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# 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 limited-profit housing council shall consist of  
12 the following members:

13 (1) The executive director of the Hawaii housing finance  
14 and development corporation, who shall serve as the  
15 co-chair;

16 (2) The executive director of the Hawaii public housing  
17 authority, who shall serve as the co-chair;



- 1        (3) The director of the department of business, economic
- 2            development, and tourism or the director's designee;
- 3        (4) The attorney general or their designee;
- 4        (5) The director of taxation or their designee;
- 5        (6) The chairs of the standing committees of the senate
- 6            and house of representatives with subject matter
- 7            jurisdiction over housing or their designees;
- 8        (7) A representative from the city and county of
- 9            Honolulu's office of housing with experience in
- 10           affordable housing development;
- 11        (8) A representative from the county of Maui's housing
- 12           division with experience in affordable housing
- 13           development;
- 14        (9) A representative from the county of Kauai's housing
- 15           agency with experience in affordable housing
- 16           development; and
- 17        (10) A representative from the county of Hawaii's office of
- 18           housing and community development with experience in
- 19           affordable housing development.
- 20        (c) Meetings shall be open to the public and subject to
- 21 chapter 92. The co-chairs 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 to practice as a limited-profit housing association and  
18 whose status as a limited-profit housing association has not  
19 been terminated as provided in this chapter.

20 "Limited-profit housing council" or "council" means the  
21 council established pursuant to section 201-



1           §   -3   Establishment; standards of conduct; termination.

2   (a)   A domestic corporation, incorporated under chapter 414, may  
3   establish itself as a limited-profit housing association upon  
4   approval.  If a corporation that is not a limited-profit housing  
5   association is a party to a merger, consolidation, or division,  
6   or is the exchanging corporation in a share exchange, and the  
7   surviving, new, or any resulting corporation in the merger,  
8   consolidation, division, or share exchange is to be a limited-  
9   profit housing association, then the plan of merger,  
10   consolidation, division, or share exchange shall not be  
11   effective unless approved.

12       (b)   The corporation shall, upon approval of its limited-  
13   profit housing association status, include in its articles or  
14   amend its articles to include a statement that the corporation's  
15   primary purpose is to provide long-term affordable housing in  
16   the State and that the corporation shall devote its assets,  
17   including its shareholders' equity, to generate affordable  
18   housing and regularly check and monitor its business operations  
19   to ensure that it is aligned with this primary purpose.



1 (c) All directors and officers of an association shall be  
2 independent of and shall have no financial relationship with any  
3 contractors.

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

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

14 (f) An association that is noncompliant with this chapter  
15 shall, upon proper notice, have its status as a limited-profit  
16 housing association revoked.

17 (g) An association may elect to terminate its status as a  
18 limited-profit housing association and cease to be subject to  
19 this chapter upon approval. If a plan of merger, consolidation,  
20 division, or share exchange would have the effect of terminating  
21 the status of a corporation as a limited-profit housing



1 association, the plan shall not be effective unless it is  
2 approved.

3 § -4 Leasehold purchase prices; rental prices. (a)

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

- 12 (1) Construction expenses, including the financing of the
- 13 affordable housing units;
- 14 (2) Operating expenses and management costs; and
- 15 (3) Replacement reserves.

16 (b) If a tenant or buyer of an affordable housing unit  
17 that is built by an association disagrees with the cost of the  
18 affordable housing unit; they may have the amount of the fixed  
19 price reviewed by a court of law.

20 § -5 Asset management. (a) The revenues generated by a  
21 limited-profit housing association shall be reserved and placed





1 in a revolving fund where the moneys shall be used only for  
2 limited business activities as provided under section -6.

3 (b) The association may only distribute its profits once a  
4 year. The profit distributed may not exceed the permissible  
5 interest rate for shareholder equity as determined by the  
6 council.

7 (c) The dividend paid to a member or shareholder that  
8 withdraws from the association shall be only the amount of the  
9 nominal value of the member's or shareholder's capital  
10 contribution.

11 § -6 Limited business activities. (a) Limited-profit  
12 housing associations shall primarily construct and manage  
13 affordable housing. Additional primary activities of an  
14 association include the large-scale renovation and management of  
15 the affordable housing of other limited-profit housing  
16 associations. All activities performed under this subsection  
17 shall be performed under the name of the association.

