
A BILL FOR AN ACT

RELATING TO HOUSING.

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

1 SECTION 1. The legislature finds that homeownership
2 creates strong communities through economic growth and helping
3 families build equity and stability. Research has shown that
4 homeowners have a greater sense of security, continuity,
5 belonging and pride in their communities.

6 The legislature finds that there is a lack of affordable
7 housing for low- and moderate-income households statewide.
8 Residential condominiums developed on state lands under long
9 term leases provide a way to make homeownership affordable to
10 low- and moderate-income households.

11 The purpose of this Act is to authorize the Hawaii housing
12 finance and development corporation to enter into ninety-nine
13 year leases of residential condominium units located on state
14 lands with eligible low- and moderate-income households.

15 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
16 amended by adding a new part to be appropriately designated and
17 to read as follows:



"PART . STATE SUSTAINABLE AFFORDABLE LEASEHOLD HOUSING
PROGRAM.

§201H-A Definitions. As used in this part, unless the
context otherwise requires:

"Corporation" means the Hawaii housing finance and
development corporation.

"Legal and equitable owners" means the corporation and all
persons having legal or equitable interests in the fee or in the
corporation's leasehold estate, including mortgagees,
developers, lienors, and sublessors, and their respective heirs,
successors, legal representatives, and assigns.

"Lessee" means any person to whom state land is leased or
subleased, and the lessee's heirs, successors, legal
representatives, and assigns.

"Lessor" means the corporation and the corporation's
successors, legal representatives, and assigns.

The terms "lessor", "lessee", "fee simple owner", "fee
owner", and "legal and equitable owners" include individuals,
corporations, firms, associations, trusts, estates, and the
State or its political subdivisions. When more than one person
are the lessors, lessees, fee simple owners, fee owners, or



1 legal and equitable owners of a lot, the terms apply to each of
2 them, jointly and severally.

3 "Qualified resident" means a qualified resident as defined
4 in section 201H-32.

5 "State sustainable affordable lease" means a lease by the
6 corporation of a residential condominium unit in a state
7 sustainable affordable leasehold housing project that satisfies
8 all of the following requirements:

9 (1) The lease provides for a consideration to the
10 corporation below a fair market return on the fair
11 market value of the land; provided that compensation
12 to the corporation for land, including lease rent,
13 shall be either:

14 (A) Totally capitalized into the initial sales price
15 for the residential condominium unit, including
16 all buildings and improvements; or

17 (B) Partially capitalized with a share of
18 appreciation paid to the corporation upon resale
19 of the residential condominium unit;

20 (2) In order to maintain the continued affordability of
21 the residential condominium unit, the lease limits the



1 lessee's maximum sales price on the residential
2 condominium unit upon resale, including all buildings
3 and improvements, as set forth in section 201H-F; and
4 (3) The lease may allow the corporation to receive a share
5 of the appreciation as agreed to by the corporation
6 and lessee, and as set forth in the lease.

7 "State sustainable affordable leasehold housing project"
8 means a condominium as defined in section 514B-3 and that
9 satisfies all of the following requirements:

10 (1) The sales price at the time of initial sale of at
11 least thirty per cent of all the residential
12 condominium units in the project shall be limited in
13 accordance with directly applicable state or county
14 laws, so that households earning not more than the
15 required percentages of the median income for the
16 applicable county will be required to spend no more
17 than the allowable percentage of their gross incomes
18 for housing costs as determined by secondary mortgage
19 market standards or as otherwise agreed, as determined
20 at the time of the initial sale of the residential
21 condominium unit;



- (2) The sales price at the time of the initial sale of at least fifty-one per cent of the residential condominium units in the project, including the condominium units subject to the requirements of paragraph (1), and the sales price at the time of a resale of at least fifty-one per cent of all the residential condominium units property in the project, shall be no higher than eighty per cent of the fair market value of the residential condominium units in fee at the time of initial sale or resale, as appropriate, including all buildings and improvements, unencumbered by the restrictions of the state sustainable affordable lease;
- (3) All residential condominium units sold in satisfaction of paragraph (1) or (2) shall be leased under a state sustainable affordable lease; and
- (4) The corporation may reduce the minimum percentage of residential condominium units to be sold in satisfaction of paragraph (1) or (2) upon a showing that the state sustainable affordable leasehold housing project comprises a portion of a housing



1 project that includes other housing, which together
2 with the residential condominium units comprising the
3 state sustainable affordable leasehold housing
4 project, satisfies the corporation's affordable
5 housing requirements as set forth in applicable laws.

