
A BILL FOR AN ACT

RELATING TO CREATING A LOCAL HOUSING MARKET.

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

1 SECTION 1. The legislature finds that housing costs are
2 out of reach in Hawaii's current housing market for most
3 residents. As housing is a basic need, this is one of the
4 pressing problems for our State to address. The root of this
5 problem is our housing prices are based on the wages and
6 resources of buyers from around the world. In most housing
7 market prices are based on the incomes of the residents of the
8 local area.

9 To solve the problem of unaffordable market rate housing,
10 we are creating a separate local housing market. To do this,
11 for all housing built with government funds or assistance we
12 will place deed restrictions to keep the housing in the same
13 area median income range pricing that it was initially offered
14 at. This will build an inventory of housing that will always be
15 affordable to the local wage earner.

16 The Hawaii State Planning Act (HRS §226-19) lays out the
17 State's socio-cultural advancement with regard to housing. Its



1 purpose is to achieve greater opportunities for Hawaii's people
2 to secure reasonably priced, safe, sanitary, and livable homes,
3 located in suitable environments that satisfactorily accommodate
4 the needs and desires of families and individuals, through
5 collaboration and cooperation between government and nonprofit
6 and for-profit developers to ensure that more rental and for
7 sale affordable housing is made available to extremely low-, very
8 low-, lower-, moderate-, and above moderate-income segments of
9 Hawaii's population.

10 Two of the policies of our State are:

11 (1) Stimulate and promote feasible approaches that increase
12 affordable rental and for sale housing choices for extremely
13 low-, very low-, lower-, moderate-, and above moderate-income
14 households.

15 (2) Increase homeownership and rental opportunities and choices
16 in terms of quality, location, cost, densities, style, and size
17 of housing.

18 In 2019, this Legislature requested a study of policies and
19 practices around achieving these housing objectives. One of the
20 findings of the ALOHA Homes Implementation Study was, "We
21 recommend that the sales price of affordable units be restricted



1 so that subsequent buyers can purchase a home at the same area
2 median income level as their predecessors (pg 29)." And that in
3 their focus groups, "most participants felt it would be unfair
4 for people to sell affordable units at market-rate value at any
5 time after the initial purchase (pg 42)."

6 The purpose of this Act is to make changes to §201H-47,
7 §201H-49, and §201H-023 to implement keeping affordable housing
8 units affordable to the initial targeted area median income
9 level in perpetuity.

10 SECTION 2. Section 201H-47, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§201H-47 Real property; restrictions on transfer; waiver**
13 **of restrictions.** (a) The following restrictions shall apply to
14 the transfer of real property developed and sold under this
15 chapter, whether in fee simple or leasehold:

16 (1) [~~For a period of ten years~~] In perpetuity after the
17 purchase, whether by lease, assignment of lease, deed,
18 or agreement of sale, if the purchaser wishes to
19 transfer title to the real property, the corporation
20 shall have the first option to purchase the real
21 property at a price that shall not exceed the same



1 regulations, it was purchased under and remain
2 affordable to the same area median income as it was
3 originally purchased at. If applicable the sales price
4 shall be adjusted to include the sum of:
5 (A) ~~[The original cost to the purchaser, as defined~~
6 ~~in rules adopted by the corporation;]~~
7 [~~(B)~~] The cost of any improvements added by the
8 purchaser, as defined in rules adopted by
9 the corporation; and
10 [~~(C)~~] ~~[Simple interest on the original cost and~~
11 ~~capital improvements to the purchaser at the~~
12 ~~rate of one per cent per year; and]~~
13 [~~(D)~~] (B) The amount, if any, previously paid by the
14 purchaser to the corporation [~~as the~~
15 ~~corporation's share of net appreciation in the~~
16 ~~real property;]~~
17 (2) The corporation may purchase the real property either:
18 (A) By conveyance free and clear of all mortgages and
19 liens; or
20 (B) By conveyance subject to existing mortgages and
21 liens.



1 If the real property is conveyed in the
2 manner provided in subparagraph (A), it shall be
3 conveyed to the corporation only after all mortgages
4 and liens are released. If the real property is
5 conveyed in the manner provided in subparagraph (B),
6 the corporation shall acquire the real property
7 subject to any first mortgage created for the purpose
8 of securing the payment of a loan of funds expended
9 solely for the purchase of the real property by the
10 seller; and any mortgage or lien created for any other
11 purpose; provided that the corporation has previously
12 consented to it in writing.

