the proper transfer or liquidation of
19 the association's assets."



1 SECTION 4. Chapter 235, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§235- Exclusion of income earned by a limited-profit
5 housing association. Notwithstanding any law to the contrary,
6 all income earned from a limited-profit housing association that
7 would otherwise be taxed as ordinary income shall be excluded
8 from taxation under this chapter for Hawaii income tax purposes;
9 provided that any income that is not used for primary business
10 activities under section -6(a) shall be subject to this
11 chapter if the limited-profit housing association is unable to
12 verify that the income has been properly utilized in five years
13 for the primary business activities of the association.

14 SECTION 5. Section 23-94, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

- 16 "(c) This section shall apply to the following:
- 17 (1) Section 235-4.5(a)--Exclusion of intangible income
18 earned by a trust sited in this State;
 - 19 (2) Section 235-4.5(b)--Exclusion of intangible income of
20 a foreign corporation owned by a trust sited in this
21 State;



- 1 (3) Section 235-4.5(c)--Credit to a resident beneficiary
- 2 of a trust for income taxes paid by the trust to
- 3 another state;
- 4 (4) Sections 235-55 and 235-129--Credit for income taxes
- 5 paid by a resident taxpayer to another jurisdiction;
- 6 (5) Section 235-71(c)--Credit for a regulated investment
- 7 company shareholder for the capital gains tax paid by
- 8 the company;
- 9 (6) Section 235-110.6--Credit for fuel taxes paid by a
- 10 commercial fisher;
- 11 (7) Section 235-110.93--Credit for important agricultural
- 12 land qualified agricultural cost;
- 13 (8) Section 235-110.94--Credit for organically produced
- 14 agricultural products;
- 15 (9) Section 235-129(b)--Credit to a shareholder of an S
- 16 corporation for the shareholder's pro rata share of
- 17 the tax credit earned by the S corporation in this
- 18 State; [and]
- 19 (10) Section 209E-10--Credit for a qualified business in an
- 20 enterprise zone; provided that the review of this



1 credit pursuant to this part shall be limited in scope
2 to income tax credits[-]; and

3 (11) Section 235- -- Exclusion of income earned by a
4 limited-profit housing association."

5 SECTION 6. Section 247-3, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§247-3 Exemptions.** The tax imposed by section 247-1
8 shall not apply to:

- 9 (1) Any document or instrument that is executed prior to
10 January 1, 1967;
- 11 (2) Any document or instrument that is given to secure a
12 debt or obligation;
- 13 (3) Any document or instrument that only confirms or
14 corrects a deed, lease, sublease, assignment,
15 transfer, or conveyance previously recorded or filed;
- 16 (4) Any document or instrument between husband and wife,
17 reciprocal beneficiaries, or parent and child, in
18 which only a nominal consideration is paid;
- 19 (5) Any document or instrument in which there is a
20 consideration of \$100 or less paid or to be paid;



- 1 (6) Any document or instrument conveying real property
2 that is executed pursuant to an agreement of sale, and
3 where applicable, any assignment of the agreement of
4 sale, or assignments thereof; provided that the taxes
5 under this chapter have been fully paid upon the
6 agreement of sale, and where applicable, upon [~~such~~]
7 the assignment or assignments of agreements of sale;
- 8 (7) Any deed, lease, sublease, assignment of lease,
9 agreement of sale, assignment of agreement of sale,
10 instrument or writing in which the United States or
11 any agency or instrumentality thereof or the State or
12 any agency, instrumentality, or governmental or
13 political subdivision thereof are the only parties
14 thereto;
- 15 (8) Any document or instrument executed pursuant to a tax
16 sale conducted by the United States or any agency or
17 instrumentality thereof or the State or any agency,
18 instrumentality, or governmental or political
19 subdivision thereof for delinquent taxes or
20 assessments;



1 (9) Any document or instrument conveying real property to
2 the United States or any agency or instrumentality
3 thereof or the State or any agency, instrumentality,
4 or governmental or political subdivision thereof
5 pursuant to the threat of the exercise or the exercise
6 of the power of eminent domain;

7 (10) Any document or instrument that solely conveys or
8 grants an easement or easements;

9 (11) Any document or instrument whereby owners partition
10 their property, whether by mutual agreement or
11 judicial action; provided that the value of each
12 owner's interest in the property after partition is
13 equal in value to that owner's interest before
14 partition;

15 (12) Any document or instrument between marital partners or
16 reciprocal beneficiaries who are parties to a divorce
17 action or termination of reciprocal beneficiary
18 relationship that is executed pursuant to an order of
19 the court in the divorce action or termination of
20 reciprocal beneficiary relationship;



1 (13) Any document or instrument conveying real property
2 from a testamentary trust to a beneficiary under the
3 trust;

4 (14) Any document or instrument conveying real property
5 from a grantor to the grantor's revocable living
6 trust, or from a grantor's revocable living trust to
7 the grantor as beneficiary of the trust;

8 (15) Any document or instrument conveying real property, or
9 any interest therein, from an entity that is a party
10 to a merger or consolidation under chapter 414, 414D,
11 415A, 421, 421C, 425, 425E, or 428 to the surviving or
12 new entity;

13 (16) Any document or instrument conveying real property, or
14 any interest therein, from a dissolving limited
15 partnership to its corporate general partner that
16 owns, directly or indirectly, at least a ninety per
17 cent interest in the partnership, determined by
18 applying section 318 (with respect to constructive
19 ownership of stock) of the federal Internal Revenue
20 Code of 1986, as amended, to the constructive
21 ownership of interests in the partnership; [and]



1 [+] (17) [+] Any document or instrument that conforms to the
2 transfer on death deed as authorized under chapter
3 527 [-] ;

4 (18) Any document or instrument conveying real property, or
5 any interest therein, to a limited-profit housing
6 association; and

7 (19) Any document or instrument conveying real property, or
8 interest therein, by a limited-profit housing
9 association."

