

JAN 23 2020

A BILL FOR AN ACT

RELATING TO LAND DEVELOPMENT.

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

1 PART I

2 SECTION 1. The legislature finds that the State's
3 population has declined each year over the past three years, an
4 unprecedented situation that has not happened since Hawaii
5 became a state in 1959. A significant portion of this
6 population loss can be attributed to the State's high cost of
7 living and lack of affordable dwellings. The legislature
8 further finds that housing costs continue to rise, keeping
9 homeownership outside the reach of many Hawaii residents.

10 Accordingly, the purpose of this Act is to provide
11 solutions to expeditiously develop housing for working families
12 in the State.

13 PART II

14 SECTION 2. The purpose of this part is to make amendments
15 to chapter 201H, Hawaii Revised Statutes, to:

16 (1) Authorize the Hawaii housing finance and development
17 corporation to lease real property for a period not to



1 exceed ninety-nine years for development projects that
2 include affordable housing;

3 (2) Require the Hawaii housing finance and development
4 corporation to identify state lands that can be
5 developed for multi-unit dwellings;

6 (3) Authorize the issuance of \$200,000,000 in general
7 obligation bonds, with the proceeds used for the
8 establishment of regional infrastructure with the
9 primary purpose of supporting the development of
10 housing on lands owned by the university of Hawaii
11 near or adjacent to the university of Hawaii West Oahu
12 campus; and

13 (4) Authorize the issuance of \$75,000,000 in general
14 obligation bonds for infrastructure for affordable
15 housing in counties having a population of less than
16 500,000.

17 SECTION 3. Section 201H-9, Hawaii Revised Statutes, is
18 amended to read as follows:

19 " **[+]§201H-9[+]** **Acquisition, use, and disposition of**
20 **property.** (a) The corporation may acquire any real or personal
21 property or interest therein by purchase, exchange, gift, grant,

1 lease, or other means from any person or government to provide
2 housing. Exchange of real property shall be in accordance with
3 section 171-50.

4 (b) The corporation may own or hold real property. All
5 real property owned or held by the corporation shall be exempt
6 from mechanic's or materialman's liens and also from levy and
7 sale by virtue of an execution, and no execution or other
8 judicial process shall issue against the same nor shall any
9 judgment against the corporation be a charge or lien upon its
10 real property; provided that this subsection shall not apply to
11 or limit the right of obligees to foreclose or otherwise enforce
12 any mortgage of the corporation or the right of obligees to
13 pursue any remedies for the enforcement of any pledge or lien
14 given by the corporation on its rents, fees, or revenues. The
15 corporation and its property shall be exempt from all taxes and
16 assessments.

17 (c) The corporation may lease real property set aside by
18 the governor to the corporation or leased to the corporation by
19 any department or agency of the State for a period not to exceed
20 ninety-nine years; provided that:



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1 (1) Any lease granted pursuant to this subsection shall be
2 issued only for the development of multi-unit
3 dwelling; and

4 (2) Any development project that is granted a lease shall
5 reserve at least fifty per cent of the development's
6 dwelling units for affordable housing.

7 For the purpose of this subsection:

8 "Affordable housing" means housing that is affordable to
9 households having incomes at or below one hundred forty per cent
10 of the area median income as determined by the United States
11 Department of Housing and Urban Development.

12 "Condominium project" means a development of multi-unit
13 dwelling where separate dwelling units are offered for sale;
14 provided that the sale of a dwelling unit shall not include any
15 fee simple interest in the real property upon which the project
16 has been built.

17 "Development of multi-unit dwellings" and "development
18 project" shall include the development of a condominium project.

19 [~~e~~] (d) The corporation may lease or rent all or a
20 portion of any housing project and establish and revise the
21 rents or charges therefor. The corporation may sell, exchange,



1 transfer, assign, or pledge any property, real or personal, or
2 any interest therein to any person or government.

3 [~~(d)~~] (e) The corporation may insure or provide for the
4 insurance of its property or operations against risks as it
5 deems advisable."

