

JAN 22 2010

S.B. NO. 2575

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# A BILL FOR AN ACT

RELATING TO HOUSING.

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

1           SECTION 1. The purpose of this Act is to preserve  
2 affordable housing units through the transfer and sale of rental  
3 and affordable housing in perpetuity, and to create an  
4 anti-speculation capital gains tax on the sale of real property  
5 that does not apply to the sale of real property that is owned  
6 by a resident and provides affordable housing rentals for a  
7 minimum period of time.

8           SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11           "§235-    Anti-speculation; capital gains tax. (a) In  
12 addition to the capital gains tax imposed under this chapter,  
13 there shall be an anti-speculation capital gains tax on the net  
14 capital gains realized by a seller of real property, less  
15 commissions, fees, and other charges, if any, related to the  
16 sale. The tax shall be as follows:



1       (1) If the real property was held by the seller for less  
2       than six months prior to the sale, the tax shall be  
3       sixty per cent of the capital gains tax owed;

4       (2) If the real property was held by the seller for at  
5       least six months but less than twelve months prior to  
6       the sale, the tax shall be thirty per cent of the  
7       capital gains tax owed; and

8       (3) If the real property was held by the seller for at  
9       least twelve months but not more than twenty-four  
10       months, the tax shall be fifteen per cent of the  
11       capital gains tax owed.

12       (b) This section shall not apply to:

13       (1) Real property sold to provide affordable rental  
14       housing for a period of not less than ten years to a  
15       resident, as defined in section 235-1, earning less  
16       than one hundred forty per cent of the median Hawaii  
17       income, as determined by the department;

18       (2) A principal residence sold by reason of a change in  
19       place of employment, health, or unforeseen  
20       circumstances, as exempted under section 121(c)(2) of  
21       the Internal Revenue Code; or



1        (3) Amounts realized from properties that are  
2                    involuntarily converted (destroyed, stolen, seized,  
3                    requisitioned, or condemned), as exempted under  
4                    section 1033 of the Internal Revenue Code.

5        (c) The sale of unimproved real property shall be subject  
6                    to taxation under this section, unless otherwise prohibited  
7                    under this section.

8        (d) The tax realized pursuant to this section shall be  
9                    deposited into an escrow account to be forwarded to the  
10                   department. The department shall deposit all of the tax  
11                   realizations into the rental housing trust fund under section  
12                   201H-202.

13        (e) This section shall not apply to properties that  
14                   qualify the seller for a county homeowner's exemption or to  
15                   military personnel selling property as a result of military  
16                   relocation orders."

17        SECTION 3. Chapter 356D, Hawaii Revised Statutes, is  
18                   amended by adding a new section to be appropriately designated  
19                   and to read as follows:

20        "§356D-        Public housing; affordable in perpetuity.  
21                   Notwithstanding any law to the contrary, any public housing  
22                   project that is constructed or managed with state or county

1 funds for sale to qualified buyers or provided to qualified  
2 tenants as rentals shall remain affordable in perpetuity,  
3 subject to any restrictions and conditions provided by law that  
4 are not contrary to the purposes of this section; provided that  
5 if a public housing project is redeveloped or reconstructed to  
6 provide for additional new units, different target income  
7 groups, or mixed use development, the number of affordable units  
8 shall be no lower than the original number of affordable units.

9 For purposes of this section, "affordable" means:

10 (1) With regard to units for sale to qualified buyers,  
11 "affordable" means available for households with  
12 incomes at or below one hundred forty per cent of the  
13 median family income, as determined by the United  
14 States Department of Housing and Urban Development;  
15 and

16 (2) With regard to rental units for qualified tenants,  
17 "affordable" means available for households with  
18 incomes at or below eighty per cent of the median  
19 family income, as determined by the United States  
20 Department of Housing and Urban Development."

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



1           "§201H-47 Real property; restrictions on transfer; waiver  
2 of restrictions. (a) The following restrictions shall apply to  
3 the transfer of real property developed and sold under this  
4 chapter, whether in fee simple or leasehold:

5           (1) [~~For a period of ten years after~~] After the purchase,  
6           whether by lease, assignment of lease, deed, or  
7           agreement of sale, if the purchaser wishes to transfer  
8           title to the real property, the [~~corporation shall~~  
9           ~~have the first option to purchase~~] purchaser shall  
10           transfer the real property to a qualified resident, as  
11           defined in section 201H-32, at a price that shall not  
12           exceed the sum of:

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

15           (B) The cost of any improvements added by the  
16           purchaser, as defined in rules adopted by the  
17           corporation; and

18           (C) Simple interest on the original cost and capital  
19           improvements to the purchaser at the rate of one  
20           per cent a year[+].