10 PART III

11 SECTION 7. (a) There is established a working group to
12 examine:

13 (1) The feasibility and implementation of various non-
14 federal incentives to construct long-term affordable
15 housing units in the State, including but not limited
16 to long-term bank mortgages at reduced interest rates,
17 subsidies based on income limits, repayable and
18 nonrepayable construction grants, and other forms of
19 competitive financing; and

20 (2) Proposed guidelines for a limited-profit housing
21 association to determine:



- 1 (A) The below-market leasehold and rental prices of
- 2 its affordable housing units; and
- 3 (B) Its annual permissible interest rate for
- 4 shareholder equity.

5 (b) The working group shall consist of the following
6 members:

- 7 (1) The commissioner of financial institutions, who shall
- 8 serve as the chair;
- 9 (2) The director of finance;
- 10 (3) The chairs of the standing committees of the senate
- 11 and house of representatives with subject matter
- 12 jurisdiction over state funds;
- 13 (4) A representative from the city and county of
- 14 Honolulu's department of budget and fiscal services;
- 15 (5) A representative from the county of Maui's department
- 16 of finance;
- 17 (6) A representative from the county of Kauai's department
- 18 of finance; and
- 19 (7) A representative from the county of Hawaii's
- 20 department of finance.



1 Working group members may recommend additional members with
2 appropriate special expertise to the working group, for approval
3 by the chair.

4 (c) In its recommendations of subsection (a)(1), the
5 working group may consider the formation of a program to
6 administer the competitive financing incentives for the
7 construction of long-term affordable housing in the State. In
8 its recommendations of subsection (a)(2), the working group
9 shall consider any existing guidelines relating to limited-
10 profit housing associations.

11 (d) The working group shall present a report of its
12 findings and recommendations, including any proposed
13 legislation, to the limited-profit housing council for public
14 comment. Thereafter, the limited-profit housing council shall
15 submit a report of its findings and recommendations, including
16 any proposed legislation, to the legislature no later than
17 twenty days prior to the convening of the regular session of
18 2024.

19 (e) The members of the working group shall serve without
20 compensation but shall be reimbursed for expenses, including
21 travel expenses, necessary for the performance of their duties.



1 (f) No member of the working group shall be subject to
2 chapter 84, Hawaii Revised Statutes, solely because of the
3 member's participation in the working group.

4 (g) The department of commerce and consumer affairs shall
5 provide administrative and clerical support required by the
6 working group.

7 (h) The working group shall be dissolved on December 31,
8 2023.

9 SECTION 8. (a) There is established a working group to
10 study and recommend recordkeeping and auditing standards that
11 define, report, and assess the overall housing development
12 performance for limited-profit housing associations that
13 accurately reflect:

- 14 (1) The profitability of the association;
- 15 (2) The expediency of the management of the affordable
16 housing units; and
- 17 (3) Compliance with chapter , Hawaii Revised Statutes.

18 (b) The working group shall consist of the following
19 members or their designees:

- 20 (1) The director of taxation, who shall serve as the
21 chair;



- 1 (2) The city auditor of the city and county of Honolulu;
- 2 (3) The county auditor of the county of Maui;
- 3 (4) The legislative auditor of the county of Hawaii; and
- 4 (5) The county auditor of the county of Kauai.

5 Working group members may recommend additional members with
6 appropriate special expertise to the working group, for approval
7 by the chair.

8 (c) In drafting the proposed standards, the working group
9 shall examine any existing recordkeeping and auditing guidelines
10 for limited-profit housing associations. The working group
11 shall also consider the establishment of a limited-profit
12 housing association auditing board to review and enforce the
13 proposed standards. The working group may consider existing
14 statutory language, including chapter 514B, Hawaii Revised
15 Statutes.

16 (d) The working group shall present a report of its
17 findings and recommendations, including any proposed
18 legislation, to the limited-profit housing council for public
19 comment. Thereafter, the limited-profit housing council shall
20 submit a report of its findings and recommendations, including
21 any proposed legislation, to the legislature no later than



1 twenty days prior to the convening of the regular session of
2 2024.

3 (e) The members of the working group shall serve without
4 compensation but shall be reimbursed for expenses, including
5 travel expenses, necessary for the performance of their duties.

6 (f) No member of the working group shall be subject to
7 chapter 84, Hawaii Revised Statutes, solely because of the
8 member's participation in the working group.

9 (g) The department of taxation shall provide
10 administrative and clerical support required by the working
11 group.

12 (h) The working group shall be dissolved on December 31,
13 2023.

14 PART IV

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

17 SECTION 10. This Act shall take effect upon its approval;
18 provided that part II of this Act shall take effect on
19 January 1, 2024.

20

INTRODUCED BY: _____



S.B. NO. 1462

Report Title:

Affordable Housing; Limited-profit Housing Associations

Description:

Establishes an organizational and regulatory framework for limited-profit housing associations.

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

