

JAN 20 2012

A BILL FOR AN ACT

RELATING TO THE PUBLIC LAND DEVELOPMENT CORPORATION.

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

PART I

SECTION 1. Chapter 171C, Hawaii Revised Statutes, is amended by adding two new parts to read as follows:

"PART II. HOUSING FINANCE AND DEVELOPMENT

A. General Provisions

§171C-A Definitions. The following terms, wherever used or referred to in this part, shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Bonds" means any bonds, interim certificates, notes, debentures, participation certificates, pass-through certificates, mortgage-backed obligations, or other evidences of indebtedness of the corporation issued pursuant to this part.

"Community facilities" includes real and personal property; buildings, equipment, lands, and grounds for recreational or social assemblies, or educational, health, or welfare purposes; and necessary or convenient utilities, when designed primarily



1 for the benefit and use of the corporation or the occupants of
2 the dwelling.

3 "Contract" means any agreement of the corporation with an
4 obligee or a trustee for the obligee, whether contained in a
5 resolution, trust indenture, mortgage, lease, bond, or other
6 instrument.

7 "Dwelling", "dwelling unit", or "unit" means any structure
8 or room for sale, lease, or rent, that provides shelter.

9 "Elderly housing project" means a housing project that is
10 intended and operated as housing that satisfies the definition
11 of housing for older persons under 42 United States Code section
12 3607(b) (2).

13 "Federal government" includes the United States and any
14 agency or instrumentality, corporate or otherwise, of the United
15 States.

16 "Government" or "government agency" includes the State and
17 the United States and any political subdivision, agency, or
18 instrumentality, corporate or otherwise, of either of them.

19 "Household member" means a person who:

20 (1) Is a co-applicant; or

21 (2) Will reside in the dwelling unit purchased or leased
22 from the corporation.



"Housing project" or "project":

(1) Includes all real and personal property, buildings and improvements, commercial spaces, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project; and

(2) May also be applied to the planning of the buildings and improvements, the acquisition of property by purchase, lease, or otherwise, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

"Land" or "property" includes vacant land or land with site improvements, whether partially or entirely finished in accordance with governmental subdivision standards, or with complete dwellings.

"Mortgage holder" includes the United States Department of Housing and Urban Development, Federal Housing Administration, the United States Department of Agriculture, or other federal or state agency engaged in housing activity, United States Department of Veterans Affairs, Federal National Mortgage



1 Association, Government National Mortgage Association, Federal
2 Home Loan Mortgage Corporation, private mortgage lender, private
3 mortgage insurer, and their successors, grantees, and assigns.

4 "Mortgage lender" means any bank, trust company, savings
5 bank, national banking association, savings and loan
6 association, building and loan association, mortgage banker,
7 credit union, insurance company, or any other financial
8 institution, or a holding company for any of the foregoing,
9 that:

10 (1) Is authorized to do business in the State;

11 (2) Customarily provides service or otherwise aids in the
12 financing of mortgages on single-family or multifamily
13 residential property; and

14 (3) Is a financial institution whose accounts are
15 federally insured or is an institution that is an
16 approved mortgagee for the Federal Housing
17 Administration, an approved lender for the United
18 States Department of Veterans Affairs or the United
19 States Department of Agriculture, or an approved
20 mortgage loan servicer for the Federal National
21 Mortgage Association or the Federal Home Loan Mortgage
22 Corporation.



1 "Nonprofit organization" means a corporate entity,
2 association, or other duly chartered entity that is registered
3 with the State and has received a written determination from the
4 Internal Revenue Service that it is exempt under either section
5 501(c)(3), section 501(c)(4), or so much of section 501(c)(2) as
6 applied to title holding entities that turn over their income to
7 organizations that are exempt under either section 501(c)(3) or
8 501(c)(4), of the Internal Revenue Code of 1986, as amended.

9 "Obligee of the corporation" or "obligee" includes any
10 bondholder, trustee or trustees for any bondholders, any lessor
11 demising property to the corporation used in connection with a
12 housing project, or any assignee or assignees of the lessor's
13 interest or any part thereof, and the United States, when it is
14 a party to any contract with the corporation.

15 "Real property" includes lands, land under water,
16 structures, and any and all easements, franchises, and
17 incorporeal hereditaments and every estate and right therein,
18 legal and equitable, including terms for years and liens by way
19 of judgment, mortgage, or otherwise.

20 **§171C-B Fair housing law to apply.** Notwithstanding any
21 other law to the contrary, the provisions of chapter 515 shall
22 apply in administering this part.



1 §171C-C Housing advocacy and information system. (a) The
2 corporation, with the assistance of other agencies of the State
3 and counties with related responsibilities, shall develop and
4 maintain a housing advocacy and information system to aid the
5 corporation in meeting the needs and demands of housing
6 consumers.

7 (b) In establishing and maintaining the housing advocacy
8 and information system, the corporation shall conduct market
9 studies, engage in community outreach, and solicit
10 recommendations from, and statistics and research developed by,
11 agencies of the United States, the State, the counties, private
12 research organizations, nonprofit community groups, trade
13 associations, including those of the construction and real
14 estate industries, departments, individuals at the University of
15 Hawaii, and housing consumers.

16 (c) The corporation shall analyze the information received
17 and make recommendations to the appropriate agencies and
18 developers.

19 (d) The corporation, through the housing advocacy and
20 information system, shall act as a clearinghouse for information
21 relating to housing conditions, needs, supply, demand,



1 characteristics, developments, trends in federal housing
2 programs, and housing laws, ordinances, rules, and regulations.

3 (e) The housing advocacy and information system may be
4 used by housing researchers, planners, administrators, and
5 developers and shall be coordinated with other housing research
6 efforts. The corporation shall maintain a current supply of
7 information, including means to gather new information through
8 surveys, contracted research, and investigations.

9 (f) The corporation, through the housing advocacy and
10 information system, shall develop and maintain an affordable
11 housing inventory registry to identify:

12 (1) Affordable housing projects developed by the
13 corporation utilizing moneys in the rental housing
14 trust fund established by section 171C-AAAAH or the
15 dwelling unit revolving fund established by section
16 171C-AAAAE;

17 (2) State and federal public housing projects identified
18 by the Hawaii public housing authority;

19 (3) United States Department of Housing and Urban
20 Development Region 9 federally supported and privately
21 managed housing projects; and



(4) State and county lands that may be developed for
affordable housing, as defined in section 171C-AS(b).

§171C-D Housing research. (a) The corporation may study
the plans of any government regarding the clearing, replanning,
or reconstruction of an area where unsafe or unsanitary dwelling
or housing conditions exist.

(b) The corporation may purchase materials for the
development of land and the construction of dwelling units in
the manner it concludes to be most conducive to lower costs,
including purchase from other states or from foreign countries
for drop shipment in the State or on cost-plus contracts for
materials with persons or firms doing business in the State, or
otherwise.

(c) The corporation may conduct, or cause to be conducted,
research on housing needs, materials, design, or technology, and
apply the findings of the investigation to housing projects,
including the following:

(1) Sociocultural investigation of housing and community
utilization, preferences, or needs of residents within
the housing need classification of the housing
functional plan;



(2) Development of technology for the application of innovative building systems or materials, to provide energy or resource conservation or cost savings in the construction or operation of a housing project;

(3) Investigation of the applicability of locally-produced building materials and systems to dwelling unit construction;

(4) Investigation of new forms of project construction, maintenance, operation, financing, or ownership, involving tenants, homeowners, financing agencies, and others; or

(5) Other necessary or appropriate research that may lower the long-term costs of housing, conserve resources, or create communities best suited to the needs of residents.

(d) In the development and construction of a housing project, the corporation may provide for an on-the-job training program or other projects as it may deem justifiable, including innovative projects to develop a larger qualified work force in the State.

§171C-E Housing counseling. The corporation may provide the following services for the programs it administers:



- 1 (1) Listing and referral services to tenants seeking to
2 rent homes;
- 3 (2) Counseling to tenants on matters such as financial
4 management and budgeting, basic housekeeping,
5 communicating effectively and getting along with
6 others, and other matters as may be desirable or
7 necessary;
- 8 (3) Counseling to prospective homeowners on the rudiments
9 of owning a home;
- 10 (4) Assistance to any person or government agency
11 regarding the nature and availability of federal
12 assistance for housing development and community
13 development or redevelopment;
- 14 (5) Counseling and guidance services to aid: any person
15 or government agency in securing the financial aid or
16 cooperation of the federal government in undertaking,
17 constructing, maintaining, operating, or financing any
18 housing designated for elders; persons displaced by
19 governmental action; university and college students
20 and faculty; and any other persons; and
- 21 (6) Assistance to a county agency upon request from the
22 agency in the development of programs to correct or



1 eliminate blight and deterioration and to effect
2 community development.

3 **§171C-F Acquisition, use, and disposition of property.**

4 (a) The corporation may acquire any real or personal property
5 or interest therein by purchase, exchange, gift, grant, lease,
6 or other means from any person or government to provide housing.
7 Exchange of real property shall be in accordance with section
8 171-50.

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



1 (c) The corporation may lease or rent all or a portion of
2 any housing project and establish and revise the rents or
3 charges therefor. The corporation may sell, exchange, transfer,
4 assign, or pledge any property, real or personal, or any
5 interest therein to any person or government.

6 (d) The corporation may insure or provide for the
7 insurance of its property or operations against risks as it
8 deems advisable.

9 **§171C-G Cooperative agreements with other governmental**
10 **agencies.** (a) The corporation may:

11 (1) Obtain the aid and cooperation of governmental
12 agencies in the planning, construction, and operation
13 of housing projects and enter into agreements and
14 arrangements as it deems advisable to obtain aid and
15 cooperation;

16 (2) Arrange or enter into agreements with any governmental
17 agency for the acquisition of property, options, or
18 property rights or for the furnishing, installing,
19 opening, or closing of streets, roads, alleys,
20 sidewalks, or other places, or for the furnishing of
21 property, services, parks, sewage, water, and other
22 facilities in connection with housing projects, or for



1 the changing of the map of a political subdivision or
2 the planning, replanning, zoning, or rezoning of any
3 part of a political subdivision;

4 (3) Procure insurance or guarantees from any governmental
5 agency for the payment of any debts or parts thereof
6 incurred by the corporation, including the power to
7 pay premiums on any such insurance; and

8 (4) Agree to make payments to any state or county agency,
9 if the agency is authorized to accept payments, as the
10 corporation deems consistent with the maintenance of
11 the character of housing projects or the purposes of
12 this part.

13 (b) For the purpose of aiding and cooperating in the
14 planning, construction, and operation of housing projects
15 located within their respective territorial boundaries, any
16 state or county agency, upon those terms, with or without
17 consideration, as it determines, may:

18 (1) Dedicate, grant, sell, convey, or lease any of its
19 property or grant easements, licenses, or any other
20 rights or privileges therein to the corporation or to
21 the federal government;



(2) To the extent that it is within the scope of the agency:

(A) Cause the services customarily provided by the agency to be rendered for the benefit of housing projects and the occupants thereof;

(B) Provide and maintain parks, sewage, water, lights, and other facilities adjacent to or in connection with housing projects;

(C) Open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other related facilities; and

(D) Change the map of a political subdivision or plan, replan, zone, or rezone any part of a political subdivision;

(3) Enter into agreements with the corporation with respect to the exercise of their powers relating to the repair, closing, or demolition of unsafe, unsanitary, or unfit dwellings;

(4) Employ, notwithstanding any other law as to what constitutes legal investments, any available funds belonging to them or within their control, including funds derived from the sale or furnishing of property



1 or facilities to the corporation, in the purchase of
2 bonds or other obligations of the corporation; and
3 exercise all the rights of any holder of the bonds or
4 other obligations;

5 (5) Do any and all things necessary or convenient to aid
6 and cooperate in the planning, undertaking, and
7 construction of those housing projects; and

8 (6) Enter into contracts with the corporation or the
9 federal government for any period agreeing to exercise
10 any of the powers conferred hereby or to take any
11 other action in aid of those housing projects.

12 In connection with the exercise of this power, any
13 political subdivision may incur the entire expense of any public
14 improvements located within its territorial boundaries without
15 assessment against abutting property owners.

16 For the purpose of aiding and cooperating in the planning,
17 construction, and operation of housing projects, the department
18 of land and natural resources, the Hawaiian homes commission,
19 and any other agency of the State having power to manage or
20 dispose of its public lands, with the approval of the governor
21 and with or without consideration, may grant, sell, convey, or
22 lease, for any period, any parts of those public lands, without



1 limit as to area, to the corporation or to the federal
2 government.

3 Any law to the contrary notwithstanding, any gift, grant,
4 sale, conveyance, lease, or agreement provided for in this
5 section may be made by the state or county government without
6 appraisal, public notice, advertisement, or public bidding.

7 If at any time title to, or possession of, any housing
8 project is held by any governmental agency authorized by law to
9 engage in the development or administration of low-income
10 housing or slum clearance projects, any agreement made under
11 this part relating to the project shall inure to the benefit of
12 and may be enforced by that governmental agency.

13 Insofar as this subsection is inconsistent with the
14 provisions of any other law, this subsection shall be
15 controlling.

16 (c) Any county in which a housing project is located or is
17 about to be located may make donations or advances to the
18 corporation in sums as the county in its discretion may
19 determine. The advances or donations shall be made for the
20 purpose of aiding or cooperating in the construction and
21 operation of the housing project. The corporation, when it has



1 money available therefor, shall reimburse the county for all
2 advances made by way of a loan to it.

3 **§171C-H Agents, including corporations.** The corporation
4 may exercise any or all of the powers conferred upon it, either
5 generally or with respect to any specific housing project
6 through an agent that it may designate, including any
7 corporation that is formed under the laws of this State, and for
8 those purposes the corporation may cause one or more
9 corporations to be formed under the laws of this State or may
10 acquire the capital stock of any corporation. Any corporate
11 agent, all of the stock of which shall be owned by the
12 corporation or its nominee, to the extent permitted by law, may
13 exercise any of the powers conferred upon the corporation in
14 this part.

15 **§171C-I Development of property.** (a) The corporation, in
16 its own behalf or on behalf of any federal, state, or county
17 agency, may:

18 (1) Clear, improve, and rehabilitate property;

19 (2) Plan, develop, construct, and finance housing
20 projects; and

21 (3) In cooperation with the department of education and
22 department of accounting and general services, plan



1 educational facilities and related infrastructure as a
2 necessary and integral part of its housing projects,
3 using all of its innovative powers toward achieving
4 that end expeditiously and economically; provided that
5 the educational facilities comply with the department
6 of education's educational specifications, timelines,
7 and siting requirements.

8 (b) The corporation may develop public land in an
9 agricultural district subject to the prior approval of the land
10 use commission, when developing lands greater than fifteen acres
11 in size, and public land in a conservation district subject to
12 the prior approval of the board of land and natural resources.
13 The corporation shall not develop state monuments, historical
14 sites, or parks. When the corporation proposes to develop
15 public land, it shall file with the department of land and
16 natural resources a petition setting forth the purpose for the
17 development. The petition shall be conclusive proof that the
18 intended use is a public use superior to that which the land has
19 been appropriated.

20 (c) The corporation may develop or assist in the
21 development of federal lands with the approval of appropriate
22 federal authorities.



1 (d) The corporation shall not develop any public land
2 where the development may endanger the receipt of any federal
3 grant, impair the eligibility of any government agency for a
4 federal grant, prevent the participation of the federal
5 government in any government program, or impair any covenant
6 between the government and the holder of any bond issued by the
7 government.

8 (e) The corporation may contract or sponsor with any
9 county, housing authority, or person, subject to the
10 availability of funds, an experimental or demonstration housing
11 project designed to meet the needs of elders; the disabled;
12 displaced or homeless persons; low- and moderate-income persons;
13 teachers or other government employees; or university and
14 college students and faculty.

15 **§171C-J Eminent domain, exchange or use of public**
16 **property.** (a) The corporation may acquire any real property,
17 including fixtures and improvements, or interest therein:
18 through voluntary negotiation; through exchange of land in
19 accordance with section 171-50, provided that the public land to
20 be exchanged need not be of like use to that of the private
21 land; or by the exercise of the power of eminent domain which it
22 deems necessary by the adoption of a resolution declaring that



1 the acquisition of the property described therein is in the
2 public interest and required for public use. The corporation
3 shall exercise the power of eminent domain granted by this
4 section in the same manner and procedure as is provided by
5 chapter 101 and otherwise in accordance with all applicable
6 provisions of the general laws of the State; provided that
7 condemnation of parcels greater than fifteen acres shall be
8 subject to legislative disapproval expressed in a concurrent
9 resolution adopted by majority vote of the senate and the house
10 of representatives in the first regular or special session
11 following the date of condemnation.

12 (b) The corporation may acquire by the exercise of the
13 power of eminent domain property already devoted to a public
14 use; provided that no property belonging to any government may
15 be acquired without its consent, and that no property belonging
16 to a public utility corporation may be acquired without the
17 approval of the public utilities commission, and subject to
18 legislative disapproval expressed in a concurrent resolution
19 adopted by majority vote of the senate and the house of
20 representatives in the first regular or special session
21 following the date of condemnation.



§171C-K Contracts with the federal government. (a) The corporation may:

- (1) Borrow money or accept grants from the federal government for or in aid of any housing project that the corporation is authorized to undertake;
- (2) Take over any land acquired by the federal government for the construction or operation of a housing project with the approval of the federal government or at the request of the federal government;
- (3) Procure insurance or guarantees from the federal government for the payment of any debts or parts thereof secured by mortgages made or held by the corporation on any property included in any housing project;
- (4) Comply with any conditions required by the federal government in any contract for financial assistance; and
- (5) Execute contracts with the federal government.

(b) It is the purpose and intent of this part to authorize the corporation to do any and all things necessary to secure the financial aid and the cooperation of the federal government in



1 the undertaking, construction, maintenance, and operation of any
2 housing project that the corporation is empowered to undertake.

3 **§171C-L Administration of low-income housing credit**

4 **allowed under section 235-110.8.** (a) The corporation is
5 designated as a state housing credit agency to carry out section
6 42(h) (with respect to limitation on aggregate credit allowable
7 with respect to a project located in a state) of the Internal
8 Revenue Code of 1986, as amended. As a state housing credit
9 agency, the corporation shall determine the eligibility basis
10 for a qualified low-income building, make the allocation of
11 housing credit dollar amounts within the State, and determine
12 the portion of the State's housing credit ceiling set aside for
13 projects involving qualified nonprofit organizations. The
14 corporation shall file any certifications and annual reports
15 required by section 42 (with respect to low-income housing
16 credit) of the Internal Revenue Code of 1986, as amended.

17 (b) The state aggregate housing credit dollar amount shall
18 be allocated annually as required by section 42 of the Internal
19 Revenue Code of 1986, as amended, by the corporation in an
20 amount equal to \$1.25 multiplied by the state population in the
21 calendar year or such greater or lesser amount as provided by
22 section 42(h) of the Internal Revenue Code of 1986, as amended.



1 (c) The corporation shall adopt rules under chapter 91
2 necessary to comply with federal and state requirements for
3 determining the amount of the tax credit allowed under section
4 42 of the Internal Revenue Code of 1986, as amended, and section
5 235-110.8. The corporation may establish and collect reasonable
6 fees for administrative expenses incurred in providing the
7 services required by this section, including fees for processing
8 developer applications for the credit. All fees collected for
9 administering these provisions, including developer application
10 fees, shall be used to cover the administrative expenses of the
11 corporation.

12 (d) All claims for allocation of the low-income housing
13 credit under section 235-110.8 shall be filed with the
14 corporation. The corporation shall determine the amount of the
15 credit allocation, if necessary, and return the claim to the
16 taxpayer. The taxpayer shall file the credit allocation with
17 the taxpayer's tax return with the department of taxation.

18 **§171C-M Administration of federal programs.** (a) The
19 corporation may carry out federal programs designated to be
20 carried out by a housing finance or housing development entity.

21 (b) The corporation shall adopt necessary rules in
22 accordance with chapter 91, including the establishment and



1 collection of reasonable fees for administering the program, to
2 carry out any federal program in subsection (a).

3 (c) All fees collected for administering the program may
4 be deposited into an appropriate special fund of the corporation
5 and may be used to cover the administrative expenses of the
6 corporation.

7 **§171C-N Federal funds outside of state treasury.**

8 Notwithstanding chapter 38, the corporation may establish and
9 manage federal funds outside of the state treasury to be used
10 for federal housing programs. The corporation shall invest
11 those funds in permitted investments in accordance with chapter
12 36.

13 **§171C-O Public works contracts.** The corporation may make,
14 execute, and carry out contracts for, or in connection with, any
15 housing project in the manner provided under chapter 103D and
16 section 103-53; provided that with regard to the contracts, the
17 term "officers", as used in chapter 103D, shall mean the
18 corporation or officer authorized by the corporation to act as
19 its contracting officer. Unless made and executed in the name
20 of the State, each contract made and executed as authorized in
21 this section shall state therein that it is so made and
22 executed.



1 §171C-P Remedies of an obligee: mandamus; injunction;
2 possessory action; receiver; accounting; etc. An obligee of the
3 corporation shall have the right, in addition to all other
4 rights that may be conferred on the obligee subject only to any
5 contractual restrictions binding upon the obligee, and subject
6 to the prior and superior rights of others:

7 (1) By mandamus, suit, action, or proceeding in law or
8 equity to compel the corporation, and the members,
9 officers, agents, or employees thereof to perform each
10 and every item, provision, and covenant contained in
11 any contract of the corporation, and to require the
12 carrying out of any or all covenants and agreements of
13 the corporation and the fulfillment of all duties
14 imposed upon the corporation by this part;

15 (2) By suit, action, or proceeding in equity to enjoin any
16 acts or things that may be unlawful, or the violation
17 of any of the rights of the obligee of the
18 corporation;

19 (3) By suit, action, or proceeding in any court of
20 competent jurisdiction to cause possession of any
21 housing project or any part thereof to be surrendered



1 to any obligee having the right to possession pursuant
2 to any contract of the corporation;

3 (4) By suit, action, or proceeding in any court of
4 competent jurisdiction, upon the happening of an event
5 of default (as defined in a contract of the
6 corporation), to obtain the appointment of a receiver
7 of any housing project of the corporation or any part
8 or parts thereof, and if the receiver is appointed,
9 the receiver may enter and take possession of the
10 housing project or any part or parts thereof and
11 operate and maintain same, and collect and receive all
12 fees, rents, revenues, or other charges thereafter
13 arising therefrom in the same manner as the
14 corporation itself might do and shall keep the moneys
15 in a separate account or accounts and apply the same
16 in accordance with the obligations of the corporation
17 as the court shall direct; and

18 (5) By suit, action, or proceeding in any court of
19 competent jurisdiction to require the corporation and
20 the members thereof to account as if it and they were
21 the trustees of an express trust.



1 **§171C-Q Subordination of mortgage to agreement with**
2 **government.** The corporation may agree in any mortgage made by
3 it that the mortgage shall be subordinate to a contract for the
4 supervision by a governmental agency of the operation and
5 maintenance of the mortgaged property and the construction of
6 improvements thereon. In that event, any purchaser or
7 purchasers at a sale of the property of the corporation pursuant
8 to a foreclosure of the mortgage or any other remedy in
9 connection therewith shall obtain title subject to the contract.

10 **§171C-R Duty to make reports.** Except as otherwise
11 provided by law, the corporation shall:

12 (1) Report to the state comptroller on moneys deposited in
13 depositories other than the state treasury under
14 section 40-81 and rules adopted thereunder; and

15 (2) As part of its report required under section 171C-20,
16 submit a report on all corporation program areas and
17 funds organized by program area, and by fund within
18 each program area, which shall provide the following
19 information on the status of its programs and
20 finances:

21 (A) A description of programs being developed in the
22 current fiscal biennium, including a summary



1 listing of the programs, the status of each
2 program, the methods of project financing or
3 loans, and other information deemed significant;

4 (B) A description of programs planned for development
5 during the two ensuing fiscal bienniums,
6 including a summary listing of the proposed
7 programs, the methods of project financing or
8 loans, and other information deemed significant;

9 (C) A status report of actual expenditures made in
10 the prior completed fiscal year from each fund
11 established under this part, estimated
12 expenditures anticipated for the current fiscal
13 year, and projected expenditures for the ensuing
14 fiscal years to be described in relation to
15 specific projects developed to implement the
16 purposes of any program or fund established under
17 this part;

18 (D) A financial audit and report conducted on an
19 annual basis by a certified public accounting
20 firm; and



(E) Recommendations with reference to any additional legislation or other action that may be necessary to carry out the purposes of this part.

§171C-S Quitclaim deeds. Unless otherwise provided by law, the corporation shall issue quitclaim deeds and leases whenever it conveys, transfers, sells, or assigns any property developed, constructed, or sponsored under this part.

§171C-T For-sale developments. Any law to the contrary notwithstanding, new multifamily for-sale housing condominium developments of seventy-five units or more per acre on privately owned lands and privately financed without federal, state, or county financing assistance or subsidies, including tax credits, shall:

- (1) Be exempt from the corporation's shared appreciation equity program;
- (2) Be subject to three-year occupancy requirements and transfer restrictions; provided that the three-year occupancy requirement shall begin upon the sale of each unit; and
- (3) Not be subject to the ten-year occupancy requirements and transfer restrictions in sections 171C-AL and 171C-AN, respectively;



1 provided that, in order for paragraphs (1), (2), and (3) to
2 apply, the primary purpose of constructing the new multifamily
3 for-sale housing condominium development of seventy-five units
4 or more per acre shall be to augment the existing affordable
5 housing unit inventory in the State and not for the purpose of
6 satisfying any affordable housing or reserved housing
7 requirement under this chapter, section 171C-4(a)(17), or any
8 other law or ordinance.

9 As used in this section:

10 "Affordable housing" means the same as defined under
11 section 171C-AS.

12 "Reserved housing" means the same as defined under section
13 171C-AAAAAP.

14 B. Housing Development Programs

15 **§171C-U Criteria.** In administering this part and other
16 laws of the State applicable to the supplying of housing or the
17 assistance in obtaining housing, the corporation shall give
18 preference to those applicants most in need of assistance in
19 obtaining housing, in light of the amount of moneys available
20 for the various programs. In doing so, the corporation shall
21 take into consideration the applicant's household income and
22 number of dependents; the age of the applicant; the physical



1 disabilities of the applicant or those living with the
2 applicant; whether or not the present housing of the applicant
3 is below standard; whether or not the applicant's need for
4 housing has arisen by reason of displacement of the applicant by
5 governmental actions; and other factors as it may deem
6 pertinent.

7 **§171C-V Definitions.** The following terms, wherever used
8 or referred to in this subpart, shall have the following
9 respective meanings unless a different meaning clearly appears
10 from the context:

11 "Develop" or "development" means the planning, financing
12 and acquisition of real and personal property; demolition of
13 existing structures and clearance of real property;
14 construction, reconstruction, alteration, or repairing of
15 approaches, streets, sidewalks, utilities, and services, or
16 other site improvements; construction, reconstruction, repair,
17 remodeling, extension, equipment, or furnishing of buildings or
18 other structures; or any combination of the foregoing, of any
19 housing project. It also includes any and all undertakings
20 necessary therefor, and the acquisition of any housing, in whole
21 or in part.



"Eligible bidder" means a person, partnership, firm, or corporate entity determined by the corporation:

(1) To be qualified by experience and financial responsibility to construct housing of the type proposed to be contracted; and

(2) To have submitted the lowest acceptable bid.

"Eligible developer" means any person, partnership, cooperative including a limited-equity housing cooperative as defined in chapter 421H, firm, nonprofit or for-profit entity, or public agency determined by the corporation:

(1) To be qualified by experience, financial responsibility, and support to construct housing of the type described and of the magnitude encompassed by the given project;

(2) To have submitted plans for a housing project adequately meeting the objectives of this part, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and

(3) To meet all other requirements the corporation deems to be just and reasonable, and all requirements stipulated in this part.



1 "Purchaser's equity" means the difference between the
2 original cost of the dwelling unit to the purchaser, and the
3 principal amount of any mortgages, liens, or notes outstanding.

4 "Qualified resident" means a person who:

5 (1) Is a citizen of the United States or a resident alien;

6 (2) Is at least eighteen years of age;

7 (3) Is domiciled in the State and physically resides in
8 the dwelling unit purchased or rented under this part;

9 (4) In the case of the purchase of real property in fee
10 simple or leasehold, has a gross income sufficient to
11 qualify for the loan to finance the purchase; or in
12 the case of a rental, demonstrates an ability to pay
13 rent as determined by the corporation and meets any
14 additional criteria established by the corporation for
15 the respective rental housing development for which
16 the applicant is applying; and

17 (5) Meets the following qualifications:

18 (A) Is a person who either by the person's self, or
19 together with spouse or household member, does
20 not own a majority interest in fee simple or
21 leasehold lands suitable for dwelling purposes or
22 a majority interest in lands under any trust



1 agreement or other fiduciary arrangement in which
2 another person holds the legal title to the land;
3 and

4 (B) Is a person whose spouse or household member does
5 not own a majority interest in fee simple or
6 leasehold lands suitable for dwelling purposes or
7 more than a majority interest in lands under any
8 trust agreement or other fiduciary arrangement in
9 which another person holds the legal title to the
10 land, except when husband and wife are living
11 apart under a decree of separation from bed and
12 board issued by the family court pursuant to
13 section 580-71;

14 provided that for purchasers of market-priced units in an
15 economically integrated housing project, the term "qualified
16 resident" means a person who is a citizen of the United States
17 or a resident alien; is domiciled in the State and shall
18 physically reside in the dwelling unit purchased; is at least
19 eighteen years of age; and meets other qualifications as
20 determined by the developer.

21 "Short-term project notes" means evidences of indebtedness
22 issued by the State for specified housing projects and secured



1 by the projects, the terms of which call for complete repayment
2 by the State of the face amount in not less than two nor more
3 than ten years.

4 **§171C-W Powers and duties, generally.** (a) The
5 corporation may develop fee simple or leasehold property,
6 construct dwelling units thereon, including condominiums,
7 planned units, and cluster developments, and sell, lease, or
8 rent or cause to be leased or rented, at the lowest possible
9 price to qualified residents, nonprofit organizations, or
10 government agencies, with an eligible developer or in its own
11 behalf:

12 (1) Fully completed dwelling units with the appropriate
13 interest in the land on which the dwelling unit is
14 located;

15 (2) Dwelling units that are substantially complete and
16 habitable with the appropriate interest in the land on
17 which the dwelling unit is located; or

18 (3) The land with site improvements (other than the
19 dwelling unit) either partially or fully developed.

20 (b) The corporation shall require all applicants for the
21 purchase of dwelling units to make application therefor under
22 oath, and may require additional testimony or evidence under



1 oath in connection with any application. The determination of
2 any applicant's eligibility under this part by the corporation
3 shall be conclusive as to all persons thereafter dealing with
4 the property; provided that the making of any false statement
5 knowingly by the applicant or other person to the corporation in
6 connection with any application shall constitute perjury and be
7 punishable as such. The corporation shall establish a system to
8 determine preferences by lot in the event that it receives more
9 qualified applications than it has dwelling units available.

10 (c) The corporation shall adopt, pursuant to chapter 91,
11 rules on health, safety, building, planning, zoning, and land
12 use that relate to the development, subdivision, and
13 construction of dwelling units in housing projects in which the
14 State, through the corporation, shall participate. The rules
15 shall not contravene any safety standards or tariffs approved by
16 the public utilities commission, and shall follow existing law
17 as closely as is consistent with the production of lower cost
18 housing with standards that meet minimum requirements of good
19 design, pleasant amenities, health, safety, and coordinated
20 development.

21 When adopted, the rules shall have the force and effect of
22 law and shall supersede, for all housing projects in which the



1 State, through the corporation, shall participate, all other
2 inconsistent laws, ordinances, and rules relating to the use,
3 zoning, planning, and development of land, and the construction
4 of dwelling units thereon. The rules, before becoming
5 effective, shall be presented to the legislative body of each
6 county in which they will be effective and the legislative body
7 of any county may within forty-five days approve or disapprove,
8 for that county, any or all of the rules by a majority vote of
9 its members. On the forty-sixth day after submission, any rules
10 not disapproved shall be deemed to have been approved by the
11 county.

12 (d) The corporation may acquire, by eminent domain,
13 exchange, or negotiation, land or property required within the
14 foreseeable future for the purposes of this part. Whenever land
15 with a completed or substantially complete and habitable
16 dwelling or dwellings thereon is acquired by exchange or
17 negotiation, the exchange value or purchase price for each
18 dwelling, including land, shall not exceed its appraised value.
19 Land or property acquired in anticipation of future use may be
20 leased for the interim period by the corporation for the term
21 and rent as it deems appropriate.



1 (e) Upon authorization by the legislature, the corporation
2 shall cause the State to issue general obligation bonds to
3 finance:

4 (1) Land acquisition;

5 (2) The development and improvement of land;

6 (3) The construction of dwelling units;

7 (4) The purchase, lease, or rental of land and dwelling
8 units by qualified residents, nonprofit organizations,
9 or government agencies under this part;

10 (5) Payment for any services contracted for under this
11 part, including profit or recompense paid to partners,
12 and including community information and advocacy
13 services deemed necessary by the corporation to
14 provide for citizen participation in the development
15 of housing projects, the implementation of this part,
16 and the staffing of any citizen advisory committee the
17 corporation may establish;

18 (6) The cost of the repurchase of units under section
19 171C-AL;

20 (7) Loans for the rehabilitation and renovation of
21 existing housing; and



(8) Any other moneys required to accomplish the purposes of this part.

(f) The corporation shall do all other things necessary and convenient to carry out the purposes of this part.

§171C-X Additional powers; development. Notwithstanding section 103-7, but with the approval of the governor, the corporation may enter into and carry out agreements and undertake projects or participate in projects authorized by this part.

§171C-Y Authority to modify and amend development agreements with eligible developers. The corporation is authorized to amend, delete, restate, and otherwise modify the terms, conditions, plans, specifications, and all other matters relating, directly or indirectly, to any housing project that was previously approved by the corporation, including the terms, covenants, and conditions of any development agreement for a housing project between the corporation and an eligible developer.

§171C-Z Bond financing. The director of finance may issue general obligation bonds and short-term project notes of the State in an aggregate amount not to exceed \$105,000,000 for the dwelling unit revolving fund established by section 171C-AAAE.



Pending the receipt of funds from the issuance and sale of the bonds and notes, the amount required for the purposes of this part shall be advanced from the general fund of the State. Upon the receipt of the bond or note funds, the general fund shall be reimbursed. The director of finance may sequester and separate the proceeds from the sale of the bonds and notes into separate funds and the amounts in either fund may be used for any of the purposes set forth in this part.

§171C-AA Exemption from general excise taxes. (a) In accordance with section 237-29, the corporation may approve and certify for exemption from general excise taxes any qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project:

(1) Developed under this subpart;

(2) Developed under a government assistance program approved by the corporation, including but not limited to the United States Department of Agriculture 502 program and Federal Housing Administration 235 program;

(3) Developed under the sponsorship of a private nonprofit organization providing home rehabilitation or new



1 homes for qualified families in need of decent, low-
2 cost housing; or

3 (4) Developed by a qualified person or firm to provide
4 affordable rental housing where at least fifty per
5 cent of the available units are for households with
6 incomes at or below eighty per cent of the area median
7 family income as determined by the United States
8 Department of Housing and Urban Development, of which
9 at least twenty per cent of the available units are
10 for households with incomes at or below sixty per cent
11 of the area median family income as determined by the
12 United States Department of Housing and Urban
13 Development.

14 (b) All claims for exemption under this section shall be
15 filed with and certified by the corporation and forwarded to the
16 department of taxation. Any claim for exemption that is filed
17 and approved, shall not be considered a subsidy for the purpose
18 of this subpart.

19 (c) For the purposes of this section:

20 "Moderate rehabilitation" means rehabilitation to upgrade a
21 dwelling unit to a decent, safe, and sanitary condition, or to



1 repair or replace major building systems or components in danger
2 of failure.

3 "Substantial rehabilitation":

4 (1) Means the improvement of a property to a decent, safe,
5 and sanitary condition that requires more than routine
6 or minor repairs or improvements. It may include but
7 is not limited to the gutting and extensive
8 reconstruction of a dwelling unit, or cosmetic
9 improvements coupled with the curing of a substantial
10 accumulation of deferred maintenance; and

11 (2) Includes renovation, alteration, or remodeling to
12 convert or adapt structurally sound property to the
13 design and condition required for a specific use, such
14 as conversion of a hotel to housing for elders.

15 (d) The corporation may establish, revise, charge, and
16 collect a reasonable service fee, as necessary, in connection
17 with its approvals and certifications under this section. The
18 fees shall be deposited into the dwelling unit revolving fund.

19 **§171C-AB Exemption from tax on income and obligations.**

20 Income earned and obligations issued by a nonprofit entity
21 determined to constitute a "public housing agency" pursuant to
22 section 3(6) of the United States Housing Act of 1937, as



1 amended, and which income and obligations are declared by the
2 United States Department of Housing and Urban Development to be
3 exempt from all taxation imposed by the United States pursuant
4 to section 11(b) of the Act, shall be exempt from all taxation
5 now or hereafter imposed by the State.

