
A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

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

3 "**§412:5-305 Permitted investments.** (a) To the extent
4 specified [~~herein~~,] in this subsection, a bank may invest its
5 own assets in:

6 (1) Securities and obligations of the United States
7 government and any agency of the United States
8 government whose debt obligations are fully and
9 explicitly guaranteed as to the timely payment of
10 principal and interest by the full faith and credit of
11 the United States, including without limitation
12 Federal Reserve Banks, the Government National
13 Mortgage Association, the Department of Veterans
14 Affairs, the Federal Housing Administration, the
15 United States Department of Agriculture, the Export-
16 Import Bank, the Overseas Private Investment
17 Corporation, the Commodity Credit Corporation, and the
18 Small Business Administration;



1 (2) Bonds, notes, mortgage backed securities, and other
2 debt obligations of the Federal Home Loan Mortgage
3 Corporation, the Federal National Mortgage
4 Association, and the Federal Home Loan Banks;
5 (3) Securities and obligations of United States
6 government-sponsored agencies which are originally
7 established or chartered by the United States
8 government to serve public purposes specified by the
9 Congress but whose debt obligations are not explicitly
10 guaranteed by the full faith and credit of the United
11 States, including without limitation Banks for
12 Cooperatives, Federal Agricultural Mortgage
13 Corporation, Federal Farm Credit Banks, Federal
14 Intermediate Credit Banks, Federal Land Banks,
15 Financing Corporation, Resolution Funding Corporation,
16 Student Loan Marketing Association, Tennessee Valley
17 Authority, the United States Postal Service, and
18 securities and obligations of the Federal Home Loan
19 Mortgage Corporation, the Federal National Mortgage
20 Association, and the Federal Home Loan Banks that are
21 not bonds, notes, mortgage backed securities, or other



1 debt obligations of the Federal Home Loan Mortgage
2 Corporation, the Federal National Mortgage
3 Association, and the Federal Home Loan Banks; provided
4 that the total amount invested in obligations of any
5 one issuer shall not exceed twenty per cent of the
6 bank's capital and surplus; and

7 (4) Securities and obligations of quasi-United States
8 governmental institutions, including without
9 limitation the International Bank for Reconstruction
10 and Development (World Bank), the Inter-American
11 Development Bank, the Asian Development Bank, the
12 African Development Bank, the European Investment
13 Bank, and other multilateral lending institutions or
14 regional development institutions in which the United
15 States government is a shareholder or contributing
16 member; provided that the total amount invested in
17 obligations of any one issuer shall not exceed twenty
18 per cent of the bank's capital and surplus.

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



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

8 (1) The bond, note, or warrant has been issued in
9 compliance with the constitution and laws of any such
10 government;

11 (2) There has been no default in payment of either
12 principal or interest on any of the general
13 obligations of such government for a period of five
14 years immediately preceding the date of the
15 investment; and

16 (3) The total amount invested in such obligations of any
17 one issuer by a bank shall not exceed twenty per cent
18 of the bank's capital and surplus.

19 (d) To the extent specified [~~herein,~~] in this subsection,
20 a bank may invest its own assets in notes, bonds, and other
21 obligations of any corporation [~~which~~] that at the time of the



1 investment is incorporated under the laws of the United States
2 or any state or territory thereof or the District of Columbia;
3 provided~~[,]~~ that the aggregate amount invested by a bank under
4 this subsection and subsection (e) in any one corporation shall
5 not exceed twenty per cent of the bank's capital and surplus.