21           The corporation shall provide that the transfer of the  
22           real property to the "qualified resident" is upon



1           terms that preserve the intent of this section and  
2           sections 201H-49 and 201H-50 and in accordance with  
3           rules adopted by the corporation.

- 4           (2) [The] If the purchaser cannot transfer the real  
5           property within one year of listing it for transfer,  
6           the corporation may purchase the real property either:  
7           (A) By conveyance free and clear of all mortgages and  
8           liens; or  
9           (B) By conveyance subject to existing mortgages and  
10           liens.

11           If the real property is conveyed in the manner  
12           provided in subparagraph (A), it shall be conveyed to  
13           the corporation only after all mortgages and liens are  
14           released. If the real property is conveyed in the  
15           manner provided in subparagraph (B), the corporation  
16           shall acquire the property subject to any first  
17           mortgage created for the purpose of securing the  
18           payment of a loan of funds expended solely for the  
19           purchase of the real property by the seller; and any  
20           mortgage or lien created for any other purpose  
21           provided that the corporation has previously consented  
22           to it in writing.



1           The corporation's interest created by this  
2 section shall constitute a statutory lien on the real  
3 property and shall be superior to any other mortgage  
4 or lien except for:

5           (i) Any first mortgage created for the purpose  
6 of securing the payment of a loan of funds  
7 expended solely for the purchase of the real  
8 property by the seller;

9           (ii) Any mortgage insured or held by a federal  
10 housing agency; and

11           (iii) Any mortgage or lien created for any other  
12 purpose; provided that the corporation has  
13 previously consented to it in writing.

14           The amount paid by the corporation to the seller shall  
15 be the difference, if any, between the purchase price  
16 determined by paragraph (1)(A) to (C), and the total  
17 of the outstanding principal balances of the mortgages  
18 and liens assumed by the corporation[+].

19           [~~3~~] (b) A purchaser may refinance real property  
20 developed and sold under this chapter; provided that the  
21 purchaser shall not refinance the real property within ten years  
22 from the date of purchase for an amount in excess of the



1 purchase price as determined by paragraph (1) (A) to (C);  
2 provided further that the purchaser shall obtain the  
3 corporation's written consent if any restriction on the transfer  
4 of the real property remains applicable[7

5 ~~(4) After the end of the tenth year from the date of~~  
6 ~~initial purchase or execution of an agreement of sale,~~  
7 ~~the purchaser may sell the real property and sell or~~  
8 ~~assign the property free from any price restrictions,~~  
9 ~~provided that the purchaser shall be required to pay~~  
10 ~~to the corporation the sum of:~~

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

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





1           ~~(C) Interest on the subsidy or deferred sales price,~~  
2           ~~if applicable, and any other amount expended at~~  
3           ~~the rate of seven per cent a year computed as to~~  
4           ~~the subsidy or deferred sales price, if~~  
5           ~~applicable, from the date of purchase or~~  
6           ~~execution of the agreement of sale, and as to any~~  
7           ~~amount expended, from the date of expenditure,~~  
8           ~~provided that the computed interest shall not~~  
9           ~~extend beyond thirty years from the date of~~  
10           ~~purchase or execution of the agreement of sale of~~  
11           ~~the real property. If any proposed sale or~~  
12           ~~transfer will not generate an amount sufficient~~  
13           ~~to pay the corporation the sum as computed under~~  
14           ~~this paragraph, the corporation shall have the~~  
15           ~~first option to purchase the real property at a~~  
16           ~~price that shall not exceed the sum as computed~~  
17           ~~under paragraphs (1) and (2); and~~

18           ~~(D) The corporation's share of appreciation in the~~  
19           ~~real property as determined under rules adopted~~  
20           ~~pursuant to chapter 91, when applicable;~~

21           ~~(5) Notwithstanding any provision in this section to the~~  
22           ~~contrary, pursuant to rules adopted by the~~