6 **§171C-AC Housing development; exemption from statutes,**
7 **ordinances, charter provisions, and rules.** (a) The corporation
8 may develop on behalf of the State or with an eligible
9 developer, or may assist under a government assistance program
10 in the development of, housing projects that shall be exempt
11 from all statutes, ordinances, charter provisions, and rules of
12 any government agency relating to planning, zoning, construction
13 standards for subdivisions, development and improvement of land,
14 and the construction of dwelling units thereon; provided that:

15 (1) The corporation finds the housing project is
16 consistent with the purpose and intent of this part,
17 and meets minimum requirements of health and safety;

18 (2) The development of the proposed housing project does
19 not contravene any safety standards, tariffs, or rates
20 and fees approved by the public utilities commission
21 for public utilities or of the various boards of water
22 supply authorized under chapter 54;



1 (3) The legislative body of the county in which the
2 housing project is to be situated shall have approved
3 the project with or without modifications:

4 (A) The legislative body shall approve, approve with
5 modification, or disapprove the project by
6 resolution within forty-five days after the
7 corporation has submitted the preliminary plans
8 and specifications for the project to the
9 legislative body. If on the forty-sixth day a
10 project is not disapproved, it shall be deemed
11 approved by the legislative body;

12 (B) No action shall be prosecuted or maintained
13 against any county, its officials, or employees
14 on account of actions taken by them in reviewing,
15 approving, modifying, or disapproving the plans
16 and specifications; and

17 (C) The final plans and specifications for the
18 project shall be deemed approved by the
19 legislative body if the final plans and
20 specifications do not substantially deviate from
21 the preliminary plans and specifications. The
22 final plans and specifications for the project



1 shall constitute the zoning, building,
2 construction, and subdivision standards for that
3 project. For purposes of sections 501-85 and
4 502-17, the executive director of the corporation
5 or the responsible county official may certify
6 maps and plans of lands connected with the
7 project as having complied with applicable laws
8 and ordinances relating to consolidation and
9 subdivision of lands, and the maps and plans
10 shall be accepted for registration or recordation
11 by the land court and registrar; and

12 (4) The land use commission shall approve, approve with
13 modification, or disapprove a boundary change within
14 forty-five days after the corporation has submitted a
15 petition to the commission as provided in section 205-
16 4. If, on the forty-sixth day, the petition is not
17 disapproved, it shall be deemed approved by the
18 commission.

19 (b) For the purposes of this section, "government
20 assistance program" means a housing program qualified by the
21 corporation and administered or operated by the corporation or



1 the United States or any of their political subdivisions,
2 agencies, or instrumentalities, corporate or otherwise.

3 **§171C-AD Starter homes; design standards; applicant**
4 **eligibility; authority to incorporate starter homes into housing**
5 **projects of the corporation.** (a) The corporation shall adopt
6 rules in accordance with chapter 91 to establish design and
7 construction standards for starter homes configured to expand
8 incrementally over time. For the purposes of this section,
9 "starter home" means a dwelling unit that is designed to meet
10 the basic living capacity requirements of homebuyers with
11 families of limited size by eliminating unnecessary design and
12 space amenities, but which nonetheless enables future expansion,
13 modification, and improvement by the owner to accommodate
14 increased occupancy over time as may be necessary. The rules
15 shall include building, setback, minimum lot size,
16 infrastructure, and architectural standards for the construction
17 and development of starter homes.

18 (b) In addition to the requirements of subsection (a), the
19 corporation shall adopt rules in accordance with chapter 91 to
20 establish the basic requirements for families eligible to
21 purchase starter homes under this section. The rules shall
22 include guidelines and restrictions on occupancy standards



1 initially permitted in a starter home, as well as the income
2 ranges of families eligible to qualify for purchases under this
3 section.

4 (c) The corporation may incorporate starter homes into any
5 affordable housing project developed by the corporation under
6 this part. The corporation shall determine on a project-by-
7 project basis the number of starter home units to be included in
8 each particular project.

9 (d) The corporation shall include in its annual report to
10 the legislature a report on the number of starter homes
11 constructed and developed by the corporation in accordance with
12 the authorization provided in this section.

13 **§171C-AE Housing projects; construction and sponsorship.**

14 (a) The corporation, on behalf of the State or with eligible
15 developers and contractors, shall develop real property and
16 construct dwelling units thereon; provided that not less than
17 ten per cent of the total number of units in single-family
18 projects consisting of fifty units or more sponsored by the
19 corporation shall be first offered to owner-builders or to
20 nonprofit organizations assisting owner-builders in the
21 construction of units thereon. Qualifications for developers
22 and contractors shall be provided by rules adopted by the



1 corporation in accordance with chapter 91. Any person, if
2 qualified, may act as both the developer and the contractor.

3 (b) In selecting the eligible developers or in contracting
4 any services or materials for the purposes of this part, the
5 corporation shall not be subject to the competitive bidding
6 laws.

7 (c) If working in partnership with an eligible developer,
8 the corporation shall have sole control of the partnership,
9 shall keep all books of the partnership, and shall ascertain all
10 costs of the partnership, including the cost of services
11 performed by any other partners, and the corporation shall audit
12 the same. The other partners shall perform services for the
13 partnership under the direction of the corporation and shall be
14 reimbursed for all costs relating to the project as certified by
15 the corporation, including administrative and overhead costs.
16 Additionally, the other partners, upon transfer of title by the
17 corporation to the purchaser, shall be entitled to a guaranteed
18 gross share if the actual cost of the project does not exceed
19 the original project cost. The gross share shall not exceed
20 fifteen per cent of the original project cost prorated to the
21 dwelling units, less any amount subsidized by the State.

22 Subsidies shall include unrecovered development and land costs



1 and any other subsidized items as defined in rules adopted by
2 the corporation pursuant to chapter 91. The percentage of the
3 share shall be determined by the corporation by contract with
4 the partners based upon the nature of the services rendered by
5 them. For purposes of this subsection, "original project cost"
6 means the original budget of a project as approved by the
7 corporation without modification at a later date.

8 (d) The corporation may require that performance bonds be
9 posted to the benefit of the State with surety satisfactory to
10 the corporation guaranteeing performance by the other partners,
11 or the State may act as a self-insurer requiring security, if
12 any, from the other partners, as the corporation shall deem
13 necessary.

14 **§171C-AF Independent development of projects.** (a) In any
15 county, the corporation may develop or may enter into agreements
16 to develop housing projects with an eligible developer if in the
17 corporation's reasonable judgment a project is primarily
18 designed for lower income housing. The agreement may provide
19 for the housing to be placed under the control of the
20 corporation, or to be sold by the corporation, or to be sold to
21 the corporation as soon as the units are completed and shall
22 contain terms, conditions, and covenants as the corporation, by



1 rules, deems appropriate. Every agreement shall provide for the
2 developer to furnish a performance bond in favor of the
3 corporation, assuring the timely and complete performance of the
4 housing project. Sureties on the bond shall be satisfactory to
5 the corporation.

6 (b) The plans and specifications for the housing project
7 shall:

8 (1) Provide for economically integrated housing by
9 stipulation and design;

10 (2) Provide for the sale of all dwelling units in fee
11 simple or in leasehold either to the corporation or to
12 the purchaser and in all cases subject to all of the
13 provisions of sections 171C-AL, 171C-AN, and 171C-AO
14 excepting units sold at market price; and

15 (3) Encompass the use of lands adequately suited to the
16 size, design, and types of occupancies designated in
17 subsection (a), properly located for occupancy by the
18 group for which the project was primarily designed,
19 properly districted for the use intended prior to the
20 agreement, and appropriately zoned within an urban
21 land use district or appropriate in its situation and
22 surroundings for more intensive or denser zoning.



1 (c) The corporation may accept and approve housing
2 projects independently initiated by private developers that
3 fully comply with subsections (a) and (b). The corporation may
4 review the plans, specifications, districting, and zoning of the
5 project for the purpose of exempting the project from all
6 statutes, ordinances, charter provisions, and rules of any
7 government agency relating to zoning and construction standards
8 for subdivisions, development, and improvement of land and the
9 construction, improvement, and sale of dwelling units thereon;
10 provided that the procedures in section 171C-AC(a)(1), (2), and
11 (3) have been satisfied.

12 **§171C-AG Private development of projects.** (a) The
13 corporation may enter into contracts with any eligible bidder to
14 provide for the construction of a housing project or projects.
15 Each contract shall provide that the housing project or projects
16 shall be placed under the control of the corporation as soon as
17 the unit is available for occupancy. Each contract also shall
18 provide that the capital stock of the mortgagor (where the
19 mortgagor is a corporate entity) be transferred to the
20 corporation when the housing project or projects have been
21 completed. Each contract shall contain terms and conditions
22 that the corporation may determine to be necessary to protect



1 the interests of the State. Each contract shall provide for the
2 furnishing by the contractor of a performance bond and a payment
3 bond with sureties satisfactory to the corporation, and the
4 furnishings of the bonds shall be deemed a sufficient compliance
5 with the provisions of law and no additional bonds shall be
6 required. Before the corporation shall enter into any contract
7 as authorized by this section for the construction of a housing
8 project or projects, it shall invite the submission of
9 competitive bids after giving public notice in the manner
10 prescribed by law.

11 (b) Notwithstanding any other law to the contrary, the
12 corporation may:

13 (1) Acquire the capital stock of mortgagors holding
14 property covered by a mortgage guarantee under this
15 part and established by this section; to exercise the
16 rights as holder of the capital stock during the life
17 of the mortgage and, upon the termination of the
18 mortgage, to dissolve the mortgagor;

19 (2) Guarantee the payment of notes or other legal
20 instruments of the mortgagors; and

21 (3) Make payments thereon.



1 All housing projects placed under the control of the corporation
2 pursuant to this section shall be deemed to be housing projects
3 under the jurisdiction of the State.

4 (c) On request by the corporation, the attorney general
5 shall furnish to the corporation an opinion as to the
6 sufficiency of title to any property on which a housing project
7 is proposed for construction, or on which housing projects have
8 been constructed, under this section. If the opinion of the
9 attorney general is that the title to the property is good and
10 sufficient, the corporation is authorized to guarantee, or enter
11 into a commitment to guarantee, the mortgagee against any losses
12 that may thereafter arise from adverse claims to the title.

13 None of the proceeds of any mortgage loan hereafter insured
14 shall be used for title search and title insurance costs;
15 provided that, if the corporation determines in the case of any
16 housing project that the financing of the construction of the
17 project is impossible unless title insurance is provided, the
18 corporation may provide for the payment of the reasonable costs
19 necessary for obtaining title search and title insurance. Any
20 determination by the corporation under this subsection shall be
21 set forth in writing, together with the reasons therefor.



(d) The State shall be authorized to guarantee the repayment of one hundred per cent of the principal and interest of loans from commercial lenders for the purposes of this section pursuant to rules adopted by the corporation which shall conform as closely as is possible to the practices of the Federal Housing Administration in insuring loans under sections 203 and 207 of the United States Housing Act of 1937, as amended; provided that at no time shall the State's liability, contingent or otherwise, on the guarantees exceed \$10,000,000.

§171C-AH Interim financing of projects. (a) The corporation may provide interim construction loans to eligible developers. In addition to the rate of interest charged on interim loans, the corporation may charge loan commitment fees to be determined by rules adopted by the corporation.

(b) The interim loans shall be secured by a duly recorded primary or secondary mortgage upon the fee simple or leasehold interest in the land upon which the dwelling units are constructed, or the corporation may require other security interests and instruments as it deems necessary to secure the indebtedness and any other conditions consistent with the production and marketing of dwelling units at the lowest possible prices. The corporation may also set the conditions of



1 a loan in a building and loan agreement between the eligible
2 developer and the corporation to secure the loan and the
3 performance of the developer to complete the project.

4 **§171C-AI Commercial, industrial, and other uses.** (a) In
5 connection with the development of any dwelling units under this
6 part, the corporation may also develop commercial, industrial,
7 and other properties if it determines that the uses can be an
8 integral part of the development and can help to preserve the
9 lifestyles of the purchasers of dwelling units in the
10 development. The corporation may designate any portions of the
11 development for commercial, industrial, or other use and shall
12 have all the powers granted under this part with respect
13 thereto, including the power to bypass statutes, ordinances,
14 charter provisions, and rules of any government agency pursuant
15 to section 171C-AC. For this purpose, the corporation may use
16 any of the funds authorized under this part.

17 (b) The corporation shall adopt rules that shall provide
18 the manner in which the uses of properties shall be designated,
19 and shall provide that any commercial, industrial, or other
20 properties so developed shall be sold or leased at cost or at
21 economic rents or sales prices. Sale or lease shall be made at
22 cost to owners of commercial, industrial, or other facilities



1 displaced by the corporation. All other leases or sales shall
2 be at economic rents or sales prices determined by the
3 corporation, after appraisal, to be consistent with rents or
4 sales prices in similar locations or with similar terms. The
5 net proceeds of all such sales or leases, less costs to the
6 corporation, shall be deposited in the dwelling unit revolving
7 fund.

8 The rules may also provide that during the first twenty
9 years after its purchase, any commercial, industrial, or other
10 property so developed and sold may be resold or assigned only to
11 the corporation at the original purchase price plus the cost of
12 any improvements made by the purchaser together with simple
13 interest on all of the purchaser's equity in the property at the
14 rate of seven per cent a year. Rules may also provide that
15 ownership of the commercial, industrial, or other property
16 cannot be separated from ownership of the residential property
17 in connection with which it was sold or leased.

18 **§171C-AJ Sale; mortgage, agreement of sale, and other**
19 **instruments.** (a) The corporation shall sell completed dwelling
20 units or dwelling units that are substantially completed and
21 habitable, developed and constructed hereunder, to qualified
22 residents in fee simple, or shall cause them to be leased or



1 rented to qualified residents at a price or rental based on
2 costs as determined by the corporation. The gross share to the
3 other partners or contract payments and any amounts subsidized
4 by the State, including but not limited to the land, need not be
5 counted as cost so as to increase the price. These costs may be
6 borne by the State, pursuant to rules adopted by the corporation
7 subject to reimbursement upon sale as provided in section 171C-
8 AL.

9 (b) If a qualified purchaser is unable to obtain
10 sufficient funds at reasonable rates from private lenders, the
11 corporation, by way of mortgage, agreement of sale, or other
12 instrument to secure the indebtedness, may loan to the purchaser
13 up to one hundred per cent of the purchase price. The purchaser
14 in that event shall execute with the corporation an agreement of
15 sale, mortgage, or other instrument under the terms of which the
16 unpaid principal and the interest thereon shall be paid in
17 monthly installments over a period of not more than forty years.

18 (c) Every mortgage, agreement of sale, other instrument to
19 secure the indebtedness, or instrument of indebtedness executed
20 by the corporation may contain other provisions as are usually
21 found in such instruments and shall provide that the purchaser
22 may repay the whole or any part of the unpaid balance of the



1 purchase price plus accrued interest at any time without
2 prepayment penalty.

3 (d) If the purchaser defaults on the payment of any loan,
4 the corporation shall take all necessary action to collect the
5 delinquent principal and interest on the loan and may take all
6 actions allowed to holders of obligations, including the power
7 to repossess, lease, rent, repair, renovate, modernize, and sell
8 the property foreclosed, subject to the restrictions described
9 in this section.

10 (e) The mortgages, agreements of sale, and other
11 instruments of indebtedness, at the direction of the
12 corporation, may be assigned to and serviced by commercial banks
13 and other lending institutions doing business in the State at a
14 fee of not more than one-half of one per cent of the amount
15 loaned to the purchaser.

16 (f) Subsections (a) to (e) need not apply to market-priced
17 dwelling units in an economically integrated housing project,
18 except as otherwise determined by the developer of the units;
19 provided that preference shall be given to qualified residents
20 in the initial sale of market-priced units.

21 **§171C-AK Co-mortgagor.** For purposes of qualifying for a
22 mortgage loan to finance the purchase of a dwelling unit under



1 this part, a "qualified resident" as defined in section 171C-V
2 may be assisted by a co-mortgagor who is a family member as
3 defined by the corporation, who may own other lands in fee
4 simple or leasehold suitable for dwelling purposes, whose
5 interest in the dwelling unit to be purchased is limited to no
6 more than one per cent, and who certifies that the co-mortgagor
7 does not intend to reside in the dwelling unit. The income and
8 assets of the co-mortgagor shall not be counted in determining
9 the eligibility of the "qualified resident" under this part.

10 **§171C-AL Real property; restrictions on transfer; waiver**
11 **of restrictions.** (a) The following restrictions shall apply to
12 the transfer of real property developed and sold under this
13 part, whether in fee simple or leasehold:

14 (1) For a period of ten years after the purchase, whether
15 by lease, assignment of lease, deed, or agreement of
16 sale, if the purchaser wishes to transfer title to the
17 real property, the corporation shall have the first
18 option to purchase the real property at a price that
19 shall not exceed the sum of:

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



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

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

7 (2) The corporation may purchase the real property either:

8 (A) By conveyance free and clear of all mortgages and
9 liens; or

10 (B) By conveyance subject to existing mortgages and
11 liens.

12 If the real property is conveyed in the manner
13 provided in subparagraph (A), it shall be conveyed to
14 the corporation only after all mortgages and liens are
15 released. If the real property is conveyed in the
16 manner provided in subparagraph (B), the corporation
17 shall acquire the property subject to any first
18 mortgage created for the purpose of securing the
19 payment of a loan of funds expended solely for the
20 purchase of the real property by the seller; and any
21 mortgage or lien created for any other purpose



1 provided that the corporation has previously consented
2 to it in writing.

3 The corporation's interest created by this
4 section shall constitute a statutory lien on the real
5 property and shall be superior to any other mortgage
6 or lien except for:

7 (i) Any first mortgage created for the purpose
8 of securing the payment of a loan of funds
9 expended solely for the purchase of the real
10 property by the seller;

11 (ii) Any mortgage insured or held by a federal
12 housing agency; and

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

16 The amount paid by the corporation to the seller shall
17 be the difference, if any, between the purchase price
18 determined by paragraph (1) (A) to (C), and the total
19 of the outstanding principal balances of the mortgages
20 and liens assumed by the corporation;

21 (3) A purchaser may refinance real property developed and
22 sold under this part; provided that the purchaser



1 shall not refinance the real property within ten years
2 from the date of purchase for an amount in excess of
3 the purchase price as determined by paragraph (1) (A)
4 to (C); provided further that the purchaser shall
5 obtain the corporation's written consent if any
6 restriction on the transfer of the real property
7 remains applicable;

8 (4) After the end of the tenth year from the date of
9 initial purchase or execution of an agreement of sale,
10 the purchaser may sell the real property and sell or
11 assign the property free from any price restrictions;
12 provided that the purchaser shall be required to pay
13 to the corporation the sum of:

14 (A) The balance of any mortgage note, agreement of
15 sale, or other amount owing to the corporation;

16 (B) Any subsidy or deferred sales price made by the
17 corporation in the acquisition, development,
18 construction, and sale of the real property, and
19 any other amount expended by the corporation not
20 counted as costs under section 171C-AJ but
21 charged to the real property by good accounting
22 practice as determined by the corporation whose



1 books shall be prima facie evidence of the
2 correctness of the costs;

3 (C) Interest on the subsidy or deferred sales price,
4 if applicable, and any other amount expended at
5 the rate of seven per cent a year computed as to
6 the subsidy or deferred sales price, if
7 applicable, from the date of purchase or
8 execution of the agreement of sale, and as to any
9 amount expended, from the date of expenditure;
10 provided that the computed interest shall not
11 extend beyond thirty years from the date of
12 purchase or execution of the agreement of sale of
13 the real property. If any proposed sale or
14 transfer will not generate an amount sufficient
15 to pay the corporation the sum as computed under
16 this paragraph, the corporation shall have the
17 first option to purchase the real property at a
18 price that shall not exceed the sum as computed
19 under paragraphs (1) and (2); and

20 (D) The corporation's share of appreciation in the
21 real property as determined under rules adopted
22 pursuant to chapter 91, when applicable;



1 (5) Notwithstanding any provision in this section to the
2 contrary, pursuant to rules adopted by the
3 corporation, the subsidy or deferred sales price
4 described in paragraph (4)(B) and any interest accrued
5 pursuant to paragraph (4)(C) may be paid, in part or
6 in full, at any time; and

7 (6) Notwithstanding any provision in this section to the
8 contrary, the corporation's share of appreciation in
9 the real property described in paragraph (4)(D):

10 (A) Shall apply when the sales price of the real
11 property that is developed and sold under this
12 part is less than the then-current, unencumbered,
13 fair market value of the real property as
14 determined by a real property appraisal obtained
15 prior to the closing of the sale;

16 (B) Shall be a restriction that runs with the land
17 until it is paid in full and released by the
18 corporation, or extinguished pursuant to
19 subsection (e); and

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



1 (b) 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 to the real property, and
4 if the corporation does not exercise the option to purchase the
5 real property as provided in subsection (a), then the
6 corporation shall require the purchaser to sell the real
7 property to a "qualified resident" as defined in section 171C-V,
8 and upon the terms that preserve the intent of this section and
9 sections 171C-AN and 171C-AO, and in accordance with rules
10 adopted by the corporation.

11 (c) The corporation may waive the restrictions prescribed
12 in subsection (a) or (b) if:

13 (1) The purchaser wishes to transfer title to the real
14 property by devise or through the laws of descent to a
15 family member who would otherwise qualify under rules
16 established by the corporation;

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



1 "qualified resident" as defined in section 171C-V; and
2 provided further that the purchaser shall pay to the
3 corporation its share of appreciation in the real
4 property as determined in rules adopted pursuant to
5 chapter 91, when applicable; or

6 (3) The sale or transfer is of real property subject to a
7 sustainable affordable lease as defined in section
8 516-1.

9 (d) The corporation may release the restrictions
10 prescribed in subsection (a) or (b) if the real property is
11 financed under a federally subsidized mortgage program and the
12 restrictions would jeopardize the federal government's ability
13 to recapture any interest credit subsidies provided to the
14 homeowner.

15 (e) The restrictions prescribed in this section and
16 sections 171C-AN to 171C-AP shall be automatically extinguished
17 and shall not attach in subsequent transfers of title when a
18 mortgage holder or other party becomes the owner of the real
19 property pursuant to a mortgage foreclosure, foreclosure under
20 power of sale, or a conveyance in lieu of foreclosure after a
21 foreclosure action is commenced; provided that the mortgage is
22 the initial purchase money mortgage, or that the corporation



1 consented to and agreed to subordinate the restrictions to the
2 mortgage when originated, if the mortgage is not the initial
3 purchase money mortgage; or when a mortgage is assigned to a
4 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 real property as determined under this part
20 in lien priority when the payment is applicable, and if
21 foreclosure occurs within the ten-year period after the
22 purchase, the corporation shall also be entitled to all proceeds



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

6 (f) The provisions of this section shall be incorporated
7 in any deed, lease, agreement of sale, or any other instrument
8 of conveyance issued by the corporation. In any sale by the
9 corporation of real property for which a subsidy or deferred
10 sales price was made by the corporation, the amount of the
11 subsidy or deferred sales price described in subsection
12 (a)(4)(B), a description of the cost items that constitute the
13 subsidy or deferred sales price, and the conditions of the
14 subsidy or deferred sales price shall be clearly stated at the
15 beginning of the contract document issued by the corporation.
16 In any sale in which the corporation's share of appreciation in
17 real property is a restriction, the terms of the shared
18 appreciation equity program shall be clearly stated and included
19 as an exhibit in any deed, lease, agreement of sale, or any
20 other instrument of conveyance.

21 (g) This section need not apply to market-priced units in
22 an economically integrated housing project, except as otherwise



1 determined by the developer of the units; provided that
2 preference shall be given to qualified residents in the initial
3 sale of market-priced units.

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

10 **§171C-AM Exception of current owners in corporation**
11 **projects.** The corporation may allow a person who is a current
12 owner of a dwelling unit in a multifamily housing project
13 sponsored by the corporation to apply for the purchase of a
14 larger dwelling unit in a project sponsored by the corporation
15 if the applicant's current family size exceeds the permissible
16 family size for the applicant's current dwelling unit, as
17 determined by prevailing county building or housing codes. The
18 applicant shall be required to sell the applicant's current
19 dwelling unit back to the corporation. Notwithstanding any law
20 to the contrary, any applicant, as it pertains to for-sale
21 housing, shall be a "qualified resident" who:

22 (1) Is a citizen of the United States or a resident alien;



- 1 (2) Is at least eighteen years of age;
- 2 (3) Is domiciled in the State and shall physically reside
- 3 in the dwelling unit purchased under this section;
- 4 (4) In the case of purchase of real property in fee simple
- 5 or leasehold, has a gross income sufficient to qualify
- 6 for the loan to finance the purchase; and
- 7 (5) Except for the applicant's current residence, meets
- 8 the following qualifications:
- 9 (A) Is a person who either oneself or together with
- 10 the person's spouse or a household member, does
- 11 not own a majority interest in fee simple or
- 12 leasehold lands suitable for dwelling purposes,
- 13 or a majority interest in lands under any trust
- 14 agreement or other fiduciary arrangement in which
- 15 another person holds the legal title to the land;
- 16 and
- 17 (B) Is a person whose spouse or a household member
- 18 does not own a majority interest in fee simple or
- 19 leasehold lands suitable for dwelling purposes,
- 20 or a majority interest in lands under any trust
- 21 agreement or other fiduciary arrangement in which
- 22 another person holds the legal title to the land,



1 except when husband and wife are living apart
2 under a decree of separation from bed and board
3 issued by the family court pursuant to section
4 580-71.

5 **§171C-AN Real property; restrictions on use.** (a) Real
6 property purchased under this part shall be occupied by the
7 purchaser at all times during the ten-year restriction period
8 set forth in section 171C-AL, except in hardship circumstances
9 where the inability to reside on the property arises out of
10 unforeseeable job or military transfer, a temporary educational
11 sabbatical, serious illness of the person, or in other hardship
12 circumstances as determined by the corporation on a case-by-case
13 basis.

14 The corporation may waive the owner-occupancy requirement
15 for a total of not more than ten years after the purchase of the
16 dwelling, during which time the dwelling unit may be rented or
17 leased. Waivers may be granted only to qualified residents who
18 have paid resident state income taxes during all years in which
19 they occupied the dwelling, who continue to pay resident state
20 income taxes during the waiver period, and whose inability to
21 reside on the property does not stem from a natural disaster.
22 The ten-year owner-occupancy requirement shall be extended by



1 one month for every month or fraction thereof that the owner-
2 occupancy requirement is waived.

3 The corporation shall adopt rules under chapter 91 to
4 implement the letter and spirit of this subsection and to
5 prescribe necessary terms and conditions. The rules shall
6 include:

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

13 No qualified resident who fails to reoccupy a dwelling unit
14 after any waiver period shall receive more than the maximum to
15 which the person would be entitled under section 171C-AL. Any
16 person who disagrees with the corporation's determination under
17 this section shall be entitled to a contested case proceeding
18 under chapter 91.

19 (b) From time to time the corporation may submit a
20 verification of owner-occupancy form to the purchaser. Failure
21 to respond to the verification in a timely manner or violation
22 of subsection (a) shall be sufficient reason for the



1 corporation, at its option, to purchase the unit as provided in
2 section 171C-AL(a)(1), (2), or (4), as applicable.

3 (c) Any deed, lease, agreement of sale, or other
4 instrument of conveyance issued by the corporation shall
5 expressly contain the restrictions on use prescribed in this
6 section.

7 (d) The restrictions prescribed in subsection (a) shall
8 terminate and shall not attach in subsequent transfers of title
9 if the corporation releases the restrictions when the real
10 property is financed under a federally subsidized mortgage
11 program.

12 (e) Subsections (a) to (c) need not apply to market-priced
13 units in an economically integrated housing project, except as
14 otherwise determined by the developer of the units; provided
15 that preference shall be given to qualified residents in the
16 initial sale of market-priced units.

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



1 §171C-AO Restrictions on use, sale, and transfer of real
2 **property; effect of amendment or repeal.** (a) Restrictions on
3 the use, sale, and transfer of real property shall be made as
4 uniform as possible in application to purchasers of all real
5 property, and restrictions shall be conformed with agreement of
6 the purchaser to reflect change or repeal made by any subsequent
7 legislative act, ordinance, rule, or regulation. Purchasers
8 shall be permitted at their election to sell or transfer real
9 property subject to restrictions in effect at the time of their
10 sale or transfer; provided that the corporation is paid its
11 share of appreciation in the real property as determined by
12 rules adopted pursuant to chapter 91, as applicable.

13 (b) The corporation, any department of the State, or any
14 county housing agency maintaining restrictions, through
15 contract, deed, other instrument, or by rule, shall notify
16 purchasers of any substantial change in restrictions made by
17 law, ordinance, rule, or regulation not more than one hundred
18 eighty days after a change in restrictions. The notice shall
19 clearly state the enacted or proposed new provisions, the date
20 or dates upon which they are to be effective, and offer to each
21 purchaser of real property constructed and sold prior to the
22 effective date an opportunity to modify the existing contract or



1 other instrument to incorporate the most recent provisions.
2 Public notice shall also be given at least three times in the
3 State for state agencies and at least three times in a county
4 for county agencies.

5 (c) For all purchasers of real property prior to June 25,
6 1990, where the restrictions on use and transfer of property
7 apply for a period of time, the period of time shall not be
8 increased beyond the date calculated from the date of original
9 purchase.

10 (d) No purchaser shall be entitled to modify the
11 restrictions on use, transfer, or sale of the real property,
12 without the written permission of the holder of a duly-recorded
13 first mortgage on the dwelling unit and the owner of the fee
14 simple or leasehold interest in the land underlying the unit,
15 unless the holder of the first mortgage or the owner is an
16 agency of the State or its political subdivisions.

17 (e) This section shall apply to all real property
18 developed, constructed, and sold pursuant to this part and
19 similar programs in the State or its political subdivisions and
20 which are sold on the condition that the purchaser accepts
21 restrictions on the use, sale, or transfer of interest in the
22 real property purchased.



1 (f) The provisions of this section shall be incorporated
2 in any deed, lease, instrument, rule, or regulation relating to
3 restrictions on use, sale, or transfer of dwelling units,
4 entered into after June 20, 1977.

5 (g) The restrictions of this section shall terminate as to
6 a particular real property and shall not attach in subsequent
7 transfers of title of that real property if the corporation
8 releases the restrictions when the real property is financed
9 under a federally subsidized mortgage program.

10 **§171C-AP Corporation's right to repurchase or rent real**
11 **property; authority to seek recovery.** (a) Notwithstanding any
12 provisions to the contrary, during the period in which the
13 restrictions in section 171C-AL are in effect, the following
14 provisions shall apply when dwelling units developed,
15 constructed, financed, purchased, or sold pursuant to Act 105,
16 Session Laws of Hawaii 1970, as amended, are found to have a
17 substantial construction defect, or when vacant lands developed,
18 financed, purchased, or sold pursuant to Act 105, Session Laws
19 of Hawaii 1970, as amended, are found to have a substantial soil
20 defect:

21 (1) The corporation shall have the right, but not the
22 obligation, to repurchase a dwelling unit or land that



1 has a defect, regardless of whether or not the owner
2 wishes to sell; provided that those repurchases shall
3 be in accordance with the following provisions:

4 (A) The corporation may repurchase a dwelling unit or
5 land if:

6 (i) The dwelling unit or land is deemed unsafe
7 by the county building department;

8 (ii) The defects are irreparable; or

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

12 (B) The corporation's purchase price shall be based
13 on the formula set forth in section 171C-
14 AL(a)(1);

15 (C) After repairs to the unit or land are completed,
16 the former owner shall have the first right of
17 refusal to repurchase the real property;

18 (D) The corporation shall give preference in all
19 other projects of the corporation to all owners
20 whose real property is repurchased by the
21 corporation under this subsection, and the



1 corporation may waive certain eligibility

2 requirements for these owners; and

3 (E) If the corporation exercises its right to

4 repurchase defective real property against an

5 owner's wishes pursuant to this paragraph, the

6 corporation shall provide relocation assistance

7 to that owner as provided in chapter 111;

8 (2) If the corporation does not opt to repurchase

9 defective real property, the corporation shall also

10 have the right, but not the obligation, to enter into

11 a contract to repair a dwelling unit which has a

12 construction defect or land which has a soil defect.

13 During the period that the real property is being

14 repaired, the corporation shall rent that real

15 property from the owner for an amount not to exceed

16 the owner's present mortgage payments; and

17 (3) If the corporation does not execute either a contract

18 to repurchase the real property or an agreement to

19 repair and rent the real property within ninety days

20 after written notice is given to the corporation of a

21 construction defect, the owner may pursue any other

22 available legal remedies.



1 For the purposes of this section:

2 "Substantial construction defect" includes but is not
3 limited to:

- 4 (1) Structural defects such as shifting foundations and
5 bearing walls;
6 (2) Structural deficiencies due to the use of defective or
7 undersized materials; and
8 (3) Defects affecting the health and safety of occupants.

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

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

17 (c) If real property developed, constructed, financed,
18 purchased, or sold pursuant to Act 105, Session Laws of Hawaii
19 1970, as amended, is found to have a substantial construction or
20 soil defect, the corporation shall have the right, but not the
21 obligation, to file or cause to be filed a legal action on
22 behalf of or by the owner or lessee of the real property for the



1 recovery of damages or for injunctive relief against the
2 developer, co-developer, general contractor, and their
3 subcontractors, consultants, and other parties notwithstanding
4 chapter 657. Additionally, notwithstanding any provision of
5 rule 23 of the Hawaii rules of civil procedure, the corporation
6 may file or cause to be filed a legal action brought under this
7 subsection as a class action on behalf of or by at least two
8 owners or lessees of real property that have similar substantial
9 construction or soil defects.

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

13 (e) The corporation shall adopt rules pursuant to chapter
14 91 necessary for the purposes of this section.

15 (f) This section shall not apply to a particular real
16 property and shall not apply after subsequent transfers of title
17 of that real property if the corporation releases the
18 restrictions when the real property is financed under a
19 federally subsidized mortgage program.

20 (g) If any subsection, sentence, clause, or phrase of this
21 section, or its application to any person or transaction or
22 other circumstances, is for any reason held to be



1 unconstitutional or invalid, the remaining subsections,
2 sentences, clauses, and phrases of this section, or the
3 application of this section to other persons or transactions or
4 circumstances, shall not be affected. The legislature hereby
5 declares that it would have passed this section and each
6 subsection, clause, or phrase thereof, irrespective of the fact
7 that any one or more subsections, sentences, clauses, or phrases
8 of this section, or its application to any person or transaction
9 or other circumstance, may be declared unconstitutional or
10 invalid.

11 **§171C-AQ Nonprofit organizations and government agencies.**

12 (a) The corporation may retain dwelling units in a project to
13 the extent it determines necessary and appropriate, for sale,
14 lease, or rental to nonprofit organizations and government
15 agencies. The dwelling units shall be used by the nonprofit
16 organizations and government agencies to provide housing
17 opportunities and related support services to special needs
18 individuals or families. These purposes include but are not
19 limited to the use of dwelling units for group homes and
20 congregate living facilities and for government employees in
21 special situations. The corporation, in consultation with other
22 appropriate government agencies, shall adopt rules pursuant to



1 chapter 91 necessary to implement this subsection, including but
2 not limited to rules relating to the eligibility and
3 qualifications of nonprofit organizations and government
4 agencies; the eligibility and qualifications of clients of
5 nonprofit organizations and government agencies to whom housing
6 opportunities may be made available; and restrictions on the
7 use, sale, or transfer of, and authorizing repurchase of,
8 dwelling units sold, leased, or rented pursuant to this
9 subsection.

10 The corporation, to the extent appropriate, shall have the
11 same powers with respect to nonprofit organizations and
12 government agencies purchasing, leasing, or renting dwelling
13 units as the corporation has with respect to qualified residents
14 purchasing, leasing, or renting dwelling units.

15 (b) In connection with the development of any residential
16 units under this part, the corporation may provide for the
17 development of appropriate community facilities. The
18 corporation may:

- 19 (1) Sell, lease, or rent vacant land or land with site
20 improvements to nonprofit organizations or government
21 agencies to develop community facilities; or



1 (2) Develop, on behalf of the State or with an eligible
2 developer, the community facilities and then sell,
3 lease, rent, or otherwise transfer or make available
4 these facilities to nonprofit organizations or
5 government agencies.

6 The corporation shall adopt rules pursuant to chapter 91
7 necessary to implement this subsection.

8 **§171C-AR Rate of wages for laborers and mechanics.** The
9 corporation shall require an eligible bidder or eligible
10 developer of a housing project developed under this part to
11 comply with the requirements of section 104-2 for those laborers
12 and mechanics hired to work on that housing project; provided
13 that this section shall not apply to a housing project developed
14 under this subpart if the entire cost of the project is less
15 than \$500,000 and the eligible bidder or eligible developer is a
16 private nonprofit organization.

