S.B. NO. ⁷⁶⁴ S.D. 1 H.D. 3

C.D. 1

A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

SECTION 1. Section 412:5-305, Hawaii Revised Statutes, is
 amended to read as follows:

3 "§412:5-305 Permitted investments. (a) To the extent
4 specified [herein,] in this subsection, a bank may invest its
5 own assets in:

| 6 | (1) | Securities and obligations of the United States |
|----|-----|--|
| 7 | | government and any agency of the United States |
| 8 | | government whose debt obligations are fully and |
| 9 | | explicitly guaranteed as to the timely payment of |
| 10 | | principal and interest by the full faith and credit of |
| 11 | | the United States, including without limitation |
| 12 | | Federal Reserve Banks, the Government National |
| 13 | | Mortgage Association, the Department of Veterans |
| 14 | | Affairs, the Federal Housing Administration, the |
| 15 | | United States Department of Agriculture, the Export- |
| 16 | | Import Bank, the Overseas Private Investment |
| 17 | | Corporation, the Commodity Credit Corporation, and the |
| 18 | | Small Business Administration; |

2023-2853 SB764 CD1 SMA.docx





| 1 | (2) | Bonds, notes, mortgage backed securities, and other |
|----|-----|--|
| 2 | | debt obligations of the Federal Home Loan Mortgage |
| 3 | | Corporation, the Federal National Mortgage |
| 4 | | Association, and the Federal Home Loan Banks; |
| 5 | (3) | Securities and obligations of United States |
| 6 | | government-sponsored agencies which are originally |
| 7 | | established or chartered by the United States |
| 8 | | government to serve public purposes specified by the |
| 9 | | Congress but whose debt obligations are not explicitly |
| 10 | | guaranteed by the full faith and credit of the United |
| 11 | | States, including without limitation Banks for |
| 12 | | Cooperatives, Federal Agricultural Mortgage |
| 13 | | Corporation, Federal Farm Credit Banks, Federal |
| 14 | | Intermediate Credit Banks, Federal Land Banks, |
| 15 | | Financing Corporation, Resolution Funding Corporation, |
| 16 | | Student Loan Marketing Association, Tennessee Valley |
| 17 | | Authority, the United States Postal Service, and |
| 18 | | securities and obligations of the Federal Home Loan |
| 19 | | Mortgage Corporation, the Federal National Mortgage |
| 20 | | Association, and the Federal Home Loan Banks that are |
| 21 | | not bonds, notes, mortgage backed securities, or other |

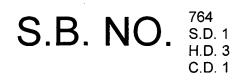


S.B. NO. ⁷⁶⁴ S.D. 1 H.D. 3 C.D. 1

1 debt obligations of the Federal Home Loan Mortgage 2 Corporation, the Federal National Mortgage 3 Association, and the Federal Home Loan Banks; provided 4 that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the 5 bank's capital and surplus; and 6 7 (4) Securities and obligations of guasi-United States governmental institutions, including without 8 9 limitation the International Bank for Reconstruction 10 and Development (World Bank), the Inter-American 11 Development Bank, the Asian Development Bank, the 12 African Development Bank, the European Investment 13 Bank, and other multilateral lending institutions or 14 regional development institutions in which the United 15 States government is a shareholder or contributing 16 member; provided that the total amount invested in 17 obligations of any one issuer shall not exceed twenty per cent of the bank's capital and surplus. 18 19 (b) A bank may invest its own assets in bonds, securities, 20 or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality. 21