1           ~~corporation, the subsidy or deferred sales price~~  
2           ~~described in paragraph (4) (B) and any interest accrued~~  
3           ~~pursuant to paragraph (4) (C) may be paid, in part or~~  
4           ~~in full, at any time, and~~

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

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

15           ~~(B) Shall be a restriction that runs with the land~~  
16           ~~until it is paid in full and released by the~~  
17           ~~corporation, or extinguished pursuant to~~  
18           ~~subsection (c); and~~

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

21           ~~(b) For a period of ten years after the purchase, whether~~  
22           ~~by lease, assignment of lease, deed, or agreement of sale, if~~



1 ~~the purchaser wishes to transfer title to the real property, and~~  
2 ~~if the corporation does not exercise the option to purchase the~~  
3 ~~real property as provided in subsection (a), then the~~  
4 ~~corporation shall require the purchaser to sell the real~~  
5 ~~property to a "qualified resident" as defined in section~~  
6 ~~201H-32, and upon the terms that preserve the intent of this~~  
7 ~~section and sections 201H-49 and 201H-50, and in accordance with~~  
8 ~~rules adopted by the corporation].~~

9 (c) The corporation may waive the restrictions prescribed  
10 in subsection (a) [~~or (b)~~] if [+

11 ~~(1) The]~~ the purchaser wishes to transfer title to the  
12 real property by devise or through the laws of descent  
13 to a family member who would otherwise qualify under  
14 rules established by the corporation[+]

15 ~~(2) The sale or transfer of the real property would be at~~  
16 ~~a price and upon terms that preserve the intent of~~  
17 ~~this section without the necessity of the State~~  
18 ~~repurchasing the real property; provided that, in this~~  
19 ~~case, the purchaser shall sell the real property and~~  
20 ~~sell or assign the real property to a person who is a~~  
21 ~~"qualified resident" as defined in section 201H-32,~~  
22 ~~and provided further that the purchaser shall pay to~~



1           ~~the corporation its share of appreciation in the real~~  
2           ~~property as determined in rules adopted pursuant to~~  
3           ~~chapter 91, when applicable; or~~

4           ~~(3) The sale or transfer is of real property subject to a~~  
5           ~~sustainable affordable lease as defined in section~~  
6           ~~516-1].~~

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

13          (e) The restrictions prescribed in this section and  
14          sections 201H-49 to 201H-51 shall not be [automatically]  
15          extinguished and shall [~~not~~] attach in subsequent transfers of  
16          title when a mortgage holder or other party becomes the owner of  
17          the real property pursuant to a mortgage foreclosure,  
18          foreclosure under power of sale, or a conveyance in lieu of  
19          foreclosure after a foreclosure action is commenced; provided  
20          that the mortgage is the initial purchase money mortgage, or  
21          that the corporation consented to and agreed to subordinate the  
22          restrictions to the mortgage when originated, if the mortgage is



1 not the initial purchase money mortgage; or when a mortgage is  
2 assigned to a federal housing agency. Any law to the contrary  
3 notwithstanding, a mortgagee under a mortgage covering real  
4 property or leasehold interest encumbered by the first option to  
5 purchase in favor of the corporation, prior to commencing  
6 mortgage foreclosure proceedings, shall notify the corporation  
7 in writing of:

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

10 (2) Any intention of the mortgagee to foreclose the  
11 mortgage under chapter 667 forty-five days prior to  
12 commencing mortgage foreclosure proceedings;

13 provided that the mortgagee's failure to provide written notice  
14 to the corporation shall not affect the mortgage holder's rights  
15 under the mortgage. The corporation shall be a party to any  
16 foreclosure action, and shall be entitled to its share of  
17 appreciation in the real property as determined under this  
18 chapter in lien priority when the payment is applicable, and if  
19 foreclosure occurs within the ten-year period after the  
20 purchase, the corporation shall also be entitled to all proceeds  
21 remaining in excess of all customary and actual costs and  
22 expenses of transfer pursuant to default, including liens and



1 encumbrances of record; provided that the person in default  
2 shall be entitled to an amount that shall not exceed the sum of  
3 amounts determined pursuant to subsection (a)(1)(B) and (C).