17 **§171C-AS Land leases to nonprofit organizations providing**
18 **affordable housing.** (a) Notwithstanding any provision to the
19 contrary, the corporation, pursuant to section 171C-4(a)(29),
20 may lease land to any qualified nonprofit organization providing
21 affordable housing, under the following terms and conditions:



(1) Leases shall be for ninety-nine years at \$1 per year per parcel; and

(2) The instrument of lease shall include provisions, enforceable by the corporation, that the land shall:

(A) Be used only for providing affordable housing through long-term, renewable, and transferable leases or other means that are in accordance with rules adopted by the corporation under chapter 91; and

(B) Revert back to the corporation if:

(i) The land is used for any purpose other than as provided under subparagraph (A); or

(ii) The qualified nonprofit organization ceases operations.

(b) For the purposes of this section:

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

"Qualified nonprofit organization" means any private entity that is organized and operated:



(1) In accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

(2) For the purpose of providing affordable housing through long-term, renewable, and transferable leases.

§171C-AT Leases; self-help housing. (a) The corporation may lease parcels that it deems suitable for affordable housing at \$1 per year for up to fifty years to organizations or community trusts to develop the parcel with ownership units through self-help development.

(b) The corporation may extend or modify the fixed rental period of the lease or extend the term of the lease.

(c) Parcels leased under this section may be transferred or assigned by devise, bequest, or intestate succession, and may be sublet with the approval of the corporation.

§171C-AU Affordable rental housing development program.

(a) There is established the affordable rental housing development program under the corporation.

(b) The purpose of this program shall be to preserve affordable rental housing units.

(c) For the purposes of this section, activities eligible for assistance from the affordable rental housing development program shall include rehabilitation, acquisition, or



1 preservation of multifamily rental housing units for persons and
2 families with incomes at or below eighty per cent of the median
3 family income, as determined by the United States Department of
4 Housing and Urban Development.

5 (d) The corporation shall identify properties whose
6 contracts with either the United States Department of Housing
7 and Urban Development or the United States Department of
8 Agriculture are set to expire on or before January 1, 2014, and
9 the corporation shall contact the project owners to initiate
10 negotiations to renew or preserve the existing subsidy
11 contracts; provided that:

12 (1) Nonprofit organizations shall be given priority to
13 take over expiring subsidy contracts; and

14 (2) Nonprofit organizations shall be given priority over
15 for-profit organizations, if federal government funds
16 are needed for the acquisition or rehabilitation of a
17 project.

18 **§171C-AV Additional powers.** The powers conferred upon the
19 corporation by this subpart shall be in addition and
20 supplemental to the powers conferred by any other law, and
21 nothing in this subpart shall be construed as limiting any
22 powers, rights, privileges, or immunities so conferred.



1 C. Financing Programs

2 1. General Provisions

3 **§171C-AW Bonds; authorization.** (a) The corporation, with
4 the approval of the governor, may issue from time to time bonds
5 (including refunding bonds to pay, retire, or provide for the
6 retirement of bonds previously issued by the corporation) in
7 amounts not exceeding the total amount of bonds authorized to be
8 issued by the legislature for any of its corporate purposes.
9 Bonds may also be issued in connection with any program whose
10 primary purpose is to provide housing for active or retired
11 United States military personnel, their families, and other
12 persons authorized by any branch of the United States military
13 to reside in the housing; provided that the aggregate principal
14 amount of all outstanding bonds issued by the corporation for
15 military housing projects shall total no more than
16 \$2,000,000,000.

17 (b) All bonds shall be issued pursuant to part III of
18 chapter 39, except as provided in this subpart.

19 (c) The bonds shall be issued in the name of the
20 corporation, and not in the name of the State. The final



1 maturity date of the revenue bonds may be any date not exceeding
2 sixty years from the date of issuance.

3 (d) The corporation may issue such types of bonds as it
4 may determine, including without limitation bonds payable from
5 and secured, in whole or in part, by:

6 (1) Income and revenues derived from the housing project
7 or projects financed from the proceeds of bonds;

8 (2) Receipts derived from any grant from the federal
9 government made in aid of a housing project or
10 projects financed from the proceeds of bonds;

11 (3) Income and revenues derived from a particular
12 designated housing project or projects whether or not
13 financed, in whole or in part, from the proceeds of
14 bonds;

15 (4) Receipts derived from any payment for "eligible
16 loans", "eligible improvement loans", or "eligible
17 project loans", as the terms are defined in
18 subdivision 2, or any other agreement or agreements
19 entered into for a "housing loan program", as the term
20 is defined in subdivision 2 or 4, or any other loan
21 program administered by the corporation and financed
22 from the proceeds of bonds;



(5) Receipts derived from loans to mortgage lenders or from the payment on account of principal of or interest on loans purchased from mortgage lenders, as provided in subdivision 2 which loans to mortgage lenders or loans purchased are financed from the proceeds of bonds;

(6) Moneys in any funds or accounts established in connection with the issuance of bonds, and any earnings thereon;

(7) Proceeds derived from any insurance;

(8) Income and revenues of the corporation generally; or

(9) Any combination of paragraphs (1) through (8).

The term "income and revenues" includes income and revenues derived from the sale of land or from both land and improvements thereon serviced from infrastructure financed from the proceeds of bonds as permitted by this subpart. The provisions of this subsection are in addition and supplemental to part III of chapter 39.

(e) Any of the bonds may be additionally secured by a pledge of any revenues or a mortgage of any housing project, other property of the corporation, the pledge or assignment of any loans or other agreements, or any note or other undertaking,



1 obligation, or property held by or on behalf of the corporation
2 to secure loans made from the proceeds of bonds for any "housing
3 loan program", as the term is defined in subdivision 2 or 4, or
4 any other loan program administered by the corporation and
5 financed from the proceeds of bonds.

6 (f) Any pledge made by the corporation shall create a
7 perfected security interest in the revenues, moneys, or property
8 so pledged and thereafter received by the corporation from and
9 after the time that a financing statement with respect to the
10 revenues, moneys, or property so pledged and thereafter received
11 shall be filed with the bureau of conveyances. Upon the filing,
12 the revenues, moneys, or property so pledged and thereafter
13 received by the corporation shall immediately be subject to the
14 lien of the pledge without any physical delivery thereof or
15 further act, and the lien of any such pledge shall be prior to
16 the lien of all parties having claims of any kind in tort,
17 contract, or otherwise against the corporation, irrespective of
18 whether the parties have notice thereof. This section shall
19 apply to any financing statement heretofore or hereafter filed
20 with the bureau of conveyances with respect to any pledge made
21 to secure revenue bonds issued under this subpart.



1 (g) Any housing project or projects authorized by, and
2 undertaken pursuant to, this part shall constitute an
3 "undertaking" within the meaning of that term as defined and
4 used in part III, chapter 39. Any loan program authorized by,
5 and undertaken pursuant to, this part, including without
6 limitation "housing loan programs" defined in and authorized by
7 subdivisions 2 and 4, shall constitute a "loan program" within
8 the meaning of that term as defined and used in part III,
9 chapter 39. The corporation shall constitute a "department" and
10 the board shall constitute a "governing body" within the meaning
11 of those terms as defined and used in part III, chapter 39.

12 (h) Neither the members of the board nor any person
13 executing the bonds shall be liable personally on the bonds by
14 reason of the issuance thereof.

15 **§171C-AX Issuance of bonds for the development of**
16 **infrastructure.** Without limiting section 171C-AW, the
17 corporation, pursuant to and in accordance with this
18 subdivision, is hereby authorized to issue bonds for the purpose
19 of financing the development of infrastructure on land owned by
20 the corporation.

21 **§171C-AY Issuance of bonds for the preservation of**
22 **low-income housing projects.** The corporation, pursuant to and



1 in accordance with this subdivision, may issue bonds to purchase
2 low-income housing projects financed by the United States
3 Department of Housing and Urban Development to preserve these
4 projects. Upon the payment of all interest and principal
5 stemming from the issuance of these bonds, the corporation may
6 transfer title to these projects to qualified nonprofit
7 organizations. Nothing in this section shall be construed to:

8 (1) Prohibit qualified nonprofit or for-profit
9 organizations from operating these projects on behalf
10 of the corporation, or providing for the repair and
11 maintenance of these projects, before the payment of
12 all interest and principal stemming from the issuance
13 of these bonds; or

14 (2) Prohibit the corporation from transferring title to
15 these projects to qualified nonprofit or for-profit
16 organizations if these bonds can be secured to the
17 satisfaction of the bondholders.

18 As used in this section, "qualified nonprofit organization"
19 includes community-based nonprofit organizations and resident
20 councils.

21 **§171C-AZ Bonds; interest rate, price, and sale.** (a) The
22 bonds shall bear interest at rates payable at times that the



1 corporation, with the approval of the governor, may determine
2 except for deeply discounted bonds that are subject to
3 redemption or retirement at their accreted value; provided that
4 the discounted value of the bonds shall not exceed ten per cent
5 of any issue; and provided further that no bonds may be issued
6 without the approval of the director of finance and the
7 governor. Notwithstanding any other law to the contrary, the
8 corporation, subject to the approval of the director of finance
9 and the governor, may issue bonds pursuant to section 171C-AX,
10 in which the discounted value of the bonds exceeds ten per cent
11 of the issue.

12 (b) The corporation may include the costs of undertaking
13 and maintaining any housing project or projects or loan program
14 for which the bonds are issued in determining the principal
15 amount of bonds to be issued. In determining the costs of
16 undertaking and maintaining the housing projects, the
17 corporation may include the cost of studies and surveys;
18 insurance premiums; underwriting fees; financial consultant,
19 legal, accounting, and other services incurred; reserve account,
20 trustee, custodian, and rating agency fees; and interest on the
21 bonds for a period determined by the corporation, or the



1 estimated expenditure of borrowed funds for any loan program for
2 which the bonds are issued.

3 **\$171C-AAA Trustee; designation, duties.** (a) The
4 corporation may designate a trustee for each issue of bonds
5 secured under the same trust indenture; provided that the
6 trustee shall be approved by the director of finance.

7 (b) The trustee shall be authorized by the corporation to
8 receive and receipt for, hold, and administer the proceeds of
9 the bonds, and to apply the proceeds to the purposes for which
10 the bonds are issued.

11 (c) The trustee shall also be authorized by the
12 corporation to hold and administer any housing project bond
13 special funds and housing loan program revenue bond special
14 funds established pursuant to section 171C-AAF. The trustee may
15 receive and receipt for, hold, and administer the revenues
16 derived by the corporation from any housing project or projects
17 or loan program for which the bonds are issued or the projects
18 or loan programs pledged to the payment of the bonds. The
19 trustee shall apply the revenues to the payment of the cost of
20 administering, operating, and maintaining the housing project or
21 projects or loan program; to pay the principal of and the
22 interest on the bonds; to the establishment of reserves; and to



1 other purposes as may be authorized in the proceedings providing
2 for the issuance of the bonds.

3 (d) Notwithstanding section 39-68, the director of finance
4 may appoint the trustee to serve as fiscal agent for:

5 (1) The payment of the principal of and interest on the
6 bonds; and

7 (2) The purchase, registration, transfer, exchange, and
8 redemption of the bonds.

9 (e) The trustee shall perform additional functions with
10 respect to the payment, purchase, registration, transfer,
11 exchange, and redemption, as the director of finance may deem
12 necessary, advisable, or expeditious, including the holding of
13 the bonds and coupons, if any, that have been paid and the
14 supervision of their destruction in accordance with law.

15 (f) Nothing in this subpart shall limit or be construed to
16 limit the powers granted to the director of finance in sections
17 36-3, 39-13, and 39-68(a), to appoint the trustee or others as
18 fiscal agents, paying agents, and registrars for the bonds or to
19 authorize and empower those fiscal agents, paying agents, and
20 registrars to perform the functions referred to in those
21 sections.



1 §171C-AAB Trust indenture. (a) A trust indenture may
2 contain covenants and provisions authorized by part III of
3 chapter 39, and as deemed necessary or convenient by the
4 corporation for the purposes of this subpart.

5 (b) A trust indenture may allow the corporation to pledge
6 and assign to the trustee agreements related to the housing
7 project or projects or loan program and the rights of the
8 corporation thereunder, including the right to receive revenues
9 thereunder and to enforce the provision thereof.

10 (c) Where a trust indenture provides that any bond issued
11 under that trust indenture is not valid or obligatory for any
12 purpose unless certified or authenticated by the trustee, all
13 signatures of the officers of the State upon the bonds required
14 by section 39-56 may be facsimiles of their signatures.

15 (d) A trust indenture shall also contain provisions as to:

16 (1) The investment of the proceeds of the bonds, the
17 investment of any reserve for the bonds, the
18 investment of the revenues of the housing project or
19 system of housing projects or the loan program, and
20 the use and application of the earnings from
21 investments; and



1 (2) The terms and conditions upon which the holders of the
2 bonds or any portion of them or any trustee thereof
3 may institute proceedings for the enforcement of any
4 agreement or any note or other undertaking,
5 obligation, or property securing the payment of the
6 bonds and the use and application of the moneys
7 derived therefrom.

8 (e) A trust indenture may also contain provisions deemed
9 necessary or desirable by the corporation to obtain or permit,
10 by grant, interest subsidy, or otherwise, the participation of
11 the federal government in the housing projects or loan programs
12 or in the financing of the costs of administering, operating, or
13 maintaining the housing projects or loan programs.

14 **§171C-AAC Investment of reserves, etc.** The corporation
15 may invest any funds held in reserves or sinking funds or any
16 funds not required for immediate disbursement, including the
17 proceeds of bonds, in property or securities in which the
18 director of finance may legally invest, as provided in section
19 36-21, except that funds held outside the state treasury may be
20 invested for terms not to exceed thirty-five years. No
21 provisions with respect to the acquisition, operation, or
22 disposition of property by other government agencies shall be



1 applicable to the corporation unless the legislature shall
2 specifically so state.

3 **\$171C-AAD Security for funds deposited by the corporation.**

4 The corporation may by resolution provide that all moneys
5 deposited by it shall be secured by:

6 (1) Any securities by which funds deposited by the
7 director of finance may be legally secured as provided
8 in section 38-3; or

9 (2) An undertaking with sureties as are approved by the
10 corporation faithfully to keep and pay over upon the
11 order of the corporation any deposits and agreed
12 interest thereon, and all banks and trust companies
13 are authorized to give any such security for those
14 deposits.

15 **\$171C-AAE Arbitrage provisions, interest rate.** (a) Any
16 other provision of law to the contrary notwithstanding, neither
17 the corporation nor the director of finance shall make loans or
18 purchase mortgages with the proceeds of general obligation bonds
19 of the State or from a revolving fund established or maintained
20 from the proceeds of bonds, at a rate of interest or upon terms
21 and conditions that would cause any general obligation bond of
22 the State or any bond to be an "arbitrage bond" within the



1 meaning of that term as defined in the Internal Revenue Code of
2 1986, as amended, and the regulations of the Internal Revenue
3 Service promulgated pursuant thereto.

4 (b) The rate of interest on loans made under this part
5 from the proceeds of general obligation bonds of the State shall
6 be established by the corporation, with the approval of the
7 director of finance, after each sale of general obligation bonds
8 of the State, the proceeds of which are to be used for the
9 purposes of making loans or purchasing mortgages under this
10 part. If no sale of general obligation bonds of the State
11 intervenes in a twelve-month period after the last rate fixing,
12 the corporation may review the then existing rates on loans or
13 mortgages made under this part from the proceeds of general
14 obligation bonds of the State and retain the existing rate or,
15 with the approval of the director of finance, establish
16 different rates.

17 (c) The director of finance shall approve those rates so
18 as to produce up to, but not in excess of, the maximum yield to
19 the State or the corporation permitted under the Internal
20 Revenue Code of 1986, as amended, and the regulations of the
21 Internal Revenue Service promulgated pursuant thereto, on the
22 assumption that the general obligation bonds of the State, the



1 proceeds of which have been or are to be used for the purposes
2 of making loans or purchasing mortgages under this part, would
3 otherwise be "arbitrage bonds" under the Internal Revenue Code
4 of 1986, as amended, and the regulations of the Internal Revenue
5 Service promulgated pursuant thereto, were the maximum yield to
6 be exceeded. The establishment of the rates of interest shall be
7 exempt from chapter 91.

8 **§171C-AAF Housing finance revolving fund; bond special**
9 **funds.** (a) There is established a housing finance revolving
10 fund to be administered by the corporation. Notwithstanding
11 sections 36-21 and 171C-AAAAE, the proceeds in the fund shall be
12 used for long-term and other special financings of the
13 corporation and for the necessary expenses in administering this
14 subpart.

15 (b) All moneys received and collected by the corporation,
16 not otherwise pledged or obligated nor required by law to be
17 placed in any other special fund, shall be deposited in the
18 housing finance revolving fund.

19 (c) A separate special fund shall be established for each
20 housing project or system of housing projects or loan program
21 financed from the proceeds of bonds secured under the same trust
22 indenture. Each fund shall be designated "housing project bond



1 special fund" or "housing loan program revenue bond special
2 fund", as appropriate, and shall bear any additional designation
3 as the corporation deems appropriate to properly identify the
4 fund.

5 (d) Notwithstanding any other law to the contrary, all
6 revenues, income, and receipts derived from a housing project or
7 system of projects or loan program financed from the proceeds of
8 bonds or pledged to the payment of the principal of and interest
9 and premium on bonds, shall be paid into the housing project
10 bond special fund or housing loan program revenue bond special
11 fund established for the housing project or system of projects
12 or loan program and applied as provided in the proceedings
13 authorizing the issuance of the bonds.

14 **§171C-AAG Kikala-Keokea housing revolving fund;**
15 **established.** (a) There is established in the state treasury
16 the Kikala-Keokea housing revolving fund to provide low interest
17 loans for home construction for Kikala-Keokea leaseholders who
18 have been denied loans from traditional financial institutions.
19 The revolving fund shall be administered by the corporation.

20 (b) The rate of interest on loans executed pursuant to
21 this section shall not exceed three per cent per year and
22 interest earnings on loans made pursuant to this section may be



1 used for administrative and other expenses necessary for
2 administering the loan program. Guidelines shall be established
3 by the corporation with respect to loan terms and loan
4 qualification criteria. Moneys appropriated for the purposes of
5 this section shall be deposited into the Kikala-Keokea housing
6 revolving fund; provided that upon fulfillment of the purposes
7 of this section, all unencumbered moneys shall lapse into the
8 general fund.

9 (c) The corporation shall adopt rules in accordance with
10 chapter 91 to effectuate the purposes of this section.

11 **§171C-AAH Rate of wages for laborers and mechanics.** The
12 corporation shall require an eligible bidder or eligible
13 developer of a housing project developed under this subpart to
14 comply with the requirements of section 104-2 for those laborers
15 and mechanics hired to work on that housing project; provided
16 that this section shall not apply to a housing project developed
17 under this part if the entire cost of the project is less than
18 \$500,000 and the eligible bidder or eligible developer is a
19 private nonprofit organization.

20 **§171C-AAI Pineapple workers and retirees housing**
21 **assistance fund; established.** (a) There is established in the
22 state treasury the pineapple workers and retirees housing



1 assistance fund to provide mortgage payments or rent subsidies
2 for eligible Del Monte Fresh Produce pineapple workers and
3 retirees and their families who are displaced or affected by the
4 closure of Del Monte Fresh Produce. The pineapple workers and
5 retirees housing assistance fund shall be administered by the
6 corporation.

7 (b) Moneys appropriated for the purposes of this section
8 shall be deposited into the pineapple workers and retirees
9 housing assistance fund; provided that, upon fulfillment of the
10 purposes of this section, all unencumbered moneys shall lapse
11 into the general fund. The corporation shall establish
12 guidelines with respect to eligible Del Monte Fresh Produce
13 pineapple workers and retirees and mortgage payments or rental
14 assistance payments under this section.

15 (c) The corporation shall adopt rules in accordance with
16 chapter 91 to effectuate the purposes of this section.

17 **§171C-AAJ Low-income housing tax credit loan.** (a) The
18 corporation may provide a no-interest low-income housing tax
19 credit loan to an owner of a qualified low-income building that
20 has been awarded federal tax credits that are subject to the
21 state housing credit ceiling under section 42(h)(3)(C) of the
22 Internal Revenue Code, federal credits that are allocated



1 pursuant to section 42(h)(4) of the Internal Revenue Code, or a
2 subaward under section 1602 of the American Recovery and
3 Reinvestment Act of 2009, Public Law 111-5. The loan shall be
4 in an amount equal to seventy per cent of the cash value of the
5 amount of the low-income housing tax credit that would otherwise
6 have been claimable with respect to the qualified low-income
7 building under section 235-110.8 for each taxable year in the
8 ten-year credit period, discounted to present day value and
9 capitalized at the rate of interest on the taxable general
10 obligation bonds used to fund the loan.

11 (b) An owner who is provided a low-income housing tax
12 credit loan under this section shall not be eligible for the
13 state income tax credit under section 235-110.8.

14 (c) The corporation shall impose conditions or
15 restrictions on the low-income housing tax credit loan,
16 including:

- 17 (1) A requirement providing for acceleration and repayment
18 on any no-interest loan under this section to assure
19 that the building with respect to which the loan is
20 made remains a qualified low-income building under
21 section 42 of the Internal Revenue Code or section
22 1602 of the American Recovery and Reinvestment Act of



1 2009, Public Law 111-5. Any such repayment shall be
2 payable to the housing finance revolving fund and may
3 be enforced by means of liens or other methods as the
4 corporation deems appropriate;

5 (2) The same limitations on rent, income, and use
6 restrictions as applied under an allocation of a
7 housing credit dollar amount allocated under section
8 42 of the Internal Revenue Code; and

9 (3) The payment of reasonable fees for the corporation to
10 perform or cause to be performed asset management
11 functions to ensure compliance with section 42 of the
12 Internal Revenue Code and the long-term viability of
13 buildings funded by any no-interest loan under this
14 section.

15 (d) The corporation shall perform asset management
16 functions to ensure compliance with section 42 of the Internal
17 Revenue Code or section 1602 of the American Recovery and
18 Reinvestment Act of 2009, Public Law 111-5, to sustain the long-
19 term viability of buildings funded by a no-interest loan under
20 this section.

21 (e) The corporation may collect reasonable fees from the
22 owner of a qualified low-income building to cover expenses



1 associated with the performance of the corporation's duties
2 under this section and may retain an agent or other private
3 contractor to satisfy the requirements of this section.

4 (f) If the owner is not in default, the corporation may
5 forgive the amount remaining under the no-interest loan to the
6 owner of the qualified low-income building after thirty years.

7 (g) For purposes of this section, "qualified low-income
8 building" shall have the same meaning as used in section
9 42(c)(2) of the Internal Revenue Code.

10 **§171C-AAK Additional powers.** The powers conferred upon
11 the corporation by this subdivision shall be in addition and
12 supplemental to the powers conferred by any other law, and
13 nothing in this subdivision shall be construed as limiting any
14 powers, rights, privileges, or immunities so conferred.

15 2. Housing Loan and Mortgage Program

16 **§171C-AAL Definitions.** The following words or terms as
17 used in this subdivision shall have the following meanings
18 unless a different meaning clearly appears from the context:

19 "Eligible borrower" means a person or family, without
20 regard to race, creed, national origin, or sex, who:

21 (1) Is a citizen of the United States or a resident alien;

22 (2) Is a bona fide resident of the State;



- 1 (3) Is at least eighteen years of age;
- 2 (4) Does not personally, or whose spouse does not if the
- 3 person is married, own any interest in a principal
- 4 residence within or without the State and who has not
- 5 owned a principal residence within the three years
- 6 immediately prior to the application for an eligible
- 7 loan under this subdivision, except this requirement
- 8 shall not apply to any eligible loan for a targeted
- 9 area residence as defined in the Mortgage Subsidy Bond
- 10 Tax Act of 1980, Public Law 96-499, which residence is
- 11 to replace a housing unit that has been declared
- 12 structurally unsalvageable by a governmental board or
- 13 agency having the power to make the declaration; and
- 14 provided further that this requirement shall not apply
- 15 to up to ten per cent of eligible loans of a bond
- 16 issue made to single parent household borrowers. No
- 17 loans, however, shall be made if they adversely affect
- 18 the tax-exempt status of the bonds issued. For the
- 19 purpose of this section, "single parent household"
- 20 means a household headed by a single person who has
- 21 legal custody of one or more dependent children;



1 (5) Has never before obtained a loan under this subpart;
2 and

3 (6) Meets other qualifications as established by rules
4 adopted by the corporation.

5 "Eligible improvement" means alterations, repairs, or
6 improvements to an existing dwelling unit that substantially
7 protect or improve the basic livability of the unit.

8 "Eligible improvement loan" means a loan to finance an
9 eligible improvement to the owner of the dwelling unit, which
10 may be a condominium unit, where the eligible improvement is to
11 be made; provided that the owner meets the requirements of an
12 eligible borrower, except that the requirements of paragraph (4)
13 of the definition of "eligible borrower" shall not apply, the
14 unit to be financed is located in the State, the unit will be
15 occupied as the principal place of residence of the borrower,
16 and meets other requirements as established by rules adopted by
17 the corporation.

18 "Eligible loan" means a loan to an eligible borrower for
19 the permanent financing of a dwelling unit, including a
20 condominium unit; provided that the property financed is located
21 in the State, will be occupied as the principal place of



1 residence by the eligible borrower, and meets other requirements
2 as established by rules adopted by the corporation.

3 "Eligible project loan" means an interim or permanent loan,
4 which may be federally insured or guaranteed, made to a
5 qualified sponsor for the financing of a rental housing project,
6 and which meets other requirements as established by rules
7 adopted by the corporation.

8 "Housing loan programs" includes all or any part of the
9 loans to lenders program, the purchase of existing loans
10 program, the advance commitments program, and the loan funding
11 programs authorized under this subdivision.

12 "Qualified sponsor" means any person or entity determined
13 by the corporation:

- 14 (1) To be qualified by experience, financial
15 responsibility, and support to construct a housing
16 project of the type and magnitude described;
- 17 (2) To have submitted plans for a housing project
18 adequately meeting the objectives of this part, the
19 maintenance of aesthetic values in the locale of the
20 project, and the requirements of all applicable
21 environmental statutes and rules; and



(3) To meet other qualifications as established by rules adopted by the corporation pursuant to chapter 91.

§171C-AAM Owner-occupancy requirement. (a) An eligible borrower shall use the dwelling unit purchased under this subdivision as the eligible borrower's permanent and primary residence.

(b) From time to time, the corporation may submit a verification of owner-occupancy form to the eligible borrower. Failure to respond to this verification in a timely manner may result in an immediate escalation of the interest rate or acceleration of the eligible loan.

(c) For eligible borrowers in the process of selling or transferring title to their property, the corporation may grant a waiver of subsection (a) for a period not to exceed three years and for reasons set forth in section 171C-AN on a case-by-case basis.

§171C-AAN Eligible borrowers. (a) The corporation shall establish the qualifications of the eligible borrower, and may consider the following:

(1) The proportion of income spent for shelter;

(2) Size of the family;



1 (3) Cost and condition of housing available to the total
2 housing market; and

3 (4) Ability of the person to compete successfully in the
4 normal housing market and to pay the amounts on which
5 private enterprise is providing loans for safe,
6 decent, and sanitary housing in the State.

7 (b) The family income of an eligible borrower shall not
8 exceed the income requirements of section 143(f) of the Internal
9 Revenue Code of 1986, as amended.

10 (c) For the purpose of determining the qualification of an
11 eligible borrower for an eligible improvement loan:

12 (1) The dwelling unit for which the eligible improvement
13 loan is to be made and the property on which the
14 dwelling unit is situated shall not be included in the
15 calculation of the eligible borrower's assets; and

16 (2) The mortgage secured by the dwelling unit and property
17 shall not be included in the calculation of the
18 eligible borrower's liabilities.

19 (d) For the purpose of determining the qualification of an
20 eligible borrower for an eligible loan for a targeted area
21 residence:



(1) The dwelling unit being replaced and the property on which the dwelling unit is situated shall not be included in the calculation of the eligible borrower's assets; and

(2) The mortgage secured by the dwelling unit and the property shall not be included in the calculation of the eligible borrower's liabilities.

§171C-AAO Eligible loans. (a) The corporation shall establish requirements for property financed by an eligible loan, and may consider the location, age, condition, and other characteristics of the property.

(b) The corporation shall establish restrictions on the terms, maturities, interest rates, collateral, and other requirements for eligible loans.

(c) All eligible loans made shall comply with applicable state and federal laws.

§171C-AAP Eligible project loans. (a) The corporation shall establish requirements for rental housing projects to be financed by an eligible project loan, and may consider the location, age, condition, and other characteristics of the project.



1 (b) The corporation shall establish restrictions on the
2 terms, maturities, interest rates, and other requirements for
3 eligible project loans.

4 (c) The corporation shall establish restrictions on the
5 prepayment of eligible project loans and on the transfer of
6 ownership of the projects securing eligible project loans.

7 (d) The corporation shall require that any sums deferred
8 on land leased at nominal rates by the corporation to the owner
9 of a rental housing project shall be recovered by the
10 corporation at the time an eligible project loan is prepaid,
11 whether as a result of refinancing of the eligible project loan
12 or otherwise, to the extent that funds are available from the
13 refinancing or other method by which the eligible project loan
14 is paid in full prior to its due date.

15 (e) The corporation shall enter into an agreement with the
16 owner of a rental housing project to be financed with an
17 eligible project loan which shall provide that in the event that
18 the eligible project loan is at any time prepaid for the purpose
19 of converting the rental units of such project to ownership
20 units, all tenants at the time of the proposed conversion shall
21 have the first option to purchase their units.



1 (f) All eligible project loans shall comply with
2 applicable state and federal laws.

3 **§171C-AAQ Eligible improvement loans.** (a) The
4 corporation shall establish requirements for property financed
5 by an eligible improvement loan, and may consider the location,
6 age, condition, value, and other characteristics of the
7 property.

8 (b) The corporation shall establish restrictions on the
9 terms, maturities, interest rates, collateral, and other
10 requirements for eligible improvement loans.

11 (c) All eligible improvement loans made shall comply with
12 applicable state and federal laws.

13 **§171C-AAR Housing loan programs; procedures and**
14 **requirements.** (a) The corporation shall establish procedures
15 for:

16 (1) The submission of requests or the invitation of
17 proposals for loans to mortgage lenders;

18 (2) The purchase of existing loans by auction, invitation
19 of tenders, or negotiation;

20 (3) The making of advance commitments to purchase and the
21 purchasing of eligible loans, eligible improvement
22 loans, or eligible project loans to be made by



1 mortgage lenders by auction, invitation of tenders, or
2 negotiation; and

3 (4) Loan applications made through mortgage lenders to
4 eligible borrowers or qualified sponsors.

5 (b) The corporation shall establish standards and
6 requirements for:

7 (1) The allocation of loans to mortgage lenders;

8 (2) The allocation of funds to purchase existing loans
9 from mortgage lenders;

10 (3) The making of advance commitments and allocation of
11 funds to purchase eligible loans, eligible improvement
12 loans, or eligible project loans from mortgage
13 lenders; and

14 (4) The participation by mortgage lenders as originators
15 and processors of eligible loans, eligible improvement
16 loans, or eligible project loans on behalf of the
17 corporation.

18 (c) The standards and requirements for the allocation of
19 funds to mortgage lenders shall be adopted by the corporation
20 and shall be designed to include the maximum number of qualified
21 mortgage lenders as participants in the housing loan programs.



1 **§171C-AAS Housing loan programs; general powers.** (a) The
2 corporation may make, enter into, and enforce all contracts or
3 agreements that are necessary, convenient, or desirable in the
4 performance of its duties in executing the housing loan
5 programs.

6 (b) The corporation may require representations and
7 warranties as it determines necessary to secure its loans.

8 **§171C-AAT Housing loan programs; self-supporting.** The
9 interest rate, fees, charges, premiums, and other terms of the
10 loans made under the housing loan programs shall be at least
11 sufficient to pay the cost of administering and maintaining the
12 portion of the specific housing loan programs for which the
13 bonds have been issued, and to assure payment of the principal
14 of and interest on the bonds as they become due.

15 **§171C-AAU Housing loan programs; fees.** The corporation
16 may establish, revise, charge, and collect fees, premiums, and
17 charges as necessary, reasonable, or convenient, for its housing
18 loan programs. The fees, premiums, and charges shall be
19 deposited into the housing loan program revenue bond special
20 fund established for the particular housing loan program or part
21 thereof from which the fees, premiums, and charges are derived
22 as determined by the corporation.



1 **§171C-AAV Housing loan programs; evidence of eligible**

2 **loan, eligible improvement loan, or eligible project loan. (a)**

3 Each mortgage lender who participates in any housing loan
4 program shall submit evidence, as deemed satisfactory by the
5 corporation, that eligible loans, eligible improvement loans, or
6 eligible project loans have been made from the proceeds of the
7 bonds.

8 (b) The corporation may inspect the books and records of
9 the mortgage lenders as may be necessary for the purposes of
10 this section.

11 **§171C-AAW Loans to lenders program. (a) The corporation**

12 may make loans to mortgage lenders under terms and conditions
13 requiring that the loan proceeds be used within a time period
14 prescribed by the corporation to make eligible loans, eligible
15 improvement loans, and eligible project loans in an aggregate
16 principal amount substantially equal to the amount of the loan.

17 (b) The loan made to a mortgage lender shall be a general
18 obligation of the respective mortgage lender.

19 (c) The loan as determined by the corporation shall:

20 (1) Bear a date or dates;

21 (2) Mature at a time or times;



(3) Be evidenced by a note, bond, or other certificate of indebtedness;

(4) Be subject to prepayment; and

(5) Contain other provisions consistent with this subpart.

(d) Subject to any agreement with the holders of its bonds, the corporation may consent to any modification to the rate of interest, time and payment of any installment of principal or interest, security, or any other term of any loan to a mortgage lender or any bond, note, contract, or agreement of any kind to which the corporation is a party.

§171C-AAX Loans to lenders program; collateral security.

(a) Loans made to mortgage lenders shall be additionally secured by a pledge of a lien upon collateral security in an amount as the corporation deems necessary to assure the payment of the principal of and interest on the loans as they become due.

(b) The corporation shall determine the nature and type of collateral security required.

(c) A statement designating the collateral security pledged, the mortgage lender pledging the collateral, and the corporation's interest in the pledged collateral may be filed with the bureau of conveyances. Where a statement has been



1 filed, no possession, further filing, or other action under any
2 state law shall be required to perfect any security interest
3 which may be deemed to have been created in favor of the
4 corporation. The mortgage lender shall be deemed the trustee of
5 an express trust for the benefit of the corporation in all
6 matters relating to the pledged collateral.

7 (d) Subject to any agreement with the holders of its
8 bonds, the corporation may collect, enforce the collection of,
9 and foreclose on any collateral securing its loans to mortgage
10 lenders. The corporation may acquire, take possession of, sell
11 at public or private sale with or without bidding, or otherwise
12 deal with the collateral to protect its interests.

13 **§171C-AAY Purchase of existing loans program.** (a) The
14 corporation may contract with a mortgage lender to purchase, in
15 whole or in part, existing loans, whether or not eligible loans,
16 eligible improvement loans, or eligible project loans. The
17 contract may contain provisions as determined by the corporation
18 to be necessary or appropriate to provide security for its
19 bonds, including but not limited to provisions requiring the:

20 (1) Repurchase of the loans, in whole or in part, by
21 mortgage lenders at the option of the corporation;



(2) Payments of premiums, fees, charges, or other amounts by mortgage lenders to provide a reserve or escrow fund for the purposes of protecting against loan defaults; and

(3) Guarantee by, or for recourse against, mortgage lenders, with respect to defaults on these loans of the corporation.

(b) The corporation shall require, as a condition of each purchase of existing loans from a mortgage lender, that the mortgage lender proceed to make and disburse eligible loans, eligible improvement loans, or eligible project loans in an aggregate principal amount substantially equal to the amount of the proceeds from the purchase by the corporation of loans therefrom.

§171C-AAZ Advance commitments program. (a) The corporation may contract with a mortgage lender for the advance commitment to purchase eligible loans, eligible improvement loans, or eligible project loans.

(b) The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its bonds. Notwithstanding any other law to the contrary, project loans may be made available for housing



1 projects on Hawaiian home lands pursuant to the Hawaiian Homes
2 Commission Act, 1920, as amended.

3 **\$171C-AAAA Loan funding programs.** (a) The corporation
4 may contract with mortgage lenders to fund eligible loans and
5 eligible improvement loans and may directly make or contract
6 with mortgage lenders to fund eligible project loans.

7 (b) Any contract in subsection (a) with a mortgage lender
8 may contain provisions as determined by the corporation to be
9 necessary or appropriate to provide security for its revenue
10 bonds.

11 **\$171C-AAAB Loans; service and custody.** The corporation
12 may contract for the service and custody of its loans. The
13 contract may provide for the payment of fees or charges for the
14 services rendered; provided that the fees or charges shall not
15 exceed the usual, customary, and reasonable charges for the
16 services rendered.

