

JAN 25 2017

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# A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

1           SECTION 1. The legislature finds that the shortage of  
2 safe, decent, and sanitary housing has been a persistent problem  
3 in Hawaii for decades. Almost 50 years ago, in 1970, the Hawaii  
4 state legislature recognized the need to address the severe  
5 shortfall of affordable housing and passed H.B. No. 397, as  
6 amended, which was enacted into law as Act 105, Session Laws of  
7 Hawaii 1970, and codified as chapter 359A, Hawaii Revised  
8 Statutes. This enabling legislation expanded the powers of the  
9 then Hawaii Housing Authority to provide for-sale affordable  
10 housing units to the general public, in addition to providing  
11 affordable rental housing units. This legislation was the  
12 predecessor to what is today known as the Hawaii housing finance  
13 and development corporation.

14           In Act 105, the legislature noted "a critical shortage of  
15 housing units for lower and middle income residents" and  
16 emphasized the importance of affordable housing to the fabric of  
17 society. Act 105 also cited studies indicating that the high



1 cost of housing is the result of multiple factors, including  
2 "the cost and availability of land, the cost of development, the  
3 cost and availability of financing, the cost added by government  
4 regulation, the cost and availability of labor and materials,  
5 the inflationary state of the economy", and "conflicting  
6 priorities in our pluralistic society".

7       The legislature further finds that, almost a half century  
8 after Act 105, the shortage of affordable housing still exists  
9 and has grown to crisis proportions. With the limited amount of  
10 developable land and the lack of needed infrastructure, we find  
11 median prices for single family homes on Oahu hovering at around  
12 \$750,000. Recent studies show a need for 60,000 housing units  
13 by the year 2020. It is necessary, therefore, for the  
14 legislature to take steps to preserve existing affordable  
15 housing units for as long as possible. This has not been the  
16 case in recent years relative to government-assisted or mandated  
17 affordable housing units. Because of the lack of financial or  
18 other resources, government agencies have often opted to waive  
19 their right of first refusal to repurchase housing units that  
20 are sold within the designated restriction period.



1           The purpose of this Act is to authorize a qualified  
2 nonprofit housing trust to repurchase affordable units developed  
3 with government assistance when a government entity elects to  
4 waive its first right of refusal to repurchase the unit. The  
5 intent is to create a pool of affordable housing units that will  
6 remain permanently affordable through the purchase and  
7 management of the units by the housing trust.

8           SECTION 2. Chapter 206E, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11           "§206E- Reserved and workforce housing units; transfer  
12 to qualified nonprofit housing trust. Any law to the contrary  
13 notwithstanding, the authority may authorize a designated  
14 qualified nonprofit housing trust to administer the covenants  
15 and rules related to the reserved housing and workforce housing  
16 programs. Additionally, the authority may waive its right to  
17 repurchase a reserved or workforce housing unit during the  
18 restriction period and may transfer that right of repurchase to  
19 a qualified nonprofit housing trust for the purpose of  
20 maintaining the reserved or workforce housing unit as an  
21 affordable housing unit. If the repurchase rights are



1 transferred to a qualified nonprofit housing trust, the  
2 restrictions prescribed in this chapter or in rules adopted by  
3 the authority shall be automatically extinguished and shall not  
4 attach in subsequent transfers of title; provided further that  
5 the qualified nonprofit housing trust shall have the right to  
6 establish new restrictions in order to effectuate the long-term  
7 affordability of a housing unit."

8 SECTION 3. Section 201H-1, Hawaii Revised Statutes, is  
9 amended by adding a new definition to be appropriately inserted  
10 and to read as follows:

11 "Qualified nonprofit housing trust" means a corporation,  
12 association, or other duly chartered organization that is  
13 registered and in good standing with the State; has received  
14 charitable status under the Internal Revenue Code of 1986, as  
15 amended; and has been established to maintain the affordability  
16 of rental or for-sale units for as long as practicable."

17 SECTION 4. Section 201H-47, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 **"§201H-47 Real property; restrictions on transfer; waiver**  
20 **of restrictions.** (a) The following restrictions shall apply to



1 the transfer of real property developed and sold under this  
2 chapter, whether in fee simple or leasehold:

3 (1) For a period of ten years after the purchase, whether  
4 by lease, assignment of lease, deed, or agreement of  
5 sale, if the purchaser wishes to transfer title to the  
6 real property, the corporation shall have the first  
7 option to purchase the real property at a price that  
8 shall not exceed the sum of:

9 (A) The original cost to the purchaser, as defined in  
10 rules adopted by the corporation;

11 (B) The cost of any improvements added by the  
12 purchaser, as defined in rules adopted by the  
13 corporation; and

14 (C) Simple interest on the original cost and capital  
15 improvements to the purchaser at the rate of one  
16 per cent a year;

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

- 17                         (i) Any first mortgage created for the purpose  
18                                 of securing the payment of a loan of funds  
19                                 expended solely for the purchase of the real  
20                                 property by the seller;



- 1           (ii) Any mortgage insured or held by a federal
- 2                   housing agency; and
- 3           (iii) Any mortgage or lien created for any other
- 4                   purpose; provided that the corporation has
- 5                   previously consented to it in writing.