4 (f) The provisions of this section shall be incorporated  
5 in any deed, lease, agreement of sale, or any other instrument  
6 of conveyance issued by the corporation. [~~In any sale by the  
7 corporation of real property for which a subsidy or deferred  
8 sales price was made by the corporation, the amount of the  
9 subsidy or deferred sales price described in subsection  
10 (a)(4)(B), a description of the cost items that constitute the  
11 subsidy or deferred sales price, and the conditions of the  
12 subsidy or deferred sales price shall be clearly stated at the  
13 beginning of the contract document issued by the corporation.  
14 In any sale in which the corporation's share of appreciation in  
15 real property is a restriction, the terms of the shared  
16 appreciation equity program shall be clearly stated and included  
17 as an exhibit in any deed, lease, agreement of sale, or any  
18 other instrument of conveyance.]~~

19 (g) This section need not apply to market-priced units in  
20 an economically integrated housing project, except as otherwise  
21 determined by the developer of the units; provided that



1 preference shall be given to qualified residents in the initial  
2 sale of market-priced units.

3 (h) The corporation is authorized to waive any of the  
4 restrictions set forth in this section in order to comply with  
5 or conform to requirements set forth in federal law or  
6 regulations governing mortgage insurance or guarantee programs  
7 or requirements set forth by federally chartered secondary  
8 mortgage market participants."

9 SECTION 5. Section 201H-48, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[+]§201H-48[+] **Exception of current owners in corporation**  
12 **projects.** The corporation may allow a person who is a current  
13 owner of a dwelling unit in a multifamily housing project  
14 sponsored by the corporation to apply for the purchase of a  
15 larger dwelling unit in a project sponsored by the corporation  
16 if the applicant's current family size exceeds the permissible  
17 family size for the applicant's current dwelling unit, as  
18 determined by prevailing county building or housing codes. The  
19 applicant shall be required to first sell the applicant's  
20 current dwelling unit [~~back to the corporation. Notwithstanding~~  
21 ~~any law to the contrary, any applicant, as it pertains to for-~~  
22 ~~sale housing, shall be a "qualified resident" who.~~



- 1       ~~(1) Is a citizen of the United States or a resident alien;~~
- 2       ~~(2) Is at least eighteen years of age;~~
- 3       ~~(3) Is domiciled in the State and shall physically reside~~  
4       ~~in the dwelling unit purchased under this section;~~
- 5       ~~(4) In the case of purchase of real property in fee simple~~  
6       ~~or leasehold, has a gross income sufficient to qualify~~  
7       ~~for the loan to finance the purchase; and~~
- 8       ~~(5) Except for the applicant's current residence, meets~~  
9       ~~the following qualifications:~~
- 10       ~~(A) Is a person who either oneself or together with~~  
11       ~~the person's spouse or a household member, does~~  
12       ~~not own a majority interest in fee simple or~~  
13       ~~leasehold lands suitable for dwelling purposes,~~  
14       ~~or a majority interest in lands under any trust~~  
15       ~~agreement or other fiduciary arrangement in which~~  
16       ~~another person holds the legal title to the land;~~  
17       ~~and~~
- 18       ~~(B) Is a person whose spouse or a household member~~  
19       ~~does not own a majority interest in fee simple or~~  
20       ~~leasehold lands suitable for dwelling purposes,~~  
21       ~~or a majority interest in lands under any trust~~  
22       ~~agreement or other fiduciary arrangement in which~~





1           ~~another person holds the legal title to the land,~~  
2           ~~except when husband and wife are living apart~~  
3           ~~under a decree of separation from bed and board~~  
4           ~~issued by the family court pursuant to section~~  
5           ~~580-71.]~~

6    to a "qualified resident", as defined in section 201H-32."

7           SECTION 6. Section 201H-49, Hawaii Revised Statutes, is  
8    amended by amending subsections (a) and (b) to read as follows:

9           "(a) Real property purchased under this chapter shall be  
10   occupied by the purchaser at all times [~~during the ten year~~  
11   ~~restriction period set forth in section 201H-47,~~] while owned by  
12   the purchaser, except in hardship circumstances where the  
13   inability to reside on the property arises out of unforeseeable  
14   job or military transfer, a temporary educational sabbatical,  
15   serious illness of the person, or in other hardship  
16   circumstances as determined by the corporation on a case-by-case  
17   basis.