17 **\$171C-AAAC Loans; sale, pledge, or assignment.** (a)
18 Subject to any agreements with the holders of its revenue bonds,
19 the corporation may sell its loans at public or private sale at
20 a price and upon terms and conditions as it determines.

21 (b) Subject to any agreements with the holders of its
22 revenue bonds, the corporation may pledge or assign its loans,



1 other agreements, notes, or property to secure the loans or
2 agreements.

3 **§171C-AAAD Loans; insurance and guarantees.** The
4 corporation may procure insurance or guarantees against any
5 default of its loans, in amounts and from insurers or
6 guarantors, as it deems necessary or desirable.

7 **§171C-AAAE Loans; default.** (a) The corporation may
8 renegotiate, refinance, or foreclose any loan in default.

9 (b) The corporation may waive any default or consent to
10 the modification of the terms of any loan or security agreement.

11 (c) The corporation may commence any action to protect or
12 enforce any right conferred upon it by any law, mortgage,
13 insurance policy, contract, or other agreement.

14 (d) The corporation may bid for and purchase the property
15 secured by the loan at any foreclosure or other sale, or acquire
16 or take possession of the property secured by the loan.

17 (e) The corporation may operate, manage, lease, dispose
18 of, or otherwise deal with the property secured by the loan.

19 **§171C-AAAF Additional powers.** The powers conferred upon
20 the corporation by this subdivision shall be in addition and
21 supplemental to the powers conferred by any other law, and



1 nothing in this subdivision shall be construed as limiting any
2 powers, rights, privileges, or immunities so conferred.

3 3. Rental Assistance Program

4 **\$171C-AAAG Purpose; findings and determinations.** The
5 legislature finds and declares that the health and general
6 welfare of the people of this State require that the people of
7 this State have safe and sanitary rental housing accommodations
8 available at affordable rents; that a grave shortage in the
9 number of such accommodations affordable by families and
10 individuals of low- and moderate-income in the State exists; and
11 that it is essential that owners of rental housing
12 accommodations be provided with appropriate additional means to
13 assist in reducing the cost of rental housing accommodations to
14 the people of this State.

15 The legislature further finds that the high cost of
16 infrastructure development and the obtaining of interim
17 construction financing are two of the greatest impediments to
18 the production of affordable rental housing in this State. It
19 is especially difficult for private nonprofit and for-profit
20 entities to participate in the development of affordable housing
21 due to the difficulty in amassing the capital necessary to plan
22 and carry out a project to completion.



1 It is the purpose of this subdivision to:

2 (1) Assist owners in maintaining rentals at levels
3 affordable to low- and moderate-income families and
4 individuals by providing owners with rental assistance
5 payments which, together with rental payments received
6 from low- and moderate-income tenants, will provide
7 owners with limited but acceptable rates of return on
8 their investments in rental housing accommodations.

9 Assisting owners by entering into contracts with them
10 to provide for rental assistance payments is a valid
11 public purpose and in the public interest; and

12 (2) Provide a funding source for interim construction
13 financing for the development of affordable rental
14 housing by private nonprofit and for-profit entities,
15 as well as the corporation; provided that in allotting
16 this financing, the corporation shall give preference
17 to qualified sponsors who are private nonprofit and
18 for-profit entities.

19 **§171C-AAAH Definitions.** The following terms as used in
20 this subdivision shall have the following meanings unless a
21 different meaning clearly appears from the context:

22 "Eligible project" means a rental housing project that:



1 (1) Is financed by the corporation pursuant to subdivision
2 2 or 4, or that the corporation determines will
3 require rental assistance to make it financially
4 feasible;

5 (2) Is subject to a regulatory agreement with the
6 corporation;

7 (3) Maintains at least twenty per cent of its units for
8 eligible tenants; and

9 (4) Meets other qualifications as established by rules
10 adopted by the corporation.

11 Notwithstanding any provision to the contrary, "eligible
12 project" may also include a rental housing project that is
13 financed by the corporation pursuant to subdivision 1.

14 "Eligible tenant" means a family or an individual whose
15 income does not exceed eighty per cent of the area median income
16 as determined by the United States Department of Housing and
17 Urban Development.

18 "Owner" means the owner of an eligible project.

19 "Regulatory agreement" means an agreement between the
20 corporation and the owner relating to an eligible project that
21 includes provisions relating to rents, charges, profits, return
22 on owner's equity, development costs, and methods of operation.



1 "Rental assistance contract" means an agreement between an
2 owner and the corporation providing for periodic rental
3 assistance payment for units in an eligible project.

4 **§171C-AAAI Rental assistance revolving fund.** (a) There
5 is created a rental assistance revolving fund to be administered
6 by the corporation.

7 (b) The rental assistance revolving fund may include sums
8 made available from any government program or grant, from
9 private grants or contributions, from the proceeds of any bond
10 issue, or from appropriations to the fund. The aggregate
11 principal in the fund shall be invested by the corporation in a
12 manner that will maximize the rate of return on investment of
13 the fund; provided that any investment made shall be consistent
14 with section 171C-AAC but need not comply with section 36-21.

15 (c) The corporation may use, as needed, the aggregate
16 principal sum and the accumulated earnings in the rental
17 assistance revolving fund to make payments under rental
18 assistance contracts or to subsidize tenants' rents in eligible
19 projects developed under this subpart; provided that the
20 corporation shall use up to \$25,000,000 plus any bond proceeds
21 to provide interim construction financing to:



(1) Qualified sponsors who are private nonprofit or for-profit entities; or

(2) The corporation, for the development of affordable rental housing;

provided further that the corporation, in allotting interim construction financing moneys pursuant to this subdivision, shall give preference to rental housing projects developed by qualified sponsors who are private nonprofit or for-profit entities.

§171C-AAAJ Rental assistance contracts. (a) The

corporation may enter into a rental assistance contract and a regulatory agreement with the owner of an eligible project, when the owner of an eligible project is other than the corporation.

(b) Prior to the execution of a rental assistance contract, the corporation may execute an agreement to enter into a rental assistance contract with an owner. The agreement shall provide for the execution of a rental assistance contract upon satisfaction of the terms set forth in the agreement and otherwise established by the corporation. Each rental assistance contract heretofore entered into by the corporation that provided that rental assistance payments shall be made solely from the earnings on the investment of the rental



1 assistance revolving fund shall hereafter, without modification
2 of the contracts, be payable from the aggregate principal sum
3 and the accumulated earnings in the rental assistance revolving
4 fund.

5 (c) A rental assistance contract and any subsidy of
6 tenants' rents in projects developed under this subdivision
7 shall be for a term not in excess of thirty-five years and shall
8 be approved by the board of directors of the corporation. Upon
9 that approval by the corporation, the director of finance shall
10 be authorized to guarantee the obligation of the corporation for
11 the term of the rental assistance contract or the subsidy of
12 tenants' rents in an amount equal to the aggregate obligation of
13 the corporation to make assistance payments; provided that the
14 aggregate of all of the outstanding guarantees shall not exceed
15 \$100,000,000. Pursuant to that guarantee, the corporation shall
16 make annual rental payments to the owner in accordance with the
17 approved rental assistance contract or to the tenants in
18 accordance with the approved subsidy.

19 (d) Each rental assistance contract shall set forth a
20 maximum annual rental assistance payment amount. The
21 corporation shall establish procedures for determining the



1 maximum annual rental assistance payment amount and may consider
2 the following:

- 3 (1) The cost of constructing the eligible project;
- 4 (2) The estimated annual operating cost of the eligible
5 project;
- 6 (3) The estimated maximum rentals that may be charged for
7 dwelling units in the eligible project;
- 8 (4) The amount of funds available for the funding of
9 rental assistance contracts;
- 10 (5) The number of eligible projects requiring assistance
11 under this subdivision; and
- 12 (6) A restricted rate of return on equity to the owner,
13 which rate shall be established by the corporation by
14 rule.

15 **§171C-AAAK Rental assistance program.** (a) Prior to the
16 execution of a rental assistance contract and annually
17 thereafter, the owner shall submit a proposed rental schedule to
18 the corporation for approval. The schedule shall list every
19 rental unit in the project and shall designate which units are
20 to be maintained for eligible tenants.



1 (b) The corporation shall establish procedures for
2 evaluating the rental schedules submitted pursuant to this
3 section, and may consider the following:

- 4 (1) The size of and number of bedrooms in the units
5 comprising the eligible project;
- 6 (2) The location of the project and its type (whether
7 high-rise, mid-rise, or low-rise);
- 8 (3) The percentage of units being maintained for eligible
9 tenants; and
- 10 (4) The rentals prevalent in the open market for
11 comparable units.

12 (c) Annually, following the approval of the rental
13 schedule submitted pursuant to subsection (a), the corporation
14 shall determine the amount of rental assistance payments payable
15 to the owner for the forthcoming year; provided that the amount
16 shall not exceed the maximum annual rental assistance payment
17 amount determined in accordance with section 171C-AAAJ. The
18 amount determined pursuant to this subsection shall take into
19 account the estimated amount to be derived by the owner from
20 rentals to be charged for the forthcoming year and the limited
21 rate of return on equity permitted in accordance with section
22 171C-AAAJ(d) (6).



1 (d) The corporation shall establish standards and
2 requirements for:

3 (1) The awarding of rental assistance contracts and the
4 allocation of annual rental assistance payments;

5 (2) The form of lease to be utilized by the owner in
6 renting units in an eligible project;

7 (3) The marketing and tenant selection and admission
8 processes to be employed by the owner with respect to
9 an eligible project; and

10 (4) The maintenance and operation of eligible projects.

11 (e) The corporation shall establish procedures for:

12 (1) The annual review of rental schedules for eligible
13 projects;

14 (2) The periodic review of the income of tenants renting
15 units in eligible projects; and

16 (3) The periodic inspection of eligible projects to
17 monitor the owners' compliance with the terms and
18 conditions of their rental assistance contracts.

19 (f) When an eligible project is not owned by the
20 corporation, the corporation shall be entitled to share in the
21 appreciation in value of units maintained for eligible tenants
22 within an eligible project realized at the time of refinancing



1 or prepayment of the eligible project loan. The corporation's
2 share shall be calculated by multiplying the appreciation in
3 value of units maintained for eligible tenants realized upon
4 refinancing or prepayment by the ratio of the owner's equity to
5 the discounted value of the aggregate rental assistance
6 payments. The discount rate shall be established by rules
7 adopted by the corporation.

8 The corporation shall exempt projects owned by a county
9 from the shared appreciation requirement set forth in this
10 subsection if all of the following requirements are met:

11 (1) The funds derived by the county as a result of
12 appreciation in value of the units are used for
13 housing projects wherein:

14 (A) At least sixty per cent of the project is
15 affordable to families earning one hundred per
16 cent or below of the applicable area median
17 income; and

18 (B) At least half of the foregoing sixty per cent is
19 affordable to families earning eighty per cent or
20 below of the applicable area median income; and

21 (2) The project from which the appreciation in value is
22 derived remains as affordable as it was prior to the



1 refinancing or prepayment of the eligible project
2 loan.

3 **\$171C-AAAL Benefits of program not exclusive.** Nothing in
4 this subdivision shall be construed to prohibit, with respect to
5 an eligible project, the operation of the rental assistance
6 program in conjunction with other state or federal programs
7 including the state rent supplements provided for in part VIII
8 of chapter 356D.

9 **\$171C-AAAM Additional powers.** The powers conferred upon
10 the corporation by this subdivision shall be in addition and
11 supplemental to the powers conferred by any other law, and
12 nothing in this subdivision shall be construed as limiting any
13 powers, rights, privileges, or immunities so conferred.

14 4. Taxable Mortgage Securities Programs

15 **\$171C-AAAN Definitions.** Whenever used in this
16 subdivision, unless the context otherwise requires:

17 "Eligible borrower" means:

18 (1) Any person or family, without regard to race, creed,
19 national origin, or sex, who:

20 (A) Is a citizen of the United States or a resident
21 alien;

22 (B) Is a bona fide resident of the State;



1 (C) Is at least eighteen years of age;

2 (D) Does not personally, or whose spouse does not if
3 the person is married, own a majority interest in
4 any residential property in the State; and

5 (E) Meets other qualifications as established by
6 rules adopted by the corporation; or

7 (2) A qualified sponsor of an affordable housing project
8 who meets the qualification requirements as
9 established by rules adopted by the corporation.

10 "Eligible loan" or "loan" means:

11 (1) A loan to an eligible borrower for the purchase of a
12 dwelling unit, including a condominium unit; provided
13 that the property financed is located in the State,
14 will be occupied as the principal place of residence
15 by the eligible borrower, and meets other requirements
16 as established by rules adopted by the corporation; or

17 (2) An interim or permanent loan, which may be federally
18 insured or guaranteed, made to a qualified sponsor for
19 the financing of an affordable housing project, and
20 which meets other requirements as established by rules
21 adopted by the corporation.



1 "Housing loan programs" include all or any part of the loan
2 programs authorized in section 171C-AAAO.

3 **\$171C-AAAO Housing loan programs; authorization.** (a) The
4 corporation may establish under this subdivision one or more
5 eligible loan programs.

6 (b) The corporation may invest in, make, purchase, take
7 assignments of, or otherwise acquire or make commitments to
8 invest in, make, purchase, take assignments of, or otherwise
9 acquire any eligible loans or any partial interest or
10 participation therein held by or on behalf of the corporation.

11 (c) The corporation may sell, assign, or otherwise dispose
12 of or enter into commitments to sell, assign, or otherwise
13 dispose of any eligible loans or any partial interest or
14 participation therein held by or on behalf of the corporation.

15 (d) The corporation may acquire any obligation under
16 conditions which require the seller of the obligation to use the
17 proceeds of the sale for the purpose of financing eligible
18 loans.

19 **\$171C-AAAP Housing loan programs; procedures and**
20 **requirements.** (a) The corporation may establish procedures and
21 requirements for:



(1) The purchase of loans from mortgage lenders by auction, invitation of tender, advance commitment, or other negotiation;

(2) The making of loans through mortgage lenders to eligible borrowers or qualified sponsors;

(3) The allocation to mortgage lenders of money made available under this subdivision; and

(4) The participation by mortgage lenders as originators and processors of loans on behalf of the corporation under this subdivision.

(b) The corporation may adopt rules under chapter 91 necessary or convenient for the operation of the housing loan programs established under this subdivision.

§171C-AAAQ Housing loan programs; general powers. (a)

The corporation may make, enter into, and enforce all contracts or agreements which are necessary, convenient, or desirable for the purpose of the performance of its powers under this subdivision.

(b) The corporation may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient in connection with its housing loan programs established under this subdivision. The fees, premiums, and



1 charges shall be deposited into funds as determined by the
2 corporation.

3 (c) The corporation may contract for the servicing and
4 custody of any loans or other obligations acquired under this
5 subdivision.

6 (d) The corporation may procure insurance against any
7 default of its loans from insurers in amounts deemed necessary
8 or desirable.

9 (e) Subject to any agreements with the holders of its
10 bonds, the corporation may:

11 (1) Renegotiate, refinance, or foreclose any loan in
12 default;

13 (2) Commence any action to protect or enforce any right
14 conferred upon it by any law, or as provided in any
15 mortgage, insurance policy, contract, or other
16 agreement; and

17 (3) Bid for and purchase the property secured by the loan
18 at any foreclosure or other sale; or acquire, or take
19 possession of the property secured by the loan and may
20 operate, manage, lease, dispose of, or otherwise deal
21 with the property securing the loan.



1 **§171C-AAAR Additional powers.** The powers conferred upon
2 the corporation by this subdivision shall be in addition and
3 supplemental to the powers conferred by any other law, and
4 nothing in this subdivision shall be construed as limiting any
5 powers, rights, privileges, or immunities so conferred.

6 5. State Mortgage Guarantee Program

7 **§171C-AAAS State mortgage guarantee.** (a) The corporation
8 may guarantee:

9 (1) Up to the top twenty-five per cent of the principal
10 balance of real property mortgage loans for the
11 purchase of qualified single-family or multifamily
12 dwelling units;

13 (2) Up to one hundred per cent of the principal balance of
14 real property mortgage loans of qualified single-
15 family housing under section 213 of the Hawaiian Homes
16 Commission Act, 1920, as amended; or

17 (3) Up to one hundred per cent of the principal balance of
18 real property mortgage loans of single-family or
19 multifamily housing developed under self-help or shell
20 housing programs;

21 plus the interest due thereon, made to qualified borrowers by
22 qualified private lenders; provided that at no time shall the



1 corporation's liability, contingent or otherwise, on these
2 guarantees exceed \$10,000,000.

3 For purposes of this section:

4 "Self-help housing program" means development or
5 preservation of housing in which prospective homeowners have
6 contributed labor, materials, or real property; provided that at
7 least two-thirds of the participating homeowners are qualified
8 by income for assistance under this subdivision and that the
9 program is carried out under the sponsorship of a nonprofit
10 community development organization.

11 "Shell housing program" means development of housing which
12 is habitable but unfinished and can be completed or expanded;
13 provided that one hundred per cent of the participating
14 homeowners are qualified by income for assistance under this
15 subdivision and that the program is carried out under the
16 sponsorship of a public, nonprofit, or private organization.

17 (b) The loans shall be secured by a duly recorded first
18 mortgage upon the fee simple or leasehold interest of the
19 borrower in the single-family or multifamily dwelling owned and
20 occupied by the borrower and the borrower's permitted assigns.
21 Private lenders shall include all banks, savings and loan
22 associations, mortgage companies, and other qualified companies



1 and trust funds whose business includes the making of loans in
2 the State.

3 (c) Loans guaranteed under this section shall be in
4 accordance with rules adopted by the corporation.

5 (d) To be eligible for loans under this section, a
6 qualified borrower shall be:

7 (1) A citizen of the United States or a resident alien;

8 (2) Qualified under the rules adopted by the corporation;
9 and

10 (3) Willing to comply with the rules as may be adopted by
11 the corporation.

12 The corporation may secure the services of a private lender to
13 process all applications and determine the qualification of
14 borrowers under this subdivision.

15 (e) When the application for an insured loan has been
16 approved by the corporation, the corporation shall issue to the
17 lender a guarantee for that percentage of the loan on which it
18 guarantees payment of principal and interest. The private
19 lender shall collect all payments from the borrower and
20 otherwise service the loan.

21 (f) In return for the corporation's guarantee, the private
22 lender shall remit out of monthly payments collected an



1 insurance fee as established by the corporation. The funds
2 remitted shall be deposited to the credit of the state general
3 fund.

4 (g) When any installment of principal and interest has
5 been due for sixty days and has not been paid by the borrower,
6 the private lender may file a claim for the guaranteed portion
7 of the overdue payments with the corporation which may then
8 authorize vouchers for these payments, thereby acquiring a
9 division of interest in the collateral pledged by the borrower
10 in proportion to the amount of the payment. The corporation
11 shall be reimbursed for any amounts so paid plus the applicable
12 interest rate when payment is collected from the borrower.

13 (h) If there is any default in any payment to be made by
14 the borrower, the lender shall notify the corporation within
15 fifteen days. Should the lender deem that foreclosure
16 proceedings are necessary to collect moneys due from the
17 borrower, it shall notify the corporation. Within thirty days
18 of either notification, the corporation may elect to request an
19 assignment of the loan on payment in full to the lender of the
20 principal balance and interest due. Foreclosure proceedings
21 shall be held in abeyance in the interim.



(i) Every qualified borrower who is granted a loan under this section shall comply with the following conditions:

(1) Expend no portion of the qualified borrower's loan for purposes other than those sanctioned by the corporation;

(2) Not sell or otherwise dispose of the mortgaged property except upon the prior written consent of the corporation and except upon any conditions that may be prescribed in writing by the private lender;

(3) Undertake to pay when due all taxes, liens, judgments, or assessments that may be lawfully assessed against the property mortgaged, together with the costs and expenses of any foreclosure of the mortgage;

(4) Keep insured to the satisfaction of the private lender all improvements and other insurable property covered by the mortgage. Insurance shall be made payable to the mortgagee as its interest may appear at the time of the loss. At the option of the private lender, subject to the rules and standards of the corporation, sums so received may be used to pay for reconstruction of the improvements destroyed, or for decreasing the amount of the indebtedness;



1 (5) Keep the improvements in good repair; and

2 (6) The private lender may impose any other conditions in
3 its mortgage; provided the form of the mortgage has
4 received the prior approval of the corporation.

5 All of the conditions in paragraphs "(1) through (6) shall be '
6 held and construed to be provisions of any mortgage executed by
7 virtue of this section regardless of whether or not the
8 conditions are expressly incorporated in the mortgage document.

9 (j) Loans guaranteed and made under this subdivision shall
10 be repaid in accordance with a payment schedule specified by the
11 private lender with payments applied first to interest and then
12 to principal. Additional payments in any sums and the payment
13 of the entire principal may be made at any time within the
14 period of the loan. The private lender for satisfactory cause
15 and at its discretion, may extend the time within which the
16 installments of principal may be made for a period not to exceed
17 two years.

18 (k) All interest and fees collected under this subdivision
19 by the corporation shall be deposited into the general fund.

20 All moneys necessary to guarantee payment of loans made under
21 this subdivision and to carry on the operations of the
22 corporation in administering and granting loans under this



1 subdivision shall be appropriated by the legislature out of the
2 proceeds of the general fund. The corporation shall include in
3 its legislative budgetary request for the upcoming fiscal
4 period, the amounts necessary to effectuate the purposes of this
5 section.

6 **§171C-AAAT Mortgage guarantee agreements.** (a) To induce
7 appropriate officials of any agency or instrumentality of the
8 United States to commit to insure and to insure mortgages under
9 the provisions of the United States Housing Act of 1937, as
10 amended, the corporation may enter into guarantee agreements
11 with those officials whenever:

12 (1) The purchaser-mortgagor in question is ineligible for
13 mortgage insurance purposes under the United States
14 Housing Act of 1937, as amended, because of credit
15 standing, debt obligation, or income characteristics;

16 (2) The purchaser-mortgagor in question is a "displaced
17 person" as defined in chapter 111 and the guarantee
18 agreement will enable the purchaser-mortgagor to
19 obtain suitable replacement housing in accordance with
20 chapter 111; or

21 (3) The corporation finds that the purchaser-mortgagor
22 would be a satisfactory credit risk with ability to



repay the mortgage loan if the purchaser-mortgagor were to receive budget, debt management, and related counseling.

(b) Guarantee agreements under subsection (a) may obligate the corporation to:

(1) Provide or cause to be provided counseling under subsection (a)(3); and

(2) Indemnify an agency or instrumentality of the United States for a period not to exceed five years for any loss sustained by the agency or instrumentality by reason of insurance of a mortgage.

(c) The total of guarantees made pursuant to this section and guarantees made pursuant to section 171C-AAAS shall not exceed \$10,000,000.

§171C-AAAU Additional powers. The powers conferred upon the corporation by this subdivision shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subdivision shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

6. Downpayment Loan Program

§171C-AAAV Downpayment loans. (a) The corporation may make direct downpayment loans to eligible borrowers who qualify



1 for loans under section 171C-AAAW. The downpayment loan to any
2 one borrower shall not exceed thirty per cent of the purchase
3 price of the residential property or \$15,000, whichever is less.
4 The interest rate on the loans may range from zero per cent to
5 eight per cent, depending on the buyer's income.

6 (b) The repayment of every downpayment loan shall be
7 secured by a duly recorded second mortgage executed by the
8 borrower to the State on the residential property purchased with
9 the downpayment loan.

10 (c) The principal of the downpayment loan, together with
11 accrued interest, shall be due and payable upon the sale,
12 transfer, or refinancing of the property, or shall be repaid by
13 the borrower in installments as determined by the corporation;
14 provided that the corporation may provide a period in which
15 payments may be waived. The period over which the principal and
16 interest shall be paid need not coincide with the period over
17 which the loan from the mortgage lender for the balance of the
18 purchase price must be repaid. The borrower may repay the whole
19 or any part of the unpaid balance of the downpayment loan, plus
20 accrued interest, at any time without penalty.

21 (d) The corporation may secure the services of the
22 mortgage lender who loans to the borrower the balance of the



1 purchase price of the residential property or the services of
2 any other mortgage lender doing business in the State to
3 collect, on behalf of the State, the principal and interest of
4 the downpayment loan and otherwise to service the downpayment
5 loan, for a servicing fee not in excess of the prevailing loan
6 servicing fees.

7 (e) The corporation shall adopt rules pursuant to chapter
8 91 to carry out the purposes of this subdivision.

9 **§171C-AAAW Qualifications for downpayment loans.** (a) No
10 person shall be qualified for a downpayment loan unless the
11 person:

12 (1) Is a citizen of the United States or a resident alien;

13 (2) Is at least eighteen years of age;

14 (3) Is a bona fide resident of the State;

15 (4) Will physically reside in the residential property to
16 be purchased for the term of the loan;

17 (5) Is accepted by a mortgage lender as a person to whom
18 it is willing to lend money for the purchase of the
19 residential property provided the required downpayment
20 is made; and

21 (6) Provides a portion of the downpayment which shall be
22 equal to at least three per cent of the sales price.



(b) No person who owns in fee simple or in leasehold any other residential property within the State shall be eligible to become a borrower under this section. A person shall be deemed to own a residential property if the person, the person's spouse, or both (unless separated and living apart under a decree of a court of competent jurisdiction) own a majority interest in a residential property.

§171C-AAAX Restrictions on borrower. Every loan made under this subdivision shall be subject to the following conditions:

(1) The borrower shall expend no portion of the borrower's downpayment loan for purposes other than to make a downpayment for the purchase of a residential property;

(2) The residential property purchased with the downpayment loan and mortgaged to the State to secure the repayment of the loan shall not be sold or assigned without the prior approval in writing of the corporation and the first mortgage lender;

(3) The borrower shall pay when due all taxes, liens, judgments, or assessments that may be lawfully levied against the residential property and all costs and



1 expenses of any foreclosure of the mortgage made to
2 the State;

3 (4) The borrower shall maintain fire and casualty
4 insurance in amounts equal to the replacement value of
5 all improvements and insurable portions of the
6 residential property with an insurance company
7 authorized to do business in the State. All proceeds
8 of that insurance shall be made payable to the first
9 mortgage lender and the corporation as their
10 respective interests may appear at the time of any
11 loss or damage. Subject to the rules of the
12 corporation, in the event of any loss or damage to the
13 improvements or property covered by the insurance, the
14 proceeds receivable by the State shall be applied
15 toward the reconstruction of the improvements or
16 property destroyed or damaged, unless otherwise
17 determined by the corporation on behalf of the State;
18 and

19 (5) The borrower shall maintain the improvements in good
20 repair.

21 All of the conditions in paragraphs (1) through (5) shall
22 be a part of any downpayment mortgage executed under this



1 subdivision, regardless of whether or not they are expressly
2 incorporated in the mortgage document.

3 **§171C-AAAY Default.** If the borrower defaults in the
4 payment of any installment of principal or interest of the
5 downpayment loan, the corporation or mortgage lender shall take
6 all necessary action to collect the delinquent amounts and may
7 take all actions generally allowed holders of mortgages,
8 including the power to foreclose. Upon any foreclosure of the
9 second mortgage, the corporation or mortgage lender on behalf of
10 the corporation, may purchase the interest of the borrower in
11 and to the residential property, take possession thereof and
12 assume all of the obligations of the borrower under the first
13 mortgage held by the private lender and any other liens having
14 priority over the second mortgage that may then exist. On the
15 acquisition of the borrower's interest, the corporation, at its
16 option, may pay in full the unpaid balance of the borrower's
17 obligation secured by the first mortgage and other prior liens;
18 repair, renovate, modernize, or improve the residential
19 property; and, with or without clearing the property of all
20 prior mortgages and liens, sell, lease, or rent the property or
21 use or dispose of the same in any manner authorized by law.



1 **\$171C-AAAZ Additional powers.** The powers conferred upon
2 the corporation by this subdivision shall be in addition and
3 supplemental to the powers conferred by any other law, and
4 nothing in this subdivision shall be construed as limiting any
5 powers, rights, privileges, or immunities so conferred.

6 7. Homebuyers' Club Program

7 **\$171C-A AAAA Homebuyers' club program.** (a) The
8 corporation may establish a homebuyers' club program for
9 participants who are desirous of purchasing a home and who have
10 adequate incomes but who lack sufficient funds for the
11 downpayment and closing costs. The primary focus of this
12 program is to facilitate the purchase of homes by providing
13 participants with strategies to save money, to resolve credit
14 problems, and to educate participants on how to shop for and
15 purchase a home.

16 (b) In establishing such a program, the corporation shall
17 adopt rules pursuant to chapter 91 relating to establishing a
18 savings program for participants based upon individual analyses
19 of income and family expenses. The rules may also provide for
20 integration of the homebuyers' club program with other
21 governmental programs including but not limited to individual
22 housing accounts under section 235-5.5, the state mortgage



1 guarantee program under subdivision 5, the downpayment loan
2 program established under subdivision 6, and the rent-to-own
3 program established under subdivision 8.

4 (c) The corporation may secure the services of another
5 public or private entity to carry out the purposes of this
6 section.

7 **§171C-AAAAB Additional powers.** The powers conferred upon
8 the corporation by this subdivision shall be in addition and
9 supplemental to the powers conferred by any other law, and
10 nothing in this subdivision shall be construed as limiting any
11 powers, rights, privileges, or immunities so conferred.

12 8. Rent-to-Own Program

13 **§171C-AAAAC Rent-to-own program.** (a) The corporation may
14 establish a rent-to-own program under which dwelling units that
15 are for sale may be rented to program participants. Under this
16 program, the corporation shall credit a portion of the rent
17 received toward the purchase of the unit.

18 (b) The sales price shall be established at the beginning
19 of the rental term and shall remain fixed for the first five
20 years after the rental agreement is executed. During this
21 period, the participant shall have the option of purchasing the
22 unit at the designated sales price. If the participant does not



1 elect to purchase the unit within the five-year period, the
2 renter shall forfeit the right to continue living in the unit
3 and the unit shall be made available to another purchaser or
4 renter.

5 (c) The corporation shall have the right to reestablish
6 the sales price upon expiration of the option period or upon
7 resale of the unit.

8 **§171C-AAAAD Additional powers.** The powers conferred upon
9 the corporation by this subdivision shall be in addition and
10 supplemental to the powers conferred by any other law, and
11 nothing in this subdivision shall be construed as limiting any
12 powers, rights, privileges, or immunities so conferred.

13 9. Dwelling Unit Revolving Fund

14 **§171C-AAAAE Dwelling unit revolving fund.** There is
15 established a dwelling unit revolving fund. The funds
16 appropriated for the purpose of the dwelling unit revolving fund
17 and all moneys received or collected by the corporation for the
18 purpose of the revolving fund shall be deposited in the
19 revolving fund. The proceeds in the revolving fund shall be
20 used to reimburse the general fund to pay the interest on
21 general obligation bonds issued for the purposes of the
22 revolving fund, for the necessary expenses in administering



1 housing development programs, and for carrying out the purposes
2 of housing development programs, including but not limited to
3 the expansion of community facilities constructed in conjunction
4 with housing projects, permanent primary or secondary financing,
5 and supplementing building costs, federal guarantees required
6 for operational losses, and all things required by any federal
7 agency in the construction and receipt of federal funds or
8 low-income housing tax credits for housing projects.

9 **§171C-AAAAF Additional powers.** The powers conferred upon
10 the corporation by this subdivision shall be in addition and
11 supplemental to the powers conferred by any other law, and
12 nothing in this subdivision shall be construed as limiting any
13 powers, rights, privileges, or immunities so conferred.

14 10. Rental Housing Trust Fund

15 **§171C-AAAAG Definitions.** As used in this subdivision,
16 unless a different meaning is clearly required by the context:

17 "Develop" or "development" means the planning, financing,
18 or acquisition of real and personal property; demolition of
19 existing structures; clearance of real property; construction,
20 reconstruction, alteration, or repairing of approaches, streets,
21 sidewalks, utilities, and services, or other site improvements;
22 construction, reconstruction, repair, remodeling, extension,



1 equipment, or furnishing of buildings or other structures; or
2 any combination of the foregoing, of any housing project. It
3 also includes any undertakings necessary therefor, and the
4 acquisition of any housing, in whole or in part.

5 "Fund" means the rental housing trust fund established in
6 this subdivision.

7 **§171C-AAAAH Rental housing trust fund.** (a) There is
8 established the rental housing trust fund to be administered by
9 the corporation.

10 (b) An amount from the fund, to be set by the corporation
11 and authorized by the legislature, may be used for
12 administrative expenses incurred by the corporation in
13 administering the fund; provided that fund moneys may not be
14 used to finance day-to-day administrative expenses of projects
15 allotted fund moneys.

16 (c) The following may be deposited into the fund:
17 appropriations made by the legislature, private contributions,
18 repayment of loans, interest, other returns, and moneys from
19 other sources.

20 (d) The fund shall be used to provide loans or grants for
21 the development, pre-development, construction, acquisition,
22 preservation, and substantial rehabilitation of rental housing



1 units. Permitted uses of the fund may include but are not
2 limited to planning, design, land acquisition, costs of options,
3 agreements of sale, downpayments, equity financing, capacity
4 building of nonprofit housing developers, or other housing
5 development services or activities as provided in rules adopted
6 by the corporation pursuant to chapter 91. The rules may
7 provide for a means of recapturing loans or grants made from the
8 fund if a rental housing project financed under the fund is
9 refinanced or sold at a later date. The rules may also provide
10 that moneys from the fund shall be leveraged with other
11 financial resources to the extent possible.

12 (e) Moneys available in the fund shall be used for the
13 purpose of providing, in whole or in part, loans or grants for
14 rental housing projects in the following order of priority:

- 15 (1) Projects or units in projects that are allocated
16 low-income housing credits pursuant to the state
17 housing credit ceiling under section 42(h) of the
18 Internal Revenue Code of 1986, as amended, or projects
19 or units in projects that are funded by programs of
20 the United States Department of Housing and Urban
21 Development and United States Department of
22 Agriculture Rural Development wherein:



1 (A) At least fifty per cent of the available units
2 are for persons and families with incomes at or
3 below eighty per cent of the median family income
4 of which at least five per cent of the available
5 units are for persons and families with incomes
6 at or below thirty per cent of the median family
7 income; and

8 (B) The remaining units are for persons and families
9 with incomes at or below one hundred per cent of
10 the median family income;

11 provided that the corporation may establish rules to
12 ensure full occupancy of fund projects; and

13 (2) Mixed-income rental projects or units in a
14 mixed-income rental project wherein all of the
15 available units are for persons and families with
16 incomes at or below one hundred forty per cent of the
17 median family income.

18 (f) The corporation shall submit an annual report to the
19 legislature no later than twenty days prior to the convening of
20 each regular session describing the projects funded and, with
21 respect to rental housing projects targeted for persons and
22 families with incomes at or below thirty per cent of the median



1 family income, its efforts to develop those rental housing
2 projects, a description of proposals submitted for this target
3 group and action taken on the proposals, and any barriers to
4 developing housing units for this target group.

5 (g) For the purposes of this subdivision, the applicable
6 median family income shall be the median family income for the
7 county or standard metropolitan statistical area in which the
8 project is located as determined by the United States Department
9 of Housing and Urban Development, as adjusted from time to time.

10 (h) The corporation may provide loans and grants under
11 this section; provided that the corporation shall establish
12 loan-to-value ratios to protect the fund from inordinate risk
13 and that under no circumstances shall the rules permit the
14 loan-to-value ratio to exceed one hundred per cent; and provided
15 further that the underwriting guidelines include a debt-coverage
16 ratio of not less than 1.0 to 1.

17 (i) For the period commencing July 1, 2005, through June
18 30, 2009, the fund may be used to provide grants for rental
19 units set aside for persons and families with incomes at or
20 below thirty per cent of the median family income in any project
21 financed in whole or in part by the fund in proportion of those
22 units to the total number of units in the project. At the



1 conclusion of the period described in this subsection, the
2 corporation shall report to the legislature on the number and
3 use of grants provided and whether the grants were an effective
4 use of the funds for purposes of developing rental housing for
5 families at or below thirty per cent of the median family
6 income.

7 **§171C-AAAAI Eligible applicants for funds.** Eligible
8 applicants for funds shall include nonprofit and for-profit
9 organizations, limited liability companies, partnerships, and
10 government agencies, who are qualified in accordance with rules
11 adopted by the corporation pursuant to chapter 91.

12 **§171C-AAAJ Eligible projects.** (a) Activities eligible
13 for assistance from the fund shall include but not be limited
14 to:

15 (1) New construction, rehabilitation, or preservation of
16 low-income rental housing units that meet the criteria
17 for eligibility described in subsection (c);

18 (2) The leveraging of moneys with the use of fund assets;

19 (3) Pre-development activity grants or loans to nonprofit
20 organizations; and

21 (4) Acquisition of housing units for the purpose of
22 preservation as low-income or very low-income housing.