6 (e) To the extent specified ~~[herein,]~~ in this subsection,
7 a bank may invest its own assets in securities of an investment
8 grade. ~~[The term "investment grade"]~~ "Investment grade" means
9 notes, bonds, certificates of interest or participation,
10 beneficial interests, mortgage or receivable-related securities,
11 and other obligations that are commonly understood to be of
12 investment grade quality, including without limitation those
13 securities that are rated within the four highest grades by any
14 nationally-recognized rating service or unrated securities of
15 similar quality as reasonably determined by the bank in its
16 prudent banking judgment, ~~[+]~~ which may be based in part upon
17 estimates ~~[which]~~ that it believes to be reliable~~[+]~~.
18 ~~[Investment grade]~~ "Investment grade" does not include
19 investments ~~[which]~~ that are predominantly speculative in
20 nature. The aggregate amount invested by a bank under this
21 subsection and subsection (d) in any one company or other issuer



1 shall not exceed twenty per cent of the bank's capital and
2 surplus.

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

6 (1) The real property in or on which the business of the
7 bank is carried on, including its banking offices;
8 other space in the same property to rent as a source
9 of income; permanent or vacation residences or
10 recreational facilities for its officers and
11 employees; other real property necessary to the
12 accommodation of the bank's business, including but
13 not limited to parking facilities, data processing
14 centers, and real property held for future banking use
15 where the bank in good faith expects to use the
16 property as bank premises; provided that if the bank
17 ceases to use any real property and improvements
18 thereon for one of the foregoing purposes, it shall,
19 within five years thereafter, sell the real property,
20 cease to carry it or them as an asset, or transfer the
21 real property to an operating subsidiary of the bank;



- 1 provided further that the bank's investment in [~~such~~]
2 an operating subsidiary shall not exceed fifteen per
3 cent of the bank's tier one capital; provided
4 further [~~, such~~] that the property shall not, without
5 the approval of the commissioner, exceed seventy-five
6 per cent of the bank's capital and surplus;
- 7 (2) Personal property used in or necessary to the
8 accommodation of the bank's business, including but
9 not limited to furniture, fixtures, equipment, vaults,
10 and safety deposit boxes. The bank's investment in
11 furniture and fixtures shall not, without the approval
12 of the commissioner, exceed twenty-five per cent of
13 the bank's capital and surplus;
- 14 (3) Personal property and fixtures [~~which~~] that the bank
15 acquires for purposes of leasing to third parties, and
16 [~~such~~] real property interests as shall be incidental
17 thereto;
- 18 (4) [~~Such real~~] Real property or tangible personal
19 property as may come into its possession as security
20 for loans or in the collection of debts; or as may be
21 purchased by or conveyed to the bank in satisfaction



1 of or on account of debts previously contracted in the
2 course of its business, when [~~such~~] the property was
3 held as security by the bank; and

4 (5) The seller's interest under an agreement of sale, as
5 that term is defined in sections 501-101.5[7] and 502-
6 85, including without limitation the reversionary
7 interest in the real estate and the right to income
8 under the agreement of sale, with or without recourse
9 to the seller.

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

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



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

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

10 (g) A bank may own or control:

11 (1) Operating subsidiaries, or the parent of the operating
12 subsidiary, as set forth in this article;

13 (2) A corporation, partnership, or limited liability
14 company, organized and existing for the ownership of
15 real or personal property used or which the bank in
16 good faith expects to be used in the bank's business
17 or used for a permissible purpose under title 12 Code
18 of Federal Regulations part 362;

19 (3) The capital stock of the Federal National Mortgage
20 Association, the Student Loan Marketing Association,
21 Federal Home Loan Mortgage Corporation, or of any



- 1 other corporation organized for substantially the same
2 purposes; provided that this subsection shall be
3 deemed to authorize subscription for as well as
4 purchase of the stock;
- 5 (4) A small business investment company operating under
6 the Federal Small Business Investment Act of 1958;
- 7 (5) Bank service corporations, subject to the Bank Service
8 Company Act, 12 United States Code sections 1861-1862;
- 9 (6) A corporation whose stock is acquired or purchased to
10 save a loss on a preexisting debt secured by [~~such~~]
11 the stock; provided[~~7~~] that the stock shall be sold
12 within twelve months of the date acquired or
13 purchased, or within [~~such further~~] a later time as
14 may be granted by the commissioner;
- 15 (7) An international banking corporation established
16 pursuant to article 5A or an Edge corporation or an
17 Agreement corporation established or authorized
18 pursuant to section 25a of the Federal Reserve Act, 12
19 United States Code section 631;



