
A BILL FOR AN ACT

RELATING TO THE BANK OF THE STATE OF HAWAII.

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

PART I

SECTION 1. (a) The department of commerce and consumer affairs, in conjunction with:

(1) The department of accounting and general services;

(2) The department of agriculture;

(3) The department of the attorney general;

(4) The department of budget and finance;

(5) The department of human resources development;

(6) The department of land and natural resources;

(7) The Hawaii housing finance and development

corporation; and

(8) The agribusiness development corporation;

shall conduct a comprehensive review of the State's laws relating to financial institutions, mortgage lending, housing development, agricultural development, and land use for the purpose of developing proposed legislation to establish a bank of the State of Hawaii.



1 (b) The division of financial institutions of the
2 department of commerce and consumer affairs shall be the lead
3 agency charged with the responsibility of coordinating the
4 review required under subsection (a).

5 SECTION 2. The commissioner of financial institutions
6 shall submit a status report of the review to the legislature on
7 a semi-annual basis. The commissioner of financial institutions
8 shall submit the first progress report, along with findings and
9 recommendations, to the legislature no later than twenty days
10 prior to the convening of the 2016 regular session. The
11 commissioner of financial institutions shall submit the final
12 report no later than twenty days prior to the convening of the
13 2017 regular session.

14 SECTION 3. The final report shall include but not be
15 limited to:

16 (1) A graduated schedule of state funds to be transferred
17 to the bank of the State of Hawaii from financial
18 institutions that are serving as depositories for the
19 State; and



1 intends for the interim purchase program to address problematic
2 mortgages until the bank of the State of Hawaii is established
3 pursuant to law.

4 Under the purchase program, the Hawaii housing finance and
5 development corporation may purchase residential property
6 occupied by one or more persons who hold title to the property
7 if the mortgagee's lien and its supporting documentation fail to
8 adequately demonstrate that the mortgagee has the right to
9 collect on the mortgagor's indebtedness or that the mortgagee
10 has legal authority to foreclose on a property.

11 (b) An owner-occupant who has been using the subject
12 property as a primary residence for a continuous period of not
13 less than two hundred days immediately prior to the date when
14 the owner-occupant received a letter of default on the mortgage
15 or notice that the owner-occupant's application for a mortgage
16 modification under a federally sponsored program has been denied
17 shall be entitled to apply for consideration in the purchase
18 program. The application shall conform to rules adopted by the
19 corporation and shall include copies of:

20 (1) The three most recent billing statements for the
21 mortgage loan;



- 1 (2) The promissory note;
- 2 (3) The mortgage agreement; and
- 3 (4) The letter of default or notice that the owner-
- 4 occupant's application for a mortgage modification
- 5 under a federally sponsored program has been denied.

6 (c) Within forty-five days of receiving an application

7 pursuant to subsection (b), the Hawaii housing finance and

8 development corporation shall review the application and

9 determine whether the property shall be accepted for further

10 evaluation.

11 If the corporation accepts the property for further

12 evaluation, within the forty-five day review period, the

13 corporation shall notify the mortgagee and its agents on record

14 at the bureau of conveyances, including all affiliates that may

15 be reported pursuant to any affiliate statement recorded

16 pursuant to sections 454M-5(a)(4) and 667-58(a), Hawaii Revised

17 Statutes, and any entities purporting to represent the

18 mortgagee, as reflected in the mortgage statements provided in

19 the application. The notice shall describe the purchase program

20 and include details about the program's requirements, as set



1 forth by rules adopted by the corporation in accordance with
2 chapter 91, Hawaii Revised Statutes.

3 If the corporation declines to accept the property for
4 further evaluation, the corporation shall provide written
5 notification to the applicant stating the reasons for that
6 determination within the forty-five day review period.

7 (d) Within thirty days of receiving notice under
8 subsection (c), the mortgagee shall submit a written response to
9 the corporation. The response shall include:

10 (1) A copy of the promissory note, signed by the
11 mortgagor, including any endorsements, allonges,
12 amendments, or riders to the note evidencing the
13 mortgage debt and the mortgagee's legal right to
14 enforce the note under section 490:3-203(b) and
15 articles 3 and 9 of the Uniform Commercial Code
16 generally;

17 (2) A copy of the mortgage document and any amendments,
18 riders, or other documentation evidencing the
19 mortgagee's right to foreclose and interest in the
20 property, including any interest as a successor,
21 transferee, or assignee; and



