

JAN 20 2023

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# A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING CREDITS.

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

1           SECTION 1. The legislature finds that the State has a  
2 housing crisis. A 2019 study commissioned by the department of  
3 business, economic development, and tourism found that the State  
4 will require an additional 50,156 homes by the year 2025, with  
5 the city and county of Honolulu requiring 22,168 new units,  
6 Hawaii county requiring 13,303 new units, Maui county requiring  
7 10,404 new units, and Kauai county requiring 4,281 new housing  
8 units. While this forecast projects an acute housing shortage,  
9 there has been a lack of measurable progress at the county level  
10 to enact policies that will stimulate housing production to meet  
11 project demand.

12           The Federal Home Loan Corporation, more commonly known as  
13 Freddie Mac, has reported that the average 30-year fixed  
14 residential mortgage interest rate was 3.11 per cent in December  
15 2021 and 6.42 per cent in December 2022. This 206 per cent  
16 increase reflects the dramatically increasing monthly cost of  
17 owning a home for residents and the decreasing maximum sale



1 price of income-specified affordable housing units that are  
2 constructed pursuant to chapter 201H, Hawaii Revised Statutes,  
3 relating to the various programs of the Hawaii housing finance  
4 and development corporation. In addition, the Federal Reserve  
5 has reported that the one-month term of the secured overnight  
6 financing rate, a metric used by lenders to determine real  
7 estate construction loan interest rates, has increased from 0.05  
8 per cent in December 2021 to 4.30 per cent in December 2022.  
9 The 86-times increase reflects the dramatically increasing cost  
10 of construction financing for residential units. These  
11 increases in home loan and construction loan interest rates have  
12 severely impaired the ability of the Hawaii housing finance and  
13 development corporation to increase the affordable housing  
14 supply in the State.

15 Accordingly, the purpose of this Act is to require the  
16 counties to issue affordable housing credits for affordable  
17 housing units that are constructed pursuant to chapter 201H,  
18 Hawaii Revised Statutes.

19 SECTION 2 Section 46-15.1, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§46-15.1 Housing; county powers. (a) Notwithstanding  
2 any law to the contrary, any county shall have and may exercise  
3 the same powers, subject to applicable limitations, as those  
4 granted the Hawaii housing finance and development corporation  
5 pursuant to chapter 201H insofar as those powers may be  
6 reasonably construed to be exercisable by a county for the  
7 purpose of developing, constructing, and providing low- and  
8 moderate-income housing; provided that no county shall be  
9 empowered to cause the State to issue general obligation bonds  
10 to finance a project pursuant to this section; provided further  
11 that county projects shall be granted an exemption from general  
12 excise or receipts taxes in the same manner as projects of the  
13 Hawaii housing finance and development corporation pursuant to  
14 section 201H-36; and provided further that section 201H-16 shall  
15 not apply to this section unless federal guidelines specifically  
16 provide local governments with that authorization and the  
17 authorization does not conflict with any state laws. The powers  
18 shall include the power, subject to applicable limitations, to:  
19           (1) Develop and construct dwelling units, alone or in  
20           partnership with developers;



- 1           (2) Acquire necessary land by lease, purchase, exchange,  
2                    or eminent domain;
- 3           (3) Provide assistance and aid to a public agency or other  
4                    person in developing and constructing new housing and  
5                    rehabilitating existing housing for elders of low- and  
6                    moderate-income, other persons of low- and moderate-  
7                    income, and persons displaced by any governmental  
8                    action, by making long-term mortgage or interim  
9                    construction loans available;
- 10          (4) Contract with any eligible bidders to provide for  
11                    construction of urgently needed housing for persons of  
12                    low- and moderate-income;
- 13          (5) Guarantee the top twenty-five per cent of the  
14                    principal balance of real property mortgage loans,  
15                    plus interest thereon, made to qualified borrowers by  
16                    qualified lenders;
- 17          (6) Enter into mortgage guarantee agreements with  
18                    appropriate officials of any agency or instrumentality  
19                    of the United States to induce those officials to  
20                    commit to insure or to insure mortgages under the  
21                    National Housing Act, as amended;



1           (7) Make a direct loan to any qualified buyer for the  
2           downpayment required by a private lender to be made by  
3           the borrower as a condition of obtaining a loan from  
4           the private lender in the purchase of residential  
5           property;

6           (8) Provide funds for a share, not to exceed fifty per  
7           cent, of the principal amount of a loan made to a  
8           qualified borrower by a private lender who is unable  
9           otherwise to lend the borrower sufficient funds at  
10          reasonable rates in the purchase of residential  
11          property; and

12          (9) Sell or lease completed dwelling units.

13          For purposes of this section, a limitation is applicable to  
14          the extent that it may reasonably be construed to apply to a  
15          county.

