

JAN 17 2024

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# A BILL FOR AN ACT

RELATING TO LIMITED-PROFIT HOUSING ASSOCIATIONS.

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

1 PART I

2 SECTION 1. Chapter 201, Hawaii Revised Statutes, is  
3 amended by adding a new section to be appropriately designated  
4 and to read as follows:

5 "§201- Limited-profit housing council. (a) There is  
6 established the limited-profit housing council within the  
7 department of business, economic development, and tourism for  
8 administrative purposes, to oversee and administer the  
9 establishment and governance of limited-profit housing  
10 associations in the State.

11 (b) The limited-profit housing council shall consist of  
12 the following members:

13 (1) The executive director of the Hawaii housing finance  
14 and development corporation, who shall serve as the  
15 co-chair;

16 (2) The executive director of the Hawaii public housing  
17 authority, who shall serve as the co-chair;



- 1        (3) The director of the department of business, economic
- 2        development, and tourism or the director's designee;
- 3        (4) The attorney general or their designee;
- 4        (5) The director of taxation or their designee;
- 5        (6) The chairs of the standing committees of the senate
- 6        and house of representatives with subject matter
- 7        jurisdiction over housing or their designees;
- 8        (7) A representative from the city and county of
- 9        Honolulu's office of housing with experience in
- 10       affordable housing development;
- 11       (8) A representative from the county of Maui's housing
- 12       division with experience in affordable housing
- 13       development;
- 14       (9) A representative from the county of Kauai's housing
- 15       agency with experience in affordable housing
- 16       development; and
- 17       (10) A representative from the county of Hawaii's office of
- 18       housing and community development with experience in
- 19       affordable housing development.
- 20       (c) Meetings shall be open to the public and subject to
- 21       chapter 92. The co-chairs shall determine how often the council



1 shall meet; provided that the council meets at least once a  
2 calendar year.

3 (d) The department shall provide administrative support to  
4 the council and hire an administrator without regard to chapter  
5 76, who shall be responsible for the day-to-day operations of  
6 the council.

7 (e) The council may adopt rules under chapter 91 necessary  
8 to establish and govern limited-profit housing associations in  
9 the State."

10 PART II

11 SECTION 2. The Hawaii Revised Statutes is amended by  
12 adding a new chapter to be appropriately designated and to read  
13 as follows:

14 "CHAPTER

15 LIMITED-PROFIT HOUSING ASSOCIATIONS

16 § -1 Purpose. The purpose of this chapter is to create  
17 long-term affordable housing in the State through the  
18 establishment of limited-profit housing associations. Every  
19 limited-profit housing association shall have the primary  
20 purpose of providing long-term affordable housing in the State.  
21 This includes devoting and reinvesting its assets, including its



1 shareholders' equity, to generate affordable housing and  
2 regularly auditing its business operations to ensure that it is  
3 aligned with this primary purpose. This chapter authorizes a  
4 designation and code of conduct for an association to offer  
5 entrepreneurs and investors a sustainable option to develop  
6 long-term affordable housing in the State.

7       §   -2   **Definitions.** As used in this chapter:

8       "Contractor" means any general engineering, general  
9 building, or specialty contractor, any subcontractor, or any  
10 person, who by oneself or through others offers to undertake, or  
11 holds oneself out as being able to undertake, or does undertake  
12 to alter, add to, subtract from, improve, enhance, or beautify  
13 any realty or construct, alter, repair, add to, subtract from,  
14 improve, move, wreck, or demolish any building, highway, road,  
15 railroad, excavation, or other structure, project, development,  
16 or improvement, or do any part thereof, including the erection  
17 of scaffolding or other structures or works in connection  
18 therewith.

19       "Financial relationship" means a relationship between a  
20 person and a contractor, where:



- 1           (1) The person is, or has been within the last three  
2                   years, an employee of a contractor, its parent  
3                   company, or its subsidiaries;
- 4           (2) The person is related by blood, marriage, or adoption  
5                   to; is a party to a civil union with; is a reciprocal  
6                   beneficiary or household member of; or resides with a  
7                   contractor or an officer or director of a contractor,  
8                   its parent company, or its subsidiaries; or
- 9           (3) The person or an association of which the person is a  
10                  director, officer, or manager or in which the person  
11                  owns beneficially or of record five per cent or more  
12                  of the outstanding equity interests or the outstanding  
13                  shares of a contractor, its parent company, or its  
14                  subsidiaries.