2023-2853 SB764 CD1 SMA.docx

Page 4



| 1 | (c) | To the extent specified [herein,] in this subsection, |
|----|-----------|---|
| 2 | a bank ma | y invest its own assets in bonds or similar obligations |
| 3 | issued by | any state of the United States other than this State, |
| 4 | the Distr | ict of Columbia, or any territory or possession of the |
| 5 | United St | ates, by municipal governments of such states, |
| 6 | territori | es or possessions or by any foreign country or |
| 7 | political | subdivision of such country; provided [7] that: |
| 8 | (1) | The bond, note, or warrant has been issued in |
| 9 | | compliance with the constitution and laws of any such |
| 10 | | government; |
| 11 | (2) | There has been no default in payment of either |
| 12 | | principal or interest on any of the general |
| 13 | | obligations of such government for a period of five |
| 14 | | years immediately preceding the date of the |
| 15 | | investment; and |
| 16 | (3) | The total amount invested in such obligations of any |
| 17 | | one issuer by a bank shall not exceed twenty per cent |
| 18 | | of the bank's capital and surplus. |
| 19 | (d) | To the extent specified [herein,] in this subsection, |
| 20 | a bank ma | y invest its own assets in notes, bonds, and other |
| 21 | obligatio | ns of any corporation [which] <u>that</u> at the time of the |

2023-2853 SB764 CD1 SMA.docx



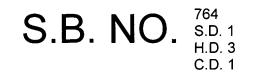
1 investment is incorporated under the laws of the United States 2 or any state or territory thereof or the District of Columbia; 3 provided $[\tau]$ that the aggregate amount invested by a bank under 4 this subsection and subsection (e) in any one corporation shall 5 not exceed twenty per cent of the bank's capital and surplus.

6 To the extent specified [herein,] in this subsection, (e) 7 a bank may invest its own assets in securities of an investment 8 [The term "investment grade"] "Investment grade" means grade. 9 notes, bonds, certificates of interest or participation, 10 beneficial interests, mortgage or receivable-related securities, 11 and other obligations that are commonly understood to be of 12 investment grade quality, including without limitation those 13 securities that are rated within the four highest grades by any 14 nationally-recognized rating service or unrated securities of 15 similar quality as reasonably determined by the bank in its 16 prudent banking judgment, [4] which may be based in part upon 17 estimates [which] that it believes to be reliable [+]. 18 [Investment grade] "Investment grade" does not include 19 investments [which] that are predominantly speculative in

nature. The aggregate amount invested by a bank under this 21 subsection and subsection (d) in any one company or other issuer

2023-2853 SB764 CD1 SMA.docx

20



shall not exceed twenty per cent of the bank's capital and
 surplus.

3 (f) To the extent specified [herein,] in this subsection,
4 a bank may purchase, hold, convey, sell, or lease real or
5 personal property as follows:

6 The real property in or on which the business of the (1) 7 bank is carried on, including its banking offices; 8 other space in the same property to rent as a source of income; permanent or vacation residences or 9 recreational facilities for its officers and 10 11 employees; other real property necessary to the 12 accommodation of the bank's business, including but 13 not limited to parking facilities, data processing centers, and real property held for future banking use 14 15 where the bank in good faith expects to use the 16 property as bank premises; provided that if the bank 17 ceases to use any real property and improvements 18 thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property, 19 20 cease to carry it or them as an asset, or transfer the 21 real property to an operating subsidiary of the bank;



Page 7

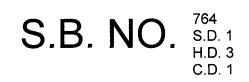


1 provided further that the bank's investment in [such] 2 an operating subsidiary shall not exceed fifteen per 3 cent of the bank's tier one capital; provided 4 further [, such] that the property shall not, without 5 the approval of the commissioner, exceed seventy-five 6 per cent of the bank's capital and surplus; 7 (2) Personal property used in or necessary to the accommodation of the bank's business, including but 8 9 not limited to furniture, fixtures, equipment, vaults, 10 and safety deposit boxes. The bank's investment in 11 furniture and fixtures shall not, without the approval 12 of the commissioner, exceed twenty-five per cent of 13 the bank's capital and surplus; 14 (3) Personal property and fixtures [which] that the bank 15 acquires for purposes of leasing to third parties, and 16 [such] real property interests as shall be incidental 17 thereto; 18 (4) [Such real] Real property or tangible personal 19 property as may come into its possession as security 20 for loans or in the collection of debts; or as may be

purchased by or conveyed to the bank in satisfaction

21

2023-2853 SB764 CD1 SMA.docx



of or on account of debts previously contracted in the 1 2 course of its business, when [such] the property was held as security by the bank; and 3 (5) The seller's interest under an agreement of sale, as 4 that term is defined in sections $501-101.5[_{T}]$ and 502-5 6 85, including without limitation the reversionary 7 interest in the real estate and the right to income 8 under the agreement of sale, with or without recourse 9 to the seller.

