

ACT 31

S.B. NO. 1170

A Bill for an Act Relating to Affordable Housing Credits.

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

SECTION 1. The legislature finds that the State has a housing crisis. A 2019 study commissioned by the department of business, economic development, and tourism found that the State will require an additional 50,156 homes by the year 2025, with the city and county of Honolulu requiring 22,168 new units, Hawaii county requiring 13,303 new units, Maui county requiring 10,404 new units, and Kauai county requiring 4,281 new housing units. While this forecast projects an acute housing shortage, there has been a lack of measurable progress at the county level to enact policies that will stimulate housing production to meet project demand.

The Federal Home Loan Corporation, more commonly known as Freddie Mac, has reported that the average 30-year fixed residential mortgage interest rate was 3.11 per cent in December 2021 and 6.42 per cent in December 2022. This one hundred-six per cent increase reflects the dramatically increasing monthly cost of owning a home for residents and the decreasing maximum sale price of income-specified affordable housing units that are constructed under the various programs of the Hawaii housing finance and development corporation. In addition, the Federal Reserve has reported that the one-month term of the secured overnight financing rate, a metric used by lenders to determine real estate construction loan interest rates, has increased from 0.05 per cent in December 2021 to 4.30 per cent in December 2022. The eight thousand five hundred per cent increase reflects the dramatically increasing cost of construction financing for residential units. These increases in home loan and construction loan interest rates have severely impaired the ability of the Hawaii housing finance and development corporation to increase the affordable housing supply in the State.

Accordingly, the purpose of this Act is to require the counties to issue affordable housing credits for affordable housing units that are constructed under the various programs of the Hawaii housing finance and development corporation.

SECTION 2. Section 46-15.1, Hawaii Revised Statutes, is amended to read as follows:

**“§46-15.1 Housing; county powers.** (a) Notwithstanding any law to the contrary, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the Hawaii housing finance and development corporation pursuant to chapter 201H insofar as those powers may be reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing low- and moderate-income housing; provided that no county shall be empowered to cause the State to issue general obligation bonds to finance a project pursuant to this section; provided further that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the Hawaii housing finance and development corporation pursuant to section 201H-36; [and] provided further that section 201H-16 shall not apply to this section unless federal guidelines specifically provide local governments with that authorization and the authorization does not conflict with any state laws. The powers shall include the power, subject to applicable limitations, to:

- (1) Develop and construct dwelling units, alone or in partnership with developers;
- (2) Acquire necessary land by lease, purchase, exchange, or eminent domain;
- (3) Provide assistance and aid to a public agency or other person in developing and constructing new housing and rehabilitating existing housing for elders of low- and moderate-income, other persons of low- and moderate-income, and persons displaced by any governmental action, by making long-term mortgage or interim construction loans available;
- (4) Contract with any eligible bidders to provide for construction of urgently needed housing for persons of low- and moderate-income;
- (5) Guarantee the top twenty-five per cent of the principal balance of real property mortgage loans, plus interest thereon, made to qualified borrowers by qualified lenders;
- (6) Enter into mortgage guarantee agreements with appropriate officials of any agency or instrumentality of the United States to induce those officials to commit to insure or to insure mortgages under the National Housing Act, as amended;
- (7) Make a direct loan to any qualified buyer for the downpayment required by a private lender to be made by the borrower as a condition of obtaining a loan from the private lender in the purchase of residential property;
- (8) Provide funds for a share, not to exceed fifty per cent, of the principal amount of a loan made to a qualified borrower by a private lender who is unable otherwise to lend the borrower sufficient funds at reasonable rates in the purchase of residential property; and
- (9) Sell or lease completed dwelling units.

For purposes of this section, a limitation is applicable to the extent that it may reasonably be construed to apply to a county.