- 1 (8) A captive insurance company incorporated under the
2 laws of the United States, or any state or territory
3 thereof, or the District of Columbia;
- 4 (9) A company transacting a business of insurance or the
5 sale of annuities pursuant to the authority conferred
6 in section 412:5-205.5; and
- 7 (10) A company engaging in securities activities pursuant
8 to the authority conferred in section 412:5-205.7.
- 9 (h) To the extent specified [~~herein,~~] in this subsection, a
10 bank may invest its own assets in limited partnerships, limited
11 liability partnerships, limited liability companies, or
12 corporations formed to invest in residential properties that will
13 qualify for the low income housing tax credit under section 42 of
14 the Internal Revenue Code of 1986, as amended, and under chapters
15 235 and 241; provided that the [~~total~~] bank may invest in an
16 aggregate amount [~~invested by a bank under this subsection in any~~
17 ~~one limited partnership, limited liability partnership, limited~~
18 ~~liability company, or corporation shall not, without the prior~~
19 ~~approval of the commissioner, exceed two~~] of up to fifteen per
20 cent of the bank's capital and surplus [~~and the aggregate amount~~
21 ~~invested under this subsection shall not,~~] without the prior



1 approval of the commissioner[, ~~exceed five per cent of the bank's~~
2 ~~capital and surplus. In no case shall the aggregate amount~~
3 ~~invested by a bank under this subsection exceed ten per cent of~~
4 ~~the bank's capital and surplus.~~] or any after-the-fact notice.

5 (i) An eligible bank may make an investment that exceeds
6 fifteen per cent, but does not exceed twenty per cent, of the
7 bank's capital and surplus without prior notification to, or
8 approval by, the commissioner if the eligible bank submits an
9 after-the-fact notice of the investment to the commissioner.

10 The after-the-fact notice shall include:

11 (1) A description of the eligible bank's investments;

12 (2) The amount of the investment;

13 (3) The percentage of the eligible bank's capital and
14 surplus represented by the investment that is the

15 subject of the notice and the eligible bank's

16 aggregate outstanding low-income housing commitments,

17 including the investment that is the subject of the
18 notice; and

19 (4) A statement certifying that the investment complies
20 with the requirements of subsection (h).

21 (j) For the purposes of this section:



1 "Eligible bank" means a bank that:
2 (1) Is well capitalized;
3 (2) Has a composite rating of 1 or 2 under the Uniform
4 Financial Institutions Rating System;
5 (3) Has a Community Reinvestment Act rating of outstanding
6 or satisfactory; and
7 (4) Is not subject to a cease and desist order, consent
8 order, formal written agreement, or Prompt Corrective
9 Action directive or, if subject to any such order,
10 agreement, or directive, is informed in writing by the
11 commissioner or appropriate federal regulator that the
12 bank may be treated as an "eligible bank" for purposes
13 of this subsection.

14 "Well capitalized" has the same meaning as defined under
15 title 12 Code of Federal Regulations section 6.4."

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

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

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



Report Title:

Affordable Housing; Banks; Assets; Capital and Surplus;
Commissioner of Financial Institutions; Aggregate Investments;
Notice; Approval

Description:

Allows a bank to invest, in aggregate, up to fifteen per cent of the bank's capital and surplus in limited partnerships, limited liability partnerships, limited liability companies, and corporations formed to invest in affordable housing residential properties without the prior approval of the Commissioner of Financial Institutions or an after-the-fact notice. Authorizes an eligible bank to make an investment exceeding fifteen per cent, but not exceeding 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. (CD1)

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