Except as otherwise authorized in this section, any tangible personal property acquired by a bank pursuant to subsection (f)(4) shall be disposed of as soon as practicable and shall not, without the written consent of the commissioner, be considered a part of the assets of the bank after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section, any real property acquired by a bank pursuant to subsection (f)(4) shall be sold or exchanged for other real property by the bank within five years after title thereto has vested in it by purchase or otherwise, or within [such further] <u>a later</u> time as may be granted by the commissioner.



S.B. NO. ⁷⁶⁴ S.D. 1 H.D. 3 C.D. 1

1 Any bank acquiring any real property in any manner other 2 than provided by this section shall immediately, upon receiving 3 notice from the commissioner, charge the same to profit and 4 loss, or otherwise remove the same from assets, and when any 5 loss impairs the capital and surplus of the bank the impairment 6 shall be made good in the manner provided in this chapter.

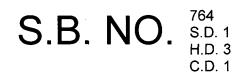
For purposes of this subsection, "tier one capital" has the
same meaning as "tier 1 capital" as set forth in title 12 Code
of Federal Regulations section 325.2(v).

- 10 (g) A bank may own or control:
- 11 (1) Operating subsidiaries, or the parent of the operating
 12 subsidiary, as set forth in this article;

13 (2) A corporation, partnership, or limited liability
14 company, organized and existing for the ownership of
15 real or personal property used or which the bank in
16 good faith expects to be used in the bank's business
17 or used for a permissible purpose under title 12 Code
18 of Federal Regulations part 362;

19 (3) The capital stock of the Federal National Mortgage
 20 Association, the Student Loan Marketing Association,
 21 Federal Home Loan Mortgage Corporation, or of any





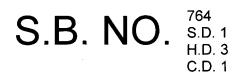
| 1 | | other corporation organized for substantially the same |
|----|-----|---|
| 2 | | purposes; provided that this subsection shall be |
| 3 | | deemed to authorize subscription for as well as |
| 4 | | purchase of the stock; |
| 5 | (4) | A small business investment company operating under |
| 6 | | the Federal Small Business Investment Act of 1958; |
| 7 | (5) | Bank service corporations, subject to the Bank Service |
| 8 | | Company Act, 12 United States Code sections 1861-1862; |
| 9 | (6) | A corporation whose stock is acquired or purchased to |
| 10 | | save a loss on a preexisting debt secured by [such] |
| 11 | | <u>the</u> stock; provided $[\tau]$ that the stock shall be sold |
| 12 | | within twelve months of the date acquired or |
| 13 | | purchased, or within [such further] <u>a later</u> time as |
| 14 | | may be granted by the commissioner; |
| 15 | (7) | An international banking corporation established |
| 16 | | pursuant to article 5A or an Edge corporation or an |
| 17 | | Agreement corporation established or authorized |
| 18 | | pursuant to section 25a of the Federal Reserve Act, 12 |
| 19 | | United States Code section 631; |





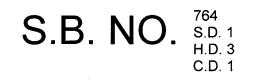
| 1 | (8) | A captive insurance company incorporated under the |
|----|-----------|--|
| 2 | | laws of the United States, or any state or territory |
| 3 | | thereof, or the District of Columbia; |
| 4 | (9) | A company transacting a business of insurance or the |
| 5 | | sale of annuities pursuant to the authority conferred |
| 6 | | in section 412:5-205.5; and |
| 7 | (10) | A company engaging in securities activities pursuant |
| 8 | | to the authority conferred in section 412:5-205.7. |
| 9 | (h) | To the extent specified $[herein_7]$ in this subsection, a |
| 10 | bank may | invest its own assets in limited partnerships, limited |
| 11 | liability | partnerships, limited liability companies, or |
| 12 | corporati | ons formed to invest in residential properties that will |
| 13 | qualify f | or the low income housing tax credit under section 42 of |
| 14 | the Inter | nal Revenue Code of 1986, as amended, and under chapters |
| 15 | 235 and 2 | 41; provided that the [total] bank may invest in an |
| 16 | aggregate | amount [invested by a bank under this subsection in any |
| 17 | one limit | ed partnership, limited liability partnership, limited |
| 18 | liability | company, or corporation shall not, without the prior |
| 19 | approval | of the commissioner, exceed two] <u>of up to fifteen</u> per |
| 20 | cent of t | he bank's capital and surplus [and the aggregate amount |
| 21 | invested- | under this subsection shall not,]without the prior |