16          (b) Each county shall recognize housing units developed by  
17          the department of Hawaiian home lands and issue affordable  
18          housing credits to the department of Hawaiian home lands. The  
19          credits shall be transferable and shall be issued on a one-  
20          credit for one-unit basis, unless the housing unit is eligible  
21          for additional credits as provided by adopted county ordinances,



1 rules, or any memoranda of agreement between a county and the  
2 department of Hawaiian home lands. In the event that credits  
3 are transferred by the department of Hawaiian home lands,  
4 twenty-five per cent of any monetary proceeds from the transfer  
5 shall be used by the department of Hawaiian home lands to  
6 develop units for rental properties. Credits shall be issued  
7 for each single-family residence, multi-family unit, other  
8 residential unit, whether for purposes of sale or rental, or if  
9 allowed under the county's affordable housing programs, vacant  
10 lot, developed by the department of Hawaiian home lands. The  
11 credits may be applied county-wide within the same county in  
12 which the credits were earned to satisfy affordable housing  
13 obligations imposed by the county on market-priced residential  
14 and non-residential developments. County-wide or project-  
15 specific requirements for housing class, use, or type; or  
16 construction time for affordable housing units shall not impair,  
17 restrict, or condition the county's obligation to apply the  
18 credits in full satisfaction of all county requirements, whether  
19 by rule, ordinance, or particular zoning conditions of a  
20 project. Notwithstanding any provisions herein to the contrary,  
21 the department may enter into a memorandum of agreement with the



1 county of Kauai to establish, modify, or clarify the conditions  
2 for the issuance, transfer, and redemption of the affordable  
3 housing credits in accordance with county affordable housing  
4 ordinances or rules. Notwithstanding any provisions herein to  
5 the contrary, the department may enter into a memorandum of  
6 agreement with the city and county of Honolulu to establish,  
7 modify, or clarify the conditions for the issuance, transfer,  
8 and redemption of the affordable housing credits in accordance  
9 with county affordable housing ordinances or rules. At least  
10 half of the affordable housing credits issued by the city and  
11 county of Honolulu shall be subject to a memorandum of agreement  
12 pursuant to this subsection.

13 ~~[For purposes of this section, "affordable housing~~  
14 ~~obligation" means the requirement imposed by a county,~~  
15 ~~regardless of the date of its imposition, to develop vacant~~  
16 ~~lots, single-family residences, multi-family residences, or any~~  
17 ~~other type of residence for sale or rent to individuals within a~~  
18 ~~specified income range.]~~

19 (c) Each county shall issue affordable housing credits to  
20 an eligible developer for affordable housing units developed  
21 pursuant to chapter 201H. Credits shall be issued for each



1 single-family residence, multi-family unit, other residential  
2 unit, whether for purposes of sale, rental, or if allowed under  
3 the county's affordable housing programs, and vacant lot,  
4 developed pursuant to chapter 201H. If low-income housing tax  
5 credits are utilized in conjunction with the affordable housing  
6 developed pursuant to chapter 201H, then affordable housing  
7 credits shall not be issued. The credits shall be transferable  
8 and shall be issued on a one-credit for one-unit basis, unless  
9 the housing unit is eligible for additional credits as provided  
10 by adopted county ordinances, rules, or any memoranda of  
11 agreement between a county and the Hawaii housing finance and  
12 development corporation. In the event that the affordable  
13 housing credits are transferred to the Hawaii housing finance  
14 and development corporation, twenty-five per cent of any  
15 monetary proceeds from the transfer shall be used by the Hawaii  
16 housing finance and development corporation to develop units for  
17 rental properties. The credits may be applied county-wide  
18 within the same county in which the credits were earned to  
19 satisfy affordable housing obligations imposed by the county on  
20 market-priced residential and non-residential developments.  
21 County-wide or project-specific requirements for housing class,



1 use, or type; or construction time for affordable housing units  
2 shall not impair, restrict, or condition the county's obligation  
3 to apply the credits in full satisfaction of all county  
4 requirements, whether by rule, ordinance, or particular zoning  
5 conditions of a project. Notwithstanding any provisions herein  
6 to the contrary, the Hawaii housing finance and development  
7 corporation may enter into a memorandum of agreement with the  
8 county of Kauai to establish, modify, or clarify the conditions  
9 for the issuance, transfer, and redemption of the affordable  
10 housing credits in accordance with county affordable housing  
11 ordinances or rules. Notwithstanding any provisions herein to  
12 the contrary, the Hawaii housing finance and development  
13 corporation may enter into a memorandum of agreement with the  
14 city and county of Honolulu to establish, modify, or clarify the  
15 conditions for the issuance, transfer, and redemption of the  
16 affordable housing credits in accordance with county affordable  
17 housing ordinances or rules.