6 SECTION 4. (a) The Hawaii housing finance and development
7 corporation shall submit a report to the legislature that:

8 (1) Identifies state lands that may be developed for
9 multi-unit dwellings;

10 (2) Includes the estimated cost of planning, designing,
11 and constructing multi-unit dwellings on the lands
12 identified in paragraph (1), including the costs of
13 installing necessary infrastructure; and

14 (3) Proposes a priority listing of the lands identified in
15 paragraph (1) based on:

16 (A) Cost of development;

17 (B) Demand for affordable housing in the county in
18 which the land is situated;

19 (C) Availability of existing infrastructure to
20 support the development; and

21 (D) Any other relevant factors.



1 (b) The Hawaii housing finance and development corporation
2 shall submit the report of its findings and recommendations,
3 including any proposed legislation, to the legislature no later
4 than twenty days prior to the convening of the regular session
5 of 2021.

6 (c) Each state or county agency shall provide to the
7 Hawaii housing finance and development corporation any
8 information the Hawaii housing finance and development
9 corporation deems necessary to prepare the report required by
10 this section.

11 SECTION 5. The director of finance is authorized to issue
12 general obligation bonds in the sum of \$275,000,000 or so much
13 thereof as may be necessary and the same sum or so much thereof
14 as may be necessary is appropriated for fiscal year 2020-2021 to
15 be deposited into the dwelling unit revolving fund established
16 pursuant to section 201H-191, Hawaii Revised Statutes.

17 SECTION 6. There is appropriated out of the dwelling unit
18 revolving fund the sum of \$200,000,000 or so much thereof as may
19 be necessary for fiscal year 2020-2021 for the establishment of
20 regional infrastructure for the primary purpose of supporting
21 development of housing on lands owned by the university of



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1 Hawaii that are near or adjacent to the university of Hawaii
2 West Oahu campus; provided that:

3 (1) The sum appropriated shall be expended by the Hawaii
4 housing finance and development corporation for the
5 purposes of this part; and

6 (2) The appropriation shall not lapse at the end of the
7 fiscal biennium for which the appropriation is made;
8 provided that all moneys from the appropriation
9 unencumbered as of June 30, 2022, shall lapse as of
10 that date.

11 SECTION 7. There is appropriated out of the dwelling unit
12 revolving fund the sum of \$75,000,000 or so much thereof as may
13 be necessary for fiscal year 2020-2021 for the establishment of
14 infrastructure to support the development for affordable housing
15 in counties with a population of less than 500,000; provided
16 that:

17 (1) The sum appropriated shall be expended by the Hawaii
18 housing finance and development corporation for the
19 purposes of this part; and

20 (2) The appropriation shall not lapse at the end of the
21 fiscal biennium for which the appropriation is made;



1 provided that all moneys from the appropriation
2 unencumbered as of June 30, 2022, shall lapse as of
3 that date.

4 PART III

5 SECTION 8. The purpose of this part is to authorize any
6 person, including a state or county department or agency, to
7 petition the appropriate county land use decision-making
8 authority, rather than the land use commission, for a change in
9 the boundary of a district involving land areas between fifteen
10 acres and twenty-five acres where the majority of the
11 development will be for affordable housing.

12 SECTION 9. Section 201H-12, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) The corporation may develop public land in an
15 agricultural district subject to the prior approval of the land
16 use commission, when developing lands greater than fifteen acres
17 in size, and public land in a conservation district subject to
18 the prior approval of the board of land and natural
19 resources[-]; provided that the corporation may develop lands
20 having an area between fifteen acres and twenty-five acres using
21 the process established pursuant to section 205-3.1(e). The



1 corporation shall not develop state monuments, historical sites,
2 or parks. When the corporation proposes to develop public land,
3 it shall file with the department of land and natural resources
4 a petition setting forth the purpose for the development. The
5 petition shall be conclusive proof that the intended use is a
6 public use superior to that which the land has been
7 appropriated."

8 SECTION 10. Section 205-3.1, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§205-3.1 Amendments to district boundaries. (a)**

11 [~~District~~] Except as provided in subsection (e), district
12 boundary amendments involving lands in the conservation
13 district, land areas greater than fifteen acres, or lands
14 delineated as important agricultural lands shall be processed by
15 the land use commission pursuant to section 205-4.