15           "Limited-profit housing association" or "association" means  
16 a domestic corporation, incorporated under chapter 414, that is  
17 approved by the limited-profit housing council to act as a  
18 limited-profit housing association and whose status as a  
19 limited-profit housing association has not been terminated as  
20 provided in this chapter.



1 "Limited-profit housing council" or "council" means the  
2 council established pursuant to section 201- .

3 **§ -3 Establishment; standards of conduct; termination.**

4 (a) A domestic corporation, incorporated under chapter 414, may  
5 establish itself as a limited-profit housing association upon  
6 approval from the council. If a corporation that is not a  
7 limited-profit housing association is a party to a merger,  
8 consolidation, or division, or is the exchanging corporation in  
9 a share exchange, and the surviving, new, or any resulting  
10 corporation in the merger, consolidation, division, or share  
11 exchange is to be a limited-profit housing association, then the  
12 plan of merger, consolidation, division, or share exchange shall  
13 not be effective unless approved by the council.

14 (b) Upon approval of its limited-profit housing  
15 association status, the corporation shall include in its  
16 articles, or amend its articles to include, a statement that the  
17 corporation's primary purpose is to provide long-term affordable  
18 housing in the State and that the corporation shall devote its  
19 assets, including its shareholders' equity, to generate  
20 affordable housing and regularly check and monitor its business



1 operations to ensure that it is aligned with this primary  
2 purpose.

3 (c) All directors and officers of an association shall be  
4 independent of and shall have no financial relationship with any  
5 contractors.

6 (d) The director of an association shall not be personally  
7 liable for monetary damages for any action taken as a director  
8 if the director performed the duties of the director's office in  
9 compliance with the general standards of conduct pursuant to  
10 section 414-221.

11 (e) The officer of an association shall not be personally  
12 liable for monetary damages for any action taken as an officer  
13 if the officer performed the duties of the position in  
14 compliance with the general standards of conduct pursuant to  
15 section 414-233.

16 (f) Upon proper notice, an association that is  
17 noncompliant with this chapter shall have its status as a  
18 limited-profit housing association revoked.

19 (g) An association may elect to terminate its status as a  
20 limited-profit housing association and cease to be subject to  
21 this chapter upon approval from the council. If a plan of



1 merger, consolidation, division, or share exchange would have  
2 the effect of terminating the status of a corporation as a  
3 limited-profit housing association, the plan shall not be  
4 effective unless it is approved by the council.

5       **§ -4 Leasehold purchase prices; rental prices.** (a) A  
6 limited-profit housing association shall only charge a fixed  
7 price for the use of its affordable housing units. The fixed  
8 price shall be at a level neither higher nor lower than  
9 necessary to cover the costs for constructing and operating the  
10 building, while considering the actual and reasonable costs of  
11 managing the affordable housing units, including the formation  
12 of reserves. The fixed price shall be based on the following  
13 factors:

- 14       (1) Construction expenses, including the financing of the  
15             affordable housing units;
- 16       (2) Operating expenses and management costs; and
- 17       (3) Replacement reserves.

18       (b) If a tenant or buyer of an affordable housing unit  
19 that is built by an association disagrees with the cost of the  
20 affordable housing unit, they may have the amount of the fixed  
21 price reviewed by a court of law.



1           §    **-5 Asset management.** (a) The revenues generated by a  
2 limited-profit housing association shall be reserved and placed  
3 in a revolving fund where the moneys shall be used only for  
4 limited business activities as provided under section    -6.

5           (b) The association shall only distribute its profits once  
6 a year. The profit distributed shall not exceed the permissible  
7 interest rate for shareholder equity as determined by the  
8 council.

9           (c) The dividend paid to a member or shareholder that  
10 withdraws from the association shall be only the amount of the  
11 nominal value of the member's or shareholder's capital  
12 contribution.

13          §    **-6 Limited business activities.** (a) Limited-profit  
14 housing associations shall primarily construct, rehabilitate,  
15 and manage affordable housing. Additional primary activities of  
16 an association include the large-scale renovation and management  
17 of the affordable housing of other limited-profit housing  
18 associations. All activities performed under this subsection  
19 shall be performed under the name of the association.