18        [~~e~~] (d) Notwithstanding any law to the contrary, any  
19 county may:

20        (1) Authorize and issue bonds under chapter 47 and chapter  
21            49 to provide moneys to carry out the purposes of this



- 1 section or section 46-15.2, including the satisfaction  
2 of any guarantees made by the county pursuant to this  
3 section;
- 4 (2) Appropriate moneys of the county to carry out the  
5 purposes of this section;
- 6 (3) Obtain insurance and guarantees from the State or the  
7 United States, or grants from either;
- 8 (4) Designate, after holding a public hearing on the  
9 matter and with the approval of the respective  
10 council, any lands owned by it for the purposes of  
11 this section;
- 12 (5) Provide interim construction loans to partnerships of  
13 which it is a partner and to developers whose projects  
14 qualify for federally assisted project mortgage  
15 insurance, or other similar programs of federal  
16 assistance for persons of low and moderate income; and
- 17 (6) Adopt rules pursuant to chapter 91 as are necessary to  
18 carry out the purposes of this section.
- 19 [~~(d)~~] (e) Notwithstanding any law to the contrary, a  
20 county may waive its right to repurchase a privately-developed  
21 affordable housing unit built pursuant to a unilateral agreement



1 or similar instrument, and may transfer that right of repurchase  
2 to a qualified nonprofit housing trust for the purpose of  
3 maintaining the unit as affordable for as long as required by  
4 the county program.

5 ~~[For the purposes of this subsection, "qualified nonprofit~~  
6 ~~housing trust" means a corporation, association, or other duly~~  
7 ~~chartered organization that is registered and in good standing~~  
8 ~~with the State; that is recognized by the Internal Revenue~~  
9 ~~Service as a charitable or otherwise tax exempt organization~~  
10 ~~under section 501(c)(3) of the Internal Revenue Code of 1986, as~~  
11 ~~amended; and that has the capacity, resources, and mission to~~  
12 ~~carry out the purposes of this section as determined by the~~  
13 ~~county in which the housing unit is located.]~~

14 ~~[(e)]~~ (f) A qualified nonprofit housing trust shall report  
15 the status and use of its housing units to its respective county  
16 by November 30 of each calendar year.

17 ~~[(f)]~~ (g) The provisions of this section shall be  
18 construed liberally so as to effectuate the purpose of this  
19 section in facilitating the development, construction, and  
20 provision of low- and moderate-income housing by the various  
21 counties.



1            [~~g~~] (h) For purposes of this section [~~7~~ "~~low~~]:

2            "Affordable housing obligation" means the requirement  
3 imposed by a county, regardless of the date of its imposition,  
4 to develop vacant lots, single-family residences, multi-family  
5 residences, or any other type of residence for sale or rent to  
6 individuals within a specified income range.

7            "Eligible developer" means the same as defined in section  
8 201H-32.

9            "Low and moderate income housing" means any housing project  
10 that meets the definition of "low- and moderate-income housing  
11 project" in section 39A-281.

12            "Qualified nonprofit housing trust" means a corporation,  
13 association, or other duly chartered organization that is  
14 registered and in good standing with the State; that is  
15 recognized by the Internal Revenue Service as a charitable or  
16 otherwise tax-exempt organization under section 501(c)(3) of the  
17 Internal Revenue Code of 1986, as amended; and that has the  
18 capacity, resources, and mission to carry out the purposes of  
19 this section as determined by the county in which the housing  
20 unit is located."



1 SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval;  
4 provided that:

5 (1) The amendments made to section 46-15.1, Hawaii Revised  
6 Statutes, by section 2 of this Act shall not be  
7 repealed when that section is repealed and reenacted  
8 on June 30, 2024, pursuant to section 3 of Act 141,  
9 Session Laws of Hawaii 2009, as amended by section 3  
10 of Act 102, Session Laws of Hawaii 2015, as amended by  
11 section 1 of Act 80, Session Laws of Hawaii 2019; and

12 (2) This Act shall be repealed on June 30, 2031 and  
13 section 46-15.1, Hawaii Revised Statutes, shall be  
14 reenacted pursuant to section 3 of Act 141, Session  
15 Laws of Hawaii 2009, section 23 of Act 96, Session  
16 Laws of Hawaii 2014, and section 9 of Act 159, Session  
17 Laws of Hawaii 2017.

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INTRODUCED BY:



# S.B. NO. 1170

**Report Title:**

Counties; Affordable Housing Credits; Hawaii Housing Finance and Development Corporation; Housing Production; County Powers

**Description:**

Requires the counties to issue affordable housing credits for affordable housing units that are constructed pursuant to chapter 201H, Hawaii Revised Statutes. Repeals on June 30, 2031.

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