6 "State sustainable affordable leasehold land" means land
7 that the corporation owns pursuant to section 201H-9, land set
8 aside to the corporation pursuant to section 171-11, and land
9 leased to the corporation by another state department or agency
10 or by a county and used in whole or in part for a state
11 sustainable affordable leasehold housing project. The
12 corporation as lessor may lease condominium units on state
13 sustainable affordable leasehold land under a state sustainable
14 affordable lease for a term, measured from the initial date of
15 the conveyance, of no longer than ninety-nine years, which may
16 be renewed under conditions set forth in the state sustainable
17 affordable lease.

18 **§201H-B State sustainable affordable leasehold housing**
19 **program; authorization.** The corporation may enter into state
20 sustainable affordable leases with lessees in state sustainable
21 affordable leasehold housing projects.



1 **§201H-C Exemption for state sustainable affordable**
2 **leasehold housing projects.** Notwithstanding any law to the
3 contrary, state sustainable affordable leasehold housing
4 projects shall be exempt from chapter 516, and no lessee under a
5 state sustainable affordable lease may exercise the rights
6 granted to a lessee by chapter 516.

7 **§201H-D Recordkeeping.** The corporation shall maintain
8 during the term of all state sustainable affordable leases
9 records regarding income levels and other qualifications of
10 buyers of state sustainable affordable leases at the time of
11 purchase.

12 **§201H-E Transfers; options; restrictions; waiver of**
13 **restrictions.** (a) The following restrictions shall apply to
14 the transfer of a residential condominium unit sold under this
15 part:

16 (1) If a lessee wishes to transfer title of the unit, the
17 corporation shall have the first option to purchase
18 the unit at a price that shall not exceed the sum of:

19 (A) The original cost to the seller, as defined in
20 rules adopted by the corporation;



1 (B) The cost of any improvements added by the seller,
2 as defined in rules adopted by the corporation;

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

6 (D) The corporation's share of net appreciation in
7 the unit, as defined in rules adopted by the
8 corporation;

9 (2) The corporation may purchase the unit either:

10 (A) By conveyance free and clear of all mortgages and
11 liens; provided all mortgages and liens are
12 released; or

13 (B) By conveyance subject to existing mortgages and
14 liens;

15 The corporation's interest created by this section
16 shall constitute a statutory lien on the unit and
17 shall be superior to any other mortgage or lien except
18 for:

19 (i) Any first mortgage created for the purpose
20 of securing the payment of a loan of funds



1 expended solely for the purchase of the unit
2 by the seller;

3 (ii) Any mortgage insured or held by a federal
4 housing agency; and

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

8 The amount paid by the corporation to the seller shall
9 be the difference, if any, between the purchase price
10 determined by paragraph (1) (A) through (C), and the
11 total of the outstanding principal balances of the
12 mortgages and liens assumed by the corporation;

13 (3) A purchaser may refinance a unit sold under this part;
14 provided that the purchaser shall not refinance the
15 unit within ten years from the date of purchase for an
16 amount in excess of the purchase price as determined
17 by paragraph (1) (A) through (C); provided that the
18 purchaser shall obtain the corporation's written
19 consent if any restriction on the transfer of the unit
20 remains applicable;



1 (4) Notwithstanding any provision in this section to the
2 contrary, the subsidy or deferred sales price and any
3 interest accrued may be paid, at any time; and

4 (5) Notwithstanding any provision in this section to the
5 contrary, the corporation's share of appreciation in
6 the unit:

7 (A) Shall apply when the sales price of the unit that
8 is sold under this part is less than the current,
9 unencumbered, fair market value of the unit as
10 determined by a real property appraisal obtained
11 prior to the closing of the sale;

12 (B) Shall be a restriction that runs with the unit
13 until it is paid in full and released by the
14 corporation, or extinguished pursuant to
15 subsection (f); and

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

18 (b) If the corporation waives its first option to
19 repurchase the unit provided in subsection (a), a qualified
20 nonprofit housing trust shall have the option to purchase the
21 unit at the price and in the manner set forth in subsection (a).



