THE SENATE TWENTY-FIFTH LEGISLATURE, 2010 STATE OF HAWAII

S.B. NO. ²⁴⁷² s.d. 2 H.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

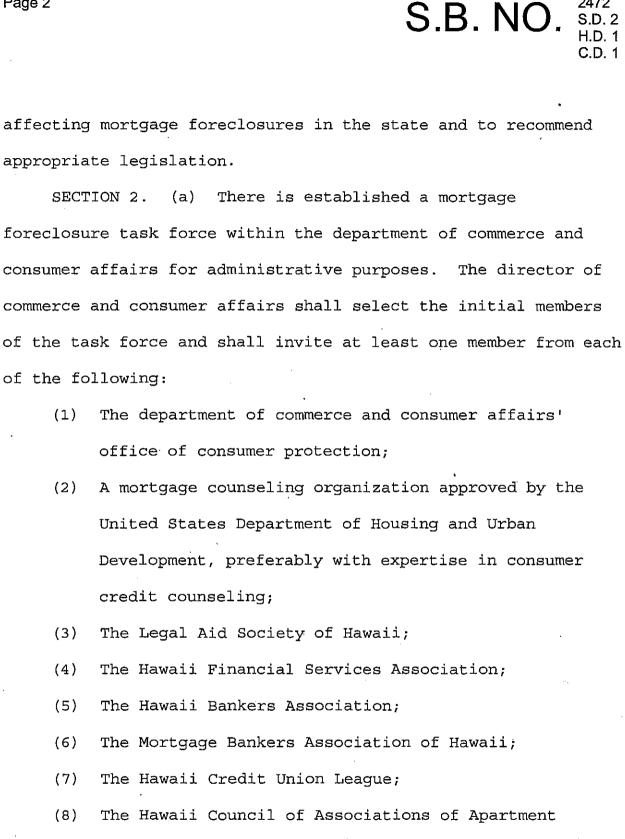
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the number of 2 mortgage foreclosures of residential property has reached an 3 alarming level. The legislature acknowledges that this 4 situation is not unique to Hawaii and is part of a nationwide 5 economic downturn and resulting upheaval throughout the home lending industry. Because of these concerns, there have been 6 numerous measures proposed during the 2010 legislative session 7 to address foreclosure-related issues. However, it is unclear 8 9 whether any of these approaches will improve the conditions 10 relating to foreclosures or improve the current foreclosure 11 laws.

12 The legislature further finds that a comprehensive 13 evaluation of Hawaii's mortgage foreclosure laws is necessary 14 before the enactment of meaningful legislation that, on balance, 15 addresses the concerns of both borrowers and lenders involved in 16 mortgage foreclosures without further overburdening the courts. 17 The purpose of this Act is to create a mortgage foreclosure

18 task force to conduct an extensive analysis of all factors
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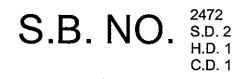
Owners;

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1	(9) The Hawaii State Bar Association Collection Law
2	Section;
3	(10) The Hawaii State Bar Association Bankruptcy Law
4	Section or the Bankruptcy Court of the United States
5	District of Hawaii; and
6	(11) The Hawaii state judiciary.
7	The members of the mortgage foreclosure task force shall elect a
8	chairperson from among its membership. The chairperson of the
9	task force shall seek to maintain a balanced representation of
10	interests and may select additional task force members at the
11	chairperson's discretion.
12	(b) The mortgage foreclosure task force shall undertake a
13	study to develop both general and specific policies and
14	procedures necessary to improve the manner in which mortgage
15	foreclosures are conducted in the state. In particular, the
16	task force shall consider the following areas for possible
17	improvements:
18	(1) The adequacy of notice given to mortgagors of
19	available mortgage counseling programs and the optimal
20	timing for such notification and counseling;



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1	(2)	The availability of loan documentation to mortgagors
2		from mortgagees prior to and during the foreclosure
3		process;
4	(3)	The establishment of statutory bidding thresholds for
5		properties sold via foreclosure;
6	(4)	The statutory timeline for power-of-sale foreclosures;
7	(5)	Further regulation of distressed property consultants;
8		and
9	(6)	Revisions to part II of chapter 667, Hawaii Revised
10		Statutes, to make it a viable vehicle for power-of-
11		sale foreclosures.
12	(c)	In undertaking the study, the mortgage foreclosure
13	task force	e may take into account any of the following factors:
14	(1)	Existing regulation, on both the state and federal
15		levels;
16	. (2)	The state of the national and local economy, mortgage
17		loan default rates, and unemployment rates;
18	(3)	Local borrowing and lending practices vis-à-vis
19		mainland practices;
20	(4)	Standard mortgage loan qualifications;
21	(5)	Language barriers and other cultural factors unique to
22		this state;

