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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.   Section 201H-47, Hawaii Revised Statutes, is  
2   amended by amending subsections (a) and (b) to read as follows:

3       "(a)   The following restrictions shall apply to the  
4   transfer of real property developed and sold under this chapter,  
5   whether in fee simple or leasehold:

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

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

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

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

(D) [~~The corporation's share of appreciation in the real property, as determined under rules adopted pursuant to chapter 91, when applicable;~~] The amount, if any, previously paid by the purchaser to the corporation as the corporation's share of net appreciation in the real property;

(2) The corporation may purchase the real property either:

(A) By conveyance free and clear of all mortgages and liens; or

(B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the

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1 purchase of the real property by the seller; and any  
2 mortgage or lien created for any other purpose  
3 provided that the corporation has previously consented  
4 to it in writing.

5 The corporation's interest created by this  
6 section shall constitute a statutory lien on the real  
7 property and shall be superior to any other mortgage  
8 or lien except for:

9 (i) Any first mortgage created for the purpose  
10 of securing the payment of a loan of funds  
11 expended solely for the purchase of the real  
12 property by the seller;

13 (ii) Any mortgage insured or held by a federal  
14 housing agency; and

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

18 The amount paid by the corporation to the seller shall  
19 be the difference, if any, between the purchase price  
20 determined by paragraph (1)(A) to [~~(C)~~] (D), and the  
21 total of the outstanding principal balances of the  
22 mortgages and liens assumed by the corporation;

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1           (3) A purchaser may refinance real property developed and  
2           sold under this chapter; provided that the purchaser  
3           shall not refinance the real property within ten years  
4           from the date of purchase for an amount in excess of  
5           the purchase price as determined by paragraph (1)(A)  
6           to (C); provided further that the purchaser shall  
7           obtain the corporation's written consent if any  
8           restriction on the transfer of the real property  
9           remains applicable;

10          (4) After the end of the tenth year from the date of  
11          initial purchase or execution of an agreement of sale,  
12          the purchaser may sell the real property and sell or  
13          assign the property free from any price restrictions;  
14          provided that the purchaser shall be required to pay  
15          to the corporation the sum of:

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

18           (B) Any subsidy or deferred sales price made by the  
19           corporation in the acquisition, development,  
20           construction, and sale of the real property, and  
21           any other amount expended by the corporation not  
22           counted as costs under section 201H-45 but

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1 charged to the real property by good accounting  
2 practice as determined by the corporation whose  
3 books shall be prima facie evidence of the  
4 correctness of the costs;

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

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

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

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

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

(B) Shall be a restriction that runs with the land until it is paid in full and released by the

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1 corporation, or extinguished pursuant to

2 subsection (f); and

3 (C) May be paid, in part or in full, at any time

4 after recordation of the sale.

5 (b) If the corporation waives its first option to

6 repurchase the real property provided in subsection (a), a

7 qualified nonprofit housing trust shall have the option to

8 purchase the real property at ~~[the price and in the manner set~~

9 ~~forth in subsection (a).]~~ a price that shall not exceed the sum

10 of:

11 (1) The original cost to the purchaser, as defined in

12 rules adopted by the corporation;

13 (2) The cost of any improvements added by the purchaser,

14 as defined in rules adopted by the corporation;

15 (3) Simple interest on the original cost and capital

16 improvements to the purchaser at the rate of one per

17 cent a year; and

18 (4) The corporation's share of net appreciation in the

19 real property to be paid as determined under rules

20 adopted pursuant to chapter 91, when applicable."

21 SECTION 2. Act 159, Session Laws of Hawaii 2017, is

22 amended by amending section 8 to read as follows:

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1       "SECTION 8. [~~This Act does not affect rights and duties~~  
2 ~~that matured, penalties that were incurred, and proceedings that~~  
3 ~~were begun before its effective date.] This Act shall not affect  
4 rights, duties, and obligations that have matured through a  
5 signed contract or disclosure by way of a preliminary offering  
6 statement filed with the real estate commission before its  
7 effective date."~~

8       SECTION 3. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

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

11  
12                   INTRODUCED BY: \_\_\_\_\_



13                   BY REQUEST

14                   JAN 22 2018



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**Report Title:**

Housing

**Description:**

Makes technical and housekeeping amendments to Act 159, Session Laws of Hawaii 2017, and statutes amended by Act 159.

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

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO HOUSING.

PURPOSE: To clarify that Act 159, Session Laws of Hawaii (SLH) 2017, does not apply to Hawaii Housing Finance and Development Corporation (HHFDC) projects developed or sold prior to the Act's effective date, and to make technical amendments to statutory provisions amended by Act 159.

MEANS: Amend section 8 of Act 159, SLH 2017, and subsections (a) and (b) of section 201H-47, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 8 of Act 159, SLH 2017, is intended to preserve "rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date." However, it appears that some HHFDC projects may be in a gray area not covered by the existing wording.

For example, agreements of sale for affordable for-sale condominium units are executed before construction begins. The actual real estate closing takes place after the units are constructed and ready for occupancy. Homebuyers accrue certain equitable and legal rights following the execution of the agreement of sale and prior to the closing of the sale itself. It is not clear if HHFDC-assisted projects in this specific "in-between" situation are excluded from Act 159 under existing wording.

Also, section 201H-50, HRS, requires the HHFDC to notify homebuyers of "any substantial change in restrictions made by law, ordinance, rule, or regulation" and to make public notice, through publication, three times in the State, of their opportunity to modify their existing

contract to incorporate the most recent modification. This would be a significant administrative burden.

Therefore, HHFDC would prefer that Act 159 not apply to any project developed or sold before its enactment. This bill is intended to do so.

This bill also makes technical amendments to subsections (a) and (b) of section 201H-47, HRS, a section previously amended by Act 159.

Impact on the public: Minimal.

Impact on the department and other agencies:  
Will reduce the potential administrative burdens of applying section 201H-50, HRS, requirements to notify homeowners of existing HHFDC-assisted projects of their right to opt-in to Act 159, SLH 2017.

GENERAL FUND:	None.
OTHER FUNDS:	Minimal impact on Dwelling Unit Revolving Fund administrative expenses.
PPBS PROGRAM DESIGNATION:	BED 160.
OTHER AFFECTED AGENCIES:	County housing agencies.
EFFECTIVE DATE:	Upon approval.