1 (c) For a period of ten years after the purchase, whether
2 by lease, assignment of lease, deed, or agreement of sale, if
3 the purchaser wishes to transfer title of the unit, and if the
4 corporation or the qualified nonprofit housing trust selected by
5 the corporation does not exercise the option to purchase the
6 unit as provided in subsection (a) or (b), then the corporation
7 shall require the purchaser to sell the unit to a qualified
8 resident, and upon the terms in accordance with sections 201H-F
9 and 201H-G, and rules adopted by the corporation.

10 (d) The corporation may waive the restrictions prescribed
11 in subsections (a) through (c) if:

12 (1) A lessee wishes to transfer title to the unit by
13 devise or through the laws of descent to a family
14 member who would otherwise qualify under rules
15 established by the corporation;

16 (2) The sale or transfer of the unit would be at a price
17 and upon terms that preserve the intent of this
18 section without the necessity of the State
19 repurchasing the unit; provided that, in this case,
20 the lessee shall sell the unit and sell or assign the
21 unit to a person who is a qualified resident; and



1 provided further that the seller shall pay to the
2 corporation its share of appreciation in the unit as
3 determined in applicable rules; or

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

7 (e) The corporation may release the restrictions
8 prescribed in subsections (a) through (c) if the unit 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 (f) The restrictions prescribed in this section and
14 section 201H-G shall be automatically extinguished and shall not
15 attach in subsequent transfers of title when a qualified
16 nonprofit housing trust becomes the owner of the unit pursuant
17 to subsection (b); or a mortgage holder or other party becomes
18 the owner of the unit pursuant to a mortgage foreclosure,
19 foreclosure under power of sale, or a conveyance in lieu of
20 foreclosure after a foreclosure action is commenced; provided
21 that the mortgage is the initial purchase money mortgage, or



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

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

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

15 provided that the mortgagee's failure to provide written notice
16 to the corporation shall not affect the mortgage holder's rights
17 under the mortgage. The corporation shall be a party to any
18 foreclosure action, and shall be entitled to its share of
19 appreciation in the unit as determined under this chapter in
20 lien priority when the payment is applicable, and if foreclosure
21 occurs within the ten-year period after a purchase, the



1 corporation shall also be entitled to all proceeds remaining in
2 excess of all customary and actual costs and expenses of
3 transfer pursuant to default, including liens and encumbrances
4 of record; provided that the person in default shall be entitled
5 to an amount that shall not exceed the sum of amounts determined
6 pursuant to subsection (a)(1)(B) and (C).

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



1 (h) This section need not apply to market-priced units in
2 an economically integrated housing project, except as otherwise
3 determined by the developer of the units and the corporation;
4 provided that preference shall be given to qualified residents
5 in the initial sale of market-priced units.

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

12 (j) Notwithstanding any law to the contrary, if a unit is
13 purchased by a qualified nonprofit housing trust pursuant to
14 subsection (b), the housing trust shall establish new buyback
15 restrictions for the purpose of maintaining the unit as
16 affordable for as long as practicable, or as otherwise required
17 by the corporation.

18 (k) A qualified nonprofit housing trust shall report the
19 status and use of its units in a state sustainable leasehold
20 housing project to the corporation by November 30 of each
21 calendar year.



1 **§201H-F Restrictions on use; occupancy requirement. (a)**

2 A unit in a state sustainable leasehold housing project
3 purchased under this part shall be occupied by the purchaser at
4 all times during the term of the state sustainable affordable
5 lease, except in hardship circumstances where the inability to
6 reside on the property arises out of unforeseeable job or
7 military transfer, a temporary educational sabbatical, serious
8 illness of the person, or in other hardship circumstances as
9 determined by the corporation on a case-by-case basis.

10 The corporation may waive the owner-occupancy requirement
11 for a total of not more than ten years after the purchase of the
12 unit, during which time the unit may be rented or leased.

13 Waivers may be granted only to qualified residents who have paid
14 resident state income taxes during all years in which they
15 occupied the dwelling, who continue to pay resident state income
16 taxes during the waiver period, and whose inability to reside on
17 the property does not stem from a natural disaster.

18 The corporation shall adopt rules pursuant to chapter 91 to
19 implement this subsection and to prescribe necessary terms and
20 conditions. The rules shall include:

21 (1) Application and approval procedures for the waivers;



1 (2) Exceptions authorized by this subsection;

2 (3) The amounts of rents that may be charged by persons
3 allowed to rent or lease a unit; and

4 (4) Schedules of fees needed to cover administrative
5 expenses and attorneys' fees.