(b) Preference shall be given to projects producing units in at least one of the following categories:

- (1) Multifamily units;
- (2) Attached single-family units;
- (3) Apartments;
- (4) Townhouses;
- (5) Housing units above commercial or industrial space;
- (6) Single room occupancy units;
- (7) Accessory apartment units;
- (8) Employee housing;
- (9) United States Department of Housing and Urban Development mixed finance development of public housing units; and
- (10) Other types of units meeting the criteria for eligibility set forth in subsection (c).

(c) The corporation shall establish an application process for fund allocation that gives preference to projects meeting the following criteria that are listed in descending order of priority:

- (1) Serve the original target group;



1 (2) Provide at least five per cent of the total number of
2 units for persons and families with incomes at or
3 below thirty per cent of the median family income;

4 (3) Provide the maximum number of units for persons or
5 families with incomes at or below eighty per cent of
6 the median family income;

7 (4) Are committed to serving the target group over a
8 longer period of time;

9 (5) Increase the integration of income levels of the
10 immediate community area;

11 (6) Meet the geographic needs of the target group of the
12 proposed rental housing project, such as proximity to
13 employment centers and services; and

14 (7) Have favorable past performance in developing, owning,
15 managing, or maintaining affordable rental housing.

16 The corporation may include other criteria as it deems
17 necessary to carry out the purposes of this subdivision.

18 If the corporation, after applying the process described in
19 this subsection, finds a nonprofit project equally ranked with a
20 for-profit or government project, the corporation shall give
21 preference to the nonprofit project in allotting fund moneys.



1 **§171C-AAAAK Additional powers.** The powers conferred upon
2 the corporation by this subdivision shall be in addition and
3 supplemental to the powers conferred by any other law, and
4 nothing in this subdivision shall be construed as limiting any
5 powers, rights, privileges, or immunities conferred.

6 D. Expenditures Of Revolving Funds Under

7 The Corporation Exempt From Appropriation And Allotment

8 **§171C-AAAAL Expenditures of revolving funds under the**
9 **corporation exempt from appropriation and allotment.** Except as
10 to administrative expenditures, and except as otherwise provided
11 by law, expenditures from the revolving funds administered by
12 the corporation under subdivisions 9 and 10 of subpart C,
13 relating to financing programs, or sections 171C-AAF, 171C-AAG,
14 171C-AAAI, or 516-44 may be made by the corporation without
15 appropriation or allotment by the legislature; provided that no
16 expenditure shall be made from and no obligation shall be
17 incurred against any revolving fund in excess of the amount
18 standing to the credit of the fund or for any purpose for which
19 the fund may not lawfully be expended. Nothing in sections 37-
20 31 to 37-41 shall require the proceeds of the revolving funds
21 identified in subdivisions 9 and 10 of subpart C, or sections



1 171C-AAF, 171C-AAG, 171C-AAAI, or 516-44 to be reappropriated
2 annually.

3 **§171C-AAAAM Additional powers.** The powers conferred upon
4 the corporation by this subpart shall be in addition and
5 supplemental to the powers conferred by any other law, and
6 nothing in this subpart shall be construed as limiting any
7 powers, rights, privileges, or immunities so conferred.

8 **PART III. COMMUNITY DEVELOPMENT**

9 **A. General Provisions**

10 **§171C-AAAAN Definitions.** As used in this part, the
11 following words and terms shall have the following meanings
12 unless the context shall indicate another or different meaning
13 or intent:

14 "County" means any county of the State.

15 "Local governing body" means the county council.

16 "Project" means a specific work or improvement, including
17 real and personal properties, or any interest therein, acquired,
18 owned, constructed, reconstructed, rehabilitated, or improved by
19 the corporation, including a residential project, a
20 redevelopment project, or a commercial project, all as defined
21 herein, or any combination thereof, which combination shall
22 hereinafter be called and known as a "multipurpose project".



1 (1) "Residential project" means a project or that portion
2 of a multipurpose project, including residential
3 dwelling units, designed and intended for the purpose
4 of providing housing and such facilities as may be
5 incidental or appurtenant thereto;

6 (2) "Redevelopment project" means an undertaking for the
7 acquisition, clearance, replanning, reconstruction,
8 and rehabilitation or a combination of these and other
9 methods, of an area for a residential project, for an
10 incidental commercial project, and for other
11 facilities incidental or appurtenant thereto, pursuant
12 to and in accordance with this part. The terms
13 "acquisition, clearance, replanning, reconstruction,
14 and rehabilitation" shall include renewal,
15 redevelopment, conservation, restoration, or
16 improvement, or any combination thereof;

17 (3) "Commercial project" means an undertaking involving
18 commercial or light industrial development, which
19 includes a mixed use development where commercial or
20 light industrial facilities may be built into,
21 adjacent to, under or above residential units.



1 "Public agency" means any office, department, board,
2 commission, bureau, division, public corporation agency, or
3 instrumentality of the federal, state, or county government.

4 "Public facilities" includes streets, utility and service
5 corridors, and utility lines where applicable, sufficient to
6 adequately service developable improvements in the district,
7 sites for schools, parks, parking garage, sidewalks, pedestrian
8 ways, and other community facilities. "Public facilities" shall
9 also include public highways, as defined by statute, storm
10 drainage systems, water systems, street lighting systems, off-
11 street parking facilities, and sanitary sewerage systems.

12 "Real property" means lands, structures, and interests in
13 land, including lands under water and riparian rights, space
14 rights, and air rights and any and all other things and rights
15 usually included within the term. Real property also means any
16 and all interests in such property less than full title, such as
17 easements, incorporeal hereditaments, and every estate, interest,
18 or right, legal or equitable, including terms for years and
19 liens thereon by way of judgments, mortgages, or otherwise.

20 **§171C-AAAAO Designation of community development**
21 **districts; community development plans.** (a) The legislature,
22 by statute, may designate an area as a community development



1 district if it determines that there is need for replanning,
2 renewal, or redevelopment of that area. The designation shall
3 describe the boundaries of the district.

4 (b) After designation, the corporation shall develop a
5 community development plan for the designated district. The
6 plan shall include but not be limited to community development
7 guidance policies, district-wide improvement program and
8 community development rules.

9 (c) The corporation may enter into cooperative agreements
10 with qualified persons or public agencies, where the powers,
11 services, and capabilities of such persons or agencies are
12 deemed necessary and appropriate for the development of the
13 community development plan.

14 (d) Whenever possible, planning activities of the
15 corporation shall be coordinated with federal, state, and county
16 plans. Consideration shall be given to state goals and
17 policies, adopted state plan or land use guidance policies,
18 county general plans, development plans, and ordinances.

19 (e) The corporation shall hold a public hearing on a
20 proposed community development plan pursuant to chapter 91 and,
21 after consideration of comments received and appropriate



1 revision, shall submit the community development plan to the
2 governor for the governor's approval.

3 After approval, the governor shall submit to the
4 legislature requests for appropriations, authorization to issue
5 bonds, or both, to implement the community development plan in
6 an orderly, affordable, and feasible manner. The governor shall
7 submit the requests to the legislature as part of the executive
8 budget or supplemental budget, as appropriate. In addition to
9 the information, data, and materials required under chapter 37,
10 the requests shall be accompanied by:

11 (1) Plans, maps, narrative descriptions, and other
12 appropriate materials on the:

13 (A) Locations and design of projects or public
14 facilities proposed to be funded; and

15 (B) Phase of the community development plans proposed
16 to be implemented with the requested funds; and

17 (2) Other information deemed by the governor of
18 significance to the legislature regarding the projects
19 or public facilities proposed to be funded, including
20 a discussion of the public benefits intended by, and
21 adverse effects which may result from, implementation
22 of the projects or public facilities.



(f) The corporation may amend the community development plan as may be necessary. Amendments shall be made in accordance with chapter 91.

§171C-AAAAP Community and public notice requirements; posting on the corporation's website; required. (a) The corporation shall adopt community and public notice procedures pursuant to chapter 91 that shall include at a minimum:

(1) A means to effectively engage the community in which the corporation is planning a development project to ensure that community concerns are received and considered by the corporation;

(2) The posting of the corporation's proposed plans for development of community development districts, public hearing notices, and minutes of its proceedings on the corporation's website; and

(3) Any other information that the public may find useful so that it may meaningfully participate in the corporation's decision-making processes.

(b) The corporation shall notify the president of the senate and speaker of the house:

(1) Of any public hearing upon posting of the hearing notice; and



(2) With a report detailing the public's reaction at the public hearing, within one week after the hearing.

§171C-AAAAQ Public hearing for decision making; separate hearing required. (a) When rendering a decision regarding:

(1) An amendment to any of the corporation's community development rules established pursuant to chapter 91 and section 171C-AAAAS; or

(2) The acceptance of a developer's proposal to develop lands under the corporation's control, the corporation shall render its decision at a public hearing separate from the hearing that the proposal under paragraph (1) or (2) was presented.

(b) The corporation shall issue a public notice in accordance with section 1-28.5 and post the notice on its website; provided that the decision-making hearing shall not occur earlier than five business days after the notice is posted. Prior to rendering a decision, the corporation shall provide the general public with the opportunity to testify at its decision-making hearing.

(c) The corporation shall notify the president of the senate and speaker of the house:



(1) Of any public hearing upon posting of the hearing notice; and

(2) With a report detailing the public's reaction at the public hearing, within one week after the hearing.

§171C-AAAAR District-wide improvement program. (a) The corporation shall develop a district-wide improvement program to identify necessary district-wide public facilities within a community development district.

(b) Whenever the corporation shall determine to undertake, or cause to be undertaken, any public facility as part of the district-wide improvement program, the cost of providing the public facilities shall be assessed against the real property in the community development district specially benefiting from such public facilities. The corporation shall determine the areas of the community development district which will benefit from the public facilities to be undertaken and, if less than the entire community development district benefits, the corporation may establish assessment areas within the community development district. The corporation may issue and sell bonds in such amounts as may be authorized by the legislature to provide funds to finance such public facilities. The corporation shall fix the assessments against real property



1 specially benefited. All assessments made pursuant to this
2 section shall be a statutory lien against each lot or parcel of
3 land assessed from the date of the notice declaring the
4 assessment until paid and such lien shall have priority over all
5 other liens except the lien of property taxes. As between liens
6 of assessments, the earlier lien shall be superior to the later
7 lien.

8 (c) Bonds issued to provide funds to finance public
9 facilities shall be secured solely by the real properties
10 benefited or improved, the assessments thereon, or by the
11 revenues derived from the program for which the bonds are
12 issued, including reserve accounts and earnings thereon,
13 insurance proceeds, and other revenues, or any combination
14 thereof. The bonds may be additionally secured by the pledge or
15 assignment of loans and other agreements or any note or other
16 undertaking, obligation, or property held by the corporation.
17 Bonds issued pursuant to this section and the income therefrom
18 shall be exempt from all state and county taxation, except
19 transfer and estate taxes. The bonds shall be issued according
20 and subject to the provisions of the rules adopted pursuant to
21 this section.



1 (d) Any other law to the contrary notwithstanding, in
2 assessing real property for public facilities, the corporation
3 shall assess the real property within an assessment area
4 according to the special benefits conferred upon the real
5 property by the public facilities. These methods may include
6 assessment on a frontage basis or according to the area of real
7 property within an assessment area or any other assessment
8 method which assesses the real property according to the special
9 benefit conferred, or any combination thereof. No such
10 assessment levied against real property specially benefited as
11 provided by this part shall constitute a tax on real property
12 within the meanings of any constitutional or statutory
13 provisions.

14 (e) The corporation shall adopt rules pursuant to chapter
15 91, and may amend the rules from time to time, providing for the
16 method of undertaking and financing public facilities in an
17 assessment area or an entire community development district.
18 The rules adopted pursuant to this section shall include but are
19 not limited to the following: methods by which the corporation
20 shall establish assessment areas; the method of assessment of
21 real properties specially benefited; the costs to be borne by
22 the corporation, the county in which the public facilities are



1 situated, and the property owners; the procedures before the
2 corporation relating to the creation of the assessment areas by
3 the owners of real property therein, including provisions for
4 petitions, bids, contracts, bonds, and notices; provisions
5 relating to assessments; provisions relating to financing, such
6 as bonds, revolving funds, advances from available funds,
7 special funds for payment of bonds, payment of principal and
8 interest, and sale and use of bonds; provisions relating to
9 funds and refunding of outstanding debts; and provisions
10 relating to limitations on time to sue, and other related
11 provisions.

12 (f) Any provisions to the contrary notwithstanding, the
13 corporation may, in its discretion, enter into any agreement
14 with the county in which the public facilities are located, to
15 implement all or part of the purposes of this section.

16 (g) All sums collected under this section shall be
17 deposited in the Hawaii community development revolving fund
18 established by section 171C-AAAAAD; except that notwithstanding
19 section 171C-AAAAAD, all moneys collected on account of
20 assessments and interest thereon for any specific public
21 facilities financed by the issuance of bonds shall be set apart
22 in a separate special fund and applied solely to the payment of



1 the principal and interest on these bonds, the cost of
2 administering, operating, and maintaining the program, the
3 establishment of reserves, and other purposes as may be
4 authorized in the proceedings providing for the issuance of the
5 bonds. If any surplus remains in any special fund after the
6 payment of the bonds chargeable against such fund, it shall be
7 credited to and become a part of the Hawaii community
8 development revolving fund. Moneys in the Hawaii community
9 development revolving fund may be used to make up any
10 deficiencies in the special fund.

11 (h) If the public facilities to be financed through bonds
12 issued by the corporation may be dedicated to the county in
13 which the public facilities are to be located, the corporation
14 shall ensure that the public facilities are designed and
15 constructed to meet county requirements.

16 (i) Notwithstanding any law to the contrary, whenever as
17 part of a district-wide improvement program it becomes necessary
18 to remove, relocate, replace, or reconstruct public utility
19 facilities, the corporation shall establish by rule the
20 allocation of cost between the corporation, the affected public
21 utilities, and properties that may specially benefit from such
22 improvement, if any. In determining the allocation of cost, the



1 corporation shall consider the cost allocation policies for
2 improvement districts established by the county in which the
3 removal, relocation, replacement, or reconstruction is to take
4 place.

5 **§171C-AAAAS Community development rules.** The corporation
6 shall establish community development rules under chapter 91 on
7 health, safety, building, planning, zoning, and land use which,
8 upon final adoption of a community development plan, shall
9 supersede all other inconsistent ordinances and rules relating
10 to the use, zoning, planning, and development of land and
11 construction thereon. Rules adopted under this section shall
12 follow existing law, rules, ordinances, and regulations as
13 closely as is consistent with standards meeting minimum
14 requirements of good design, pleasant amenities, health, safety,
15 and coordinated development. The corporation may, in the
16 community development plan or by a community development rule,
17 provide that lands within a community development district shall
18 not be developed beyond existing uses or that improvements
19 thereon shall not be demolished or substantially reconstructed,
20 or provide other restrictions on the use of the lands.

21 **§171C-AAAAT Use of public lands; acquisition of state**
22 **lands.** (a) Any provision of chapter 171 to the contrary



1 notwithstanding, the governor may set aside public lands located
2 within community development districts to the corporation for
3 its use.

4 (b) If state lands under the control and management of
5 other public agencies are required by the corporation for its
6 purposes, the agency having the control and management of those
7 required lands shall, upon request by the corporation and with
8 the approval of the governor, convey, or lease such lands to the
9 corporation upon such terms and conditions as may be agreed to
10 by the parties.

11 (c) Notwithstanding the foregoing, no public lands shall
12 be set aside, conveyed, or leased to the corporation as above
13 provided if such setting aside, conveyance, or lease would
14 impair any covenant between the State or any county or any
15 department or board thereof and the holders of bonds issued by
16 the State or such county, department, or board.

17 **§171C-AAAAU Developments within special management areas**
18 **and shoreline setback.** (a) Notwithstanding chapter 205A, all
19 requests for developments within a special management area and
20 shoreline setback variances for developments on any lands within
21 a community development district, for which a community
22 development plan has been developed and approved in accordance



1 with section 171C-AAAAO, shall be submitted to and reviewed by
2 the lead agency as defined in chapter 205A. In community
3 development districts for which a community development plan has
4 not been developed and approved in accordance with section 171C-
5 AAAAO, parts II and III of chapter 205A shall continue to be
6 administered by the applicable county authority until a
7 community development plan for the district takes effect.

8 (b) In the review of such requests, the lead agency shall
9 conform to the following, as deemed appropriate:

10 (1) Applicable county rules adopted in accordance with
11 section 205A-26 for the review of developments within
12 a special management area, except that paragraph

13 (2)(C) of section 205A-26 shall not apply; and

14 (2) Part III of chapter 205A and applicable county rules
15 for the review of developments within the shoreline
16 setback.

17 (c) With the approval of the lead agency, the developments
18 may be allowed without a special management area permit or
19 shoreline setback variance as required by chapter 205A.

20 **§171C-AAAV Acquisition of real property from a county.**

21 Notwithstanding the provision of any law or charter, any county,
22 by resolution of its local governing body, may, without public



1 auction, sealed bids, or public notice, sell, lease for a term
2 not exceeding sixty-five years, grant or convey to the
3 corporation any real property owned by it which the corporation
4 certifies to be necessary for its purposes. The sale, lease,
5 grant, or conveyance shall be made with or without consideration
6 and upon such terms and conditions as may be agreed upon by the
7 county and the corporation. Certification shall be evidenced by
8 a formal request from the corporation. Before the sale, lease,
9 grant, or conveyance may be made to the corporation, a public
10 hearing shall be held by the local governing body to consider
11 the same. Notice of the hearing shall be published at least ten
12 days before the date set for the hearing in such publication and
13 in such manner as may be designated by such local governing
14 body.

15 **§171C-AAAAW Condemnation of real property.** The
16 corporation upon making a finding that it is necessary to
17 acquire any real property for its immediate or future use for
18 the purposes of this part, may acquire the property by
19 condemnation pursuant to chapter 101, including property already
20 devoted to a public use. Such property shall not thereafter be
21 taken for any other public use without the consent of the
22 corporation. No award of compensation shall be increased by



1 reason of any increase in the value of real property caused by
2 the designation of a community development district or plan
3 adopted pursuant to a designation, or the actual or proposed
4 acquisition, use or disposition of any other real property by
5 the corporation.

6 **§171C-AAAAX Relocation.** (a) Any provision of law to the
7 contrary notwithstanding, the corporation shall adopt rules
8 pursuant to chapter 91 to ensure the appropriate relocation
9 within or outside the district of persons, families, and
10 businesses displaced by governmental action within the district.
11 The rules may include, but are not limited to, the establishment
12 and operation of a central relocation office; relocation
13 payments for actual moving costs; fixed payments for losses
14 suffered; payments for replacement housing or business
15 locations; relocation payments and loans to displaced businesses
16 for certain costs related to the re-establishment of their
17 business operations; and other similar relocation matters.

18 (b) The corporation shall provide relocation assistance to
19 persons, families, and businesses within the district that are
20 displaced by private action; provided that such assistance shall
21 not include any form of direct monetary payments except that the
22 corporation may make relocation loans to displaced businesses in



1 accordance with rules adopted by the corporation for the
2 purposes of this section. Temporary relocation facilities
3 within or outside the district may be made available to
4 displacees; provided that those displaced by government action
5 shall be afforded priority to the facilities.

6 **§171C-AAAAAY Construction contracts.** The corporation shall
7 award construction contracts in conformity with the applicable
8 provisions of chapter 103D.

9 **§171C-AAAAZ Dedication for public facilities as condition**
10 **to development.** The corporation shall establish rules requiring
11 dedication for public facilities of land or facilities, or cash
12 payments in lieu thereof, by developers as a condition of
13 developing real property pursuant to the community development
14 plan. Where state and county public facilities dedication laws,
15 ordinances, or rules differ, the provision for greater
16 dedication shall prevail.

17 **§171C-AAAAAA Public projects.** Any project or activity of
18 any county or agency of the State in a designated district shall
19 be constructed, renovated, or improved in consultation with the
20 corporation.

21 **§171C-AAAAAB Sale or lease of redevelopment projects.** (a)
22 The corporation may, without recourse to public auction, sell,



1 or lease for a term not exceeding sixty-five years, all or any
2 portion of the real or personal property constituting a
3 redevelopment project to any person, upon such terms and
4 conditions as may be approved by the corporation, if the
5 corporation finds that the sale or lease is in conformity with
6 the community development plan.

7 (b) In the case of residential projects or redevelopment
8 projects, the terms of the sale shall provide for the repurchase
9 of the property by the corporation at its option, in the event
10 that the purchaser, if other than a state agency, desires to
11 sell the property within ten years, provided that this
12 requirement may be waived by the corporation if the corporation
13 determines that a waiver will not be contrary to the community
14 development plan. The corporation shall establish at the time
15 of original sale a formula setting forth a basis for a
16 repurchase price based on market considerations including but
17 not being limited to interest rates, land values, construction
18 costs, and federal tax laws.

19 If the purchaser in a residential project is a state
20 agency, the corporation may include as a term of the sale a
21 provision for the repurchase of the property in conformance with
22 this section.



§171C-AAAAAC Residential projects; cooperative agreements.

(a) If the corporation deems it desirable to develop a residential project, it may enter into an agreement with qualified persons to construct, maintain, operate, or otherwise dispose of the residential project. Sale, lease, or rental of dwelling units in the project shall be as provided by the rules established by the corporation.

§171C-AAAAAD Hawaii community development revolving fund.

There is established the Hawaii community development revolving fund into which all receipts and revenues of the corporation shall be deposited. Proceeds from the fund shall be used for the purposes of this part.

§171C-AAAAAE Expenditures of revolving funds under the corporation exempt from appropriation and allotment. Except as to administrative expenditures, and except as otherwise provided by law, expenditures from any revolving fund administered by the corporation may be made by the corporation without appropriation or allotment of the legislature; provided that no expenditure shall be made from and no obligation shall be incurred against any revolving fund in excess of the amount standing to the credit of the fund or for any purpose for which the fund may not lawfully be expended. 'Nothing in sections 37-31 to 37-41 shall



1 require the proceeds of any revolving fund administered by the
2 corporation to be reappropriated annually.

3 **§171C-AAAAAF Exemption from taxation.** The corporation
4 shall not be required to pay assessments levied by any county,
5 nor shall the corporation be required to pay state taxes of any
6 kind.

7 **§171C-AAAAAG Assistance by state and county agencies.** Any
8 state or county agency may render services upon request of the
9 corporation.

10 **§171C-AAAAAH Court proceedings; preferences; venue.** (a)
11 Any action or proceeding to which the corporation, the State, or
12 the county may be a party, in which any question arises as to
13 the validity of this part, shall be brought in the circuit court
14 of the circuit where the case or controversy arises, and shall
15 be heard and determined in preference to all other civil cases
16 pending therein except election cases, irrespective of position
17 on the calendar.

18 (b) Upon application of counsel to the corporation, the
19 same preference shall be granted in any action or proceeding
20 questioning the validity of this part in which the corporation
21 may be allowed to intervene.



1 (c) Any action or proceeding to which the corporation, the
2 State, or the county may be a party, in which any question
3 arises as to the validity of this part or any portion of this
4 part, may be filed in the circuit court of the circuit where the
5 case or controversy arises, which court is hereby vested with
6 original jurisdiction over the action.

7 (d) Notwithstanding any provision of law to the contrary,
8 declaratory relief may be obtained for the action.

9 (e) Any party aggrieved by the decision of the circuit
10 court may appeal in accordance with part I of chapter 641 and
11 the appeal shall be given priority.

12 **§171C-AAAAAI Issuance of bonds.** The director of finance
13 may, from time to time, issue general obligation bonds pursuant
14 to chapter 39 in such amounts as may be authorized by the
15 legislature, for the purposes of this part.

16 **§171C-AAAAAJ Violations and penalty.** (a) The corporation
17 may set, charge, and collect reasonable fines for violation of
18 this part or any rule adopted pursuant to chapter 91. Any
19 person violating any of the provisions of this part or any rule
20 adopted pursuant to chapter 91, for which violation a penalty is
21 not otherwise provided, shall be fined not more than \$500 a day



1 and shall be liable for administrative costs incurred by the
2 corporation.

3 (b) The corporation may maintain an action for an
4 injunction to restrain any violation of the provisions of this
5 part and may take any other lawful action to prevent or remedy
6 any violation.

7 (c) Any person violating any provision of this part shall,
8 upon conviction, be punished by a fine not exceeding \$1,000 or
9 by imprisonment not exceeding thirty days, or both. The
10 continuance of a violation after conviction shall be deemed a
11 new offense for each day of such continuance.

12 B. Kakaako Community Development District

13 **§171C-AAAAAK Kakaako community development district;**
14 **purposes.** The legislature finds that:

15 (1) The Kakaako district is centrally located in Honolulu
16 proper, in close proximity to the central business
17 district, the government center, commercial,
18 industrial and market facilities, major existing and
19 contemplated transportation routes and recreational
20 and service areas;

21 (2) Due to its present function as a service and light
22 industrial area, the district is relatively



1 underdeveloped and has especially in view of its
2 proximity to the urban core where the pressure for all
3 land uses is strong the potential for increased growth
4 and development that can alleviate community needs
5 such as low-income housing, parks and open space, and
6 commercial and industrial facilities;

7 (3) The district, if not redeveloped or renewed, has the
8 potential to become a blighted and deteriorated area.
9 Due to its present economic importance to the State in
10 terms of industry and subsequent employment, there is
11 a need to preserve and enhance its value and
12 potential;

13 (4) Kakaako has a potential, if properly developed and
14 improved, to become a planned new community in
15 consonance with surrounding urban areas.

16 In coordinating community development in the Kakaako
17 district, the corporation shall plan a mixed-use district
18 whereby industrial, commercial, residential, and public uses may
19 coexist compatibly within the same area.

20 The corporation shall plan for the above uses, but shall
21 also respect and support the present function of Kakaako as a
22 major economic center, providing significant employment in such



1 areas as light industrial, wholesaling, service, and commercial
2 activity.

3 **§171C-AAAAAL Prohibitions.** Anything contained in this
4 part to the contrary notwithstanding, the corporation is
5 prohibited from:

6 (1) Selling or otherwise assigning the fee simple interest
7 in any lands in the Kakaako community development
8 district to which the corporation in its corporate
9 capacity holds title, except with respect to:

10 (A) Utility easements;

11 (B) Remnants as defined in section 171-52;

12 (C) Grants to any state or county department or
13 agency; or

14 (D) Private entities for purposes of any easement,
15 roadway, or infrastructure improvements; or

16 (2) Approving any plan or proposal for any residential
17 development in that portion of the Kakaako community
18 development district makai of Ala Moana boulevard and
19 between Kewalo basin and the foreign trade zone.

20 **§171C-AAAAAM District; established, boundaries.** The
21 Kakaako community development district is established. The
22 district shall include that area bounded by King Street; Piikoi



1 Street from its intersection with King Street to Ala Moana
2 Boulevard; Ala Moana Boulevard, inclusive, from Piikoi Street to
3 its intersection with the Ewa boundary of Ala Moana Park also
4 identified as the Ewa boundary of tax map key 2-3-37:01; the Ewa
5 boundary of tax map key 2-3-37:01 from its intersection with Ala
6 Moana Boulevard to the shoreline; the shoreline from its
7 intersection with the property line representing the Ewa
8 boundary of property identified by tax map key 2-3-37:01 to the
9 property line between Pier 2 and Pier 4; the property line
10 between Pier 2 and Pier 4 from its intersection with the
11 shoreline to Ala Moana Boulevard; Ala Moana Boulevard from its
12 intersection with the property line between lands identified by
13 Pier 2 and Pier 4 to Punchbowl Street; and Punchbowl Street to
14 its intersection with King Street; provided that the following
15 parcels at Pier 1 and Pier 2 shall be deleted from the Kakaako
16 community development district boundaries and conveyed to the
17 department of land and natural resources to be set aside for the
18 department of transportation and the foreign-trade zone division
19 of the department of business, economic development, and
20 tourism, to ensure continued maritime and foreign commerce use:
21 all of lot 3 and parcels 2, 3-A, A, and B of the Forrest Avenue
22 subdivision, as shown on the map filed with the bureau of



1 conveyances of the State of Hawaii as file plan 2335; and lots
2 A-1 and A-2, as shown on map 2, filed in the office of the
3 assistant registrar of the land court of the State of Hawaii
4 with land court application 1328; and provided further that all
5 existing easements affecting and appurtenant to the parcels to
6 be deleted from the Kakaako community development district
7 boundaries shall not be affected by this change.

8 The district shall also include that parcel of land
9 identified by tax map key 2-1-14:16, situated mauka of Pier 6
10 and Pier 7 and makai of Nimitz Highway, being the site for the
11 existing Hawaiian Electric power plant and related facilities.

12 **§171C-AAAAAN Kakaako community development district;**
13 **development guidance policies.** The following shall be the
14 development guidance policies generally governing the
15 corporation's action in the Kakaako community development
16 district:

- 17 (1) Development shall result in a community which permits
18 an appropriate land mixture of residential,
19 commercial, industrial, and other uses. In view of
20 the innovative nature of the mixed use approach, urban
21 design policies should be established to provide
22 guidelines for the public and private sectors in the



1 proper development of this district; while the
2 corporation's development responsibilities apply only
3 to the area within the district, the corporation may
4 engage in any studies or coordinative activities
5 permitted in this part which affect areas lying
6 outside the district, where the corporation in its
7 discretion decides that those activities are necessary
8 to implement the intent of this part. The studies or
9 coordinative activities shall be limited to facility
10 systems, resident and industrial relocation, and other
11 activities with the counties and appropriate state
12 agencies. The corporation may engage in construction
13 activities outside of the district; provided that such
14 construction relates to infrastructure development or
15 residential or business relocation activities;
16 provided further, notwithstanding section 171C-AAAAS,
17 that such construction shall comply with the general
18 plan, development plan, ordinances, and rules of the
19 county in which the district is located;

- 20 (2) Existing and future industrial uses shall be permitted
21 and encouraged in appropriate locations within the
22 district. No plan or implementation strategy shall



1 prevent continued activity or redevelopment of
2 industrial and commercial uses which meet reasonable
3 performance standards;

4 (3) Activities shall be located so as to provide primary
5 reliance on public transportation and pedestrian
6 facilities for internal circulation within the
7 district or designated subareas;

8 (4) Major view planes, view corridors, and other
9 environmental elements such as natural light and
10 prevailing winds, shall be preserved through necessary
11 regulation and design review;

12 (5) Redevelopment of the district shall be compatible with
13 plans and special districts established for the Hawaii
14 Capital District, and other areas surrounding the
15 Kakaako district;

16 (6) Historic sites and culturally significant facilities,
17 settings, or locations shall be preserved;

18 (7) Land use activities within the district, where
19 compatible, shall to the greatest possible extent be
20 mixed horizontally, that is, within blocks or other
21 land areas, and vertically, as integral units of
22 multi-purpose structures;



(8) Residential development may require a mixture of densities, building types, and configurations in accordance with appropriate urban design guidelines; integration both vertically and horizontally of residents of varying incomes, ages, and family groups; and an increased supply of housing for residents of low- or moderate-income may be required as a condition of redevelopment in residential use. Residential development shall provide necessary community facilities, such as open space, parks, community meeting places, child care centers, and other services, within and adjacent to residential development;

(9) Public facilities within the district shall be planned, located, and developed so as to support the redevelopment policies for the district established by this part and plans and rules adopted pursuant to it.

§171C-AAAAAO Cultural public market. (a) There shall be established within the corporation a state cultural public market.

(b) The cultural public market shall be located on state land within the Kakaako Makai area and developed pursuant to



1 sections 171C-AAAAAK, 171C-AAAAAM, and 171C-AAAAAN. A public
2 parking lot shall be included.

3 (c) The corporation shall:

4 (1) Designate and develop the state-owned land for the
5 cultural public market;

6 (2) Accept, for consideration, input regarding the
7 establishment of the cultural public market from the
8 following departments and agencies:

9 (A) The department of agriculture;

10 (B) The department of business, economic development,
11 and tourism;

12 (C) The department of land and natural resources;

13 (D) The department of labor and industrial relations;
14 and

15 (E) The Hawaii tourism authority;

16 (3) Consider and determine the propriety of using public-
17 private partnerships in the development and operation
18 of the cultural public market;

19 (4) Develop, distribute, and accept requests for proposals
20 from private entities for plans to develop and operate
21 the cultural public market; and



(5) Ensure that the Hawaiian culture is the featured culture in the cultural public market.

(d) Requests for proposals for the cultural public market shall contemplate but not be limited to the inclusion of the following types of facilities and services:

- (1) Retail outlets for ethnically diverse products;
- (2) Venues for businesses with ethnic themes, including restaurants and other service-related businesses;
- (3) Theaters, stages, and arenas designed to showcase cultural performing artists as well as community performing arts;
- (4) Exhibition space or museums that showcase artwork created by international and local artists; and
- (5) Museums or other educational facilities focusing on the history and cultures of the various ethnic groups within Hawaii, including Hawaiian history.

C. Reserved Housing Loan Programs

§171C-AAAAAP Definitions. The following words or terms as used in this subpart shall have the following meanings, unless a different meaning clearly appears from the context:

"Eligible borrower" means any person or family, irrespective of race, creed, national origin, or sex, who:



1 (1) Has never before obtained a loan under this subpart;

2 and

3 (2) Meets other qualifications as established by rules

4 adopted by the corporation.

5 "Eligible loan" means a loan to an eligible borrower for
6 the purchase of a reserved housing unit; provided that the
7 property financed is located in the community development
8 district, is and will be occupied as the principal place of
9 residence by the eligible borrower, and meets other requirements
10 as established by rules adopted by the corporation.

11 "Mortgage lender" means any bank, trust company, savings
12 bank, national banking association, savings and loan
13 association, building and loan association, mortgage banker,
14 credit union, insurance company, or any other financial
15 institution, or a holding company for any of the foregoing,
16 which:

17 (1) Is authorized to do business in the State;

18 (2) Customarily provides service or otherwise aids in the
19 financing of mortgages on single family or multi-
20 family residential property; and

21 (3) Is a financial institution whose accounts are
22 federally insured, or is an institution which is an



1 approved mortgagee for the Federal Housing
2 Administration, or is an approved lender for the
3 Department of Veterans Affairs or the United States
4 Department of Agriculture, or is an approved mortgage
5 loan servicer for the Federal National Mortgage
6 Association or the Federal Home Mortgage Corporation.

7 "Reserved housing" means housing designated for residents
8 in the low- or moderate-income ranges who meet such eligibility
9 requirements as the corporation may adopt by rule.

10 "Reserved housing loan programs" includes all or any part
11 of the loan to lenders program, the purchase of existing loans
12 program, the advance commitments program, and the eligible loan
13 and eligible project loan funding program authorized under this
14 subpart.

15 "Revenue bonds" means bonds, notes, or other evidence of
16 indebtedness of the corporation issued to finance any of the
17 reserved housing loan programs under this subpart.

18 "Trust indenture" means an agreement by and between the
19 corporation and the trustee, which sets forth the duties of the
20 trustee with respect to the revenue bonds, the security
21 therefor, and other provisions as deemed necessary or convenient
22 by the corporation to secure the revenue bonds.



1 **§171C-AAAAAQ Rules; eligible loans.** (a) The corporation

2 shall establish requirements for reserved housing units financed
3 by an eligible loan, and may consider, but not be limited to the
4 location, age, condition, and other characteristics of the
5 reserved housing units.

6 (b) The corporation shall establish restrictions on the
7 terms, maturities, interest rates, collateral, and other
8 requirements for eligible loans.

9 (c) All eligible loans made shall comply with applicable
10 state and federal laws.

11 **§171C-AAAAAR Revenue bonds; authorization.** (a) The

12 corporation, with the approval of the governor, may issue from
13 time to time revenue bonds in amounts not exceeding the total
14 amount of bonds authorized by the legislature for the purpose of
15 undertaking and maintaining any of the reserved housing loan
16 programs.

17 (b) All revenue bonds shall be issued pursuant to part III
18 of chapter 39, except as provided in this subpart.

19 (c) The revenue bonds shall be issued in the name of the
20 corporation, and not in the name of the State. The final
21 maturity date of the revenue bonds may be any date not exceeding
22 forty years from the date of issuance.



1 §171C-AAAAAS Revenue bonds; payment and security. (a)

2 The revenue bonds shall be payable from and secured by the
3 revenues derived from the benefits of the reserved housing loan
4 programs for which the revenue bonds are issued, including:

5 (1) Any payment made for eligible loans or eligible
6 project loans or other agreements entered into for the
7 reserved housing loan programs;

8 (2) Revenues derived from insurance proceeds;

9 (3) Reserve accounts and earnings thereon; and

10 (4) Revenues resulting from loans to mortgage lenders or
11 from the payment on account of principal of and
12 interest on loans purchased from mortgage lenders.

13 (b) The corporation may pledge any revenue derived from
14 the reserved housing loan programs financed from the proceeds of
15 the revenue bonds to the punctual payment of the principal,
16 interest, and redemption premiums, if any, on the revenue bonds.

17 (c) The revenue bonds may be additionally secured by the
18 pledge or assignment of the loans and other agreements or any
19 note or other undertaking, obligation, or property held by the
20 corporation to secure the loans.