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- 1 (3) A certification under penalty of perjury describing
2 the nature of the mortgagee's legal ownership of the
3 mortgage loan that includes:
- 4 (A) Information about the chain of possession and the
5 transfer between all holders in due course of the
6 mortgage note from the origination of the
7 mortgage loan to the present mortgagee; provided
8 that descriptions of each transaction that
9 effectuated a transfer of the mortgage note shall
10 include:
- 11 (i) The names of the individuals involved;
12 (ii) The principal employers and the employers'
13 state of incorporation for the individuals
14 involved;
15 (iii) The authority conferred to the individuals;
16 (iv) The dates on which the mortgage note was
17 negotiated; and
18 (v) The manner in which the note was endorsed;
- 19 (B) Information about the assignment or transfer of
20 each mortgage agreement, including:



- 1 (i) The entities assigned the rights to enforce
- 2 the mortgage agreement;
- 3 (ii) The individuals who signed documentation to
- 4 effectuate the transfer and their titles,
- 5 principal employers, and principal
- 6 employers' state of incorporation;
- 7 (iii) A description of the authority conferred to
- 8 the individuals;
- 9 (iv) The dates on which the mortgage agreements
- 10 were assigned or transferred;
- 11 (v) The manner of the assignment or transfer;
- 12 and
- 13 (vi) A description of the extent to which the
- 14 mortgage agreement transfers or assignments
- 15 coincided with the negotiations or transfers
- 16 of the mortgage note; and
- 17 (C) The bureau of conveyances document number for
- 18 every assignment or transfer of the mortgage note
- 19 or mortgage agreement recorded and a copy of each
- 20 filing.



1 The mortgagee's response shall provide an explanation for any
2 failure to provide any of the items enumerated in this
3 subsection.

4 Failure to respond to a notice received under subsection
5 (c) within seventy-five days shall result in an automatic
6 referral to the department of the attorney general and the
7 department of commerce and consumer affairs for investigation
8 pursuant to subsection (f), as well as to the attorney general
9 of the state within which the mortgagee is incorporated. An
10 automatic referral under this subsection shall operate as an
11 automatic stay on any foreclosure action, pursuant to subsection
12 (f).

13 (e) At any time after receiving a notice of acceptance
14 from the housing and finance and development corporation under
15 subsection (c), a mortgagee may elect to participate in the
16 purchase program as a qualified mortgagee, pursuant to rules
17 adopted by the corporation in accordance with chapter 91, Hawaii
18 Revised Statutes.

19 (f) Within forty-five days of receiving the mortgagee's
20 response pursuant to subsection (d), the corporation shall
21 determine whether to refer the subject mortgage loan to the



1 department of the attorney general, the department of commerce
2 and consumer affairs, and the attorney general of the state
3 within which the mortgagee is incorporated for a legal
4 investigation and possible action to determine the mortgagee's
5 legal authority to collect on the mortgage indebtedness and
6 enforce the mortgage agreement; provided that if no document was
7 filed or recorded with respect to a given assignment or transfer
8 of the mortgage note or mortgage agreement, or the filing or
9 recording occurred more than months after the assignment
10 or transfer, the corporation shall make the referral.

11 Written notification of the referral for legal
12 investigation pursuant to this section shall operate as a stay
13 of any foreclosure proceeding under chapter 667, Hawaii Revised
14 Statutes, and may be filed in the office of the assistant
15 registrar of the land court under chapter 501, Hawaii Revised
16 Statutes, or recorded in the bureau of conveyances under chapter
17 502, Hawaii Revised Statutes, or both, as appropriate.

18 Upon a stay pursuant to this subsection, a mortgagee shall
19 not foreclose upon a mortgage subject to the stay until the
20 department of the attorney general or the department of commerce
21 and consumer affairs releases the stay by recording a release at



1 the bureau of conveyances, or as otherwise provided by law or
2 court order.

3 If the corporation determines that a referral for
4 investigation is not warranted, the corporation shall promptly
5 notify the mortgagee and the owner-occupant applicant before the
6 end of the forty-five day period that the subject property is no
7 longer being evaluated by the purchase program. The notice may
8 be filed in the office of the assistant registrar of the land
9 court under chapter 501, Hawaii Revised Statutes, or recorded in
10 the bureau of conveyances under chapter 502, Hawaii Revised
11 Statutes, or both, as appropriate.

12 Nothing in this subsection shall be construed as preventing
13 a mortgagee from filing a claim in circuit court to lift the
14 stay by order.