18           ~~[The corporation may waive the owner occupancy requirement~~  
19   ~~for a total of not more than ten years after the purchase of the~~  
20   ~~dwelling, during which time the dwelling unit may be rented or~~  
21   ~~leased. Waivers may be granted only to qualified residents who~~  
22   ~~have paid resident state income taxes during all years in which~~



1 ~~they occupied the dwelling, who continue to pay resident state~~  
2 ~~income taxes during the waiver period, and whose inability to~~  
3 ~~reside on the property does not stem from a natural disaster.~~  
4 ~~The ten year owner occupancy requirement shall be extended by~~  
5 ~~one month for every month or fraction thereof that the owner~~  
6 ~~occupancy requirement is waived.~~

7 ~~The corporation shall adopt rules under chapter 91 to~~  
8 ~~implement the letter and spirit of this subsection and to~~  
9 ~~prescribe necessary terms and conditions. The rules shall~~  
10 ~~include:~~

- 11 ~~(1) Application and approval procedures for the waivers;~~  
12 ~~(2) Exceptions authorized by this subsection;~~  
13 ~~(3) The amounts of rents that may be charged by persons~~  
14 ~~allowed to rent or lease a dwelling unit; and~~  
15 ~~(4) Schedules of fees needed to cover administrative~~  
16 ~~expenses and attorneys' fees.~~

17 ~~No qualified resident who fails to reoccupy a dwelling unit~~  
18 ~~after any waiver period shall receive more than the maximum to~~  
19 ~~which the person would be entitled under section 201H 47. Any~~  
20 ~~person who disagrees with the corporation's determination under~~  
21 ~~this section shall be entitled to a contested case proceeding~~  
22 ~~under chapter 91.]~~



1 (b) From time to time the corporation may submit a  
2 verification of owner-occupancy form to the purchaser. Failure  
3 to respond to the verification in a timely manner or violation  
4 of subsection (a) shall be sufficient reason for the  
5 corporation[~~, at its option,~~] to require the sale to a qualified  
6 resident or purchase the unit as provided in section  
7 [201H-47(a)(1), (2), or (4), as applicable.] 201H-47."

8 SECTION 7. Section 201H-50, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§201H-50 Restrictions on use, sale, and transfer of real**  
11 **property; effect of amendment or repeal.** (a) Restrictions on  
12 the use, sale, and transfer of real property shall be made as  
13 uniform as possible in application to purchasers of all real  
14 property, and restrictions shall be conformed with agreement of  
15 the purchaser to reflect change or repeal made by any subsequent  
16 legislative act, ordinance, rule, or regulation. Purchasers  
17 shall be permitted at their election to sell or transfer real  
18 property subject to restrictions in effect at the time of their  
19 sale or transfer; provided that the corporation is paid its  
20 share of appreciation in the real property as determined by  
21 rules adopted pursuant to chapter 91, as applicable.



1           (b) The corporation, any department of the State, or any  
2 county housing agency maintaining restrictions, through  
3 contract, deed, other instrument, or by rule, shall notify  
4 purchasers of any substantial change in restrictions made by  
5 law, ordinance, rule, or regulation not more than one hundred  
6 eighty days after a change in restrictions. The notice shall  
7 clearly state the enacted or proposed new provisions, the date  
8 or dates upon which they are to be effective, and offer to each  
9 purchaser of real property constructed and sold prior to the  
10 effective date an opportunity to modify the existing contract or  
11 other instrument to incorporate the most recent provisions.  
12 Public notice shall also be given at least three times in the  
13 State for state agencies and at least three times in a county  
14 for county agencies.

15           (c) For all purchasers of real property prior to June 25,  
16 1990, where the restrictions on use and transfer of property  
17 apply for a period of time, the period of time shall not be  
18 increased beyond the date calculated from the date of original  
19 purchase.

20           (d) No purchaser shall be entitled to modify the  
21 restrictions on use, transfer, or sale of the real property,  
22 without the written permission of the holder of a duly-recorded



1 first mortgage on the dwelling unit and the owner of the fee  
2 simple or leasehold interest in the land underlying the unit,  
3 unless the holder of the first mortgage or the owner is an  
4 agency of the State or its political subdivisions.

5 (e) ~~[This section]~~ Sections 201H-47 to 201H-51 shall apply  
6 to all real property developed, constructed, and sold pursuant  
7 to this chapter and similar programs in the State or its  
8 political subdivisions and ~~[which]~~ are sold on the condition  
9 that the purchaser accepts restrictions on the use, sale, or  
10 transfer of interest in the real property purchased.