13 The corporation's interest created by this
14 section shall constitute a statutory lien on the real
15 property and shall be superior to any other mortgage or
16 lien, except for any first mortgage created for the purpose
17 of securing the payment of a loan of funds expended solely
18 for the purchase of the real property by the seller; any
19 mortgage insured or held by a federal housing agency; and
20 any mortgage or lien created for any other purpose;
21 provided that the corporation has previously consented to



1 it in writing. The amount paid by the corporation to the
2 seller shall be the difference, if any, between the
3 purchase price determined by paragraph (1) (A) to ~~[(D)]~~ (B),
4 and the total of the outstanding principal balances of the
5 mortgages and liens assumed by the corporation;

6 (3) A purchaser may refinance real property developed and
7 sold under this chapter; provided that the purchaser shall
8 not refinance the real property ~~[within ten years from the~~
9 ~~date of purchase]~~ for an amount in excess of the purchase
10 price as determined by paragraph (1) (A) to ~~[(C)]~~ (B);
11 provided further that the purchaser shall obtain the
12 corporation's written consent ~~[if any restriction on the~~
13 ~~transfer of the real property remains applicable]~~ to
14 refinance;

15 ~~[(4)] [— After the end of the tenth year from the date of~~
16 ~~initial purchase or execution of an agreement of sale, the~~
17 ~~purchaser may sell the real property and sell or assign the~~
18 ~~property free from any price restrictions; provided that the~~
19 ~~purchaser shall be required to pay to the corporation the sum~~
20 ~~of:]~~



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1 [~~(A)~~] (4) The balance of any mortgage note, agreement
2 of sale, or other amount owing to the corporation;

3 [~~(B)~~] [~~Any subsidy or deferred sales price made by~~
4 ~~the corporation in the acquisition,~~
5 ~~development, construction, and sale of the~~
6 ~~real property, and any other amount expended~~
7 ~~by the corporation not counted as costs~~
8 ~~under section 201H-45 but charged to the~~
9 ~~real property by good accounting practice as~~
10 ~~determined by the corporation whose books~~
11 ~~shall be prima facie evidence of the~~
12 ~~correctness of the costs;]~~

13 [~~(C)~~] [~~Interest on the subsidy or deferred sales~~
14 ~~price, if applicable, and any other amount~~
15 ~~expended at the rate of seven per cent per~~
16 ~~year computed as to the subsidy or deferred~~
17 ~~sales price, if applicable, from the date of~~
18 ~~purchase or execution of the agreement of~~
19 ~~sale, and as to any amount expended, from~~
20 ~~the date of expenditure; provided that the~~
21 ~~computed interest shall not extend beyond~~



1 ~~thirty years from the date of purchase or~~
2 ~~execution of the agreement of sale of the~~
3 ~~real property. If any proposed sale or~~
4 ~~transfer will not generate an amount~~
5 ~~sufficient to pay the corporation the sum as~~
6 ~~computed under this paragraph, the~~
7 ~~corporation shall have the first option to~~
8 ~~purchase the real property at a price that~~
9 ~~shall not exceed the sum as computed under~~
10 ~~paragraphs (1) and (2); and]~~

11 ~~[(D)]~~ ~~[The corporation's share of appreciation in~~
12 ~~the real property as determined under rules~~
13 ~~adopted pursuant to chapter 91, when~~
14 ~~applicable;]~~

15 ~~[(5)]~~ ~~[Notwithstanding any provision in this~~
16 ~~section to the contrary, pursuant to rules~~
17 ~~adopted by the corporation, the subsidy or~~
18 ~~deferred sales price described in paragraph~~
19 ~~(4) (B) and any interest accrued pursuant to~~
20 ~~paragraph (4) (C) may be paid, in part or in~~
21 ~~full, at any time; and]~~



1 ~~[(6)]~~ ~~[Notwithstanding any provision in this section to~~
2 ~~the contrary, the corporation's share of~~
3 ~~appreciation in the real property described in~~
4 ~~paragraph (4) (D);]~~