| 1 | approval | of the commissioner[, exceed five per cent of the bank's |
|----|----------------------|--|
| 2 | capital a | nd surplus. In no case shall the aggregate amount |
| 3 | invested : | by a bank under this subsection exceed ten per cent of |
| 4 | the bank' | s capital and surplus.] or any after-the-fact notice. |
| 5 | <u>(i)</u> | An eligible bank may make an investment that exceeds |
| 6 | fifteen p | er cent, but does not exceed twenty per cent, of the |
| 7 | bank's ca | pital and surplus without prior notification to, or |
| 8 | approval | by, the commissioner if the eligible bank submits an |
| 9 | after-the | -fact notice of the investment to the commissioner. |
| 10 | The after | -the-fact notice shall include: |
| 11 | (1) | A description of the eligible bank's investments; |
| 12 | (2) | The amount of the investment; |
| 13 | (3) | The percentage of the eligible bank's capital and |
| 14 | | surplus represented by the investment that is the |
| 15 | | subject of the notice and the eligible bank's |
| 16 | | aggregate outstanding low-income housing commitments, |
| 17 | | including the investment that is the subject of the |
| 18 | | notice; and |
| 19 | (4) | A statement certifying that the investment complies |
| 20 | | with the requirements of subsection (h). |
| 21 | <u>(j)</u> | For the purposes of this section: |





| 1 | <u>"Eli</u> | gible bank" means a bank that: |
|----|-------------|---|
| 2 | (1) | Is well capitalized; |
| 3 | (2) | Has a composite rating of 1 or 2 under the Uniform |
| 4 | | Financial Institutions Rating System; |
| 5 | (3) | Has a Community Reinvestment Act rating of outstanding |
| 6 | | or satisfactory; and |
| 7 | (4) | Is not subject to a cease and desist order, consent |
| 8 | | order, formal written agreement, or Prompt Corrective |
| 9 | | Action directive or, if subject to any such order, |
| 10 | | agreement, or directive, is informed in writing by the |
| 11 | | commissioner or appropriate federal regulator that the |
| 12 | | bank may be treated as an "eligible bank" for purposes |
| 13 | | of this subsection. |
| 14 | "Wel | l capitalized" has the same meaning as defined under |
| 15 | title 12 | Code of Federal Regulations section 6.4." |
| 16 | SECT | ION 2. This Act does not affect rights and duties that |
| 17 | matured,] | penalties that were incurred, and proceedings that were |
| 18 | begun befo | ore its effective date. |
| 19 | SECT | ION 3. Statutory material to be repealed is bracketed |
| 20 | and stric | ken. New statutory material is underscored. |
| 21 | SECT | ION 4. This Act shall take effect upon its approval. |
| | | |
| | | |





Report Title:

Affordable Housing; Banks; Assets; Capital and Surplus; Commissioner of Financial Institutions; Aggregate Investments; Notice; Approval

Description:

Allows a bank to invest, in aggregate, up to fifteen per cent of the bank's capital and surplus in limited partnerships, limited liability partnerships, limited liability companies, and corporations formed to invest in affordable housing residential properties without the prior approval of the Commissioner of Financial Institutions or an after-the-fact notice. Authorizes an eligible bank to make an investment exceeding fifteen per cent, but not exceeding twenty per cent, of the bank's capital and surplus without prior notification to, or approval by, the Commissioner if the eligible bank submits an after-the-fact notice. (CD1)

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