16 (b) Any department or agency of the State, and department
17 or agency of the county in which the land is situated, or any
18 person with a property interest in the land sought to be
19 reclassified may petition the appropriate county land use
20 decision-making authority of the county in which the land is
21 situated for a change in the boundary of a district involving



1 lands less than fifteen acres presently in the rural and urban
2 districts and lands less than fifteen acres in the agricultural
3 district that are not designated as important agricultural
4 lands.

5 (c) District boundary amendments involving land areas of
6 fifteen acres or less, except as provided in subsection (b),
7 shall be determined by the appropriate county land use decision-
8 making authority for the district and shall not require
9 consideration by the land use commission pursuant to section
10 205-4; provided that [~~such~~] the boundary amendments and approved
11 uses are consistent with this chapter. The appropriate county
12 land use decision-making authority may consolidate proceedings
13 to amend state land use district boundaries pursuant to this
14 subsection, with county proceedings to amend the general plan,
15 development plan, zoning of the affected land, or [~~such~~] other
16 proceedings. Appropriate ordinances and rules to allow
17 consolidation of [~~such~~] proceedings may be developed by the
18 county land use decision-making authority.

19 (d) The county land use decision-making authority shall
20 serve a copy of the application for a district boundary
21 amendment to the land use commission and the department of



1 business, economic development, and tourism and shall notify the
2 commission and the department of the time and place of the
3 hearing and the proposed amendments scheduled to be heard at the
4 hearing. A change in the state land use district boundaries
5 pursuant to this subsection shall become effective on the day
6 designated by the county land use decision-making authority in
7 its decision. Within sixty days of the effective date of any
8 decision to amend state land use district boundaries by the
9 county land use decision-making authority, the decision and the
10 description and map of the affected property shall be
11 transmitted to the land use commission and the department of
12 business, economic development, and tourism by the county
13 planning director.

14 (e) Notwithstanding any other provision of this section
15 to the contrary, a person may petition the appropriate county
16 decision making authority in the county in which the land is
17 situated for a change in the boundary of a district involving
18 lands comprising twenty-five acres or less; provided that the
19 majority of the development for which the boundary change is
20 sought shall be for affordable housing.



1 (f) Parceling of lands for development shall be prohibited
2 for the purposes of subsection (e). If lands that have been
3 parceled are proposed for reclassification, the petition for
4 reclassification shall be processed as lands greater than
5 fifteen or twenty-five acres, pursuant to section 205-4.

6 (g) Before a county land use decision-making authority
7 grants a petition for reclassification pursuant to subsection
8 (e), the county land use decision-making authority shall make a
9 clear finding, based on the evidence submitted, that the land
10 subject to a petition for reclassification has not been
11 parceled. Any land that has parceled shall be reverted back to
12 the land's original land use classification.

13 (h) As used in this section, "parceling" means the
14 subdivision of lands greater than twenty-five acres into two or
15 more parcels, more than one of which is then proposed for
16 reclassification within a ten-year period from the date of the
17 subdivision."

18 SECTION 11. Section 205-4, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Any department or agency of the State, any department
21 or agency of the county in which the land is situated, or any



1 person with a property interest in the land sought to be
2 reclassified[7] may petition the land use commission for a
3 change in the boundary of a district. This section applies to
4 all petitions for changes in district boundaries of lands within
5 conservation districts, lands designated or sought to be
6 designated as important agricultural lands, and lands greater
7 than fifteen acres in the agricultural, rural, and urban
8 districts, except as provided in [~~section~~] sections 201H-38[7]
9 and 205-3.1(e). The land use commission shall adopt rules
10 pursuant to chapter 91 to implement section 201H-38."

11 SECTION 12. Section 205-6, Hawaii Revised Statutes, is
12 amended by amending subsections (d) and (e) to read as follows:

13 "(d) [~~Special~~] Except as provided in section 205-3.1(e),
14 special permits for land the area of which is greater than
15 fifteen acres or for lands designated as important agricultural
16 lands shall be subject to approval by the land use commission.
17 The land use commission may impose additional restrictions as
18 may be necessary or appropriate in granting the approval,
19 including the adherence to representations made by the
20 applicant.