5 ~~[(A)]~~ ~~[Shall apply when the sales price of the~~
6 ~~real property that is developed and sold~~
7 ~~under this chapter is less than the then-~~
8 ~~current, unencumbered, fair market value of~~
9 ~~the real property, as determined by a real~~
10 ~~property appraisal obtained prior to the~~
11 ~~closing of the sale;]~~

12 ~~[(B)]~~ ~~[Shall be a restriction that runs with the~~
13 ~~land until it is paid in full and released~~
14 ~~by the corporation, or extinguished pursuant~~
15 ~~to subsection (f); and]~~

16 ~~[(C)]~~ May be paid, in part or in full, at any time
17 after recordation of the sale.

18 ~~[(b)]~~ (a) If the corporation waives its first option to
19 repurchase the real property provided in subsection (a), a
20 qualified nonprofit housing trust shall have the option to
21 purchase the real property at [a] the same area median income



1 level as it was originally purchased at. [~~price that shall not~~
2 ~~exceed the sum of:~~]

3 ~~[(1) The original cost to the purchaser, as defined in~~
4 ~~rules adopted by the corporation;~~

5 ~~— (2) The cost of any improvements added by the purchaser,~~
6 ~~as defined in rules adopted by the corporation;~~

7 ~~— (3) Simple interest on the original cost and capital~~
8 ~~improvements to the purchaser at the rate of one per cent per~~
9 ~~year; and~~

10 ~~— (4) The corporation's share of net appreciation in the~~
11 ~~real property to be paid as determined under rules adopted~~
12 ~~pursuant to chapter 91, when applicable.]~~

13 (c)] (b) If, [~~For a period of ten years after the~~
14 ~~purchase,~~] whether by lease, assignment of lease, deed, or
15 agreement of sale, if the purchaser wishes to transfer title to
16 the real property, and if the corporation or the qualified
17 nonprofit housing trust selected by the corporation does not
18 exercise the option to purchase the real property as provided in
19 subsection (a) or (b), then the corporation shall require the
20 purchaser to sell the real property to a "qualified resident" as
21 defined in section 201H-32, and upon the terms that they are



1 qualified in the same area median income level that preserve the
2 intent of this section and sections 201H-49 and 201H-50, and in
3 accordance with rules adopted by the corporation.

4 ~~[(d)]~~ (c) The corporation may waive the restrictions
5 prescribed in subsections (a) through ~~[(e)]~~ (b) if:

6 (1) The purchaser wishes to transfer title to the real
7 property by devise or through the laws of descent to a
8 family member who would otherwise qualify under rules
9 established by the corporation;

10 (2) The sale or transfer of the real property would be at
11 a price and upon terms that preserve the intent of
12 this section without the necessity of the State
13 repurchasing the real property; provided that, in this
14 case, the purchaser shall sell the real property and
15 sell or assign the real property to a person who is a
16 "qualified resident" as defined in section 201H-32 in
17 the same area median income level; ~~[and provided~~
18 ~~further that the purchaser shall pay to the~~
19 ~~corporation its share of appreciation in the real~~
20 ~~property as determined in rules adopted pursuant to~~
21 ~~chapter 91, when applicable; or~~



1 ~~_____ (3) The sale or transfer is of real property subject to a~~
2 ~~sustainable affordable lease as defined in section 516-1.]~~

3 (e) The corporation may release the restrictions
4 prescribed in subsections (a) through (c) if the real property
5 is financed under a federally subsidized mortgage program and
6 the restrictions would jeopardize the federal government's
7 ability to recapture any interest credit subsidies provided to
8 the homeowner.

9 (f) The restrictions prescribed in this section and
10 sections 201H-49 to 201H-51 shall be automatically
11 [~~extinguished~~] retained and shall [~~not~~] attach in subsequent
12 transfers of title when a qualified nonprofit housing trust
13 becomes the owner of the real property pursuant to subsection
14 (b); or a mortgage holder or other party becomes the owner of
15 the real property pursuant to a mortgage foreclosure,
16 foreclosure under power of sale, or a conveyance in lieu of
17 foreclosure after a foreclosure action is commenced; provided
18 that the mortgage is the initial purchase money mortgage, or
19 that the corporation consented to and agreed to subordinate the
20 restrictions to the mortgage when originated, if the mortgage is
21 not the initial purchase money mortgage; or when a mortgage is