6 No qualified resident who fails to reoccupy a unit after
7 any waiver period shall receive more than the maximum to which
8 the person would be entitled under section 201H-E. Any person
9 who disagrees with the corporation's determination under this
10 section shall be entitled to a contested case proceeding under
11 chapter 91.

12 (b) From time to time the corporation may submit a
13 verification of owner-occupancy form to the lessee. Failure to
14 respond to the verification in a timely manner or violation of
15 subsection (a) shall be sufficient reason for the corporation,
16 at its option, to purchase the unit as provided in section 201H-
17 E.

18 (c) Any lease, deed, agreement of sale, or other
19 instrument of conveyance issued by the corporation shall
20 expressly contain the restrictions on use prescribed in this
21 section.



1 (d) The restrictions prescribed in subsection (a) shall
2 terminate and shall not attach in subsequent transfers of title
3 if the corporation releases the restrictions when the unit is
4 financed under a federally subsidized mortgage program.

5 (e) Subsections (a) through (c) shall not apply to market-
6 priced units in an economically integrated housing project,
7 except as otherwise determined by the developer of the units and
8 the corporation; provided that preference shall be given to
9 qualified residents in the initial sale of market-priced units.

10 (f) The corporation shall be authorized to waive any of
11 the restrictions set forth in this section in order to comply
12 with or conform to requirements set forth in federal law or
13 regulations governing mortgage insurance or guarantee programs
14 or requirements set forth by federally chartered secondary
15 mortgage market participants.

16 **§201H-G Restrictions on use, sale, and transfer of real**
17 **property; effect of amendment or repeal.** (a) Restrictions on
18 the use, sale, and transfer of real property shall be made as
19 uniform as possible in application to purchasers of all
20 residential condominium units, and restrictions shall be
21 conformed with applicable rules. Purchasers shall be permitted



1 at their election to sell or transfer units subject to
2 restrictions in effect at the time of their sale or transfer;
3 provided that the corporation is paid its share of appreciation
4 in the unit as determined by rules adopted.

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

19 (c) No purchaser shall be entitled to modify the
20 restrictions on use, transfer, or sale of a residential
21 condominium unit, without the written permission of the holder



1 of a duly-recorded first mortgage on the real property and the
2 corporation, unless the holder of the first mortgage or the
3 owner is an agency of the State or its political subdivisions.

4 (d) This section shall apply to all residential
5 condominium units leased pursuant to this chapter and that are
6 leased on the condition that the lessee accepts restrictions on
7 the use, sale, or transfer of interest in the unit leased.

8 (e) The provisions of this section shall be incorporated
9 in any State sustainable affordable lease or instrument, rule,
10 or regulation relating to restrictions on use, sale, or transfer
11 of a residential condominium unit subject to a State sustainable
12 affordable lease.

13 (f) The restrictions of this section shall terminate as to
14 a particular residential condominium unit and shall not attach
15 in subsequent transfers of title of that unit if the corporation
16 releases the restrictions when the unit is financed under a
17 federally subsidized mortgage program.

18 **§201H-H Substantial defect; authority to seek recovery.**

19 (a) Notwithstanding any provisions to the contrary, during the
20 term of the state sustainable affordable lease, the following
21 provisions shall apply when a state sustainable affordable



1 leasehold housing project is found to have a substantial
2 construction defect or a substantial soil defect:

3 (1) The corporation shall have the right, but not the
4 obligation, to repurchase a unit in a state
5 sustainable affordable leasehold housing project that
6 has a defect, regardless of whether or not the lessee
7 wishes to sell; provided that the repurchase shall be
8 in accordance with the following provisions:

9 (A) The corporation may repurchase the unit if:

10 (i) The state sustainable affordable leasehold
11 housing project is deemed unsafe by the
12 county building department;

13 (ii) The defects are irreparable; or

14 (iii) In the opinion of the corporation, the
15 defect is of such magnitude that it will
16 take longer than one year to repair;

17 (B) The corporation's purchase price shall be based
18 on the formula set forth in section 201H-E(a)(1);

19 (C) After repairs to the unit or state sustainable
20 affordable leasehold housing project are



1 completed, the former owner shall have the first
2 right of refusal to repurchase the unit;