6           The amount paid by the corporation to the seller shall  
7           be the difference, if any, between the purchase price  
8           determined by paragraph (1) (A) to (C), and the total  
9           of the outstanding principal balances of the mortgages  
10           and liens assumed by the corporation;

- 11       (3) A purchaser may refinance real property developed and
- 12           sold under this chapter; provided that the purchaser
- 13           shall not refinance the real property within ten years
- 14           from the date of purchase for an amount in excess of
- 15           the purchase price as determined by paragraph (1) (A)
- 16           to (C); provided further that the purchaser shall
- 17           obtain the corporation's written consent if any
- 18           restriction on the transfer of the real property
- 19           remains applicable;

- 20       (4) After the end of the tenth year from the date of
- 21           initial purchase or execution of an agreement of sale,



1 the purchaser may sell the real property and sell or  
2 assign the property free from any price restrictions;  
3 provided that the purchaser shall be required to pay  
4 to the corporation the sum of:

5 (A) The balance of any mortgage note, agreement of  
6 sale, or other amount owing to the corporation;

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

16 (C) Interest on the subsidy or deferred sales price,  
17 if applicable, and any other amount expended at  
18 the rate of seven per cent a year computed as to  
19 the subsidy or deferred sales price, if  
20 applicable, from the date of purchase or  
21 execution of the agreement of sale, and as to any





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

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

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



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

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

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

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

17          (b) If the corporation waives its first option to  
18          repurchase the unit as provided in subsection (a), a qualified  
19          nonprofit housing trust shall have the option to purchase the  
20          unit at the price and in the manner set forth in subsection (a).



1           ~~[(b)]~~ (c) For a period of ten years after the purchase,  
2 whether by lease, assignment of lease, deed, or agreement of  
3 sale, if the purchaser wishes to transfer title to the real  
4 property, and if the corporation or the qualified nonprofit  
5 housing trust does not exercise the option to purchase the real  
6 property as provided in subsection (a), then the corporation  
7 shall require the purchaser to sell the real property to a  
8 "qualified resident" as defined in section 201H-32, and upon the  
9 terms that preserve the intent of this section and sections  
10 201H-49 and 201H-50, and in accordance with rules adopted by the  
11 corporation.

12           ~~[(e)]~~ (d) The corporation may waive the restrictions  
13 prescribed in subsection (a) or (b) if:

14           (1) The purchaser wishes to transfer title to the real  
15 property by devise or through the laws of descent to a  
16 family member who would otherwise qualify under rules  
17 established by the corporation;

18           (2) The sale or transfer of the real property would be at  
19 a price and upon terms that preserve the intent of  
20 this section without the necessity of the State  
21 repurchasing the real property; provided that, in this



1 case, the purchaser shall sell the real property and  
2 sell or assign the real property to a person who is a  
3 "qualified resident" as defined in section 201H-32;  
4 and provided further that the purchaser shall pay to  
5 the corporation its share of appreciation in the real  
6 property as determined in rules adopted pursuant to  
7 chapter 91, when applicable; or

- 8 (3) The sale or transfer is of real property subject to a  
9 sustainable affordable lease as defined in section  
10 516-1.

11 [~~(d)~~] (e) The corporation may release the restrictions  
12 prescribed in subsection (a) or (b) if the real property is  
13 financed under a federally subsidized mortgage program and the  
14 restrictions would jeopardize the federal government's ability  
15 to recapture any interest credit subsidies provided to the  
16 homeowner.