(b) Each county shall recognize housing units developed by the department of Hawaiian home lands and issue affordable housing credits to the department of Hawaiian home lands. The credits shall be transferable and shall be issued on a one-credit for one-unit basis, unless the housing unit is eligible for additional credits as provided by adopted county ordinances, rules, or any memorandum of agreement between a county and the department of Hawaiian home lands. In the event that credits are transferred by the department of Hawaiian

home lands, twenty-five per cent of any monetary proceeds from the transfer shall be used by the department of Hawaiian home lands to develop units for rental properties. Credits shall be issued for each single-family residence, multi-family unit, other residential unit, whether for purposes of sale or rental, or if allowed under the county's affordable housing programs, vacant lot, developed by the department of Hawaiian home lands. The credits may be applied county-wide within the same county in which the credits were earned to satisfy affordable housing obligations imposed by the county on market-priced residential and non-residential developments. County-wide or project-specific requirements for housing class, use, or type; or construction time for affordable housing units shall not impair, restrict, or condition the county's obligation to apply the credits in full satisfaction of all county requirements, whether by rule, ordinance, or particular zoning conditions of a project. Notwithstanding any provisions ~~herein~~ in this section to the contrary, the department may enter into a memorandum of agreement with any of the [county of Kauai] counties to establish, modify, or clarify the conditions for the issuance, transfer, and redemption of the affordable housing credits in accordance with county affordable housing ordinances or rules. ~~[Notwithstanding any provisions herein to the contrary, the department may enter into a memorandum of agreement with the city and county of Honolulu to establish, modify, or clarify the conditions for the issuance, transfer, and redemption of the affordable housing credits in accordance with county affordable housing ordinances or rules.]~~ At least half of the affordable housing credits issued by the city and county of Honolulu shall be subject to a memorandum of agreement pursuant to this subsection.

[For purposes of this section, "affordable housing obligation" means the requirement imposed by a county, regardless of the date of its imposition, to develop vacant lots, single-family residences, multi-family residences, or any other type of residence for sale or rent to individuals within a specified income range.]

(c) Each county shall recognize housing units developed pursuant to section 201H-38 and issue affordable housing credits to the eligible developer for residences required to be sold or rented to individuals within a specified income range, if a developer chooses to receive affordable housing credits. Credits shall be issued for each single-family residence, multi-family unit, other residential unit, whether for purposes of sale, rental, or if allowed under the county's affordable housing programs, vacant lot, developed pursuant to chapter 201H. Affordable housing credits shall not be issued if low-income housing tax credits are utilized in conjunction with the affordable housing developed pursuant to chapter 201H. The credits shall be transferable and shall be issued on a one-credit for one-unit basis, unless the housing unit is eligible for additional credits as provided by adopted county ordinances, rules, or any memoranda of agreement between a county and the Hawaii housing finance and development corporation. In the event that the affordable housing credits are transferred to the Hawaii housing finance and development corporation, twenty-five per cent of any monetary proceeds from the transfer shall be used by the Hawaii housing finance and development corporation to develop units for rental properties. The credits may be applied county-wide within the same county in which the credits were earned to satisfy affordable housing obligations imposed by the county on market-priced residential and non-residential developments. The credits may be applied to satisfy up to fifty per cent of the affordable housing obligations imposed by the county for each market-priced residential or non-residential development, unless the county allows for more than fifty per cent as provided by county ordinances, rules, or any memoranda of agreement between the county and the Hawaii housing finance and development corporation. County-wide or project-specific requirements for housing class, use, or type, or construction time

for affordable housing units, shall not impair, restrict, or condition the county's obligation to apply the credits in full satisfaction of all county requirements, whether by rule, ordinance, or particular zoning conditions of a project. Notwithstanding any provision of this section to the contrary, the Hawaii housing finance and development corporation may enter into a memorandum of agreement with any of the counties to establish, modify, or clarify the conditions for the issuance, transfer, and redemption of the affordable housing credits in accordance with county affordable housing ordinances or rules.

No affordable housing credit shall be issued under this subsection until a certificate of occupancy has been issued.

Prior to the issuance of an affordable housing credit under this subsection, an agreement, including affordable housing-related agreements between a county or the Hawaii housing finance and development corporation and an eligible developer, shall be executed and include language requiring:

- (1) A new and sequential identification number of at least four digits in length for each affordable housing credit to be issued within each county for tracking purposes;
- (2) An agreement to be recorded on title of at least one parcel or tax map key of the originating housing project, as defined in section 201H-1; and
- (3) The prompt amendment of an agreement when an affordable housing credit originally generated by a housing project is sold, transferred, or utilized to create an easily auditable trail of ownership.