18 (b) An association may conduct other secondary business  
19 activities, including:

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



- 1 (2) The construction of commercial premises, garages, and  
2 parking lots;
- 3 (3) The construction of community facilities for the  
4 residents of its affordable housing projects and the  
5 residential public in general;
- 6 (4) Improvements in the general housing environment of the  
7 State;
- 8 (5) Special renovation activities, including urban  
9 renewal, sanitation, and renovation for third parties;
- 10 (6) Legal transactions relating to the affordable housing  
11 units owned by the limited-profit housing association;
- 12 (7) Bank transactions relating to the construction of  
13 affordable housing;
- 14 (8) The purchase of building materials and furnishings;  
15 and
- 16 (9) Participation in other limited-profit building  
17 associations, loan associations, and building  
18 societies;
- 19 provided that the scope of these activities is connected and  
20 related to the primary business activities described in  
21 subsection (a).



1 (c) An association may, with written approval, perform  
2 other housing-related services.

3 (d) Any interruption in building activities by an  
4 association shall require the explicit permission."

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

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

18 SECTION 4. Section 23-94, Hawaii Revised Statutes, is  
19 amended by amending subsection (c) to read as follows:

20 "(c) This section shall apply to the following:



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



1 the tax credit earned by the S corporation in this  
2 State; [and]

3 (10) Section 209E-10--Credit for a qualified business in an  
4 enterprise zone; provided that the review of this  
5 credit pursuant to this part shall be limited in scope  
6 to income tax credits[-]; and

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

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

11 "**§247-3 Exemptions.** The tax imposed by section 247-1  
12 shall not apply to:

13 (1) Any document or instrument that is executed prior to  
14 January 1, 1967;

15 (2) Any document or instrument that is given to secure a  
16 debt or obligation;

17 (3) Any document or instrument that only confirms or  
18 corrects a deed, lease, sublease, assignment,  
19 transfer, or conveyance previously recorded or filed;



- 1 (4) Any document or instrument between husband and wife,  
2 reciprocal beneficiaries, or parent and child, in  
3 which only a nominal consideration is paid;
- 4 (5) Any document or instrument in which there is a  
5 consideration of \$100 or less paid or to be paid;
- 6 (6) Any document or instrument conveying real property  
7 that is executed pursuant to an agreement of sale, and  
8 where applicable; any assignment of the agreement of  
9 sale, or assignments thereof; provided that the taxes  
10 under this chapter have been fully paid upon the  
11 agreement of sale, and where applicable, upon [~~such~~]  
12 the assignment or assignments of agreements of sale;
- 13 (7) Any deed, lease, sublease, assignment of lease,  
14 agreement of sale, assignment of agreement of sale,  
15 instrument or writing [~~in which~~] that the United  
16 States or any agency or instrumentality thereof or the  
17 State or any agency, instrumentality, or governmental  
18 or political subdivision thereof are the only parties  
19 thereto;
- 20 (8) Any document or instrument executed pursuant to a tax  
21 sale conducted by the United States or any agency or



1 instrumentality thereof or the State or any agency,  
 2 instrumentality, or governmental or political  
 3 subdivision thereof for delinquent taxes or  
 4 assessments;

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

11 (10) Any document or instrument that solely conveys or  
 12 grants an easement or easements;

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

19 (12) Any document or instrument between marital partners or  
 20 reciprocal beneficiaries who are parties to a divorce  
 21 action or termination of reciprocal beneficiary



1 relationship that is executed pursuant to an order of  
2 the court in the divorce action or termination of  
3 reciprocal beneficiary relationship;

4 (13) Any document or instrument conveying real property  
5 from a testamentary trust to a beneficiary under the  
6 trust;

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

11 (15) Any document or instrument conveying real property, or  
12 any interest therein, from an entity that is a party  
13 to a merger or consolidation under chapter 414, 414D,  
14 415A, 421, 421C, 425, 425E, or 428 to the surviving or  
15 new entity;

16 (16) Any document or instrument conveying real property, or  
17 any interest therein, from a dissolving limited  
18 partnership to its corporate general partner that  
19 owns, directly or indirectly, at least a ninety per  
20 cent interest in the partnership, determined by  
21 applying section 318 (with respect to constructive





1 ownership of stock) of the federal Internal Revenue  
2 Code of 1986, as amended, to the constructive  
3 ownership of interests in the partnership; [~~and~~  
4 ~~†~~] (17) ~~†~~] Any document or instrument that conforms to the  
5 transfer on death deed as authorized under chapter  
6 527 ~~[†]~~;

7 (18) Any document or instrument conveying real property, or  
8 any interest therein, to a limited-profit housing  
9 association; and

10 (19) Any document or instrument conveying real property, or  
11 interest therein, by a limited-profit housing  
12 association."

13 PART III

14 SECTION 6. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect upon its approval;  
17 provided that part II of this Act shall take effect on  
18 January 1, 2024.



**Report Title:**

Affordable Housing; Limited-Profit Housing Associations

**Description:**

Establishes an organizational and regulatory framework for limited-profit housing associations. (SD1)

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