17 [~~(e)~~] (f) The restrictions prescribed in this section and  
18 sections 201H-49 to 201H-51 shall be automatically extinguished  
19 and shall not attach in subsequent transfers of title when a  
20 qualified nonprofit housing trust becomes the owner of the real  
21 property pursuant to subsection (b); or a mortgage holder or



1 other party becomes the owner of the real property pursuant to a  
2 mortgage foreclosure, foreclosure under power of sale, or a  
3 conveyance in lieu of foreclosure after a foreclosure action is  
4 commenced; provided that the mortgage is the initial purchase  
5 money mortgage, or that the corporation consented to and agreed  
6 to subordinate the restrictions to the mortgage when originated,  
7 if the mortgage is not the initial purchase money mortgage; or  
8 when a mortgage is assigned to a federal housing agency. Any  
9 law to the contrary notwithstanding, a mortgagee under a  
10 mortgage covering real property or leasehold interest encumbered  
11 by the first option to purchase in favor of the corporation,  
12 prior to commencing mortgage foreclosure proceedings, shall  
13 notify the corporation in writing of:

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

16 (2) Any intention of the mortgagee to foreclose the  
17 mortgage under chapter 667 forty-five days prior to  
18 commencing mortgage foreclosure proceedings;

19 provided that the mortgagee's failure to provide written notice  
20 to the corporation shall not affect the mortgage holder's rights  
21 under the mortgage. The corporation shall be a party to any



1 foreclosure action, and shall be entitled to its share of  
2 appreciation in the real property as determined under this  
3 chapter in lien priority when the payment is applicable, and if  
4 foreclosure occurs within the ten-year period after the  
5 purchase, the corporation shall also be entitled to all proceeds  
6 remaining in excess of all customary and actual costs and  
7 expenses of transfer pursuant to default, including liens and  
8 encumbrances of record; provided that the person in default  
9 shall be entitled to an amount that shall not exceed the sum of  
10 amounts determined pursuant to subsection (a) (1) (B) and (C).

11 [~~f~~] (g) The provisions of this section shall be  
12 incorporated in any deed, lease, agreement of sale, or any other  
13 instrument of conveyance issued by the corporation. In any sale  
14 by the corporation of real property for which a subsidy or  
15 deferred sales price was made by the corporation, the amount of  
16 the subsidy or deferred sales price described in subsection  
17 (a) (4) (B), a description of the cost items that constitute the  
18 subsidy or deferred sales price, and the conditions of the  
19 subsidy or deferred sales price shall be clearly stated at the  
20 beginning of the contract document issued by the corporation.  
21 In any sale in which the corporation's share of appreciation in



1 real property is a restriction, the terms of the shared  
2 appreciation equity program shall be clearly stated and included  
3 as an exhibit in any deed, lease, agreement of sale, or any  
4 other instrument of conveyance.

5 ~~[(g)]~~ (h) This section need not apply to market-priced  
6 units in an economically integrated housing project, except as  
7 otherwise determined by the developer of the units; provided  
8 that preference shall be given to qualified residents in the  
9 initial sale of market-priced units.

10 ~~[(h)]~~ (i) The corporation is authorized to waive any of  
11 the restrictions set forth in this section in order to comply  
12 with or conform to requirements set forth in federal law or  
13 regulations governing mortgage insurance or guarantee programs  
14 or requirements set forth by federally chartered secondary  
15 mortgage market participants.

16 (j) Any law to the contrary notwithstanding, if a housing  
17 unit is purchased by a qualified nonprofit housing trust, the  
18 housing trust shall have the right to establish new restrictions  
19 in order to effectuate the long-term affordability of a housing  
20 unit."



1 SECTION 5. Section 206E-2, Hawaii Revised Statutes, is  
2 amended by adding three new definitions to be appropriately  
3 inserted and to read as follows:

4 "Qualified nonprofit housing trust" means a corporation,  
5 association, or other duly chartered organization that is  
6 registered and in good standing with the State; has received  
7 charitable status under the Internal Revenue Code of 1986, as  
8 amended; and has the capacity and resources as determined by the  
9 authority to carry out the requirements of the reserved housing  
10 and workforce housing programs.

11 "Reserved housing" means housing designated for residents  
12 in the low-income or moderate-income ranges who meet such  
13 eligibility requirements as the authority may adopt by rule.

14 "Workforce housing" means new residential projects where at  
15 least seventy-five per cent of the residential units are set  
16 aside for purchase or rent by households earning no more than  
17 one hundred forty per cent of the area median income and which  
18 do not require financial assistance for design and construction  
19 from federal, state or county government agencies."

20 SECTION 6. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.





# S.B. NO. 1244

1 SECTION 7. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 8. This Act shall take effect upon its approval.  
5

INTRODUCED BY: Will Eyo  
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# S.B. NO. 1244

**Report Title:**

Affordable Housing Units; Transfer

**Description:**

Authorizes qualified nonprofit housing trusts to repurchase affordable units developed with government assistance when a government entity waives its first right of refusal to repurchase the unit.

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