1 (e) [A] Except for district boundary changes made through
 2 an appropriate county decision-making authority pursuant to
 3 section 205-3.1(e), a copy of the decision, together with the
 4 complete record of the proceeding before the county planning
 5 commission on all special permit requests involving a land area
 6 greater than fifteen acres or for lands designated as important
 7 agricultural lands, shall be transmitted to the land use
 8 commission within sixty days after the decision is rendered.

9 Within forty-five days after receipt of the complete record
 10 from the county planning commission, the land use commission
 11 shall act to approve, approve with modification, or deny the
 12 petition. A denial either by the county planning commission or
 13 by the land use commission, or a modification by the land use
 14 commission, as the case may be, of the desired use shall be
 15 appealable to the circuit court of the circuit in which the land
 16 is situated and shall be made pursuant to the Hawaii rules of
 17 civil procedure."

18 PART IV

19 SECTION 13. The purpose of this part is to allow the
 20 department of land and natural resources state historic



1 preservation division to delegate the responsibility of historic
2 preservation project reviews to the respective counties.

3 SECTION 14. Section 6E-42, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§6E-42 Review of proposed projects. (a) Except as
6 provided in section 6E-42.2, before any agency or officer of the
7 State or its political subdivisions approves any project
8 involving a permit, license, certificate, land use change,
9 subdivision, or other entitlement for use[~~, which~~] that may
10 affect historic property, aviation artifacts, or a burial site,
11 the agency or office shall advise the department and prior to
12 any approval allow the department an opportunity for review and
13 comment on the effect of the proposed project on historic
14 properties, aviation artifacts, or burial sites, consistent with
15 section 6E-43, including those listed in the Hawaii register of
16 historic places. If:

- 17 (1) The proposed project consists of corridors or large
18 land areas;
19 (2) Access to properties is restricted; or
20 (3) Circumstances dictate that construction be done in
21 stages,



1 the department's review and comment may be based on a phased
2 review of the project; provided that there shall be a
3 programmatic agreement between the department and the project
4 applicant that identifies each phase and the estimated timelines
5 for each phase.

6 (b) The department shall inform the public of any project
7 proposals submitted to it under this section that are not
8 otherwise subject to the requirement of a public hearing or
9 other public notification.

10 (c) The department may delegate responsibility for review
11 and comment of projects pursuant to this section, and any
12 administrative rules adopted thereunder, to the respective
13 counties; provided that the department has certified that the
14 county has:

15 (1) Adopted an ordinance to govern the county's review
16 process that is consistent with the requirements of
17 this section and with any administrative rules adopted
18 pursuant thereto;

19 (2) Hired qualified professional staff who meet standards
20 established by the department to conduct the reviews;



- 1 (3) Established sufficient internal organizational
2 controls to ensure that the qualified professional
3 staff can make independent determinations regarding
4 the effects of projects on historic properties;
- 5 (4) Ensured that the qualified professional staff can
6 function in a manner that does not create a conflict
7 of interest or an appearance of a conflict of
8 interest;
- 9 (5) Provided for appropriate public notification in a
10 manner consistent with standards established by the
11 department; and
- 12 (6) Entered into a written agreement with the department
13 memorializing the delegation to the county;
14 provided that the delegation of authority shall automatically be
15 suspended or terminated if the county fails to retain its
16 qualified professional staff or if it becomes apparent that the
17 county does not have sufficient staffing capacity to complete
18 the delegated reviews in a timely manner.
- 19 (d) The department shall not delegate reviews or comments
20 to the county for projects affecting properties listed in the
21 Hawaii register of historic places or the national register of



1 historic places, or for projects subject to review under section
2 6E-43.