11 (f) The provisions of this section shall be incorporated  
12 in any deed, lease, instrument, rule, or regulation relating to  
13 restrictions on use, sale, or transfer of dwelling units,  
14 entered into after June 20, 1977.

15 (g) The restrictions of this section shall terminate as to  
16 a particular real property and shall not attach in subsequent  
17 transfers of title of that real property if the corporation  
18 releases the restrictions when the real property is financed  
19 under a federally subsidized mortgage program.

20 (h) Notwithstanding any other provision of this section,  
21 the amendments made by Act \_\_\_\_\_, Session Laws of Hawaii 2010,  
22 shall not apply to a purchaser of real property under this



1 chapter or any similar county program if the purchase or  
2 transfer was recorded before July 1, 2010."

3 SECTION 8. Section 201H-51, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Notwithstanding any provisions to the contrary,  
6 [~~during the period in which the restrictions in section 201H-47~~  
7 ~~are in effect,~~] the following provisions shall apply when  
8 dwelling units developed, constructed, financed, purchased, or  
9 sold pursuant to Act 105, Session Laws of Hawaii 1970, as  
10 amended, are found to have a substantial construction defect, or  
11 when vacant lands developed, financed, purchased, or sold  
12 pursuant to Act 105, Session Laws of Hawaii 1970, as amended,  
13 are found to have a substantial soil defect:

14 (1) The corporation shall have the right, but not the  
15 obligation, to repurchase a dwelling unit or land that  
16 has a defect, regardless of whether or not the owner  
17 wishes to sell; provided that those repurchases shall  
18 be in accordance with the following provisions:

19 (A) The corporation may repurchase a dwelling unit or  
20 land if:

21 (i) The dwelling unit or land is deemed unsafe  
22 by the county building department;



- 1           (ii) The defects are irreparable; or
- 2           (iii) In the opinion of the corporation, the
- 3                 defect is of such magnitude that it will
- 4                 take longer than one year to repair;
- 5       (B) The corporation's purchase price shall be based
- 6                 on the formula set forth in section
- 7                 201H-47(a)(1);
- 8       (C) After repairs to the unit or land are completed,
- 9                 the former owner shall have the first right of
- 10                refusal to repurchase the real property;
- 11       (D) The corporation shall give preference in all
- 12                other projects of the corporation to all owners
- 13                whose real property is repurchased by the
- 14                corporation under this subsection, and the
- 15                corporation may waive certain eligibility
- 16                requirements for these owners; and
- 17       (E) If the corporation exercises its right to
- 18                repurchase defective real property against an
- 19                owner's wishes pursuant to this paragraph, the
- 20                corporation shall provide relocation assistance
- 21                to that owner as provided in chapter 111;



1           (2) If the corporation does not opt to repurchase  
2           defective real property, the corporation shall also  
3           have the right, but not the obligation, to enter into  
4           a contract to repair a dwelling unit [~~which~~] that has  
5           a construction defect or land [~~which~~] that has a soil  
6           defect. During the period that the real property is  
7           being repaired, the corporation shall rent that real  
8           property from the owner for an amount not to exceed  
9           the owner's present mortgage payments; and

10          (3) If the corporation does not execute either a contract  
11          to repurchase the real property or an agreement to  
12          repair and rent the real property within ninety days  
13          after written notice is given to the corporation of a  
14          construction defect, the owner may pursue any other  
15          available legal remedies.

16          For the purposes of this section:

17          "Substantial construction defect" includes but is not  
18          limited to:

19           (1) Structural defects such as shifting foundations and  
20           bearing walls;

21           (2) Structural deficiencies due to the use of defective or  
22           undersized materials; and





1 (3) Defects affecting the health and safety of occupants.

2 "Substantial soil defect" means shifting, sliding, or  
3 sinking ground of such degree as to affect the dwelling unit on  
4 the land or the health and safety of the occupants of the land."