1 assigned to a federal housing agency. Any law to the contrary
2 notwithstanding, a mortgagee under a mortgage covering real
3 property or leasehold interest encumbered by the first option to
4 purchase in favor of the corporation, prior to commencing
5 mortgage foreclosure proceedings, shall notify the corporation
6 in writing of:

7 (1) Any default of the mortgagor under the mortgage within
8 ninety days after the occurrence of the default; and

9 (2) Any intention of the mortgagee to foreclose the
10 mortgage under chapter 667 forty-five days prior to commencing
11 mortgage foreclosure proceedings;
12 provided that the mortgagee's failure to provide written notice
13 to the corporation shall not affect the mortgage holder's rights
14 under the mortgage. The corporation shall be a party to any
15 foreclosure action, and shall be entitled to its share of
16 appreciation in the real property as determined under this
17 chapter in lien priority when the payment is applicable, and if
18 foreclosure occurs within the ten-year period after the
19 purchase, the corporation shall also be entitled to all proceeds
20 remaining in excess of all customary and actual costs and
21 expenses of transfer pursuant to default, including liens and



1 encumbrances of record; provided that the person in default
2 shall be entitled to an amount that shall not exceed the sum of
3 amounts determined pursuant to subsection [~~(a)(1)(B) and (C)~~]
4 (1)(A) and (B).

5 (g) The provisions of this section shall be incorporated
6 in any deed, lease, agreement of sale, or any other instrument
7 of conveyance issued by the corporation. [~~In any sale by the
8 corporation of real property for which a subsidy or deferred
9 sales price was made by the corporation, the amount of the
10 subsidy or deferred sales price described in subsection
11 (a)(4)(B), a description of the cost items that constitute the
12 subsidy or deferred sales price, and the conditions of the
13 subsidy or deferred sales price shall be clearly stated at the
14 beginning of the contract document issued by the corporation.
15 In any sale in which the corporation's share of appreciation in
16 real property is a restriction, the terms of the shared
17 appreciation equity program shall be clearly stated and included
18 as an exhibit in any deed, lease, agreement of sale, or any
19 other instrument of conveyance.]~~

20 (h) This section need not apply to market-priced units in
21 an economically integrated housing project, except as otherwise



1 determined by the developer of the units; provided that
2 preference shall be given to qualified residents in the initial
3 sale of market-priced units.

4 (i) The corporation is authorized to waive any of the
5 restrictions set forth in this section in order to comply with
6 or conform to requirements set forth in federal law or
7 regulations governing mortgage insurance or guarantee programs
8 or requirements set forth by federally chartered secondary
9 mortgage market participants.

10 (j) Notwithstanding any law to the contrary, if real
11 property is purchased by a qualified nonprofit housing trust
12 pursuant to subsection (b), the housing trust shall establish
13 new buyback restrictions for the purpose of maintaining the unit
14 as affordable for [~~as long as practicable, or as otherwise~~
15 ~~required by the corporation~~] in perpetuity.

16 (k) A qualified nonprofit housing trust shall report the
17 status and use of its housing units to the corporation by
18 November 30 of each calendar year.

19 SECTION 3. Section 201H-49, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "~~§201H-49~~ **Real property; restrictions on use.** (a) Real
2 property purchased under this chapter shall be occupied by the
3 purchaser at all times [~~during the ten-year restriction period~~]
4 as set forth in section 201H-47, except in hardship
5 circumstances where the inability to reside on the property
6 arises out of unforeseeable job or military transfer, a
7 temporary educational sabbatical, serious illness of the person,
8 or in other hardship circumstances as determined by the
9 corporation on a case-by-case basis.