3 (e) The department may establish a program to certify
4 third-party individuals and organizations to review documents
5 prior to submission of the documents to the department for
6 review. A review by a third party shall ensure that the
7 information submitted is complete and complies with the
8 department's documentation requirements and that any
9 accompanying data and analysis supports recommendations made in
10 the submission. All third-party reviews shall be conducted in
11 accordance with the following requirements:

12 (1) Staff who conduct the reviews shall meet professional
13 qualifications and standards established by the
14 department;

15 (2) Individuals and organizations that apply for
16 certification shall demonstrate that they have
17 established sufficient internal organizational
18 controls to ensure that the qualified professional
19 staff can make independent determinations regarding
20 the effects of projects on historic properties and can
21 function in a manner that does not create a conflict



1 economic development, and tourism for administrative purposes
2 only. The office shall be headed by the housing ombudsman and
3 funded by the dwelling unit revolving fund established pursuant
4 to section 201H-191. The housing ombudsman shall be appointed
5 by the governor to serve a term of four years concurrent with
6 the term of the governor. This appointment shall not be subject
7 to senate confirmation.

8 (b) The housing ombudsman shall develop, advocate for, and
9 implement policies to solve Hawaii's housing shortage by:

10 (1) Analyzing solutions and programs to address the
11 State's need for housing that is affordable for all
12 economic segments of the State, including but not
13 limited to programs or proposals regarding the:

14 (A) Financing, acquisition, rehabilitation,
15 preservation, conversion, or construction of
16 housing;

17 (B) Use of publicly owned land and buildings as sites
18 for affordable housing;

19 (C) Identification of state and local regulatory
20 barriers to the development and placement of
21 housing;



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- 1 (D) Stimulation of public and private sector and
- 2 intergovernmental cooperation in the development
- 3 of housing;
- 4 (E) Equitable geographic distribution of housing for
- 5 all economic segments;
- 6 (F) Examination of successful housing policies from
- 7 jurisdictions, nationally and internationally,
- 8 and methods to adapt these policies to the State;
- 9 (G) Unique circumstances for special needs
- 10 populations;
- 11 (H) Provision of infrastructure for existing and
- 12 future housing needs;
- 13 (I) Preservation and enhancement of the character of
- 14 the State's unique cultures and communities;
- 15 (J) Correction of distortions in the housing market;
- 16 (K) Prevention of the erosion of housing stock due to
- 17 speculation, transient accommodations and short-
- 18 term vacation rentals, and other phenomena; and
- 19 (L) Diversity of communities across the State;
- 20 (2) Considering homeownership and rental housing as viable
- 21 options for the provision of housing;



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- 1 (3) Considering various types of residential construction
2 and innovation housing options, including but not
3 limited to manufactured housing;
- 4 (4) Reviewing, evaluating, and making recommendations
5 regarding existing and proposed housing programs and
6 initiatives, including but not limited to tax
7 policies, land use policies, and financing programs;
- 8 (5) Incorporating feedback and concerns from all
9 stakeholders in the State's housing crisis;
- 10 (6) Attracting and retaining future generations and
11 industries through the provision of abundant and
12 affordable housing;
- 13 (7) Engaging and educating the public on housing policies
14 and programs;
- 15 (8) Facilitating the development process by serving as a
16 comprehensive guide for housing developers through all
17 parts of the development process;
- 18 (9) Establishing a consolidated permit application and
19 process to facilitate the expedited processing of
20 affordable housing development projects;



1 (10) Addressing complaints and issues concerning public
2 housing;

3 (11) Encouraging state and county housing agencies to
4 explore the potential or expanded use of development
5 and hold mechanisms, such as community land trusts,
6 land banks, and master leases, to preserve public
7 lands under long term leases or in perpetuity for
8 affordable housing; and

9 (12) Facilitating redevelopment and rehabilitation of
10 existing state public housing units."