20           (b) An association may conduct other secondary business  
21 activities, including:



- 1           (1) The construction of public housing, private homes, and  
2           homes built for third parties;
- 3           (2) The construction of commercial premises, garages, and  
4           parking lots;
- 5           (3) The construction of community facilities for the  
6           residents of its affordable housing projects and the  
7           residential public in general;
- 8           (4) Improvements in the general housing environment of the  
9           State;
- 10          (5) Special renovation activities, including urban  
11          renewal, sanitation, and renovation for third parties;
- 12          (6) Legal transactions relating to the affordable housing  
13          units owned by the limited-profit housing association;
- 14          (7) Bank transactions relating to the construction of  
15          affordable housing;
- 16          (8) The purchase of building materials and furnishings;  
17          and
- 18          (9) Participation in other limited-profit building  
19          associations, loan associations, and building  
20          societies;



1 provided that the scope of these activities shall be connected  
2 and related to the primary business activities described in  
3 subsection (a).

4 (c) With written approval from the council, an association  
5 may perform other housing-related services.

6 (d) Any interruption in building activities by an  
7 association shall require the explicit permission of the  
8 council."

9 SECTION 3. Chapter 235, Hawaii Revised Statutes, is  
10 amended by adding a new section to be appropriately designated  
11 and to read as follows:

12 "§235- Exclusion of income earned by a limited-profit  
13 housing association. Notwithstanding any law to the contrary,  
14 all income earned from a limited-profit housing association  
15 established pursuant to chapter that would otherwise be  
16 taxed as ordinary income shall be excluded from taxation under  
17 this chapter for Hawaii income tax purposes; provided that any  
18 income that is not used for primary business activities under  
19 section -6(a) shall be subject to this chapter if the  
20 limited-profit housing association is unable to verify that the



1 income has been properly utilized in five years for the primary  
2 business activities of the association."

3 SECTION 4. Section 23-94, Hawaii Revised Statutes, is  
4 amended by amending subsection (c) to read as follows:

5 "(c) This section shall apply to the following:

- 6 (1) Section 235-4.5(a)--Exclusion of intangible income  
7 earned by a trust sited in this State;
- 8 (2) Section 235-4.5(b)--Exclusion of intangible income of  
9 a foreign corporation owned by a trust sited in this  
10 State;
- 11 (3) Section 235-4.5(c)--Credit to a resident beneficiary  
12 of a trust for income taxes paid by the trust to  
13 another state;
- 14 (4) Sections 235-55 and 235-129--Credit for income taxes  
15 paid by a resident taxpayer to another jurisdiction;
- 16 (5) Section 235-71(c)--Credit for a regulated investment  
17 company shareholder for the capital gains tax paid by  
18 the company;
- 19 (6) Section 235-110.6--Credit for fuel taxes paid by a  
20 commercial fisher;



1 (7) Section 235-110.93--Credit for important agricultural  
2 land qualified agricultural cost;

3 ~~[(8) Section 235-110.94--Credit for organically produced~~  
4 ~~agricultural products;~~

5 ~~+(9)]~~ (8) Section 235-129(b)--Credit to a shareholder of an  
6 S corporation for the shareholder's pro rata share of  
7 the tax credit earned by the S corporation in this  
8 State; ~~[and~~

9 ~~+(10)]~~ (9) Section 209E-10--Credit for a qualified business  
10 in an enterprise zone; provided that the review of  
11 this credit pursuant to this part shall be limited in  
12 scope to income tax credits~~[-];~~ and

13 (10) Section 235- -- Exclusion of income earned by a  
14 limited-profit housing association."

