

A Bill for an Act Relating to Affordable Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 412:5-305, Hawaii Revised Statutes, is amended to read as follows:

**“§412:5-305 Permitted investments.** (a) To the extent specified ~~[herein,]~~ in this subsection, a bank may invest its own assets in:

- (1) Securities and obligations of the United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Department of Veterans Affairs, the Federal Housing Administration, the United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) Bonds, notes, mortgage backed securities, and other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks;
- (3) Securities and obligations of United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Intermediate Credit Banks, Federal Land Banks, Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, the United States Postal Service, and securities and obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks that are not bonds, notes, mortgage backed securities, or other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the bank's capital and surplus; and
- (4) Securities and obligations of quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the bank's capital and surplus.

(b) A bank may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified ~~[herein,] in this subsection,~~ a bank may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions or by any foreign country or political subdivision of such country; provided~~[,]~~ that:

- (1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;
- (2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and
- (3) The total amount invested in such obligations of any one issuer by a bank shall not exceed twenty per cent of the bank's capital and surplus.

(d) To the extent specified ~~[herein,] in this subsection,~~ a bank may invest its own assets in notes, bonds, and other obligations of any corporation ~~[which] that~~ at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided~~[,]~~ that the aggregate amount invested by a bank under this subsection and subsection (e) in any one corporation shall not exceed twenty per cent of the bank's capital and surplus.

(e) To the extent specified ~~[herein,] in this subsection,~~ a bank may invest its own assets in securities of an investment grade. ~~[The term "investment grade"]~~ "Investment grade" means notes, bonds, certificates of interest or participation, beneficial interests, mortgage or receivable-related securities, and other obligations that are commonly understood to be of investment grade quality, including without limitation those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar quality as reasonably determined by the bank in its prudent banking judgment, ~~[(which may be based in part upon estimates [which] that it believes to be reliable)].~~ ~~[Investment grade]~~ "Investment grade" does not include investments ~~[which] that~~ are predominantly speculative in nature. The aggregate amount invested by a bank under this subsection and subsection (d) in any one company or other issuer shall not exceed twenty per cent of the bank's capital and surplus.

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

- (1) The real property in or on which the business of the bank is carried on, including its banking offices; other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary to the accommodation of the bank's business, including but not limited to parking facilities, data processing centers, and real property held for future banking use where the bank in good faith expects to use the property as bank premises; provided that if the bank ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property, cease to carry it or them as an asset, or transfer the real property to an operating subsidiary of the bank; provided further that the bank's investment in ~~[such] an~~ operating subsidiary shall not exceed fifteen per cent of the bank's tier one capital; provided further~~[, such] that the~~ property shall not, without

- the approval of the commissioner, exceed seventy-five per cent of the bank's capital and surplus;
- (2) Personal property used in or necessary to the accommodation of the bank's business, including but not limited to furniture, fixtures, equipment, vaults, and safety deposit boxes. The bank's investment in furniture and fixtures shall not, without the approval of the commissioner, exceed twenty-five per cent of the bank's capital and surplus;
  - (3) Personal property and fixtures ~~[which]~~ that the bank acquires for purposes of leasing to third parties, and ~~[such]~~ real property interests as shall be incidental thereto;
  - (4) ~~[Such real]~~ Real property or tangible personal property as may come into its possession as security for loans or in the collection of debts; or as may be purchased by or conveyed to the bank in satisfaction of or on account of debts previously contracted in the course of its business, when ~~[such]~~ the property was held as security by the bank; and
  - (5) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5<sup>[5]</sup> and 502-85, including without limitation the reversionary interest in the real estate and the right to income under the agreement of sale, with or without recourse to the seller.

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

Except as otherwise authorized in this section, any real property acquired by a bank pursuant to subsection (f)(4) shall be sold or exchanged for other real property by the bank within five years after title thereto has vested in it by purchase or otherwise, or within ~~[such further]~~ a later time as may be granted by the commissioner.

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

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

- (g) A bank may own or control:
  - (1) Operating subsidiaries, or the parent of the operating subsidiary, as set forth in this article;
  - (2) A corporation, partnership, or limited liability company, organized and existing for the ownership of real or personal property used or which the bank in good faith expects to be used in the bank's business or used for a permissible purpose under title 12 Code of Federal Regulations part 362;
  - (3) The capital stock of the Federal National Mortgage Association, the Student Loan Marketing Association, Federal Home Loan Mortgage Corporation, or of any other corporation organized for substantially the same purposes; provided that this subsection shall be deemed to authorize subscription for as well as purchase of the stock;

- (4) A small business investment company operating under the Federal Small Business Investment Act of 1958;
  - (5) Bank service corporations, subject to the Bank Service Company Act, 12 United States Code sections 1861-1862;
  - (6) A corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by ~~[such]~~ the stock; provided~~[-]~~ that the stock shall be sold within twelve months of the date acquired or purchased, or within ~~[such further]~~ a later time as may be granted by the commissioner;
  - (7) An international banking corporation established pursuant to article 5A or an Edge corporation or an Agreement corporation established or authorized pursuant to section 25a of the Federal Reserve Act, 12 United States Code section 631;
  - (8) A captive insurance company incorporated under the laws of the United States, or any state or territory thereof, or the District of Columbia;
  - (9) A company transacting a business of insurance or the sale of annuities pursuant to the authority conferred in section 412:5-205.5; and
  - (10) A company engaging in securities activities pursuant to the authority conferred in section 412:5-205.7.
- (h) To the extent specified ~~[herein:]~~ in this subsection, a bank may invest its own assets in limited partnerships, limited liability partnerships, limited liability companies, or corporations formed to invest in residential properties that will qualify for the low income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended, and under chapters 235 and 241; provided that the ~~[total]~~ bank may invest in an aggregate amount ~~[invested by a bank under this subsection in any one limited partnership, limited liability partnership, limited liability company, or corporation shall not, without the prior approval of the commissioner, exceed two]~~ of up to fifteen per cent of the bank's capital and surplus ~~[and the aggregate amount invested under this subsection shall not, without the prior approval of the commissioner, exceed five per cent of the bank's capital and surplus. In no case shall the aggregate amount invested by a bank under this subsection exceed ten per cent of the bank's capital and surplus:]~~ or any after-the-fact notice.
- (i) An eligible bank may make an investment that exceeds fifteen per cent, but does not exceed 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 of the investment to the commissioner. The after-the-fact notice shall include:
- (1) A description of the eligible bank's investments;
  - (2) The amount of the investment;
  - (3) The percentage of the eligible bank's capital and surplus represented by the investment that is the subject of the notice and the eligible bank's aggregate outstanding low-income housing commitments, including the investment that is the subject of the notice; and
  - (4) A statement certifying that the investment complies with the requirements of subsection (h).
- (j) For the purposes of this section:  
"Eligible bank" means a bank that:
- (1) Is well capitalized;
  - (2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System;
  - (3) Has a Community Reinvestment Act rating of outstanding or satisfactory; and

- (4) Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive or, if subject to any such order, agreement, or directive, is informed in writing by the commissioner or appropriate federal regulator that the bank may be treated as an “eligible bank” for purposes of this subsection.

“Well capitalized” has the same meaning as defined under title 12 Code of Federal Regulations section 6.4.”

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

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

SECTION 4. This Act shall take effect upon its approval.

(Approved June 21, 2023.)