11 SECTION 17. Section 201H-191, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) There is created a dwelling unit revolving fund. The
14 funds appropriated for the purpose of the dwelling unit
15 revolving fund and all moneys received or collected by the
16 corporation for the purpose of the revolving fund shall be
17 deposited in the revolving fund. The proceeds in the revolving
18 fund shall be used [~~to~~]:

19 (1) To reimburse the general fund to pay the interest on
20 general obligation bonds issued for the purposes of
21 the revolving fund[~~, for~~];



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1 (2) For the necessary expenses in administering housing
2 development programs and regional state infrastructure
3 programs [~~and for carrying~~];

4 (3) To carry out the purposes of housing development
5 programs and regional state infrastructure programs,
6 including but not limited to the expansion of
7 community facilities and regional state infrastructure
8 constructed in conjunction with housing and mixed-use
9 transit-oriented development projects, permanent
10 primary or secondary financing, and supplementing
11 building costs, federal guarantees required for
12 operational losses, and all things required by any
13 federal agency in the construction and receipt of
14 federal funds or low-income housing tax credits for
15 housing projects [~~and~~]; and

16 (4) To fund the office of the housing ombudsman pursuant
17 to section -1."

18 SECTION 18. One full-time equivalent (1.0 FTE) position
19 within the department of business, economic development, and
20 tourism shall be transferred to the office of the housing
21 ombudsman established pursuant to section 16 of this part to

1 establish one full-time equivalent (1.0 FTE) position of the
 2 housing ombudsman; provided that the position shall be funded by
 3 the dwelling unit revolving fund pursuant to section 201H-191,
 4 Hawaii Revised Statutes.

PART VI

6 SECTION 19. The purpose of this part is to remove the
 7 statutory cap on the amount of conveyance tax revenues that are
 8 deposited into the rental housing revolving fund each fiscal
 9 year.

10 SECTION 20. Section 247-7, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "**§247-7 Disposition of taxes.** All taxes collected under
 13 this chapter shall be paid into the state treasury to the credit
 14 of the general fund of the State, to be used and expended for
 15 the purposes for which the general fund was created and exists
 16 by law; provided that of the taxes collected each fiscal year:

- 17 (1) Ten per cent or \$6,800,000, whichever is less, shall
- 18 be paid into the land conservation fund established
- 19 pursuant to section 173A-5; and



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1 (2) Fifty per cent [~~or \$38,000,000, whichever is less,~~
 2 shall be paid into the rental housing revolving fund
 3 established by section 201H-202."

PART VII

5 SECTION 21. This Act does not affect rights and duties
 6 that matured, penalties that were incurred, and proceedings that
 7 were begun before its effective date.

8 SECTION 22. If any provision of this Act, or the
 9 application thereof to any person or circumstance, is held
 10 invalid, the invalidity does not affect other provisions or
 11 applications of the Act that can be given effect without the
 12 invalid provision or application, and to this end the provisions
 13 of this Act are severable.

14 SECTION 23. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 24. This Act shall take effect on July 1, 2020.

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INTRODUCED BY:

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Anna Mercader-Kim

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Report Title:

Affordable Housing; HHFDC; Lease of State Lands; Boundary Amendments; SHPD; Historic Preservation; Counties; Condominiums; Rental Housing Revolving Fund; Appropriation

Description:

Authorizes the Hawaii Housing Finance and Development Corporation to lease real property for a period not to exceed 99 years for the development of certain projects that include affordable housing. Requires the Hawaii Housing Finance and Development Corporation to submit a report to the legislature that identifies all state lands that may be developed for multi-unit dwellings. Authorizes the issuance of \$200,000,000 in general obligation bonds, with the proceeds used for the establishment of infrastructure to support the development of housing on lands near the University of Hawaii West Oahu campus. Authorizes the issuance of \$75,000,000 in general obligation bonds, with the proceeds used for affordable housing infrastructure in counties with a resident population of 500,000 or less. Authorizes a state or county department or agency to petition the appropriate county land use decision-making authority, rather than the Land Use Commission, for a change in the boundary of a district involving land areas between 15 acres and 25 acres where the majority of the development will be for affordable housing. Authorizes the State Historic Preservation Division to delegate the responsibility of historic preservation project reviews to the impacted county. Establishes the Office of the Housing Ombudsman. Removes the existing statutory cap on the amount of conveyance tax revenues that are deposited into the rental housing revolving fund each fiscal year.

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