3 (D) The corporation shall give preference in all
4 other projects of the corporation to all owners
5 whose unit is repurchased by the corporation
6 under this subsection, and the corporation may
7 waive certain eligibility requirements for these
8 owners; and

9 (E) If the corporation exercises its right to
10 repurchase a defective unit against an owner's
11 wishes pursuant to this paragraph, the
12 corporation shall provide relocation assistance
13 to that owner as provided in chapter 111;

14 (2) If the corporation does not opt to repurchase a unit,
15 the corporation shall also have the right, but not the
16 obligation, to enter into a contract to repair a unit
17 which has a construction defect or soil defect.
18 During the period that the unit is being repaired, the
19 corporation shall rent that unit from the owner for an
20 amount not to exceed the owner's present mortgage
21 payments; and



1 (3) If the corporation does not execute either a contract
2 to repurchase the unit or an agreement to repair and
3 rent the unit within ninety days after written notice
4 is given to the corporation of a construction defect,
5 the owner may pursue any other available legal
6 remedies.

7 (b) If moneys are expended by the corporation pursuant to
8 subsection (a)(1) and (2), the corporation shall have the
9 authority to take necessary legal action against the developer,
10 co-developer, general contractor, and their subcontractors,
11 consultants, and other parties notwithstanding chapter 657.

12 (c) If a unit in a state sustainable leasehold housing
13 project leased under this chapter is found to have a substantial
14 construction or soil defect, the corporation shall have the
15 right, but not the obligation, to file or cause to be filed a
16 legal action on behalf of or by the lessee of the unit for the
17 recovery of damages or for injunctive relief against the
18 developer, co-developer, general contractor, and their
19 subcontractors, consultants, and other parties notwithstanding
20 chapter 657. Additionally, notwithstanding any provision of
21 rule 23 of the Hawaii Rules of Civil Procedure, the corporation



1 may file or cause to be filed a legal action brought under this
2 subsection as a class action on behalf of or by at least two
3 lessees of residential condominium units that have similar
4 substantial construction or soil defects.

5 (d) Nothing in this chapter shall be construed to diminish
6 the rights or remedies of the corporation otherwise provided
7 under common law, by law, or by contract.

8 (e) This section shall not apply to a particular
9 residential condominium unit and shall not apply after
10 subsequent transfers of title of a unit if the corporation
11 releases the restrictions when the unit is financed under a
12 federally subsidized mortgage program.

13 (f) For the purposes of this section:

14 "Substantial construction defect" includes but is not
15 limited to:

16 (1) Structural defects such as shifting foundations and
17 bearing walls;

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

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



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

§201H-I Rules. The corporation shall adopt rules pursuant to chapter 91 for the purposes of this part."

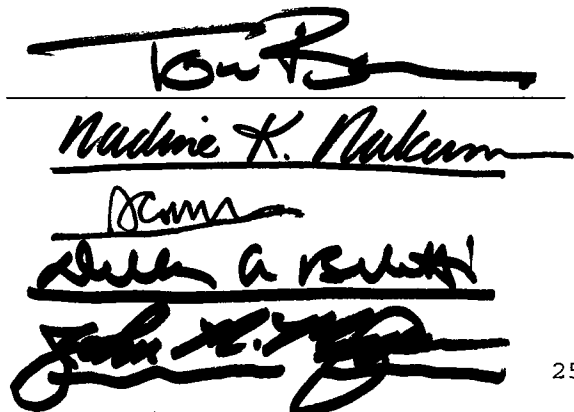
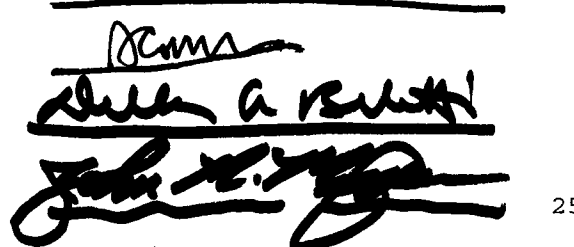
SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. This Act shall take effect on July 1, 2018.

INTRODUCED BY:


Mark J. Hahn


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HB HMS 2018-1435



JAN 24 2018

H.B. NO. 2749

Report Title:

State Sustainable Affordable Leasehold Housing Program; HHFDC

Description:

Creates the state sustainable affordable leasehold housing program to authorize the Hawaii Housing Finance and Development Corporation to enter into ninety-nine year leases of residential condominium units located on state lands with eligible low- and moderate-income households.

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