21 (d) Any pledge made by the corporation shall create a
22 perfected security interest in the revenues, moneys, or property



1 so pledged and thereafter received by the corporation from and
2 after the time that a financing statement with respect to the
3 revenues, moneys, or property so pledged and thereafter received
4 shall be filed with the bureau of conveyances. Upon such
5 filing, the revenues, moneys, or property so pledged and
6 thereafter received by the corporation shall immediately be
7 subject to the lien of such pledge without any physical delivery
8 thereof or further act, and the lien of any such pledge shall be
9 prior to the lien of all parties having claims of any kind in
10 tort, contract, or otherwise against the corporation,
11 irrespective of whether such parties have notice thereof.

12 **§171C-AAAAAT Revenue bonds; interest rate, price, and**
13 **sale.** (a) The revenue bonds shall bear interest at a rate or
14 rates payable monthly, quarterly, or semi-annually.

15 (b) The corporation shall include the costs of undertaking
16 and maintaining the reserved housing loan programs for which the
17 revenue bonds are issued in determining the cost of undertaking
18 and maintaining the reserved housing loan programs, the
19 corporation may include the cost of purchasing or funding loans
20 or other agreements entered into for the reserved housing loan
21 programs; the costs of studies and surveys; insurance premiums;
22 underwriting fees; financial consultant, legal, accounting, and



1 marketing services incurred; reserve account, trustee,
2 custodian, and rating agency fees; and interest on the bonds for
3 a period not to exceed one year from the date of issuance.

4 (c) The revenue bonds may be sold at public or private
5 sale, and for a price as may be determined by the corporation to
6 be in the best interest of the State.

7 (d) Section 39-65 shall not apply to revenue bonds issued
8 for the purpose of undertaking and maintaining any of the
9 reserved housing loan programs as permitted by this subpart.
10 The legislature consents to the taxation by the United States of
11 interest on revenue bonds issued for the purpose of undertaking
12 and maintaining any of the reserved housing loan programs as
13 permitted by this subpart.

14 **§171C-AAAAAU Revenue bonds; investment of proceeds, and**
15 **redemption.** Subject to any agreement with the holders of its
16 revenue bonds, the corporation may:

17 (1) Notwithstanding any other law to the contrary, invest
18 its moneys not required for immediate use, including
19 proceeds from the sale of any revenue bonds, in any
20 investment in accordance with procedures prescribed in
21 a trust indenture;



(2) Purchase its revenue bonds out of any fund or money of the corporation available therefor, and hold, cancel, or resell the revenue bonds.

§171C-AAAAAV Trustee; designation, duties. (a) The

corporation shall designate a trustee for each issue of revenue bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the corporation to receive and receipt for, hold, and administer the proceeds of the revenue bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the corporation to receive and receipt for, hold, and administer the revenues derived by the corporation from the benefits of the reserved housing loan program for which the revenue bonds are issued and to apply these revenues to the payment of the cost of administering, operating, and maintaining the reserved housing loan programs, to pay the principal of and interest on these bonds, to the establishment of reserves, and to other purposes as may be authorized in the proceedings providing for the issuance of the revenue bonds.



1 (d) Notwithstanding section 39-68, the director of finance
2 may appoint the trustee to serve as fiscal agent for:

3 (1) The payment of the principal of and interest on the
4 revenue bonds; and

5 (2) The purchase, registration, transfer, exchange, and
6 redemption of the bonds.

7 (e) The trustee shall perform additional functions with
8 respect to the payment, purchase, registration, transfer,
9 exchange, and redemption, as the director of finance may deem
10 necessary, advisable, or expeditious, including the holding of
11 the revenue bonds and coupons which have been paid and the
12 supervision of the destruction thereof in accordance with law.

13 (f) Nothing in this subpart shall limit or be construed to
14 limit the powers granted to the director of finance in sections
15 36-3 and 39-13, and the third sentence of section 39-68, to
16 appoint the trustee or others as fiscal agents, paying agents
17 and registrars for the revenue bonds or to authorize and empower
18 those fiscal agents and registrars to perform the functions
19 referred to in those sections.

20 **§171C-AAAAAW Trust indenture.** (a) A trust indenture may
21 contain covenants and provisions authorized by part III of



1 chapter 39, and as deemed necessary or convenient by the
2 corporation for the purposes of this subpart.

3 (b) A trust indenture may allow the corporation to pledge
4 and assign to the trustee loans and other agreements related to
5 the reserved housing loan programs, and the rights of the
6 corporation thereunder, including the right to receive revenues
7 thereunder and to enforce the provision thereof.

8 (c) Where a trust indenture provides that any revenue bond
9 issued under that trust indenture is not valid or obligatory for
10 any purpose unless certified or authenticated by the trustee,
11 all signatures of the officers of the State upon the revenue
12 bonds required by section 39-56 may be facsimiles of their
13 signatures.

14 (d) A trust indenture shall also contain provisions as to:

15 (1) The investment of the proceeds of the revenue bonds,
16 the investment of any reserve for the bonds, the
17 investment of the revenues of the reserved housing
18 loan programs, and the use and application of the
19 earnings from investments; and

20 (2) The terms and conditions upon which the holders of the
21 revenue bonds or any portion of them or any trustee
22 thereof may institute proceedings for the foreclosure



1 of any loan or other agreement or any note or other
2 undertaking, obligation or property securing the
3 payment of the bonds and the use and application of
4 the moneys derived from the foreclosure.

5 (e) A trust indenture may also contain provisions deemed
6 necessary or desirable by the corporation to obtain or permit,
7 by grant, interest subsidy, or otherwise, the participation of
8 the federal government in the reserved housing loan programs or
9 in the financing of the costs of administering, operating, or
10 maintaining such reserved housing loan programs.

11 **§171C-AAAAAX Reserved housing loan programs; procedures**
12 **and requirements.** (a) The corporation shall establish
13 procedures for:

- 14 (1) The submission of requests or the invitation of
15 proposals for loans to mortgage lenders;
16 (2) The purchase of existing loans by auction, invitation
17 of tenders, or negotiation;
18 (3) The making of advance commitments to purchase and the
19 purchasing of eligible loans or eligible project loans
20 to be made by mortgage lenders by auction, invitation
21 of tenders, or negotiation; and



(4) Loan applications made through mortgage lenders to eligible borrowers or qualified sponsors.

(b) The corporation shall establish standards and requirements for:

(1) The allocation of loans to mortgage lenders;

(2) The allocation of funds to purchase existing loans from mortgage lenders;

(3) The making of advance commitments and allocation of funds to purchase eligible loans or eligible project loans from mortgage lenders; and

(4) The participation by mortgage lenders as originators and processors of eligible loans or eligible project loans on behalf of the corporation.

(c) The standards and requirements for the allocation of funds to mortgage lenders adopted by the corporation shall be designed to include the maximum number of qualified mortgage lenders as participants in the reserved housing loan programs.

(d) The corporation may adopt rules necessary or convenient for the operation of the reserved housing loan programs under this subpart.

§171C-A AAAAY Reserved housing loan programs; general

powers. (a) The corporation may make, enter into, and enforce



1 all contracts or agreements which are necessary, convenient, or
2 desirable for the purpose of the performance of its duties in
3 executing the reserved housing loan programs.

4 (b) The corporation may require representations and
5 warranties as it determines necessary to secure its loans.

6 **§171C-AAAAAZ Reserved housing loan programs; self**
7 **supporting.** The interest rate, fees, charges, premiums, and
8 other terms of the loans made under the reserved housing loan
9 programs shall be at least sufficient to pay the cost of
10 administering and maintaining the portion of the specific
11 reserved housing loan programs for which the revenue bonds have
12 been issued, and to assure payment of the principal of and
13 interest on the revenue bonds as they become due.

14 **§171C-AAAAAAA Reserved housing loan programs; fees.** The
15 corporation may establish, revise, charge, and collect fees,
16 premiums, and charges as necessary, reasonable, or convenient,
17 for its reserved housing loan programs.

18 The fees, premiums, and charges shall be deposited into the
19 reserved housing loan program revenue bond special fund
20 established for the particular reserved housing loan program or
21 part thereof from which the fees, premiums and charges are
22 derived as determined by the corporation.



1 §171C-AAAAAAB Reserved housing loan programs; evidence of
2 eligible loan or eligible project loan. (a) Each mortgage
3 lender who participates in any reserved housing loan program
4 shall submit evidence, as deemed satisfactory by the
5 corporation, that eligible loans or eligible project loans have
6 been made from the proceeds of the revenue bonds.

7 (b) The corporation may inspect the books and records of
8 the mortgage lenders as may be necessary for this section.

9 §171C-AAAAAAC Loans to lenders program. (a) The
10 corporation may make loans to mortgage lenders under terms and
11 conditions requiring that the loan proceeds be used within a
12 time period prescribed by the corporation to make eligible loans
13 in an aggregate principal amount substantially equal to the
14 amount of the loan.

15 (b) The loan made to a mortgage lender shall be a general
16 obligation of the respective mortgage lender.

17 (c) The loan as determined by the corporation shall:

18 (1) Bear a date or dates;

19 (2) Mature at a time or times;

20 (3) Be evidenced by a note, bond or other certificate of
21 indebtedness;

22 (4) Contain other provisions consistent with this subpart.



1 (d) Subject to any agreement with the holders of its
2 revenue bonds, the corporation may consent to any modification
3 to the rate of interest, time, and payment of any installment of
4 principal or interest, security or any other term of any loan to
5 a mortgage lender or any bond, note, contract, or agreement of
6 any kind to which the corporation is a party.

7 **§171C-AAAAAAD Loan to lenders program; collateral**
8 **security.** (a) Loans made to mortgage lenders shall be
9 additionally secured by a pledge of a lien upon collateral
10 security in an amount as the corporation deems necessary to
11 assure the payment of principal of and interest on the loans as
12 they become due.

13 (b) The corporation shall determine the nature and type of
14 collateral security required.

15 (c) A statement designating the collateral security
16 pledged, the mortgage lender pledging the collateral, and the
17 corporation's interest in the pledged collateral may be filed
18 with the bureau of conveyances. Where a statement has been
19 filed, no possession, further filing, or other action under any
20 state law shall be required to perfect any security interest
21 which may be deemed to have been created in favor of the
22 corporation. The mortgage lender shall be deemed the trustee of



1 an express trust for the benefit of the corporation in all
2 matters relating to the pledged collateral.

3 (d) Subject to any agreement with the holders of its
4 revenue bonds, the corporation may collect, enforce the
5 collection of, and foreclose on any collateral securing its
6 loans to mortgage lenders. The corporation may acquire, take
7 possession, sell at public or private sale with or without
8 bidding, or otherwise deal with the collateral to protect its
9 interests.

10 **§171C-AAAAAAE Purchase of existing loans program. (a)**

11 The corporation may contract with a mortgage lender to purchase,
12 in whole or in part, existing loans, whether or not eligible
13 loans. The contract may contain provisions as determined by the
14 corporation to be necessary or appropriate to provide security
15 for its revenue bonds, including but not limited to provisions
16 requiring the:

- 17 (1) Repurchase of the loans, in whole or in part, by
18 mortgage lenders at the option of the corporation;
19 (2) Payments of premiums, fees, charges, or other amounts
20 by mortgage lenders to provide a reserve or escrow
21 fund for the purposes of protecting against loan
22 defaults; and



(3) Guarantee by, or for recourse against, mortgage lenders, with respect to defaults on these loans of the corporation.

(b) The corporation shall require as a condition of each purchase of existing loans from a mortgage lender that the mortgage lender proceed to make and disburse eligible loans in an aggregate principal amount substantially equal to the amount of the proceeds from the purchase by the corporation of loans therefrom.

§171C-AAAAAF Advance commitments program. (a) The corporation may contract with a mortgage lender for the advance commitment to purchase eligible loans or eligible project loans.

(b) The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its revenue bonds.

§171C-AAAAAG Eligible loan and eligible project loan funding program. (a) The corporation may contract with mortgage lenders to fund eligible loans or eligible project loans.

(b) The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its revenue bonds.



1 **§171C-AAAAAAH Loans; service and custody.** The corporation
2 may contract for the service and custody of its loans. The
3 contract may provide for the payment of fees or charges for the
4 services rendered; provided that the fees or charges shall not
5 exceed the usual, customary, and reasonable charges for the
6 services rendered.

7 **§171C-AAAAAAI Loans; sale, pledge, or assignment.** (a)
8 Subject to any agreement with the holders of its revenue bonds,
9 the corporation may sell its loans at public or private sale at
10 a price and upon terms and conditions as it determines.

11 (b) Subject to any agreement with the holders of its
12 revenue bonds, the corporation may pledge or assign its loans,
13 other agreements, notes, or property to secure the loans or
14 agreements.

15 **§171C-AAAAAAJ Loans; insurance and guarantees.** The
16 corporation may procure insurance or guarantees against any
17 default of its loans, in amounts and from insurers or
18 guarantors, as it deems necessary or desirable.

19 **§171C-AAAAAAK Loans; default.** (a) The corporation may
20 renegotiate, refinance, or foreclose any loan in default.

21 (b) The corporation may waive any default or consent to
22 the modification of the terms of any loan or security agreement.



1 (c) The corporation may commence any action to protect or
2 enforce any right conferred upon it by any law, mortgage,
3 insurance policy, contract, or other agreement.

4 (d) The corporation may bid for and purchase the property
5 secured by the loan at any foreclosure or other sale, or acquire
6 or take possession of the property secured by the loan.

7 (e) The corporation may operate, manage, lease, dispose
8 of, or otherwise deal with the property secured by the loan.

9 D. Revenue Bonds For Public Facility Projects

10 **\$171C-AAAAAAL Findings and declarations.** The legislature
11 finds and declares that the health, safety, and general welfare
12 of the people of the State require that every opportunity be
13 taken to assist the redevelopment of community development
14 districts; that the redevelopment and revitalization of these
15 districts will alleviate community needs for employment,
16 housing, parks, open space, and commercial and industrial
17 facilities; that a significant deterrent to redevelopment is the
18 cost of public facilities; that interest rates on moneys
19 necessary to finance such public facilities add significantly to
20 the cost of such facilities and that more favorable interest
21 rates would be available through the issuance of tax-exempt
22 bonds; and that the availability of revenue bonds to finance the



1 cost of public facilities will facilitate redevelopment of
2 community development districts.

3 The legislature further finds that the powers conferred,
4 the issuance of revenue bonds, and the expenditure of public
5 moneys under this subpart constitute a serving of a valid public
6 purpose, and that this enactment is in the public interest and
7 is so declared as an express legislative determination.

8 **§171C-AAAAAAM Definitions.** The following as used in this
9 subpart shall have the following meaning, unless a different
10 meaning clearly appears from the context:

11 "Revenue bonds" means bonds, notes, or other evidence of
12 indebtedness of the corporation issued to finance any public
13 facility under this subpart.

14 **§171C-AAAAAAN Revenue bonds; authorization.** (a) The
15 corporation, with the approval of the governor, may issue from
16 time to time revenue bonds in amounts not exceeding the total
17 amount of bonds authorized to be issued by the legislature for
18 the purpose of constructing, acquiring, remodeling, furnishing,
19 and equipping any public facility, including acquisition of the
20 site thereof.

21 (b) All revenue bonds shall be issued pursuant to part III
22 of chapter 39, except as provided in this subpart.



(c) The revenue bonds under this subpart are declared to be issued for a public purpose and, together with interest thereon, shall be exempt from all state and county taxation except estate and transfer taxes. The legislature consents to federal income taxation of interest on revenue bonds issued under this subpart, if it is determined by the corporation that such issuance is in the best interest of the State.

(d) The revenue bonds shall be issued in the name of the corporation and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance.

§171C-AAAAAAO Revenue bonds; payment and security. (a)

The revenue bonds shall be payable from and secured by the revenues derived from the public facility for which the revenue bonds are issued, including revenue derived from insurance proceeds and reserve accounts and earnings thereon.

(b) The corporation may pledge revenues derived from the public facility financed from the proceeds of the revenue bonds to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any



1 note or other undertaking, obligation, or property held by the
2 corporation to secure the loans.

3 (d) Any pledge made by the corporation shall create a
4 perfected security interest in the revenues, moneys, or property
5 so pledged and thereafter received by the corporation from and
6 after the time that a financing statement with respect to the
7 revenues, moneys, or property so pledged and thereafter received
8 shall be filed with the bureau of conveyances. Upon such
9 filing, the revenues, moneys, or property so pledged thereafter
10 received by the corporation shall immediately be subject to the
11 lien of any such pledge without any physical delivery thereof or
12 further act, and the lien of such pledge shall be prior to the
13 lien of all parties having claims of any kind in tort, contract,
14 or otherwise against the corporation, irrespective of whether
15 such parties have notice thereof. This section shall apply to
16 any financing statement heretofore or hereafter filed with the
17 bureau of conveyances with respect to any pledge made to secure
18 revenue bonds issued under this subpart.

19 **§171C-AAAAAAP Revenue bonds; interest rate, price, and**
20 **sale.** (a) The revenue bonds shall bear interest at a rate or
21 rates payable monthly, quarterly, or semi-annually.



(b) The corporation shall include the costs of undertaking the public facility for which the revenue bonds are issued in determining the principal amount of revenue bonds to be issued. In determining the cost of undertaking the public facility, the corporation may include the cost of constructing, acquiring, remodeling, furnishing, and equipping the public facility, including acquisition of the site thereof; the cost of purchasing or funding loans or other agreements entered into for the public facility; the costs of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and marketing services incurred; reserve account, trustee, custodian, and rating agency fees; and any capitalized interest.

(c) The revenue bonds may be sold at public or private sale, and for a price as may be determined by the corporation to be in the best interest of the State.

§171C-AAAAAAQ Revenue bonds; investment of proceeds, and redemption. Subject to any agreement with the holders of its revenue bonds, the corporation may:

- (1) Invest its moneys not required for immediate use, including proceeds from the sale of revenue bonds, in



1 any investment in accordance with procedures
2 prescribed in a trust indenture; and

3 (2) Purchase its revenue bonds out of any fund or money of
4 the corporation available therefor, and hold, cancel,
5 or resell the revenue bonds.

6 **§171C-AAAAAAR Revenue bonds; special funds.** (a) A

7 separate special fund shall be established for each public
8 facility financed from the proceeds of the revenue bonds secured
9 under the same trust indenture. Each fund shall be designated
10 "public facility revenue bond special fund" and shall bear
11 additional designation as the corporation deems appropriate to
12 properly identify the fund.

13 (b) Notwithstanding any other law to the contrary,
14 including particularly section 171C-AAAAAD, all revenues,
15 income, and receipts derived from the public facility for which
16 the revenue bonds are issued shall be paid into the public
17 facility revenue bond fund established for that public facility
18 and applied as provided in the proceedings authorizing the
19 issuance of the revenue bonds.

20 **§171C-AAAAAAS Trustee; designation, duties.** (a) The

21 corporation shall designate a trustee for each issue of revenue



1 bonds secured under the same trust indenture; provided that the
2 trustee shall be approved by the director of finance.

3 (b) The trustee shall be authorized by the corporation to
4 receive and receipt for, hold, and administer the proceeds of
5 the revenue bonds, and to apply the proceeds to the purposes for
6 which the bonds are issued.

7 (c) The trustee shall also be authorized by the
8 corporation to hold and administer the public facility revenue
9 bond special fund established pursuant to section 171C-AAAAAAR,
10 and to receive and receipt for, hold, and administer the
11 revenues derived by the corporation from the public facility for
12 which the revenue bonds are issued and to apply these revenues
13 to the payment of the cost:

- 14 (1) Of undertaking the public facility;
15 (2) Of administering and operating the proceedings
16 providing for the issuance of the revenue bonds;
17 (3) To pay the principal or interest on these bonds;
18 (4) To the establishment of reserves; and
19 (5) To other purposes as may be authorized in the
20 proceedings providing for the issuance of the revenue
21 bonds.



1 (d) Notwithstanding section 39-68, the director of finance
2 may appoint the trustee to serve as fiscal agent for:

3 (1) The payment of the principal of and interest on the
4 revenue bonds; and

5 (2) The purchase, registration, transfer, exchange, and
6 redemption of the bonds.

7 (e) The trustee shall perform additional functions with
8 respect to the payment, purchase, registration, transfer,
9 exchange, and redemption, as the director of finance may deem
10 necessary, advisable, or expeditious, including the holding of
11 the revenue bonds and coupons which have been paid and the
12 supervision of the destruction thereof in accordance with law.

13 (f) Nothing in this subpart shall limit or be construed to
14 limit the powers granted to the director of finance in sections
15 36-3 and 39-13, and the third sentence of section 39-68, to
16 appoint the trustee or others as fiscal agents, paying agents,
17 and registrars for the revenue bonds or to authorize and empower
18 those fiscal agents, paying agents, and registrars to perform
19 the functions referred to in those sections.

20 **§171C-AAAAAAT Trust indenture.** (a) A trust indenture may
21 contain covenants and provisions authorized by part III of



1 chapter 39, and as deemed necessary or convenient by the
2 corporation for the purposes of this subpart.

3 (b) A trust indenture may allow the corporation to pledge
4 and assign to the trustee loans and other agreements related to
5 the public facility, and the rights of the corporation
6 thereunder, including the right to receive revenues thereunder
7 and to enforce the provision thereof.

8 (c) Where a trust indenture provides that any revenue bond
9 issued under that trust indenture is not valid or obligatory for
10 any purpose unless certified or authenticated by the trustee,
11 all signatures of the officers of the State upon the revenue
12 bonds required by section 39-56 may be facsimiles of their
13 signatures.

14 (d) A trust indenture shall also contain provisions as to:

15 (1) The investment of the proceeds of the revenue bonds,
16 the investment of any reserve for the bonds, the
17 investment of the revenues of the public facility, and
18 the use and application of the earnings from
19 investments; and

20 (2) The terms and conditions upon which the holders of the
21 revenue bonds or any portion of them or any trustee
22 thereof may institute proceedings for the foreclosure



1 of any loan or other agreement or any note or other
2 undertaking, obligation, or property securing the
3 payment of the bonds and the use and application of
4 the moneys derived from the foreclosure.

5 (e) A trust indenture may also contain provisions deemed
6 necessary or desirable by the corporation to obtain or permit,
7 by grant, interest subsidy, or otherwise, the participation of
8 the federal government in the financing of the costs of
9 undertaking the public facility.

10 E. Special Facility Projects

11 **§171C-AAAAAAU Definitions.** For the purpose of this
12 subpart, if not inconsistent with the context:

13 "Special facility" means one or more buildings or
14 structures and the land thereof for the construction of
15 facilities that provides benefits to the community at large
16 including, without limitation, an ocean science center that
17 incorporates research and education programs and which is the
18 subject of a special facility lease.

19 "Special facility lease" includes a contract, lease, or
20 other agreement, or any combination thereof, the subject matter
21 of which is the same special facility.



1 §171C-AAAAAAV Powers. In addition and supplemental to the
2 powers granted to the corporation by law, the corporation may:

3 (1) With the approval of the governor, enter into a
4 special facility lease or an amendment or supplement
5 thereto whereby the corporation agrees to construct,
6 acquire, or remodel and furnish or equip a special
7 facility solely for the use by another person to a
8 special facility lease;

9 (2) With the approval of the governor, issue special
10 facility revenue bonds in principal amounts that may
11 be necessary to yield all or a portion of the cost of
12 any construction, acquisition, remodeling, furnishing,
13 and equipping of any special facility;

14 (3) With the approval of the governor, issue refunding
15 special facility revenue bonds with which to provide
16 for the payment of outstanding special facility
17 revenue bonds (including any special facility revenue
18 bonds theretofore issued for this purpose) or any part
19 thereof; provided any issuance of refunding special
20 facility revenue bonds shall not reduce the principal
21 amount of the bonds which may be issued as provided in
22 paragraph (2);



(4) Perform and carry out the terms and provisions of any special facility lease;

(5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease;

(6) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition; and

(7) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person.

§171C-AAAAAW Findings and determination for special facility leases. The corporation shall not enter into any special facility lease unless the corporation at or prior to the entering into of such special facility lease shall find and determine that the entering into of such special facility lease would not be in violation of or result in a breach of any



1 covenant contained in any resolution or certificate authorizing
2 any bonds of the corporation then outstanding.

3 **\$171C-AAAAAX Special facility lease.** (a) In addition to
4 the conditions and terms set forth in this subpart, any special
5 facility lease entered into by the corporation shall at least
6 contain provisions obligating the other person to the special
7 facility lease:

8 (1) To pay to the corporation during the initial term of
9 the special facility lease, whether the special
10 facility is capable of being used or occupied or is
11 being used or occupied by the other person, a rental
12 or rentals at the time or times and in the amount or
13 amounts that will be sufficient:

14 (A) To pay the principal and interest on all special
15 facility revenue bonds issued for the special
16 facility;

17 (B) To establish or maintain any reserves for these
18 payments; and

19 (C) To pay all fees and expenses of the trustees,
20 paying agents, transfer agents, and other fiscal
21 agents for the special facility revenue bonds
22 issued for the special facility;



1 (2) To pay to the corporation:

2 (A) A ground rental, as determined by the
3 corporation, if the land on which the special
4 facility is located was not acquired from the
5 proceeds of the special facility revenue bonds;
6 or

7 (B) A properly allocable share of the administrative
8 costs of the corporation in carrying out the
9 special facility lease and administering the
10 special facility revenue bonds issued for the
11 special facility, if the land was acquired from
12 the proceeds of the special facility revenue
13 bonds;

14 (3) To either operate, maintain, and repair the special
15 facility and pay the costs thereof or to pay to the
16 corporation all costs of operation, maintenance, and
17 repair of the special facility;

18 (4) To:

19 (A) Insure, or cause to be insured, the special
20 facility under builder's risk insurance (or
21 similar insurance) in the amount of the cost of
22 construction of the special facility to be



1 financed from the proceeds of the special
2 facility revenue bonds;

3 (B) Procure and maintain, or cause to be procured or
4 maintained, to the extent commercially available,
5 a comprehensive insurance policy providing
6 protection and insuring the corporation and its
7 officers, agents, servants, and employees (and so
8 long as special facility revenue bonds are
9 outstanding, the trustee) against all direct or
10 contingent loss or liability for damages for
11 personal injury or death or damage to property,
12 including loss of use thereof, occurring on or in
13 any way related to the special facility or
14 occasioned by reason of occupancy by and the
15 operations of the other person upon, in, and
16 around the special facility;

17 (C) Provide all risk casualty insurance, including
18 insurance against loss or damage by fire,
19 lightning, flood, earthquake, typhoon, or
20 hurricane, with standard extended coverage and
21 standard vandalism and other malicious mischief
22 endorsements; and



1 (D) Provide insurance for workers' compensation and
2 employer's liability for personal injury or death
3 or damage to property (the other party may self-
4 insure for workers' compensation if permitted by
5 law);

6 provided that all policies with respect to loss or
7 damage of property including fire or other casualty
8 and extended coverage and builder's risk shall provide
9 for payments of the losses to the corporation, the
10 other person, or the trustee as their respective
11 interests may appear; and provided further that the
12 insurance may be procured and maintained as part of or
13 in conjunction with other policies carried by the
14 other person; and provided further that the insurance
15 shall name the corporation, and so long as any special
16 facility revenue bonds are outstanding, the trustee,
17 as additional insured; and

18 (5) To indemnify, save, and hold the corporation, the
19 trustee and their respective agents, officers,
20 members, and employees harmless from and against all
21 claims and actions and all costs and expenses
22 incidental to the investigation and defense thereof,



1 by or on behalf of any person, firm, or corporation,
2 based upon or arising out of the special facility or
3 the other person's use and occupancy thereof,
4 including, without limitation, from and against all
5 claims and actions based upon and arising from any:

6 (A) Condition of the special facility;

7 (B) Breach or default on the part of the other person
8 in the performance of any of the person's
9 obligations under the special facility lease;

10 (C) Fault or act of negligence of the other person or
11 the person's agents, contractors, servants,
12 employees, or licensees; or

13 (D) Accident to, or injury or death of, any person or
14 loss of, or damage to any property occurring in
15 or about the special facility, including any
16 claims or actions based upon or arising by reason
17 of the negligence or any act of the other person.

18 Any moneys received by the corporation pursuant to
19 paragraphs (2) and (3) shall be paid into the Hawaii community
20 development revolving fund and shall not be nor be deemed to be
21 revenues of the special facility.



1 (b) The term and all renewals and extensions of the term
2 of any special facility lease (including any amendments or
3 supplements thereto) shall not extend beyond the lesser of the
4 reasonable life of the special facility which is the subject of
5 the special facility lease, as estimated by the corporation at
6 the time of the entering into thereof, or thirty years.

7 (c) Any special facility lease entered into by the
8 corporation shall contain any other terms and conditions that
9 the corporation deems advisable to effectuate the purposes of
10 this subpart.

11 **§171C-AAAAAY Special facility revenue bonds.** All special
12 facility revenue bonds authorized to be issued shall be issued
13 pursuant to part III of chapter 39, except as follows:

14 (1) No revenue bonds shall be issued unless at the time of
15 issuance the corporation shall have entered into a
16 special facility lease with respect to the special
17 facility for which the revenue bonds are to be issued;

18 (2) The revenue bonds shall be issued in the name of the
19 corporation, and not in the name of the State;

20 (3) The revenue bonds shall be payable solely from and
21 secured solely by the revenues derived by the



1 corporation from the special facility for which they
2 are issued;

3 (4) The final maturity date of the revenue bonds shall not
4 be later than either the estimated life of the special
5 facility for which they are issued or the initial term
6 of the special facility lease;

7 (5) If deemed necessary or advisable by the corporation,
8 or to permit the obligations of the other person to
9 the special facility lease to be registered under the
10 U.S. Securities Act of 1933, the corporation, with the
11 approval of the director of finance, may appoint a
12 national or state bank within or without the State to
13 serve as trustee for the holders of the revenue bonds
14 and may enter into a trust indenture or trust
15 agreement with the trustee. The trustee may be
16 authorized by the corporation to collect, hold, and
17 administer the revenues derived from the special
18 facility for which the revenue bonds are issued and to
19 apply the revenues to the payment of the principal and
20 interest on the revenue bonds. If any trustee shall
21 be appointed, any trust indenture or agreement entered
22 into by the corporation with the trustee may contain



1 the covenants and provisions authorized by part III of
2 chapter 39 to be inserted in a resolution adopted or
3 certificate issued, as though the words "resolution"
4 or "certificate" as used in that part read "trust
5 indenture or agreement". The covenants and provisions
6 shall not be required to be included in the resolution
7 or certificate authorizing the issuance of the revenue
8 bonds if included in the trust agreement or indenture.
9 Any resolution or certificate, trust indenture, or
10 trust agreement adopted, issued, or entered into by
11 the corporation pursuant to this subpart may also
12 contain any provisions required for the qualification
13 thereof under the U.S. Trust Indenture Act of 1939.
14 The corporation may pledge and assign to the trustee
15 the special facility lease and the rights of the
16 corporation including the revenues thereunder;

- 17 (6) If the corporation, with the approval of the director
18 of finance, shall have appointed or shall appoint a
19 trustee for the holders of the revenue bonds, then
20 notwithstanding the provisions of the second sentence
21 of section 39-68, the director of finance may elect
22 not to serve as fiscal agent for the payment of the



1 principal and interest, and for the purchase,
2 registration, transfer, exchange, and redemption, of
3 the revenue bonds, or may elect to limit the functions
4 the director of finance shall perform as the fiscal
5 agent. The corporation, with the approval of the
6 director of finance, may appoint the trustee to serve
7 as the fiscal agent, and may authorize and empower the
8 trustee to perform the functions with respect to
9 payment, purchase, registration, transfer, exchange,
10 and redemption, that the corporation may deem
11 necessary, advisable, or expedient, including, without
12 limitation, the holding of the revenue bonds and
13 coupons which have been paid and the supervision and
14 conduction of the destruction thereof in accordance
15 with sections 40-10 and 40-11. Nothing in this
16 paragraph shall be a limitation upon or construed as a
17 limitation upon the powers granted in the preceding
18 paragraph to the corporation, with the approval of the
19 director of finance, to appoint the trustee, or
20 granted in sections 36-3 and 39-13 and the third
21 sentence of section 39-68 to the director of finance
22 to appoint the trustee or others, as fiscal agents,



1 paying agents, and registrars for the revenue bonds or
2 to authorize and empower the fiscal agents, paying
3 agents, and registrars to perform the functions
4 referred to in that paragraph and sections, it being
5 the intent of this paragraph to confirm that the
6 director of finance as aforesaid may elect not to
7 serve as fiscal agent for the revenue bonds or may
8 elect to limit the functions the director of finance
9 shall perform as the fiscal agent, that the director
10 of finance may deem necessary, advisable, or
11 expedient;

12 (7) The corporation may sell the revenue bonds either at
13 public or private sale;

14 (8) If no trustee shall be appointed to collect, hold, and
15 administer the revenues derived from the special
16 facility for which the revenue bonds are issued, the
17 revenues shall be held in a separate account in the
18 treasury of the State, separate and apart from the
19 Hawaii community development revolving fund, to be
20 applied solely to the carrying out of the resolution,
21 certificate, trust indenture, or trust agreement
22 authorizing or securing the revenue bonds;



1 (9) If the resolution, certificate, trust indenture, or
2 trust agreement shall provide that no revenue bonds
3 issued thereunder shall be valid or obligatory for any
4 purpose unless certified or authenticated by the
5 trustee for the holders of the revenue bonds,
6 signatures of the officers of the State upon the bonds
7 required by section 39-56 may be facsimiles of their
8 signatures;

9 (10) Proceeds of the revenue bonds may be used and applied
10 by the corporation to reimburse the other person to
11 the special facility lease for all preliminary costs
12 and expenses, including architectural and legal costs;
13 and

14 (11) If the special facility lease shall require the other
15 person to operate, maintain, and repair the special
16 facility which is the subject of the lease, at the
17 other person's expense, the requirement shall
18 constitute compliance by the corporation with section
19 39-61(a)(2), and none of the revenues derived by the
20 corporation from the special facility shall be
21 required to be applied to the purposes of section
22 39-62(2). Section 39-62(4), 39-62(5), and 39-62(6)



1 shall not apply to the revenues derived from a special
2 facility lease.

3 **§171C-AAAAAAZ Special facility revenue bonds; special**
4 **funds.** (a) A separate special fund shall be established for
5 each special facility financed from the proceeds of the revenue
6 bonds secured under the same trust indenture. Each fund shall
7 be designated "special facility revenue bond special fund" and
8 shall bear additional designation as the corporation deems
9 appropriate to properly identify the fund.

10 (b) Notwithstanding any other law to the contrary,
11 including particularly section 171C-AAAAAD, all revenues,
12 income, and receipts derived from the special facility for which
13 the revenue bonds are issued shall be paid into the special
14 facility revenue bond fund established for that special facility
15 and applied as provided in the proceedings authorizing the
16 issuance of the revenue bonds.

17 F. Kalaeloa Community Development District

18 **§171C-AAAAAAA Barbers Point Naval Air Station**
19 **redevelopment; power to redevelop established.** (a) The
20 corporation shall be the designated agency of the State to
21 implement this subpart.



1 (b) The corporation shall act as the local redevelopment
2 authority to facilitate the redevelopment of Barbers Point Naval
3 Air Station in accordance with the Barbers Point Naval Air
4 Station community reuse plan. In addition to any other duties
5 that the corporation may have pursuant to this part, the
6 corporation's duties shall include but not be limited to:

7 (1) Coordinating with the Navy and other entities during
8 the conveyance of properties and conducting
9 remediation activities for the Barbers Point Naval Air
10 Station community reuse plan;

11 (2) Assisting landholders designated by the plan to market
12 their properties and process conveyance requests;

13 (3) Working with the Navy and others to ensure that
14 infrastructure support is provided to the existing
15 developed area, referred to as the "downtown area",
16 and other federally retained areas;

17 (4) Developing the infrastructure necessary to support the
18 implementation of the Barbers Point Naval Air Station
19 community reuse plan; and

20 (5) Providing, to the extent feasible, maximum opportunity
21 for the reuse of surplus property by private
22 enterprise or state and county government.



(c) Five additional voting members shall, except as otherwise provided in this subsection, be appointed to the board of directors of the corporation by the governor to represent the Kalaeloa community development district. These members shall be considered in determining quorum and majority only on issues relating to the Kalaeloa community development district, and may vote only on issues relating to the Kalaeloa community development district. These members shall consist of:

(1) The chairperson of the Hawaiian homes commission;

(2) The director of the city and county of Honolulu department of planning and permitting;

(3) Two members representing the surrounding community for a term pursuant to section 26-34, one of which shall be selected by the mayor of the city and county of Honolulu; and

(4) One member who is a Hawaiian cultural specialist.

§171C-AAAAAAB Designation of the Kalaeloa community development district. (a) The federal Department of Defense declared approximately two thousand one hundred fifty acres of land at the Barbers Point Naval Air Station to be surplus to its needs and under a base realignment is conveying these surplus lands to the various end users identified by the community reuse



1 plan. The governor has approved and forwarded to the Navy the
2 community reuse plan for these surplus lands.