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1	(6)	The extent to which predatory mortgage lending, abuse
2		of collection procedures, and otherwise unfair,
3		fraudulent, and deceptive practices have impacted
4		mortgagors;
5	(7)	The effect of various mortgage loan terms, interest
6		rates, fees, risk-based pricing, single-premium credit
7		insurance, financing, and payment structures;
8	(8)	The extent to which mortgage loan terms and conditions
9		are disclosed to and understood by borrowers;
10	(9)	A borrower's ability to negotiate mortgage loan terms
11		and prices;
12	(10)	The role of mortgage servicing agents and their
13		practices;
14	(11)	The availability, consumer knowledge, and use of
15		mortgage counseling;
16	(12)	The availability, consumer knowledge, and use of loan
17		modification processes;
18	(13)	The length of time and expense associated with
19	,	completing the foreclosure process;
20	(14)	The extent to which mortgagees provide mortgagors with
21		mortgage documents when requested;

1	(15)	The impact on the state's judicial system and the
2		timely resolution of foreclosure disputes;
3	(16)	The extent to which mortgage foreclosures go
4		uncontested;
5	(17)	The proof required to establish standing for
6		foreclosing mortgagees;
7	(18)	Association and maintenance fees and other costs borne
8		by neighbor unit holders in condominium or community
9		associations when mortgagors are in default;
10	(19)	Abuses of the existing law by mortgagors and
11		mortgagees;
12	(20)	The effect of certain inefficiencies and barriers
13		under the current law relating to foreclosures, such
14		as serving process upon absent or deceased mortgagors;
15		and
16	(21)	The extent to which the above factors impact power-of-
17	·	sale vis-à-vis judicial foreclosures.
18	(d)	The mortgage foreclosure task force shall analyze the
19	effectiver	ness and any defects of the foreclosure procedures
20	currently	set in statute for both judicial and power-of-sale
21	foreclosu	res. In this analysis, the task force:

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•	(1)	May consider and recommend alternative procedures for		
		timeshare property;		
	(2)	May consider and recommend alternative procedures for		
		foreclosures sought by junior lien holders such as		
		condominiums, co-op apartments, and community		
		associations collecting maintenance fees;		
	(3)	May propose measures to clarify the application of		
		chapter 667, Hawaii Revised Statutes, to other		
		property statutes;		
	(4)	Shall comment on the extent to which existing law does		
		or does not comply with state and federal		
		constitutional due process guarantees;		
	(5)	Shall comment on any effect proposed legislative		
		changes will have on borrowers who are current on		
		their mortgage loans; and		
	(6)	Shall seek to maintain and not erode existing consumer		
		protections.		
	(e)	The mortgage foreclosure task force shall comment on		
the feasibility of establishing a state entity or administrator				
to focus on addressing the concerns of mortgagors, disseminating				

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21 information, and otherwise engaging in consumer education. The

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task force shall propose funding mechanisms to enable the
 operation of this entity.

3 (f) Members of the mortgage foreclosure task force shall
4 serve without compensation and shall not be reimbursed for
5 expenses.

(g) The mortgage foreclosure task force shall submit a
report of its findings and recommendations, including any
proposed legislation, to the legislature no later than twenty
days prior to the convening of the 2011 and 2012 regular
sessions, and shall participate in a joint informational session
upon request of the legislature.

12 The legislative reference bureau shall assist the task (h) 13 force in preparing its findings, recommendations, and proposed 14 legislation; provided that the chairperson of the task force 15 shall submit the task force's proposals to the legislative 16 reference bureau for drafting no later than November 1, 2010 for 17 the report to the 2011 regular session and no later than 18 November 1, 2011, for the report to the 2012 regular session. 19 The mortgage foreclosure task force shall cease to (i) 20 exist on June 30, 2012.

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1 SECTION 3. This Act shall take effect upon its approval.
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Report Title: Mortgage Foreclosures; Task Force

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Description: Establishes a task force to analyze factors affecting mortgage foreclosures in Hawaii, including relevant laws. Effective upon approval. (CD1)

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