~~[(e)]~~ (d) Notwithstanding any law to the contrary, any county may:

- (1) Authorize and issue bonds under chapter 47 and chapter 49 to provide moneys to carry out the purposes of this section or section 46-15.2, including the satisfaction of any guarantees made by the county pursuant to this section;
- (2) Appropriate moneys of the county to carry out the purposes of this section;
- (3) Obtain insurance and guarantees from the State or the United States, or grants from either;
- (4) Designate, after holding a public hearing on the matter and with the approval of the respective council, any lands owned by it for the purposes of this section;
- (5) Provide interim construction loans to partnerships of which it is a partner and to developers whose projects qualify for federally assisted project mortgage insurance, or other similar programs of federal assistance for persons of low and moderate income; and
- (6) Adopt rules pursuant to chapter 91 as are necessary to carry out the purposes of this section.

~~[(d)]~~ (e) Notwithstanding any law to the contrary, a county may waive its right to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument, and may transfer that right of repurchase to a qualified nonprofit housing trust for the purpose of maintaining the unit as affordable for as long as required by the county program.

~~[For the purposes of this subsection, "qualified nonprofit housing trust" means a corporation, association, or other duly chartered organization that is registered and in good standing with the State; that is recognized by the Internal Revenue Service as a charitable or otherwise tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and that has the capacity, resources, and mission to carry out the purposes of this section as determined by the county in which the housing unit is located.]~~

~~(e)~~ (f) A qualified nonprofit housing trust shall report the status and use of its housing units to its respective county by November 30 of each calendar year.

~~(f)~~ (g) The provisions of this section shall be construed liberally so as to effectuate the purpose of this section in facilitating the development, construction, and provision of low- and moderate-income housing by the various counties.

~~(g)~~ (h) For purposes of this section~~], “low and moderate income housing”~~:

“Affordable housing obligation” means the requirement imposed by a county, regardless of the date of its imposition, to develop vacant lots, single-family residences, multi-family residences, or any other type of residence for sale or rent to individuals within a specified income range.

“Eligible developer” has the same meaning as defined in section 201H-32.

“Low- and moderate-income housing” means any housing project that meets the definition of “low- and moderate-income housing project” in section 39A-281.

“Qualified nonprofit housing trust” means a corporation, association, or other duly chartered organization that:

- (1) Is registered and in good standing with the State;
- (2) Is recognized by the Internal Revenue Service as a charitable or otherwise tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and
- (3) Has the capacity, resources, and mission to carry out the purposes of this section as determined by the county in which the housing unit is located.”

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; provided that the amendments made to section 46-15.1, Hawaii Revised Statutes, by section 2 of this Act shall not be repealed when that section is repealed and reenacted on July 1, 2030, pursuant to:

- (1) Section 3 of Act 141, Session Laws of Hawaii 2009, as amended by section 3 of Act 102, Session Laws of Hawaii 2015, as amended by section 1 of Act 80, Session Laws of Hawaii 2019, as amended by section 2 of Act 90, Session Laws of Hawaii 2023; and
- (2) Section 3 of Act 98, Session Laws of Hawaii 2012, as amended by section 4 of Act 102, Session Laws of Hawaii 2015, as amended by section 50 of Act 55, Session Laws of Hawaii 2016, as amended by section 2 of Act 80, Session Laws of Hawaii 2019, as amended by section 3 of Act 90, Session Laws of Hawaii 2023;

provided further that this Act shall be repealed on July 1, 2031, and section 46-15.1, Hawaii Revised Statutes, shall be reenacted pursuant to section 3 of Act 141, Session Laws of Hawaii 2009, and in accordance with section 23 of Act 96, Session Laws of Hawaii 2014, and section 9 of Act 159, Session Laws of Hawaii 2017.

(Approved May 28, 2024.)