3 (b) The legislature hereby designates these surplus lands
4 as the "Kalaeloa community development district".

5 **§171C-AAAAAAC District established; boundaries.** The
6 Kalaeloa community development district is established. The
7 district shall include that area within the boundaries described
8 as follows: the eastern boundary begins at Geiger Gate and runs
9 along East Hansen Road to the intersection with Essex Road until
10 its termination at White Plains Beach Park, where it follows the
11 eastern boundary of parcel 9-1-13:74 to the shoreline at the
12 mean high water mark; the northern boundary begins at the
13 eastern corner at the Geiger Road entry gate where it becomes
14 Roosevelt Road and continues westward until its intersection
15 with West Perimeter Road; the western boundary follows the West
16 Perimeter Road until its termination and then follows the
17 western border of parcel 9-1-13:30 to the shoreline at the mean
18 high water mark; two parcels (9-1-13:01 and 9-1-13:09) lying
19 west of West Perimeter Road toward its mauka end, and two
20 parcels (9-1-31:28 and 9-1-31:47) lying west of West Perimeter
21 Road on its makai end, all of which are physically separated
22 from the western boundary by a storm water drainage canal, are



1 also included; the southern boundary follows the shoreline at
2 the mean high water mark from the western boundary of parcel 9-
3 1-13:30 to the eastern boundary of White Plains Beach Park (9-1-
4 13:74). All references to parcel numbers contained herein
5 indicate the areas identified by such tax map key numbers as of
6 March 18, 2002.

7 **§171C-AAAAAAD Kalaeloa community development district;**
8 **development guidance policies.** The following development
9 guidance policies shall generally govern the corporation's
10 actions in the Kalaeloa community development district:

11 (1) Development shall be in accordance with the community
12 reuse plan, except as it conflicts with the Hawaii
13 state constitution and the Hawaii Revised Statutes, as
14 they relate to the department of Hawaiian home lands;

15 (2) With the approval of the governor and concurrence of
16 the Navy, and in accordance with state law governing
17 lands owned by the department of Hawaiian home lands,
18 the corporation, upon the concurrence of a majority of
19 its voting members, may modify and make changes to the
20 reuse plan to respond to changing conditions; provided
21 that prior to amending the reuse plan the corporation



1 shall conduct a public hearing to inform the public of
2 the proposed changes and receive public input;

3 (3) Development shall seek to promote economic development
4 and employment opportunities by fostering diverse land
5 uses and encouraging private sector investments that
6 utilize the opportunities presented by the receipt of
7 property from the base closure consistent with the
8 needs of the public;

9 (4) The corporation may engage in planning, design, and
10 construction activities within and outside of the
11 district; provided that activities outside of the
12 district shall relate to infrastructure development,
13 area-wide drainage improvements, roadways realignments
14 and improvements, business and industrial relocation,
15 and other activities the corporation deems necessary
16 to carry out redevelopment of the district and
17 implement this part. Studies or coordinating
18 activities may be undertaken by the corporation in
19 conjunction with the county and appropriate state
20 agencies and may address facility systems, industrial
21 relocation, and other activities;



(5) Planning, replanning, rehabilitation, development, redevelopment, and other preparation for reuse of Barbers Point Naval Air Station under this part are public uses and purposes for which public money may be spent and private property acquired;

(6) Hawaiian archaeological, historic, and cultural sites shall be preserved and protected. Endangered species of flora and fauna and significant military facilities shall be preserved to the extent feasible;

(7) Land use and redevelopment activities within the district shall be coordinated with and to the extent possible complement existing county and state policies, plans, and programs affecting the district; and

(8) Public facilities within the district shall be planned, located, and developed to support the redevelopment policies established by this part for the district, the reuse plan approved by the governor, and rules adopted pursuant to this part.

§171C-AAAAAAAE Kalaeloa community development revolving

fund. (a) There is established in the state treasury the



1 Kalaeloa community development revolving fund, into which shall
2 be deposited:

3 (1) All revenues, income, and receipts of the corporation
4 for the Kalaeloa community development district,
5 notwithstanding any other law to the contrary,
6 including section 171C-AAAAAD;

7 (2) Moneys directed, allocated, or disbursed to the
8 Kalaeloa community development district from
9 government agencies or private individuals or
10 organizations, including grants, gifts, awards,
11 donations, and assessments of landowners for costs to
12 administer and operate the Kalaeloa community
13 development district; and

14 (3) Moneys appropriated to the fund by the legislature.

15 (b) Moneys in the Kalaeloa community development revolving
16 fund shall be used for the purposes of this subpart.

17 (c) Investment earnings credited to the assets of the fund
18 shall become part of the assets of the fund.

19 **\$171C-AAAAAAAF Assessment for operating costs.** (a) The
20 corporation shall have the power to assess all land users,
21 except the federal government, for their fair share of the costs
22 required to administer and operate the Kalaeloa community



1 development district, which may include costs associated with
2 staffing. Assessments shall be based on each landowner's
3 proportionate share of the total acreage of the Kalaeloa
4 community development district.

5 (b) The assessment shall be set by the corporation
6 annually, based upon the operating budget for the district, and
7 adjusted for any actual expenditures made in the prior year in
8 excess of the prior approved budget. The assessments shall be
9 paid to the corporation in semiannual payments commencing thirty
10 days after the beginning of the fiscal year.

11 (c) The corporation may charge interest or other fees on
12 assessment amounts not paid on a timely basis, and may withhold
13 services or approval of governmental permits for land users
14 delinquent in payments.

15 (d) For the purposes of this section, "land user" includes
16 the owner of land; provided that the landowner may assign the
17 responsibility for payment of assessments to the lessee or
18 licensee of the land.

19 **§171C-AAAAAAG Complaints.** The corporation may establish
20 procedures for receiving and processing district-related
21 complaints, conducting research, monitoring matters that arise
22 within the district, and reporting its findings.



1 §171C-AAAAAAH Remedies. (a) The corporation may
2 research any complaint relating to the district that it
3 determines to be an appropriate subject for investigation,
4 including:

- 5 (1) Unkempt appearance of property;
- 6 (2) Brushfires on property;
- 7 (3) Rubbish disposed of inappropriately; or
- 8 (4) Conditions on property otherwise incongruous with
9 generally accepted standards of maintenance.

10 (b) The corporation may investigate, conduct research, or
11 monitor any matter that arises within the district, in
12 accordance with this subpart.

13 (c) If the corporation decides not to research a complaint
14 filed with the corporation, it shall inform the complainant of
15 its decision and shall state its reasons.

16 If the corporation decides to research the complaint, it
17 shall notify the complainant of its decision and shall also
18 notify the landowner of its intention to investigate.

19 (d) Before giving any opinion or recommendation that is
20 critical of a landowner or person who is the subject of the
21 complaint, the corporation shall consult with the landowner or
22 person on the best means to remedy the situation.



1 (e) After a reasonable time has elapsed, the corporation
2 shall notify the complainant of the actions taken by it and by
3 the landowner.

4 **§171C-AAAAAAAI Reports.** (a) After a reasonable time has
5 elapsed, the corporation may present its opinion and
6 recommendations to the governor, the legislature, the public, or
7 any of these. The corporation shall include with this opinion
8 any reply made by the landowner.

9 (b) The corporation shall submit to the various landowners
10 in the district a quarterly report discussing the corporation's
11 activities under this subpart. The report shall be made
12 available to the public upon request.

13 G. Heeia Community Development District

14 **§171C-AAAAAAAJ Definitions.** As used in this subpart:

15 "District" means the Heeia community development district.

16 "Fund" means the Heeia community development revolving
17 fund.

18 **§171C-AAAAAAAK District established; boundaries.** (a) The
19 Heeia community development district is hereby established. The
20 district shall include that area within the boundaries described
21 as follows: the southern boundary begins at the southern
22 property line of tax map key number (1) 4-6-16:001 and runs west



1 to Kahekili highway and east to Kamehameha highway. The
2 northern boundary begins at the northern property line of tax
3 map key number (1) 4-6-16:001 and runs west to Kahekili highway
4 and east to Kamehameha highway. The tax map key numbers are (1)
5 4-6-16:001 and (1) 4-6-16:002 (owned by the corporation), and
6 (1) 4-6-16:004, :011, :012, and :017 (owned by various owners of
7 kuleana parcels).

8 (b) The corporation shall serve as the local redevelopment
9 authority of the district to facilitate culturally appropriate
10 agriculture, education, and natural-resource restoration and
11 management of the Heeia wetlands, in alignment with the Honolulu
12 board of water supply's most current "Koolau Poko Watershed
13 Management Plan" and the city and county of Honolulu's most
14 current "Koolaupoko Sustainable Communities Plan". In addition
15 to any other of its duties under this part, the corporation
16 shall:

17 (1) Consult with the following persons and entities:

18 (A) Recorded landowners in the district;

19 (B) Recorded landowners in section 6 of zone 4 of the
20 first tax map key division;

21 (C) Koolaupoko Hawaiian Civic Club;

22 (D) Kailua neighborhood board;



1 (E) Kahaluu neighborhood board; and

2 (F) Kaneohe neighborhood board,

3 to implement activities related to and supportive of

4 cultural practices, agriculture, education, and

5 natural-resource restoration and management;

6 (2) Assist land users to manage their properties and

7 implement activities related to and supportive of

8 cultural practices, agriculture, education, and

9 natural-resource restoration and management;

10 (3) Work with federal, state, county, and other agencies

11 to ensure that infrastructural support is provided for

12 the district;

13 (4) Develop the infrastructure necessary to support the

14 implementation of the Heeia community development

15 district master plan; and

16 (5) Provide, to the extent feasible, maximum opportunity

17 for the restoration and implementation of sustainable,

18 culturally appropriate, biologically responsible, or

19 agriculturally beneficial enterprises.

20 (c) Three additional voting members shall, except as

21 otherwise provided in this subsection, be appointed to the board

22 of directors of the corporation by the governor pursuant to



1 section 26-34 to represent the district. These three members
2 shall be considered in determining quorum and majority only on
3 issues relating to the district and may vote only on issues
4 related to the district. The three members shall be residents
5 of the district or the Koolaupoko district which consists of
6 sections 1 through 9 of zone 4 of the first tax map key
7 division.

8 **§171C-AAAAAAL Heeia community development district;**
9 **policies to guide development.** The following general policies
10 to guide development shall govern the corporation's actions in
11 the district:

12 (1) Development shall be in accordance with the Heeia
13 master plan, except as it conflicts with the Hawaii
14 state constitution and the Hawaii Revised Statutes;

15 (2) With the approval of the governor, and in accordance
16 with law, the corporation, upon the concurrence of a
17 majority of its voting members, may modify and make
18 changes to the Heeia master plan to respond to
19 changing conditions; provided that prior to amending
20 the Heeia master plan, the corporation shall conduct a
21 public meeting pursuant to chapter 92 to inform the



1 public of the proposed changes and receive public
2 input;

3 (3) The corporation shall provide, to the extent feasible,
4 maximum opportunity for the restoration and
5 implementation of sustainable, culturally appropriate,
6 biologically responsible, or agriculturally beneficial
7 enterprises;

8 (4) The corporation may engage in planning, design, and
9 construction activities within and outside the
10 district; provided that activities outside the
11 district shall relate to infrastructural development,
12 area-wide drainage improvements and sediment transport
13 mitigation, roadway realignments and improvements, and
14 other activities the corporation deems necessary to
15 carry out redevelopment of the district and implement
16 this part. Studies or coordinating activities may be
17 undertaken by the corporation in conjunction with the
18 county and appropriate federal and state agencies and
19 may address infrastructural systems, natural-resource
20 systems, and other activities;

21 (5) Planning, replanning, rehabilitation, development,
22 redevelopment, and other preparations for the



1 restoration of cultural practices, education, natural
2 resources, and agriculture related activities shall be
3 pursued;

4 (6) Hawaiian archaeological, historic, and cultural sites
5 shall be preserved and protected to the extent
6 feasible while allowing for continued use of the
7 property for cultural activities, education,
8 agricultural and economic pursuits, and natural-
9 resource restoration;

10 (7) Endangered species of flora and fauna shall be
11 preserved and protected to the extent feasible;

12 (8) Land use and redevelopment activities within the
13 district shall be coordinated with and, to the extent
14 possible, complement existing county and state
15 policies, plans, and programs affecting the district;

16 (9) Public facilities within the district shall be
17 planned, located, and developed to support the
18 redevelopment policies established by this subpart for
19 the district, the master plan approved by the
20 governor, and rules adopted pursuant to this part; and



(10) Special management area permit administration for the district shall continue to be under the authority of the city and county of Honolulu.

§171C-AAAAAAM Heeia community development revolving fund.

(a) There is established in the state treasury the Heeia community development revolving fund, into which shall be deposited:

(1) All revenues, income, and receipts of the corporation for the district, notwithstanding any other law to the contrary, including section 171C-AAAAAD;

(2) Moneys directed, allocated, or disbursed to the district from government agencies or private individuals or organizations, including grants, gifts, awards, donations, and assessments of landowners for costs to administer and operate the district; and

(3) Moneys appropriated to the fund by the legislature.

(b) Moneys in the fund shall be used only for the purposes of this part.

(c) Investment earnings credited to the assets of the fund shall become part of the fund.



1 §171C-AAAAAAN Rules; adoption. The corporation shall
2 adopt rules in accordance with chapter 91 to carry out the
3 purposes of this subpart."

4 SECTION 2. Chapter 171C, Hawaii Revised Statutes, is
5 amended by designating sections 171C-1 to 171C-20 as part I,
6 entitled:

7 **"GENERAL PROVISIONS"**

8 SECTION 3. Section 171C-4, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Except as otherwise limited by this chapter, the
11 corporation may:

- 12 (1) Sue and be sued;
- 13 (2) Have a seal and alter the same at its pleasure;
- 14 (3) Make and alter bylaws for its organization and
15 internal management;
- 16 (4) Adopt rules under chapter 91 necessary to effectuate
17 this chapter in connection with its projects,
18 operations, and properties;
- 19 (5) Make and execute contracts and all other instruments
20 necessary or convenient for the exercise of its powers
21 and functions under this chapter;



(6) Carry out surveys, research, and investigations into technological, business, financial, consumer trends, and other aspects of leisure or recreational land uses in the national and international community;

(7) Prepare or cause to be prepared a community development plan for all designated community development districts;

(8) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, clear, improve, and rehabilitate, and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same;

~~[(7)]~~ (9) Acquire or contract to acquire by grant or purchase:

(A) All privately owned real property or any interest therein and the improvements thereon, if any, that are determined by the corporation to be necessary or appropriate for its purposes under this chapter, including real property together with improvements, if any, in excess of that needed for such use in cases where small remnants



1 would otherwise be left or where other
2 justifiable cause necessitates the acquisition to
3 protect and preserve the contemplated
4 improvements, or public policy demands the
5 acquisition in connection with such improvements;
6 and

7 (B) Encumbrances, in the form of leases, licenses, or
8 otherwise, needed by the corporation or any state
9 department or agency for public purposes, the
10 disposition of subdivided lots, houselots,
11 apartments or other economic units, or economic
12 development;

13 [~~+8~~] (10) Own, hold, improve, and rehabilitate any real,
14 personal, or mixed property acquired; and sell,
15 assign, exchange, transfer, convey, lease, or
16 otherwise dispose of, or encumber the same;

17 [~~+9~~] (11) By itself, or in partnership with qualified
18 persons or other governmental agencies, acquire,
19 construct, reconstruct, rehabilitate, improve, alter,
20 or repair any infrastructure or accessory facilities
21 in connection with any project; own, hold, sell,
22 assign, transfer, convey, exchange, lease, or



1 otherwise dispose of, or encumber any project; and
2 develop or manage, by itself, or in partnership with
3 qualified persons or other governmental agencies, any
4 project that meets the purposes of this chapter;

5 (12) Acquire or reacquire by condemnation real, personal,
6 or mixed property or any interest therein for public
7 facilities, including but not limited to streets,
8 sidewalks, parks, schools, and other public
9 improvements;

10 (13) By itself, or in partnership with qualified persons,
11 acquire, reacquire, construct, reconstruct,
12 rehabilitate, improve, alter, or repair or provide for
13 the construction, reconstruction, improvement,
14 alteration, or repair of any project; own, hold, sell,
15 assign, transfer, convey, exchange, lease, or
16 otherwise dispose of or encumber any project, and in
17 the case of the sale of any project, accept a purchase
18 money mortgage in connection therewith; and repurchase
19 or otherwise acquire any project which the corporation
20 has theretofore sold or otherwise conveyed,
21 transferred, or disposed of;



1 (14) Arrange or contract for the planning, replanning,
2 opening, grading, or closing of streets, roads,
3 roadways, alleys, or other places, or for the
4 furnishing of facilities or for the acquisition of
5 property or property rights or for the furnishing of
6 property or services in connection with a project;

7 (15) Grant options to purchase any project or to renew any
8 lease entered into by it in connection with any of its
9 projects, on such terms and conditions as it deems
10 advisable;

11 (16) Prepare or cause to be prepared plans, specifications,
12 designs, and estimates of costs for the construction,
13 reconstruction, rehabilitation, improvement,
14 alteration, or repair of any project, and from time to
15 time to modify such plans, specifications, designs, or
16 estimates;

17 (17) Allow satisfaction of any affordable housing
18 requirements imposed by the corporation upon any
19 proposed development project through the construction
20 of reserved housing, as defined in section 171C-
21 AAAAAP, by a person on land located outside the
22 geographic boundaries of the corporation's



1 jurisdiction; provided that the corporation shall not
2 permit any person to make cash payments in lieu of
3 providing reserved housing, except to account for any
4 fractional unit that results after calculating the
5 percentage requirement against residential floor space
6 or total number of units developed. The substituted
7 housing shall be located on the same island as the
8 development project and shall be substantially equal
9 in value to the required reserved housing units that
10 were to be developed on site. The corporation shall
11 establish the following priority in the development of
12 reserved housing:

- 13 (A) Within the community development district;
14 (B) Within areas immediately surrounding the
15 community development district;
16 (C) Areas within the central urban core;
17 (D) In outlying areas within the same island as the
18 development project.

19 The corporation shall adopt rules relating to the
20 approval of reserved housing that are developed
21 outside of a community development district. The
22 rules shall include but are not limited to the



1 establishment of guidelines to ensure compliance with
2 the above priorities;

3 ~~[(10)]~~ (18) In cooperation with any governmental agency, or
4 otherwise through direct investment or coventure with
5 a professional investor or enterprise or any other
6 person, or otherwise, acquire, construct, operate, and
7 maintain public land facilities, including but not
8 limited to leisure, recreational, commercial,
9 residential, time share, hotel, office space, and
10 business facilities, at rates or charges determined by
11 the corporation;

12 ~~[(11)]~~ (19) Assist developmental, recreational, and visitor-
13 industry related enterprises, or projects developed or
14 managed by the corporation, by conducting detailed
15 marketing analysis and developing marketing and
16 promotional strategies to strengthen the position of
17 those enterprises and to better exploit local,
18 national, and international markets;

19 ~~[(12)]~~ (20) Receive, examine, and determine the acceptability
20 of applications of qualified persons for allowances
21 or grants for the development of new recreation and
22 visitor-industry related products, the expansion of



1 established recreation and visitor-industry or land
2 development enterprises, and the altering of existing
3 recreational, visitor-industry related, or land
4 development enterprises;

5 ~~[(13)]~~ (21) Coordinate its activities with any federal or
6 state programs;

7 ~~[(14)]~~ (22) Grant options to purchase any project or to renew
8 any lease entered into by the corporation in
9 connection with any of its projects, on the terms and
10 conditions it deems advisable;

11 ~~[(15)]~~ (23) Provide advisory, consultative, training, and
12 educational services and technical assistance to any
13 person, partnership, or corporation, either public or
14 private, to carry out the purposes of this chapter,
15 and engage the services of consultants on a
16 contractual basis for rendering professional and
17 technical assistance and advice;

18 ~~[(16)]~~ (24) Procure insurance against any loss in connection
19 with its property and other assets and operations in
20 amounts and from insurers as it deems desirable;

21 ~~[(17)]~~ (25) Accept gifts or grants in any form from any
22 public agency or any other source;



1 ~~[(18)]~~ (26) Issue bonds to finance the cost of a project and
2 to provide for the security thereof, in the manner and
3 pursuant to the procedure prescribed in this chapter;

4 ~~[(19)]~~ (27) Subject to approval by the department, assume
5 management responsibilities for small boat harbors in
6 accordance with chapter 200 and any rules adopted
7 pursuant thereto for periods not to exceed one year;

8 ~~[(20)]~~ (28) Recommend to the board of land and natural
9 resources the purchase of any privately owned
10 properties that may be appropriate for development;
11 and

12 ~~[(21)]~~ (29) Do all things necessary or proper to carry out
13 the purposes of and powers expressly provided in this
14 chapter."

15 SECTION 4. Section 182-2, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) All minerals in, on, or under state lands or lands
18 which hereafter become state lands are reserved to the State;
19 provided that the board of land and natural resources with
20 respect to all minerals except geothermal resources, and the
21 public land development corporation with respect to geothermal
22 resources, may release, cancel, or waive the reservation



1 whenever it deems the land use, other than mining, is of greater
2 benefit to the State as provided for in section 182-4. Such
3 minerals are reserved from sale or lease except as provided in
4 this chapter. A purchaser or lessee of any such lands shall
5 acquire no right, title, or interest in or to the minerals. The
6 right of the purchaser or lessee shall be subject to the
7 reservation of all the minerals and to the conditions and
8 limitations prescribed by law providing for the State and
9 persons authorized by it to prospect for, mine, and remove the
10 minerals, and to occupy and use so much of the surface of the
11 land as may be required for all purposes reasonably extending to
12 the mining and removal of the minerals therefrom by any means
13 whatsoever."

14 SECTION 5. Section 182-3, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§182-3 Bond; compensation to occupiers.** (a) Every
17 lessee of a mining lease granted under this chapter and every
18 assignee thereof shall file with the board of land and natural
19 resources regarding leases not involving geothermal resources,
20 and with the public land development corporation regarding
21 leases involving geothermal resources, a bond, in a form and in
22 an amount approved by the board[7] or the public land



1 development corporation, made payable to the State and which
2 shall be conditioned upon the faithful performance by the lessee
3 of all the requirements of this chapter and of the mining lease,
4 and also conditioned upon the full payment by the lessee of all
5 damages suffered by the occupiers hereinunder mentioned. If the
6 State sells or leases its mineral rights on land which it or its
7 predecessors in interest have granted or leased, or which it may
8 hereafter sell or lease, and the land thereof including any
9 crops or improvements is damaged by any mining or other
10 incidental operations, including exploratory work, or by the
11 failure of the lessee of the mining lease to properly restore
12 the land after termination of the operations, the occupier shall
13 be reimbursed the full extent of the damages caused by the
14 mining operations of the lessee to be allocated between the
15 lessee and the fee owner in accordance with the lease terms, if
16 any.

17 (b) Nothing herein shall be construed to prevent the
18 occupier from demanding and receiving rentals from the lessee of
19 the mining lease or to forbid and prevent the occupier and the
20 lessee from agreeing upon the amount of damages to be paid and
21 the terms and conditions of payment. The occupier may in
22 writing before or within thirty days after the public auction



1 notify the board regarding mining leases not involving
2 geothermal resources, and the public land development
3 corporation regarding leases involving geothermal resources,
4 that the occupier elects to have the amount of damages and the
5 amount of rentals to be paid as a result of the mining lease
6 determined by arbitration with the successful bidder. In such
7 event, the occupier shall notify the successful bidder of the
8 occupier's election to arbitrate, and the arbitration shall
9 proceed in accordance with chapter 658A. The arbitrators in
10 fixing the amount of damages to be paid to the occupier shall
11 award the occupier the amount which in their judgment shall
12 fairly compensate the occupier for the damages the occupier may
13 suffer to the occupier's crops or improvements or to the surface
14 or condition of the occupier's land caused by the mining or
15 other incidental operations, including exploratory work, and a
16 reasonable rental for the use of the surface."

17 SECTION 6. Section 182-4, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§182-4 Mining leases on state lands.** (a) If any mineral
20 is discovered or known to exist on state lands, any interested
21 person may notify the board of land and natural resources
22 regarding any mineral not including geothermal resources, and



1 the public land development corporation regarding geothermal
2 resources, of the person's desire to apply for a mining lease.
3 The notice shall be accompanied by a fee of \$100 together with a
4 description of the land desired to be leased and the minerals
5 involved and any information and maps that the board or the
6 public land development corporation by rule may prescribe. As
7 soon as practicable thereafter, the board or the public land
8 development corporation shall cause a public notice to be given
9 in the county where the lands are located, at least once in each
10 of three successive weeks, setting forth the description of the
11 land, and the minerals desired to be leased. The board or the
12 public land development corporation may hold the public auction
13 of the mining lease within six months from the date of the first
14 notice or any further time that may be reasonably necessary.
15 Whether or not the state land sought to be auctioned is then
16 being utilized or put to some productive use, the board[7] or
17 the public land development corporation, after due notice of
18 public hearing to all parties in interest, within six weeks from
19 the date of the first notice or any further time that may be
20 reasonably necessary, shall determine whether the proposed
21 mining operation or the existing or reasonably foreseeable
22 future use of the land would be of greater benefit to the State.



1 If the board or the public land development corporation
2 determines that the existing or reasonably foreseeable future
3 use would be of greater benefit to the State than the proposed
4 mining use of the land, it shall disapprove the application for
5 a mining lease of the land without putting the land to auction.
6 The board or the public land development corporation shall
7 determine the area to be offered for lease and, after due notice
8 of public hearing to all parties in interest, may modify the
9 boundaries of the land areas. At least thirty days prior to the
10 holding of any public auction, the board or the public land
11 development corporation shall cause a public notice to be given
12 in the State at least once in each of three successive weeks,
13 setting forth the description of the land, the minerals to be
14 leased, and the time and place of the auction. Bidders at the
15 public auction may be required to bid on the amount of annual
16 rental to be paid for the term of the mining lease based on an
17 upset price fixed by the board[-] or the public land development
18 corporation, a royalty based on the gross proceeds or net
19 profits, cash bonus, or any combination or other basis and under
20 any terms and conditions that may be set by the board[-] or the
21 public land development corporation.



1 (b) Any provisions to the contrary notwithstanding, if the
2 person who discovers the mineral discovers it as a result of
3 exploration permitted under section 182-6, and if that person
4 bids at the public auction on the mining lease for the right to
5 mine the discovered mineral and is unsuccessful in obtaining
6 such lease, that person shall be reimbursed by the person
7 submitting the highest bid at public auction for the direct or
8 indirect costs incurred in the exploration of the land,
9 excluding salaries, attorneys fees and legal expenses. The
10 department or the public land development corporation shall have
11 the authority to review and approve all expenses and costs that
12 may be reimbursed."

13 SECTION 7. Section 182-5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§182-5 Mining leases on reserved lands. (a)** If any
16 mineral is discovered or known to exist on reserved lands, any
17 interested person may notify the board of land and natural
18 resources regarding any mineral not including geothermal
19 resources, or the public land development corporation regarding
20 geothermal resources, of the person's desire to apply for a
21 mining lease. The notice shall be accompanied by a fee of \$100
22 together with a description of the land desired to be leased and



1 the minerals involved and ~~[such]~~ any information and maps ~~[as]~~
2 that the board or the public land development corporation may by
3 ~~[regulation]~~ rule prescribe. The board or the public land
4 development corporation may grant a mining lease on reserved
5 lands in accordance with section 182-4, or the board or the
6 public land development corporation may, by the vote of two-
7 thirds of its members to which the board or the public land
8 development corporation board of directors is entitled, without
9 public auction, grant a mining lease on reserved lands to the
10 occupier thereof. ~~[Such a]~~ A mining lease may be granted to a
11 person other than the occupier if the occupier has assigned the
12 occupier's rights to apply for a mining lease to another person,
13 in which case only ~~[such an]~~ the assignee may be granted a
14 mining lease.

15 (b) ~~[Any provisions to the contrary notwithstanding, if~~
16 ~~the board]~~ Notwithstanding any other law to the contrary, if the
17 public land development corporation decides that it is
18 appropriate to grant a geothermal mining lease on the reserved
19 lands, the surface owner or the owner's assignee shall have the
20 first right of refusal for a mining lease; however, the granting
21 of a geothermal mining lease does not create the presumption
22 that a geothermal resource subzone will be designated, nor shall



1 geothermal development activities occur on land within the
2 geothermal mining lease until the area is designated a
3 geothermal resource subzone.

4 If the occupier or the occupier's assignee of the right to
5 obtain a mining lease should fail to apply for a mining lease
6 within six months from the date of notice from the board or the
7 public land development corporation of a finding by the board or
8 the public land development corporation that it is in the public
9 interest that the minerals on the reserved lands be mined, a
10 mining lease shall be granted under section 182-4; provided that
11 bidders at the public auction shall bid on an amount to be paid
12 to the State for a mining lease granting to the lessee the right
13 to exploit minerals reserved to the State."

14 SECTION 8. Section 182-6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§182-6 Exploration.** Any person wishing to conduct
17 exploration on such state lands shall apply to the board of land
18 and natural resources if geothermal resources are not involved,
19 or to the public land development corporation, if geothermal
20 resources are involved, who shall issue exploration permits upon
21 such terms and conditions as it shall by [~~regulation~~] rule
22 prescribe. During and as a result of the exploration, no



1 minerals of such types and quantity beyond that reasonably
2 required for testing and analysis shall be extracted and removed
3 from such state lands. Upon termination of the exploration
4 permit, the drill logs and the results of the assays resulting
5 from the exploration shall be turned over to the board or the
6 public land development corporation and kept confidential by the
7 board[~~-~~] or the public land development corporation. If the
8 person shall not make application for a mining lease of the
9 lands within a period of six months from the date the
10 information is turned over to the board[~~-~~] or the public land
11 development corporation, the board or the public land
12 development corporation in its discretion need not keep the
13 information confidential."

14 SECTION 9. Section 182-7, Hawaii Revised Statutes, is
15 amended by amending subsections (a) through (e) to read as
16 follows:

17 "(a) Prior to the public auction contemplated in section
18 182-4 or 182-5, or the granting of mining lease without public
19 auction contemplated in section 182-5, the board of land and
20 natural resources or the public land development corporation
21 shall cause a mining lease for the land in question to be drawn.
22 The lease shall describe the land and shall contain, in addition



1 to such other provisions which the board or the public land
2 development corporation may deem appropriate, specific
3 provisions as provided in this section.

4 (b) The term of the lease shall be sixty-five years or for
5 a lesser period at the discretion of the board~~[-]~~ or the public
6 land development corporation.

7 (c) The payments to the State as fixed by the board or the
8 public land development corporation shall be specified; provided
9 that:

10 (1) In the case of bauxite, bauxitic clay, gibbsite,
11 diaspore, boehmite, and all ores of aluminum, the
12 amount of royalties for each long dry ton of ore as
13 beneficiated shall not be less than twenty-five cents
14 or the equivalent of the price of one pound of virgin
15 pig aluminum, whichever is higher, nor shall it exceed
16 the equivalent of the price of three pounds of virgin
17 pig aluminum;

18 (2) The rate of royalty for ore processed into aluminous
19 oxide in the State shall be set at eighty per cent of
20 the rate of royalty for ore not processed to aluminous
21 oxide in the State; and



1 (3) The royalty shall be fixed at a rate which will tend
2 to encourage the establishment and continuation of the
3 mining industry in the State.

4 The prices of virgin pig aluminum for the purpose of
5 determining the royalties under this section shall be the basic
6 price on the mainland United States market for virgin pig, not
7 refined, f.o.b. factory. The royalties shall be in lieu of any
8 severance or other similar tax on the extracting, producing,
9 winning, beneficiating, handling, storing, treating, or
10 transporting of the mineral or any product into which it may be
11 processed in the State, and shall not be subject to reopening or
12 renegotiating for and during the first twenty years of the lease
13 term.

14 In the event the lessee desires to mine other minerals, the
15 lessee, before mining the minerals, shall so notify the board if
16 geothermal resources are not involved, or the public land
17 development corporation regarding geothermal resources, in
18 writing, and the board or the public land development
19 corporation and the lessee shall negotiate and fix the royalties
20 for the minerals.

21 Any other law to the contrary notwithstanding, thirty per
22 cent of all royalties received by the State from geothermal



1 resources shall be paid to the county in which mining operations
2 covered under a state geothermal resource mining lease are
3 situated.

4 (d) The lessee shall covenant and agree that the lessee
5 shall commence mining operations upon the leased lands within
6 three years from the date of execution of the lease; provided
7 that so long as the lessee is actively and on a substantial
8 scale engaged in mining operations on at least one such lease on
9 the same minerals, the covenant shall be suspended as to all
10 other leases held by the lessee.

11 Any interested party may, however, request that a mining
12 lease contain a research period under which the lessees shall be
13 required to expend money in research and development to
14 establish a method to make economical the mining and processing
15 of the mineral deposits contained in the lease. If the board or
16 the public land development corporation determines that the
17 research period would be beneficial, it shall fix the period of
18 research and shall also fix a minimum expenditure for labor
19 performed or money spent by the lessee in research and
20 development and the method by which the lessee shall establish
21 that such expenditure in fact be made. In such leases, the



1 obligation to commence mining operations within three years
2 shall not commence until the expiration of the research period.

3 (e) For the period of the lease, the lessee shall have the
4 exclusive right of possession of the minerals leased and the
5 exclusive rights to mine and remove the minerals by means which
6 shall be reasonable and satisfactory to the board or the public
7 land development corporation and to occupy and use so much of
8 the surface of the land as may reasonably be required, subject
9 to the provisions of section 182-3. The right to use the
10 surface shall include the right to erect transportation
11 facilities thereon, construct plants for beneficiating, drying,
12 and processing the minerals for electric power generation and
13 transmission and such other uses as may be necessary or
14 convenient to the winning and processing of the minerals;
15 provided that the lessee shall comply with all water and air
16 pollution control laws, and rules of the State or its political
17 subdivisions."

18 SECTION 10. Section 182-8, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§182-8 Number of leases; acreage limitations; area
21 covered by lease. The board [~~is~~] and the public land
22 development corporation are authorized to impose a limitation on



1 the number of leases or acres which a mining lessee or the
2 mining lessee's transferee may hold under such terms and
3 conditions as the board or the public land development
4 corporation determines to be in the best interest of the State.
5 No lease shall grant and include an area of land exceeding four
6 square miles of contiguous land, in which the longest dimension
7 of the area demised shall exceed its narrowest dimension by more
8 than six times unless otherwise approved by the board."

9 SECTION 11. Section 182-9, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§182-9 Deposit; first year's rental.** All bidders shall
12 prior to the date of public auction post with the board of land
13 and natural resources or the public land development corporation
14 a deposit of \$500. The board or the public land development
15 corporation shall refund to unsuccessful bidders such amount
16 within two days after the auction. All bidders, prior to the
17 auction, shall satisfy the board or the public land development
18 corporation of their financial ability to conduct mining
19 operations and of their capability to develop a mine. The
20 successful bidder shall pay to the board or the public land
21 development corporation the amount of the first year's rental
22 within two days after the acceptance of the bid by the board or



1 the public land development corporation and the \$500 deposit
2 shall be credited against such sum. If the deposit exceeds the
3 first year's rental, the excess shall be refunded. All rentals
4 thereafter are payable in advance once a year."

5 SECTION 12. Section 182-9.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[+]§182-9.5[+] **Unitization.** Upon motion by the board or
8 the public land development corporation or petition filed by any
9 mining lessee, the board[7] or the public land development
10 corporation, in its discretion, may order such lessees or owners
11 of mineral rights on adjoining properties to collectively adopt,
12 and operate under, a cooperative or unit plan of development, if
13 the board or the public land development corporation finds that
14 such a plan will prevent the waste of any mineral, increase the
15 ultimate recovery, avoid the drilling, digging, or excavating of
16 any unnecessary well, or for such other reason that would
17 encourage and promote the development of any mineral resource."

18 SECTION 13. Section 182-10, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§182-10 **Revocation of mining leases.** A mining lease may
21 be revoked if the lessee fails to pay rentals when due or if any
22 of the terms of the lease or of law are not complied with, or if



1 the lessee wholly ceases all mining operations for other than
2 reasons of force majeure or the uneconomic operation of the
3 mining lease for a period of one year without the written
4 consent of the board of land and natural resources[+] or the
5 public land development corporation; provided that the board or
6 the public land development corporation shall give the lessee
7 notice of any default and the lessee shall have six months or
8 such other time limit as provided by the rules and regulations
9 from the date of the notice to remedy the default."

10 SECTION 14. Section 182-11, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§182-11 Assignment.** Any mining lease may be assigned in
13 whole or in part, subject to the approval of the board of land
14 and natural resources[+] or the public land development
15 corporation, to an assignee who shall have the same
16 qualifications as any bidder for a mining lease. The assignee
17 shall be bound by the terms of the lease to the extent as if the
18 assignee were the original lessee. The approval of the
19 assignment by the board or the public land development
20 corporation shall release the assignor from any liabilities or
21 duties under the mining lease as to the portion thereof assigned
22 except for any liability or duty which arose prior to the



1 approval of the assignment by the board or the public land
2 development corporation and which remains unsatisfied or
3 unperformed."