5 SECTION 9. Section 356D-31, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[+]§356D-31[+] **Rentals and tenant selection.** (a) In the  
8 operation or management of federal public housing projects, the  
9 authority (acting directly or by an agent or agents) at all  
10 times shall observe the following duties with respect to rentals  
11 and tenant selection:

12 (1) It may establish maximum limits of annual net income  
13 for tenant selection in any public housing project,  
14 less such exemptions as may be authorized by federal  
15 regulations pertaining to public housing. The  
16 authority may agree to conditions as to tenant  
17 eligibility or preference required by the federal  
18 government pursuant to federal law in any contract for  
19 financial assistance with the authority;

20 (2) It may rent or lease the dwelling units therein only  
21 at rentals within the financial reach of persons who  
22 lack the amount of income that it determines to be



1           necessary to obtain safe, sanitary, and uncongested  
2           dwelling accommodations within the area of operation  
3           of the authority and to provide an adequate standard  
4           of living; and

5           (3) It may rent or lease to a tenant a dwelling consisting  
6           of the number of rooms (but no greater number) that it  
7           deems necessary to provide safe and sanitary  
8           accommodations to the proposed occupants thereof,  
9           without overcrowding.

10          (b) Nothing in this part shall be construed as limiting  
11 the power of the authority to:

12          (1) Vest in an obligee the right, in the event of a  
13          default by the authority, to take possession of a  
14          public housing project or cause the appointment of a  
15          receiver thereof, free from all the restrictions  
16          imposed by this part with respect to rentals, tenant  
17          selection, manner of operation, or otherwise; or

18          (2) Vest in obligees the right, in the event of a default  
19          by the authority, to acquire title to a public housing  
20          project or the property mortgaged by the authority,  
21          free from all the restrictions imposed by this part.



1        (c) Notwithstanding any other law to the contrary, the  
2 authority shall ensure that the dwelling units provided under  
3 this part remain affordable in perpetuity; provided that such  
4 enforcement is consistent with federal law. For the purposes of  
5 this section, "affordable" means available for households with  
6 incomes at or below eighty per cent of the median family income  
7 as determined by the United States Department of Housing and  
8 Urban Development."

9        SECTION 10. Section 356D-43, Hawaii Revised Statutes, is  
10 amended to read as follows:

11        "[+]§356D-43[+] **Rentals.** (a) Notwithstanding any other  
12 law to the contrary, the authority shall fix the rates of the  
13 rentals for dwelling units and other facilities in state  
14 low-income housing projects provided for by this subpart, at  
15 rates that will produce revenues that will be sufficient to pay  
16 all expenses of management, operation, and maintenance,  
17 including the cost of insurance, a proportionate share of the  
18 administrative expenses of the authority to be fixed by it, and  
19 the costs of repairs, equipment, and improvements, to the end  
20 that the state low-income housing projects shall be and always  
21 remain self-supporting. The authority, in its discretion, may  
22 fix the rates in amounts as will produce additional revenues (in



1 addition to the foregoing) sufficient to amortize the cost of  
2 the state low-income housing project or projects, including  
3 equipment, over a period or periods of time that the authority  
4 may deem advisable.

5 (b) Notwithstanding any other law to the contrary, if:

6 (1) Any state low-income housing project or projects have  
7 been specified in any resolution of issuance adopted  
8 pursuant to part I;

9 (2) The income or revenues from any project or projects  
10 have been pledged by the authority to the payment of  
11 any bonds issued under part I; or

12 (3) Any of the property of any state low-income housing  
13 project or projects is security for the bonds,  
14 the authority shall fix the rates of the rentals for dwelling  
15 units and other facilities in the state low-income housing  
16 project or projects so specified or encumbered at increased  
17 rates that will produce the revenues required by subsection (a)  
18 and, in addition, those amounts that may be required by part I,  
19 by any resolution of issuance adopted under part I, and by any  
20 bonds or mortgage or other security issued or given under  
21 part I.



1        (c) Notwithstanding any other law to the contrary, the  
2 authority shall ensure that the dwelling units provided under  
3 this part remain affordable in perpetuity. For the purposes of  
4 this section, "affordable" means available for households with  
5 incomes at or below eighty per cent of the median family income  
6 as determined by the United States Department of Housing and  
7 Urban Development."

8        SECTION 11. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10        SECTION 12. This Act shall take effect on July 1, 2010.

11

INTRODUCED BY:

Nancy Sato  
Michelle N. Sato



**Report Title:**

Public Housing; Affordable Housing Resident Resale Restriction;  
Anti-Speculation Capital Gains Tax

**Description:**

Creates an anti-speculation capital gains tax on real property. Requires public housing provided by county or state financing to remain affordable in perpetuity. Provides that the restriction on the resale of affordable housing to "qualified residents" shall apply in perpetuity.

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