10 The corporation may waive the owner-occupancy requirement
11 for a total of not more than ten years after the purchase of the
12 dwelling, during which time the dwelling unit may be rented or
13 leased. Waivers may be granted only to qualified residents who
14 have paid resident state income taxes during all years in which
15 they occupied the dwelling, who continue to pay resident state
16 income taxes during the waiver period, and whose inability to
17 reside on the property does not stem from a natural disaster.
18 [~~The ten-year owner-occupancy requirement shall be extended by~~
19 ~~one month for every month or fraction thereof that the owner-~~
20 ~~occupancy requirement is waived.]~~



1 The corporation shall adopt rules under chapter 91 to
2 implement the letter and spirit of this subsection and to
3 prescribe necessary terms and conditions. The rules shall
4 include:

- 5 (1) Application and approval procedures for the waivers;
- 6 (2) Exceptions authorized by this subsection;
- 7 (3) The amounts of rents that may be charged by persons
8 allowed to rent or lease a dwelling unit; and
- 9 (4) Schedules of fees needed to cover administrative
10 expenses and attorneys' fees.

11 No qualified resident who fails to reoccupy a dwelling unit
12 after any waiver period shall receive more than the maximum to
13 which the person would be entitled under section 201H-47. Any
14 person who disagrees with the corporation's determination under
15 this section shall be entitled to a contested case proceeding
16 under chapter 91.

17 (b) From time to time the corporation may submit a
18 verification of owner-occupancy form to the purchaser. Failure
19 to respond to the verification in a timely manner or violation
20 of subsection (a) shall be sufficient reason for the



1 corporation, at its option, to purchase the unit as provided in
2 section 201H-47(a)(1), (or) (2), [~~or (4)~~] as applicable.

3 (c) Any deed, lease, agreement of sale, or other
4 instrument of conveyance issued by the corporation shall
5 expressly contain the restrictions on use prescribed in this
6 section.

7 (d) The restrictions prescribed in subsection (a) shall
8 terminate and shall not attach in subsequent transfers of title
9 if the corporation releases the restrictions when the real
10 property is financed under a federally subsidized mortgage
11 program.

12 (e) Subsections (a) to (c) need not apply to market-priced
13 units in an economically integrated housing project, except as
14 otherwise determined by the developer of the units; provided
15 that preference shall be given to qualified residents in the
16 initial sale of market-priced units.

17 (f) The corporation shall be authorized to waive any of
18 the restrictions set forth in this section in order to comply
19 with or conform to requirements set forth in federal law or
20 regulations governing mortgage insurance or guarantee programs



1 or requirements set forth by federally chartered secondary
2 mortgage market participants.

3 SECTION 4. Section 201H-23, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~§201H-23~~ **For-sale developments.** [~~a~~] Any law to the
6 contrary notwithstanding, new multifamily for-sale housing
7 condominium developments of seventy-five units or more per acre
8 on privately owned lands and privately financed without federal,
9 state, or county financing assistance or subsidies, including
10 tax credits, shall:

11 (1) Be exempt from the corporation's shared appreciation
12 equity program;

13 (2) Be subject to three-year occupancy requirements and
14 transfer restrictions; provided that the three-year occupancy
15 requirement shall begin upon the sale of each unit; and

16 (3) Not be subject to the [~~ten-year occupancy~~]
17 requirements and transfer restrictions in sections 201H-47 and
18 201H-49, respectively;

19 provided that, in order for paragraphs (1), (2), and (3) to
20 apply, the primary purpose of constructing the new multifamily
21 for-sale housing condominium development of seventy-five units



1 or more per acre shall be to augment the existing affordable
2 housing unit inventory in the State and not for the purpose of
3 satisfying any affordable housing or reserved housing
4 requirement under this chapter, section 206E-4(18), or any other
5 law or ordinance.

6 [~~b~~] As used in this section:

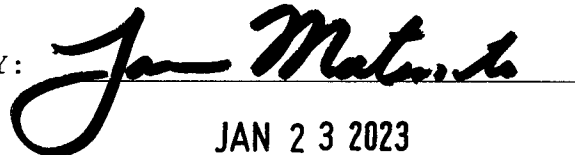
7 "Affordable housing" means the same as defined under
8 section 201H-57.

9 "Reserved housing" means the same as defined under section
10 206E-101."

11 SECTION 5. This Act shall take effect on July 1, 2023.

12

INTRODUCED BY:


JAN 23 2023



H.B. NO. 940

Report Title:

Creating a Local Housing Market

Description:

Establishing a Local Housing Market that is tied to the Hawaii State resident's incomes, and not the global economy. Thus, providing housing options that are affordable relative to wages for residents of the State.

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

HB HMIA 2023-38-05

