
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:



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-E; 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;



- 1 (2) The sales price at the time of the initial sale of at
2 least fifty-one per cent of the residential
3 condominium units in the project, including the
4 condominium units subject to the requirements of
5 paragraph (1), and the sales price at the time of a
6 resale of at least fifty-one per cent of all the
7 residential condominium units property in the project,
8 shall be no higher than eighty per cent of the fair
9 market value of the residential condominium units in
10 fee at the time of initial sale or resale, as
11 appropriate, including all buildings and improvements,
12 unencumbered by the restrictions of the state
13 sustainable affordable lease;
- 14 (3) All residential condominium units sold in satisfaction
15 of paragraph (1) or (2) shall be leased under a state
16 sustainable affordable lease; and
- 17 (4) The corporation may reduce the minimum percentage of
18 residential condominium units to be sold in
19 satisfaction of paragraph (1) or (2) upon a showing
20 that the state sustainable affordable leasehold
21 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;



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

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

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

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

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

(b) If the corporation waives its first option to repurchase the unit provided in subsection (a), a qualified nonprofit housing trust shall have the option to purchase the 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 affordable
20 leasehold housing project to the corporation by November 30 of
21 each calendar year.



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

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

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

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

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



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

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

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

19 (c) Any lease, deed, agreement of sale, or other
20 instrument of conveyance issued by the corporation shall



1 expressly contain the restrictions on use prescribed in this
2 section.

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

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

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

18 **§201H-G Restrictions on use, sale, and transfer of real**
19 **property; effect of amendment or repeal.** (a) Restrictions on
20 the use, sale, and transfer of real property shall be made as
21 uniform as possible in application to purchasers of all



1 residential condominium units, and restrictions shall be
2 conformed with applicable rules. Purchasers shall be permitted
3 at their election to sell or transfer units subject to
4 restrictions in effect at the time of their sale or transfer;
5 provided that the corporation is paid its share of appreciation
6 in the unit as determined by rules adopted.

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



1 (c) No purchaser shall be entitled to modify the
2 restrictions on use, transfer, or sale of a residential
3 condominium unit, without the written permission of the holder
4 of a duly-recorded first mortgage on the real property and the
5 corporation, unless the holder of the first mortgage or the
6 owner is an agency of the State or its political subdivisions.

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

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

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



1 §201H-H Substantial defect; authority to seek recovery.

2 (a) Notwithstanding any provisions to the contrary, during the
3 term of the state sustainable affordable lease, the following
4 provisions shall apply when a state sustainable affordable
5 leasehold housing project is found to have a substantial
6 construction defect or a substantial soil defect:

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

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

14 (i) The state sustainable affordable leasehold
15 housing project is deemed unsafe by the
16 county building department;

17 (ii) The defects are irreparable; or

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



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

3 (C) After repairs to the unit or state sustainable
4 affordable leasehold housing project are
5 completed, the former owner shall have the first
6 right of refusal to repurchase the unit;

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

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

18 (2) If the corporation does not opt to repurchase a unit,
19 the corporation shall also have the right, but not the
20 obligation, to enter into a contract to repair a unit
21 that has a construction defect or soil defect. During



1 the period that the unit is being repaired, the
2 corporation shall rent that unit from the owner for an
3 amount not to exceed the owner's present mortgage
4 payments; and

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

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

16 (c) If a unit in a state sustainable affordable leasehold
17 housing project leased under this chapter is found to have a
18 substantial construction or soil defect, the corporation shall
19 have the right, but not the obligation, to file or cause to be
20 filed a legal action on behalf of or by the lessee of the unit
21 for the recovery of damages or for injunctive relief against the



1 developer, co-developer, general contractor, and their
2 subcontractors, consultants, and other parties notwithstanding
3 chapter 657. Additionally, notwithstanding any provision of
4 rule 23 of the Hawaii Rules of Civil Procedure, the corporation
5 may file or cause to be filed a legal action brought under this
6 subsection as a class action on behalf of or by at least two
7 lessees of residential condominium units that have similar
8 substantial construction or soil defects.

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

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

17 (f) For the purposes of this section:

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

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



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

(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. Section 235-116, Hawaii Revised Statutes, is amended to read as follows:

"§235-116 Disclosure of returns unlawful; penalty. (a)
All tax returns and return information required to be filed under this chapter shall be confidential, including any copy of any portion of a federal return that may be attached to a state tax return, or any information reflected in the copy of the federal return. ~~[It]~~ Except as provided in subsection (b), it shall be unlawful for any person, or any officer or employee of the State, including the auditor or the auditor's agent with regard to tax return information obtained pursuant to section 23-5(a), to make known intentionally information imparted by any



1 income tax return or estimate made under sections 235-92, 235-
2 94, 235-95, and 235-97 or wilfully to permit any income tax
3 return or estimate so made or copy thereof to be seen or
4 examined by any person other than the taxpayer or the taxpayer's
5 authorized agent, persons duly authorized by the State in
6 connection with their official duties, the Multistate Tax
7 Commission or the authorized representative thereof, except as
8 otherwise provided by law. Any offense against the foregoing
9 provisions shall be punishable as a class C felony.

10 (b) Any officer or employee of the department of taxation
11 who makes known income tax return information shall be exempt
12 from subsection (a); provided that:

13 (1) The income tax return information is provided to the
14 Hawaii housing finance and development corporation for
15 the purposes of section 201H-F; and

16 (2) The income tax return information is limited to:

17 (A) Whether a person filed income tax returns; and

18 (B) The years of such returns."

19 SECTION 4. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 5. In codifying the new sections added by section
5 2 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 6. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect on January 1, 2050.



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. (HB2749 HD1)

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