15 (g) Terms and conditions for owner-occupants and qualified
16 mortgagees participating in the purchase program shall be set
17 forth by rules adopted by the corporation in accordance with
18 chapter 91, Hawaii Revised Statutes; provided that:

19 (1) If the mortgagee agrees to participate in the purchase
20 program, the stay on any foreclosure process and the



- 1 referral for investigation made pursuant to subsection
2 (f) shall be withdrawn;
- 3 (2) If the owner-occupant declines the offer purchase
4 price under paragraph (3), the stay on any foreclosure
5 process and the referral for investigation made
6 pursuant to subsection (f) shall be withdrawn;
- 7 (3) Upon agreement by the owner-occupant and the qualified
8 mortgagee, the corporation may offer to purchase the
9 subject property from the owner-occupant for a price
10 that shall not exceed seventy-five per cent of the
11 principal balance due on the mortgage loan at the time
12 of the mortgagee's election to participate;
- 13 (4) The amount of the purchase price of the property shall
14 be paid to the qualified mortgagee and shall be deemed
15 to fully satisfy the subject mortgage debt and release
16 the lien held by the mortgagee;
- 17 (5) The former owner-occupant shall be permitted to rent
18 the property for a minimum period of six months from
19 the date of transfer at a rate that shall be based
20 upon an independent appraisal of the fair-market rent
21 for the property;



- 1 (6) The former owner-occupant shall be required to consult
2 with an approved housing counselor or an approved
3 budget and credit counselor as defined under chapter
4 667, Hawaii Revised Statutes;
- 5 (7) Upon the recommendation of an approved housing
6 counselor or an approved budget and credit counselor,
7 the corporation may offer to sell the subject property
8 back to the former owner-occupant for a price that
9 shall not exceed ninety per cent of the prior
10 mortgagee's mortgage loan balance; provided that the
11 payment plan, which may or may not include a mortgage,
12 is reasonable and affordable to the owner-occupant;
13 and
- 14 (8) The owner-occupant shall:
- 15 (A) Be prohibited from selling the property for a
16 period of months after repurchasing it
17 pursuant to paragraph (7); and
- 18 (B) Agree that, upon any resale of the property to a
19 subsequent purchaser, the owner-occupant shall
20 pay the corporation a share of the appreciation
21 represented by the proportion of the price at



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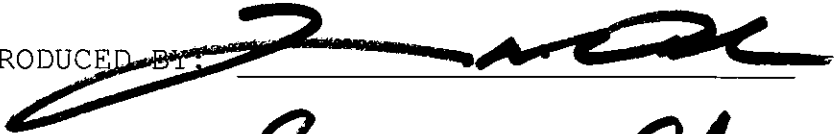
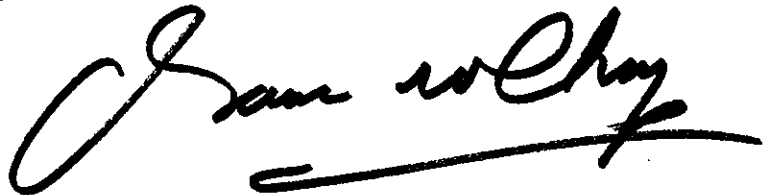
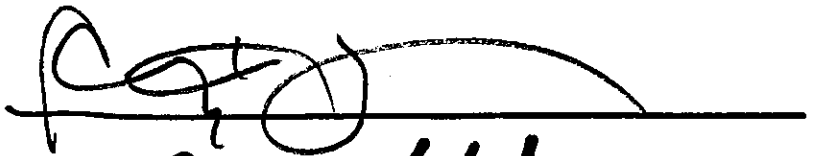
1 SECTION 9. Effective _____, the director of finance
 2 shall ensure that not less than fifty per cent of all state
 3 funds required to be held in depositories on behalf of the State
 4 shall be deposited in the bank of the State of Hawaii.

5 SECTION 10. Effective _____, the director of finance
 6 shall ensure that not less than seventy-five per cent of all
 7 state funds required to be held in depositories on behalf of the
 8 State shall be deposited in the bank of the State of Hawaii.

9 SECTION 11. This Act shall take effect on July 1, 2015.

10

INTRODUCED BY

Edwin H. Gray

JAN 23 2015



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Report Title:

Financial Institutions; State Bank; Hawaii Housing Finance and Development Corporation; Mortgage Foreclosure; Appropriation

Description:

Directs DCCA to conduct a comprehensive review of relevant state laws to develop legislation to establish the bank of the State of Hawaii. Appropriates funds to conduct the review. Directs the HHFDC to establish and operate an interim purchase program for distressed residential properties encumbered by problematic mortgages until the bank of the State of Hawaii is operational. Establishes minimum percentages of state funds that shall be deposited in the bank of the State of Hawaii.

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