15 SECTION 5. Section 247-3, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**§247-3 Exemptions.** The tax imposed by section 247-1  
18 shall not apply to:

19 (1) Any document or instrument that is executed prior to  
20 January 1, 1967;



- 1           (2) Any document or instrument that is given to secure a  
2           debt or obligation;
- 3           (3) Any document or instrument that only confirms or  
4           corrects a deed, lease, sublease, assignment,  
5           transfer, or conveyance previously recorded or filed;
- 6           (4) Any document or instrument between husband and wife,  
7           reciprocal beneficiaries, or parent and child, in  
8           which only a nominal consideration is paid;
- 9           (5) Any document or instrument in which there is a  
10          consideration of \$100 or less paid or to be paid;
- 11          (6) Any document or instrument conveying real property  
12          that is executed pursuant to an agreement of sale, and  
13          where applicable, any assignment of the agreement of  
14          sale, or assignments thereof; provided that the taxes  
15          under this chapter have been fully paid upon the  
16          agreement of sale, and where applicable, upon [~~such~~]  
17          the assignment or assignments of agreements of sale;
- 18          (7) Any deed, lease, sublease, assignment of lease,  
19          agreement of sale, assignment of agreement of sale,  
20          instrument or writing [~~in which~~] that the United  
21          States or any agency or instrumentality thereof or the



1 State or any agency, instrumentality, or governmental  
2 or political subdivision thereof are the only parties  
3 thereto;

4 (8) Any document or instrument executed pursuant to a tax  
5 sale conducted by the United States or any agency or  
6 instrumentality thereof or the State or any agency,  
7 instrumentality, or governmental or political  
8 subdivision thereof for delinquent taxes or  
9 assessments;

10 (9) Any document or instrument conveying real property to  
11 the United States or any agency or instrumentality  
12 thereof or the State or any agency, instrumentality,  
13 or governmental or political subdivision thereof  
14 pursuant to the threat of the exercise or the exercise  
15 of the power of eminent domain;

16 (10) Any document or instrument that solely conveys or  
17 grants an easement or easements;

18 (11) Any document or instrument whereby owners partition  
19 their property, whether by mutual agreement or  
20 judicial action; provided that the value of each  
21 owner's interest in the property after partition is



- 1 equal in value to that owner's interest before  
2 partition;
- 3 (12) Any document or instrument between marital partners or  
4 reciprocal beneficiaries who are parties to a divorce  
5 action or termination of reciprocal beneficiary  
6 relationship that is executed pursuant to an order of  
7 the court in the divorce action or termination of  
8 reciprocal beneficiary relationship;
- 9 (13) Any document or instrument conveying real property  
10 from a testamentary trust to a beneficiary under the  
11 trust;
- 12 (14) Any document or instrument conveying real property  
13 from a grantor to the grantor's revocable living  
14 trust, or from a grantor's revocable living trust to  
15 the grantor as beneficiary of the trust;
- 16 (15) Any document or instrument conveying real property, or  
17 any interest therein, from an entity that is a party  
18 to a merger or consolidation under chapter 414, 414D,  
19 415A, 421, 421C, 425, 425E, or 428 to the surviving or  
20 new entity;



1       (16) Any document or instrument conveying real property, or  
 2           any interest therein, from a dissolving limited  
 3           partnership to its corporate general partner that  
 4           owns, directly or indirectly, at least a ninety per  
 5           cent interest in the partnership, determined by  
 6           applying section 318 (with respect to constructive  
 7           ownership of stock) of the federal Internal Revenue  
 8           Code of 1986, as amended, to the constructive  
 9           ownership of interests in the partnership; [~~and~~

10 ~~+] (17) [+]~~ Any document or instrument that conforms to the  
 11           transfer on death deed as authorized under chapter  
 12           527~~[-]~~; and

13       (18) Any document or instrument conveying real property, or  
 14       any interest therein, to or by a limited-profit  
 15       housing association established pursuant to  
 16       chapter \_\_\_\_\_."

PART III

18       SECTION 6. Statutory material to be repealed is bracketed  
 19 and stricken. New statutory material is underscored.

20       SECTION 7. This Act shall take effect upon its approval;  
 21 provided that sections 3, 4, and 5 of this Act shall take effect



1 on January 1, 2025, and shall apply to taxable years beginning  
2 after December 31, 2024.  
3

INTRODUCED BY:

A handwritten signature in black ink, appearing to be 'BLS', is written over a horizontal line.



# S.B. NO. SB 2024

**Report Title:**

Affordable Housing; Limited-Profit Housing Associations;  
Limited-Profit Housing Council

**Description:**

Establishes an organizational, tax, and regulatory framework for limited-profit housing associations. Establishes the Limited-Profit Housing Council to oversee limited-profit housing associations.

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