4 SECTION 15. Section 182-13, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§182-13 Surrender of mining leases.** Any lessee of a
7 mining lease, who has complied fully with all the terms,
8 covenants, and conditions of the existing lease, may, with the
9 consent of the board of land and natural resources[7] or the
10 public land development corporation, surrender at any time and
11 from time to time all or any part of a mining lease or the land
12 contained therein upon payments as consideration therefor two
13 years' rent prorated upon the portion of the lease or land
14 surrendered. The lessee shall thereupon be relieved of any
15 further liability or duty with respect to the land or lease so
16 surrendered; provided that nothing herein contained shall
17 constitute a waiver of any liability or duty the lessee may have
18 with respect to the land or lease surrendered as a result of any
19 previous activities conducted on the land or under the lease.
20 Upon the termination, cancellation, or surrender of any mining
21 lease or any portion thereof, the lessee shall have the right to
22 remove any and all equipment, buildings, and plants placed on



1 the land surrendered by the holder of the mining lease. A
2 mining lease may also be surrendered if as a result of a final
3 determination by a court of competent jurisdiction, the lessee
4 is found to have acquired no rights in or to the minerals on
5 reserved lands, nor the right to exploit the same, pursuant to
6 the lease, and, in such event, the lessee shall be reimbursed
7 for rentals paid to the State pursuant to the lease."

8 SECTION 16. Section 182-14, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§182-14 Rules [~~and regulations~~]**. Subject to chapter 91,
11 the board of land and natural resources or the public land
12 development corporation may make, promulgate, and amend such
13 rules [~~and regulations~~] as it deems necessary to carry out this
14 chapter and to perform its duties thereunder, all commensurate
15 with and for the purpose of protecting the public interest. All
16 such rules [~~and regulations~~] shall have the force and effect of
17 law."

18 SECTION 17. Section 182-15, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§182-15 Other use of surface of state lands.** Where
21 mining leases are granted on state lands, the board of land and
22 natural resources or the public land development corporation may



1 reserve to the State the right to lease, sell, or otherwise
2 dispose of the surface of the lands embraced within the lease.
3 The lease, sale, or other disposal of the surface, if made,
4 shall be subject to the rights of the holder of the mining
5 lease."

6 SECTION 18. Section 182-18, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[+]§182-18[+] **Geothermal royalties.** (a) The [~~board~~]
9 public land development corporation shall fix the payment of
10 royalties to the State for the utilization of geothermal
11 resources at a rate which will encourage the initial and
12 continued production of such resources. With respect to all
13 geothermal mining leases previously issued or to be issued,
14 where the [~~board~~] public land development corporation determines
15 that it is necessary to encourage the initial or continued
16 production of geothermal resources, the [~~board~~] public land
17 development corporation shall have the authority to waive
18 royalty payments to the State for any fixed period of time up to
19 but not exceeding eight years.

20 (b) The [~~board~~] public land development corporation shall
21 adopt, amend, or repeal rules pursuant to chapter 91 to
22 establish the basis upon which the amount and duration of



1 royalty payments to the State will be fixed or waived. The
2 [~~board's~~] public land development corporation's assessment of
3 each application shall include[7] but not be limited to[7] the
4 examination of such factors as the progress of geothermal
5 development taking place in the State at the time of the
6 application, the technical and financial capabilities of the
7 applicant to undertake the project, and the need for providing a
8 financial incentive in order for the applicant to proceed. The
9 granting of any favorable terms to an applicant for the payment
10 of royalties under this section may be revoked by the [~~board~~]
11 public land development corporation if the applicant fails to
12 satisfy any of the terms and conditions established by the
13 [~~board,~~] public land development corporation, or if the
14 applicant wholly ceases operations and for reasons other than
15 events which are outside the control of the parties and which
16 could not be avoided by the exercise of due care by the parties.

17 (c) The [~~board~~] public land development corporation shall
18 submit a written report of all geothermal royalty dispositions
19 to the legislature in accordance with section 171-29."

20 SECTION 19. Section 196D-3, Hawaii Revised Statutes, is
21 amended by amending the definitions of "approval" and
22 "discretionary consent" to read as follows:



1 ""Approval" means a discretionary consent required from an
2 agency or the public land development corporation prior to the
3 actual implementation of the project.

4 "Discretionary consent" means a consent, sanction, or
5 recommendation from an agency or the public land development
6 corporation for which judgment and free will may be exercised by
7 the issuing agency~~[,]~~ or the public land development
8 corporation, as distinguished from a ministerial consent."

9 SECTION 20. Section 196D-4, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~[+]~~**\$196D-4**~~[+]~~ **Consolidated permit application and review**
12 **process.** (a) The ~~[department]~~ public land development
13 corporation is designated as the lead agency for the purposes of
14 this chapter and, in addition to its existing functions, shall
15 establish and administer the consolidated permit application and
16 review process provided for in this chapter, which shall
17 incorporate the permitting functions of those agencies involved
18 in the development of the project which are transferred by
19 section 196D-10 to the ~~[department]~~ public land development
20 corporation to effectuate the purposes of this chapter.

21 (b) The consolidated permit application and review process
22 shall incorporate:



- 1 (1) A list of all permits required for the project;
- 2 (2) The role and functions of the [~~department~~] public land
- 3 development corporation as the lead agency and the
- 4 interagency group;
- 5 (3) All permit review and approval deadlines;
- 6 (4) A schedule for meetings and actions of the interagency
- 7 group;
- 8 (5) A mechanism to resolve any conflicts that may arise
- 9 between or among the [~~department~~] public land
- 10 development corporation and any other agencies,
- 11 including any federal agencies, as a result of
- 12 conflicting permit, approval, or other requirements,
- 13 procedures, or agency perspectives;
- 14 (6) Any other administrative procedures related to the
- 15 foregoing; and
- 16 (7) A consolidated permit application form to be used for
- 17 the project for all permitting purposes.

18 (c) The [~~department~~] public land development corporation

19 shall perform all of the permitting functions for which it [~~is~~]

20 may be currently responsible and which are transferred to it by

21 section 196D-10 for the purposes of the project, and shall

22 coordinate and consolidate all required permit reviews by other



1 agencies, and to the fullest extent possible by all federal
2 agencies, having jurisdiction over any aspect of the project."

3 SECTION 21. Section 196D-5, Hawaii Revised Statutes, is
4 amended by amending subsections (a) to (c) to read as follows:

5 "(a) The [~~department~~] public land development corporation
6 shall serve as the lead agency for the consolidated permit
7 application and review process established pursuant to section
8 196D-4(b) and as set forth in this section for the project. All
9 agencies whose permitting functions are not transferred by
10 section 196D-10 to the [~~department~~] public land development
11 corporation for the purposes of the project are required to
12 participate in the consolidated permit application and review
13 process.

14 (b) To the greatest extent possible, the [~~department~~]
15 public land development corporation and each agency whose
16 permitting functions are not transferred by section 196D-10 to
17 the [~~department~~] public land development corporation for the
18 purposes of the project shall complete all of their respective
19 permitting functions for the purposes of the project, in
20 accordance with the timetable for regulatory review set forth in
21 the joint agreement described in subsection (c)(3) and within
22 the time limits contained in the applicable permit statutes,



1 ordinances, regulations, or rules; except that the [department]
2 public land development corporation or any agency shall have
3 good cause to extend, if and as permitted, the applicable time
4 limit if the permit-issuing agency must rely on another agency,
5 including any federal agency, for all or part of the permit
6 processing and the delay is caused by the other agency.

7 (c) The procedure shall be as follows:

8 (1) The applicant shall submit the consolidated permit
9 application using the consolidated permit application
10 form, which shall include whatever data about the
11 proposed project that the [department] public land
12 development corporation deems necessary to fulfill the
13 purposes of this chapter and to determine which
14 [ether] agencies may have jurisdiction over any aspect
15 of the proposed project[-];

16 (2) Upon receipt of the consolidated permit application,
17 the [department] public land development corporation
18 shall notify all agencies whose permitting functions
19 are not transferred by section 196D-10 to the
20 [department] public land development corporation for
21 the purposes of the project, as well as all federal
22 agencies, that the [department] public land



1 development corporation determines may have
2 jurisdiction over any aspect of the proposed project
3 as set forth in the application, and shall invite the
4 federal agencies so notified to participate in the
5 consolidated permit application process. The
6 agencies, and those federal agencies that accept the
7 invitation, thereafter shall participate in the
8 consolidated permit application and review process[-];

- 9 (3) The representatives of the [~~department~~] public land
10 development corporation and the state, county, and
11 federal agencies and the applicant shall develop and
12 sign a joint agreement among themselves which shall:
- 13 (A) Identify the members of the consolidated permit
14 application and review team;
 - 15 (B) Identify all permits required for the project;
 - 16 (C) Specify the regulatory and review
17 responsibilities of the [~~department~~] public land
18 development corporation and each state, county,
19 and federal agency and set forth the
20 responsibilities of the applicant;
 - 21 (D) Establish a timetable for regulatory review, the
22 conduct of necessary hearings, the preparation of



1 an environmental impact statement if necessary,
2 and other actions required to minimize
3 duplication and to coordinate and consolidate the
4 activities of the applicant, the ~~[department]~~
5 public land development corporation, and the
6 state, county, and federal agencies; and

7 (E) Provide that a hearing required for a permit
8 shall be held on the island where the proposed
9 activity shall occur~~[-]~~;

10 (4) A consolidated permit application and review team
11 shall be established and shall consist of the members
12 of the interagency group established pursuant to
13 section 196D-6(a). The applicant shall designate its
14 representative to be available to the review team, as
15 it may require, for purposes of processing the
16 applicant's consolidated permit application~~[-]~~;

17 (5) The ~~[department]~~ public land development corporation
18 and each agency whose permitting functions are not
19 transferred by section 196D-10 to the ~~[department]~~
20 public land development corporation for the purposes
21 of the project, and each federal agency shall issue
22 its own permit or approval based upon its own



jurisdiction. The consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law, except to the extent that the permitting functions of any agency are transferred by section 196D-10 to the ~~[department]~~ public land development corporation for the purposes of the project~~[-]~~;

(6) The applicant shall apply directly to each federal agency that does not participate in the consolidated permit application and review process~~[-]~~;

(7) The ~~[department]~~ public land development corporation shall review for completeness and thereafter shall process the consolidated permit application submitted by an applicant for the project, and shall monitor the processing of permit application by those agencies whose permitting functions are not transferred by section 196D-10 to the ~~[department]~~ public land development corporation for the purposes of the project. The ~~[department]~~ public land development corporation shall coordinate, and seek to consolidate where possible, the permitting functions and shall monitor and assist in the permitting functions



1 conducted by all of these agencies, and to the fullest
2 extent possible the federal agencies, in accordance
3 with the consolidated permit application and review
4 process[-]; and

5 (8) Once the processing of the consolidated permit
6 application has been completed and the permits
7 requested have been issued to the applicant, the
8 ~~[department]~~ public land development corporation shall
9 monitor the applicant's work undertaken pursuant to
10 the permits to ensure the applicant's compliance with
11 the terms and conditions of the permits."

12 SECTION 22. Section 196D-6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§196D-6[+] **Interagency group.** (a) The ~~[department]~~
15 public land development corporation shall establish an
16 interagency group comprised of those agencies whose permitting
17 functions are not transferred by section 196D-10 to the
18 ~~[department]~~ public land development corporation for the
19 purposes of the project and which have jurisdiction over any
20 aspect of the project. Each of these agencies shall designate
21 an appropriate representative to serve on the interagency group
22 as part of the representative's official responsibilities. The



1 interagency group shall perform liaison and assisting functions
2 as required by this chapter and the [~~department.~~] public land
3 development corporation. The [~~department~~] public land
4 development corporation shall invite and encourage the
5 appropriate federal agencies having jurisdiction over any aspect
6 of the project to participate in the interagency group.

7 (b) The [~~department~~] public land development corporation
8 and agencies shall cooperate with the federal agencies to the
9 fullest extent possible to minimize duplication between and,
10 where possible, promote consolidation of federal and state
11 requirements. To the fullest extent possible, this cooperation
12 shall include, among other things, joint environmental impact
13 statements with concurrent public review and processing at both
14 levels of government. Where federal law has requirements that
15 are in addition to but not in conflict with state law
16 requirements, the [~~department~~] public land development
17 corporation and the agencies shall cooperate to the fullest
18 extent possible in fulfilling their requirements so that all
19 documents shall comply with all applicable laws.

20 (c) If the legislature establishes any public corporation
21 or authority for the purposes of the project, then upon its



1 establishment, the public corporation or authority shall be a
2 member of the interagency group."

3 SECTION 23. Section 196D-7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§196D-7[+] **Streamlining activities.** In administering
6 the consolidated permit application and review process, the
7 ~~[department]~~ public land development corporation shall:

8 (1) Monitor all permit applications submitted under this
9 chapter and the processing thereof on an ongoing basis
10 to determine the source of any inefficiencies, delays,
11 and duplications encountered and the status of all
12 permits in process;

13 (2) Adopt and implement needed streamlining measures
14 identified by the interagency group, in consultation
15 with those agencies whose permitting functions are not
16 transferred by section 196D-10 to the ~~[department]~~
17 public land development corporation for the purposes
18 of the project and with members of the public;

19 (3) Design, in addition to the consolidated permit
20 application form, other applications, checklists, and
21 forms essential to the implementation of the
22 consolidated permit application and review process;



- 1 (4) Recommend to the legislature, as appropriate,
2 suggested changes to existing laws to eliminate any
3 duplicative or redundant permit requirements;
- 4 (5) Coordinate with agencies to ensure that all standards
5 used in any agency decisionmaking for any required
6 permits are clear, explicit, and precise; and
- 7 (6) Incorporate, where possible, rebuttable presumptions
8 based upon requirements met for permits issued
9 previously under the consolidated permit application
10 and review process."

11 SECTION 24. Section 196D-8, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§196D-8[+] **Information services.** The [department]
14 public land development corporation shall:

- 15 (1) Operate a permit information and coordination center
16 during normal working hours, which will provide
17 guidance to potential applicants for the project with
18 regard to the permits and procedures that may apply to
19 the project; and
- 20 (2) Maintain and update a repository of the laws, rules,
21 procedures, permit requirements, and criteria of
22 agencies whose permitting functions are not



1 transferred by section 196D-10 to the [department]
2 public land development corporation for the purposes
3 of the project and which have control or regulatory
4 power over any aspect of the project and of federal
5 agencies having jurisdiction over any aspect of the
6 project."

7 SECTION 25. Section 196D-9, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§196D-9[+] Construction of the chapter; rules. This
10 chapter shall be construed liberally to effectuate its purposes,
11 and the [department] public land development corporation shall
12 have all powers which may be necessary to carry out the purposes
13 of this chapter, including the authority to make, amend, and
14 repeal rules to implement this chapter; provided that all
15 procedures for public information and review under chapter 91
16 shall be preserved; and provided further that the consolidated
17 permit application and review process shall not affect or
18 invalidate the jurisdiction or authority of any agency under
19 existing law. The adoption, amendment, and repeal of all rules
20 shall be subject to chapter 91."

21 SECTION 26. Section 196D-10, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "[+]§196D-10[+] **Transfer of functions.** (a) Those
2 functions identified in paragraphs (1) and (2) insofar as they
3 relate to the permit application, review, processing, issuance,
4 and monitoring of laws, and rules and to the enforcement of
5 terms, conditions, and stipulations of permits and other
6 authorizations issued by agencies with respect to the
7 development, construction, installation, operation, maintenance,
8 repair, and replacement of the project, or any portion or
9 portions thereof, are transferred to the [~~department.~~] public
10 land development corporation. With respect to each of the
11 statutory authorities cited in paragraphs (1) and (2), the
12 transferred functions include all enforcement functions of the
13 agencies or their officials under the statute cited as may be
14 related to the enforcement of the terms, conditions, and
15 stipulations of permits, including but not limited to the
16 specific sections of the statute cited. "Enforcement", for
17 purposes of this transfer of functions, includes monitoring and
18 any other compliance or oversight activities reasonably related
19 to the enforcement process. These transferred functions
20 include:

- 21 (1) Such functions of the land use commission related to:
22 district boundary amendments as set forth in section



205-3.1 et seq.; and changes in zoning as set forth in
section 205-5; and

(2) The permit approval and enforcement functions of the
director of transportation or other appropriate
official or entity in the department of transportation
related to permits or approvals issued for the use of
or commercial activities in or affecting the ocean
waters and shores of the State under chapter 266.

(b) Nothing in this section shall be construed to relieve
an applicant from the laws, ordinances, and rules of any agency
whose functions are not transferred by this section to the
[department] public land development corporation for the
purposes of the project.

(c) This section shall not apply to any permit issued by
the public utilities commission under chapter 269.

~~[(d) Notwithstanding any other provision of this chapter,
this section shall take effect on July 1, 1989.]"~~

SECTION 27. Section 196D-11, Hawaii Revised Statutes, is
amended to read as follows:

"[+]§196D-11[+] **Annual report.** The [department] public
land development corporation shall submit an annual report to
the governor and the legislature on its work during the



1 preceding year, the development status of the project, any
2 problems encountered, and any legislative actions that may be
3 needed further to improve the consolidated permit application
4 and review process and implement the intent of this chapter."

5 SECTION 28. Section 196D-13, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§196D-13 Exemptions from certain state laws. In order to
8 promote the purposes of this chapter, all persons hired by the
9 ~~[department]~~ public land development corporation to effectuate
10 this chapter are excepted from chapters 76 and 89."

11 SECTION 29. Section 205-5.1, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By amending subsections (b) through (d) to read:

14 "(b) The ~~[board of land and natural resources]~~ public land
15 development corporation shall have the responsibility for
16 designating areas as geothermal resource subzones as provided
17 under section 205-5.2; except that the total area within an
18 agricultural district which is the subject of a geothermal
19 mining lease approved by the ~~[board of land and natural~~
20 ~~resources,]~~ public land development corporation, any part or all
21 of which area is the subject of a special use permit issued by
22 the county for geothermal development activities, on or before



1 May 25, 1984, is designated as a geothermal resource subzone for
2 the duration of the lease. The designation of geothermal
3 resource subzones shall be governed exclusively by this section
4 and section 205-5.2, except as provided therein. The [board]
5 public land development corporation shall adopt, amend, or
6 repeal rules related to its authority to designate and regulate
7 the use of geothermal resource subzones in the manner provided
8 under chapter 91.

9 The authority of the [board] public land development
10 corporation to designate geothermal resource subzones shall be
11 an exception to those provisions of this chapter and of section
12 46-4 authorizing the land use commission and the counties to
13 establish and modify land use districts and to regulate uses
14 therein. The provisions of this section shall not abrogate nor
15 supersede the provisions of chapters 182, 183, and 183C.

16 (c) The use of an area for geothermal development
17 activities within a geothermal resource subzone shall be
18 governed by the [board] public land development corporation
19 within the conservation district and, except as herein provided,
20 by state and county statutes, ordinances, and rules not
21 inconsistent herewith within agricultural, rural, and urban
22 districts, except that no land use commission approval or



1 special use permit procedures under section 205-6 shall be
2 required for the use of such subzones. In the absence of
3 provisions in the county general plan and zoning ordinances
4 specifically relating to the use and location of geothermal
5 development activities in an agricultural, rural, or urban
6 district, the appropriate county authority may issue a
7 geothermal resource permit to allow geothermal development
8 activities. "Appropriate county authority" means the county
9 planning commission unless some other agency or body is
10 designated by ordinance of the county council. Such uses as are
11 permitted by county general plan and zoning ordinances, by the
12 appropriate county authority, shall be deemed to be reasonable
13 and to promote the effectiveness and objectives of this chapter.
14 Chapters 177, 178, 182, 183, 183C, 205A, 226, 342, and 343 shall
15 apply as appropriate. If provisions in the county general plan
16 and zoning ordinances specifically relate to the use and
17 location of geothermal development activities in an
18 agricultural, rural, or urban district, the provisions shall
19 require the appropriate county authority to conduct a public
20 hearing on any application for a geothermal resource permit to
21 determine whether the use is in conformity with the criteria
22 specified in subsection (e) for granting geothermal resource



1 permits; provided that within the urban, rural, and agricultural
2 land use districts, direct use applications of geothermal
3 resources are permitted without any application for a geothermal
4 resource permit both within and outside of areas designated as
5 geothermal resource subzones pursuant to section 205-5.2 if such
6 direct use applications are in conformance with all other
7 applicable state and county land use regulations and are in
8 conformance with this chapter.

9 (d) If geothermal development activities are proposed
10 within a conservation district, with an application with all
11 required data, the [~~board of land and natural resources~~] public
12 land development corporation shall conduct a public hearing and,
13 upon appropriate request for mediation from any party who
14 submitted comment at the public hearing, the [~~board~~] public land
15 development corporation shall appoint a mediator within five
16 days. The [~~board~~] public land development corporation shall
17 require the parties to participate in mediation. The mediator
18 shall not be a member of the [~~board~~] public land development
19 corporation or its staff. The mediation period shall not extend
20 beyond thirty days after the date mediation started, except by
21 order of the [~~board.~~] public land development corporation.
22 Mediation shall be confined to the issues raised at the public



1 hearing by the party requesting mediation. The mediator will
2 submit a written recommendation to the [~~board,~~] public land
3 development corporation, based upon any mediation agreement
4 reached between the parties for consideration by the [~~board~~]
5 public land development corporation in its final decision. If
6 there is no mediation agreement, the [~~board~~] public land
7 development corporation may have a second public hearing to
8 receive additional comment related to the mediation issues.
9 Within ten days after the second public hearing, the [~~board~~]
10 public land development corporation may receive additional
11 written comment on the issues raised at the second public
12 hearing from any party.

13 The [~~board~~] public land development corporation shall
14 consider the comments raised at the second hearing before
15 rendering its final decision. The [~~board~~] public land
16 development corporation shall then determine whether, pursuant
17 to [~~board~~] public land development corporation rules, a
18 conservation district use permit shall be granted to authorize
19 the geothermal development activities described in the
20 application. The [~~board~~] public land development corporation
21 shall grant a conservation district use permit if it finds that
22 the applicant has demonstrated that:



1 (1) The desired uses would not have unreasonable adverse
2 health, environmental, or socio-economic effects on
3 residents or surrounding property; and

4 (2) The desired uses would not unreasonably burden public
5 agencies to provide roads and streets, sewers, water,
6 drainage, and police and fire protection; or

7 (3) There are reasonable measures available to mitigate
8 the unreasonable adverse effects or burdens referred
9 to above.

10 A decision shall be made by the [~~board~~] public land
11 development corporation within six months of the date a complete
12 application was filed; provided that the time limit may be
13 extended by agreement between the applicant and the [~~board~~.]
14 public land development corporation."

15 2. By amending subsections (f) through (h) to read:

16 "(f) Requests for mediation shall be received by the
17 [~~board~~] public land development corporation or county authority
18 within five days after the close of the initial public hearing.
19 Within five days thereafter, the [~~board~~] public land development
20 corporation or county authority shall appoint a mediator. Any
21 person submitting an appropriate request for mediation shall be
22 notified by the [~~board~~] public land development corporation or



1 county authority of the date, time, and place of the mediation
2 conference by depositing such notice in the mail to the return
3 address stated on the request for mediation. The notice shall
4 be mailed no later than ten days before the start of the
5 mediation conference. The conference shall be held on the
6 island where the public hearing is held.

7 (g) Any decision made by an appropriate county authority
8 or the ~~[board]~~ public land development corporation pursuant to a
9 public hearing or hearings under this section may be appealed
10 directly on the record to the intermediate appellate court for
11 final decision and shall not be subject to a contested case
12 hearing. Sections 91-14(b) and (g) shall govern the appeal,
13 notwithstanding the lack of a contested case hearing on the
14 matter. The appropriate county authority or the ~~[board]~~ public
15 land development corporation shall provide a court reporter to
16 produce a transcript of the proceedings at all public hearings
17 under this section for purposes of an appeal.

18 (h) For the purposes of an appeal from a decision from a
19 public hearing, the record shall include:

- 20 (1) The application for the permit and all accompanying
21 supporting documents, including but not limited to:



1 reports, studies, affidavits, statements, and
2 exhibits[-];

3 (2) Staff recommendations submitted to the members of the
4 agency in consideration of the application[-];

5 (3) Oral and written public testimony received at the
6 public hearings[-];

7 (4) Written transcripts of the proceedings at the public
8 hearings[-];

9 (5) The written recommendation received by the agency from
10 the mediator with any mediation agreement[-];

11 (6) A statement of relevant matters noticed by the agency
12 members at the public hearings[-];

13 (7) The written decision of the agency issued in
14 connection with the application and public
15 hearings[-]; and

16 (8) Other documents required by the ~~[board]~~ public land
17 development corporation or county authority."

18 SECTION 30. Section 205-5.2, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§205-5.2 Designation of areas as geothermal resource**
21 **subzones.** (a) Beginning in ~~[1983, the board of land and~~
22 ~~natural resources]~~ 2013, the public land development corporation



1 shall conduct a county-by-county assessment of areas with
2 geothermal potential for the purpose of designating geothermal
3 resource subzones. This assessment shall be revised or updated
4 at the discretion of the ~~[board,]~~ public land development
5 corporation, but at least once each five years beginning in
6 ~~[1988-]~~ 2018. Any property owner or person with an interest in
7 real property wishing to have an area designated as a geothermal
8 resource subzone may submit a petition for a geothermal resource
9 subzone designation in the form and manner established by rules
10 ~~[and regulations]~~ adopted by the ~~[board.]~~ public land
11 development corporation. An environmental impact statement as
12 defined under chapter 343 shall not be required for the
13 assessment of areas under this section.

14 (b) The ~~[board's]~~ public land development corporation's
15 assessment of each potential geothermal resource subzone area
16 shall examine factors to include~~[,]~~ but not be limited to:

17 (1) The area's potential for the production of geothermal
18 energy;

19 (2) The prospects for the utilization of geothermal energy
20 in the area;

21 (3) The geologic hazards that potential geothermal
22 projects would encounter;



(4) Social and environmental impacts;

(5) The compatibility of geothermal development and potential related industries with present uses of surrounding land and those uses permitted under the general plan or land use policies of the county in which the area is located;

(6) The potential economic benefits to be derived from geothermal development and potential related industries; and

(7) The compatibility of geothermal development and potential related industries with the uses permitted under chapter 183C and section 205-2, where the area falls within a conservation district.

In addition, the [~~board~~] public land development corporation shall consider, if applicable, objectives, policies, and guidelines set forth in part I of chapter 205A, and chapter 226.

(c) Methods for assessing the factors in subsection (b) shall be left to the discretion of the [~~board~~] public land development corporation and may be based on currently available public information.



1 (d) After the [~~board~~] public land development corporation
2 has completed a county-by-county assessment of all areas with
3 geothermal potential or after any subsequent update or review,
4 the [~~board~~] public land development corporation shall compare
5 all areas showing geothermal potential within each county, and
6 shall propose areas for potential designation as geothermal
7 resource subzones based upon a preliminary finding that the
8 areas are those sites which best demonstrate an acceptable
9 balance between the factors set forth in subsection (b). Once a
10 proposal is made, the [~~board~~] public land development
11 corporation shall conduct public hearings pursuant to this
12 subsection, notwithstanding any contrary provision related to
13 public hearing procedures. Contested case procedures are not
14 applicable to these hearings.

15 (1) Hearings shall be held at locations which are in close
16 proximity to those areas proposed for designation. A
17 public notice of hearing, including a description of
18 the proposed areas, an invitation for public comment,
19 and a statement of the date, time, and place where
20 persons may be heard shall be given and mailed no less
21 than twenty days before the hearing. The notice shall
22 be given on three separate days statewide and in the



1 county in which the hearing is to be held. Copies of
2 the notice shall be mailed to the department of
3 business, economic development, and tourism, to the
4 planning commission and planning department of the
5 county in which the proposed areas are located, and to
6 all owners of record of real estate within, and within
7 one thousand feet of, the area being proposed for
8 designation as a geothermal resource subzone. The
9 notification shall be mailed to the owners and
10 addresses as shown on the current real property tax
11 rolls at the county real property tax office. Upon
12 that action, the requirement for notification of
13 owners of land is completed. For the purposes of this
14 subsection, notice to one co-owner shall be sufficient
15 notice to all co-owners;

- 16 (2) The hearing shall be held before the [~~board,~~] public
17 land development corporation, and the authority to
18 conduct hearings shall not be delegated to any agent
19 or representative of the [~~board,~~] public land
20 development corporation. All persons and agencies
21 shall be afforded the opportunity to submit data,
22 views, and arguments either orally or in writing. The



1 department of business, economic development, and
2 tourism and the county planning department shall be
3 permitted to appear at every hearing and make
4 recommendations concerning each proposal by the
5 ~~[board]~~ public land development corporation; and

6 (3) At the close of the hearing, the ~~[board]~~ public land
7 development corporation may designate areas as
8 geothermal resource subzones or announce the date on
9 which it will render its decision. The ~~[board]~~ public
10 land development corporation may designate areas as
11 geothermal resource subzones only upon finding that
12 the areas are those sites which best demonstrate an
13 acceptable balance between the factors set forth in
14 subsection (b). Upon request, the ~~[board]~~ public land
15 development corporation shall issue a concise
16 statement of its findings and the principal reasons
17 for its decision to designate a particular area.

18 (e) The designation of any geothermal resource subzone may
19 be withdrawn by the ~~[board of land and natural resources]~~ public
20 land development corporation after proceedings conducted
21 pursuant to chapter 91. The ~~[board]~~ public land development
22 corporation shall withdraw a designation only upon finding by a



1 preponderance of the evidence that the area is no longer suited
2 for designation; provided that the designation shall not be
3 withdrawn for areas in which active exploration, development,
4 production or distribution of electrical energy from geothermal
5 sources or direct use applications of geothermal resources are
6 taking place.

7 (f) ~~[This]~~ Act 296, Session Laws of Hawaii 1983, shall not
8 apply to any active exploration, development or production of
9 electrical energy from geothermal sources or direct use
10 applications of geothermal resources taking place on June 14,
11 1983, provided that any expansion of ~~[such]~~ these activities
12 shall be carried out in compliance with its provisions."

13 SECTION 31. Section 227D-1, Hawaii Revised Statutes, is
14 amended by amending the definitions of "project" and "research
15 and technology park" to read as follows:

16 ""Project" means any combination of land and buildings and
17 other improvements thereon for use in, but not limited to
18 research, development, demonstration, processing, or
19 manufacturing activities or enterprises utilizing or in support
20 of the utilization of natural resources ~~[and geothermal energy]~~
21 which are located in a research and technology park and



1 acquired, constructed, reconstructed, rehabilitated, improved,
2 altered, or repaired by or on behalf of the authority.

3 "Research and technology park" means a tract of real
4 property determined by the board as being suitable for use as
5 building sites for projects engaged in research, development,
6 demonstration, processing, or manufacturing activities or retail
7 or commercial enterprises utilizing or in support of the
8 utilization of natural resources [~~or geothermal energy~~]. This
9 includes[~~r~~] but is not limited to[~~r~~] research,
10 commercialization, training, education, technical analyses,
11 pilot plant, or prototype product development, and may include
12 the installation of improvements to tracts incidental to the use
13 of real property as a research and technology park, such as
14 water, sewer, sewage and waste disposal, and drainage
15 facilities, sufficient to adequately service projects in the
16 research and technology park, and provision of incidental
17 transportation facilities, power distribution facilities, and
18 communication facilities."

19 SECTION 32. Section 227D-2, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) There is established the natural energy laboratory of
22 Hawaii authority, which shall be a body corporate and politic



1 and an instrumentality and agency of the State. The authority
2 shall be placed within the department of business, economic
3 development, and tourism for administrative purposes, pursuant
4 to section 26-35. The purpose of the natural energy laboratory
5 of Hawaii authority shall be to facilitate research,
6 development, and commercialization of natural energy resources
7 and ocean-related research, technology, and industry in Hawaii
8 and to engage in retail, commercial, or tourism activities that
9 will financially support that research, development, and
10 commercialization at a research and technology park in Hawaii.

11 Its duties shall include:

12 (1) Establishing, managing, and operating facilities that
13 provide sites for:

14 (A) Research and development;

15 (B) Commercial projects and businesses utilizing
16 natural resources, such as ocean water [or
17 ~~geothermal energy~~];

18 (C) Compatible businesses engaged in scientific and
19 technological investigations, or retail,
20 commercial, and tourism activities; and

21 (D) Businesses or educational facilities that support
22 the primary projects and activities;



- (2) Providing support, utilities, and other services to facility tenants and government agencies;
- (3) Maintaining the physical structure of the facilities;
- (4) Promoting and marketing these facilities;
- (5) Promoting and marketing the reasonable utilization of available natural resources;
- (6) Supporting ocean research and technology development projects that support national and state interests, use facilities and infrastructure in Hawaii, and foster potential commercial development; and
- (7) Engaging in retail, commercial, and tourism activities that are not related to facilitating research, development, and commercialization of natural energy resources in Hawaii; provided that all income derived from these activities shall be deposited in the natural energy laboratory of Hawaii authority special fund."

SECTION 33. Chapter 201H, Hawaii Revised Statutes, is repealed.

SECTION 34. Chapter 206E, Hawaii Revised Statutes, is repealed.

PART II



1 SECTION 35. Section 26-18, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The following are placed in the department of
4 business, economic development, and tourism for administrative
5 purposes as defined by section 26-35: Aloha Tower development
6 corporation, [~~Hawaii community development authority, Hawaii~~
7 ~~housing finance and development corporation,~~] high technology
8 development corporation, land use commission, natural energy
9 laboratory of Hawaii authority, and any other boards and
10 commissions as shall be provided by law.

11 The department of business, economic development, and
12 tourism shall be empowered to establish, modify, or abolish
13 statistical boundaries for cities, towns, or villages in the
14 State and shall publish, as expeditiously as possible, an up-to-
15 date list of cities, towns, and villages after changes to
16 statistical boundaries have been made."

17 SECTION 36. Section 53-1, Hawaii Revised Statutes, is
18 amended by amending the definition of "Hawaii housing finance
19 and development corporation" to read as follows:

20 "~~""[Hawaii housing finance and development corporation],~~
21 Public land development corporation", "corporation",
22 "government", "federal government", and "real property" have the



1 respective meanings set forth for these terms in chapter [~~201H.~~]
2 171C."

3 SECTION 37. Section 171-2, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§171-2 Definition of public lands.** "Public lands" means
6 all lands or interest therein in the State classed as government
7 or crown lands previous to August 15, 1895, or acquired or
8 reserved by the government upon or subsequent to that date by
9 purchase, exchange, escheat, or the exercise of the right of
10 eminent domain, or in any other manner; including accreted lands
11 not otherwise awarded, submerged lands, and lands beneath tidal
12 waters which are suitable for reclamation, together with
13 reclaimed lands which have been given the status of public lands
14 under this chapter, except:

15 (1) Lands designated in section 203 of the Hawaiian Homes
16 Commission Act, 1920, as amended;

17 (2) Lands set aside pursuant to law for the use of the
18 United States;

19 (3) Lands being used for roads and streets;

20 (4) Lands to which the United States relinquished the
21 absolute fee and ownership under section 91 of the

22 Hawaiian Organic Act prior to the admission of Hawaii



1 as a state of the United States unless subsequently
2 placed under the control of the board of land and
3 natural resources and given the status of public lands
4 in accordance with the state constitution, the
5 Hawaiian Homes Commission Act, 1920, as amended, or
6 other laws;

7 (5) Lands to which the University of Hawaii holds title;

8 ~~[-(6) Lands to which the Hawaii housing finance and~~
9 ~~development corporation in its corporate capacity~~
10 ~~holds title;~~

11 ~~-(7) Lands to which the Hawaii community development~~
12 ~~authority in its corporate capacity holds title;]~~

13 (6) Lands to which the public land development corporation
14 in its corporate capacity holds title;

15 ~~[-(8)]~~ (7) Lands to which the department of agriculture
16 holds title by way of foreclosure, voluntary
17 surrender, or otherwise, to recover moneys loaned or
18 to recover debts otherwise owed the department under
19 chapter 167;

20 ~~[-(9)]~~ (8) Lands ~~[which]~~ that are set aside by the governor
21 to the Aloha Tower development corporation; lands
22 leased to the Aloha Tower development corporation by



1 any department or agency of the State; or lands to
2 which the Aloha Tower development corporation holds
3 title in its corporate capacity;

4 ~~[(10)]~~ (9) Lands ~~[which]~~ that are set aside by the governor
5 to the agribusiness development corporation; lands
6 leased to the agribusiness development corporation by
7 any department or agency of the State; or lands to
8 which the agribusiness development corporation in its
9 corporate capacity holds title; and

10 ~~[(11)]~~ (10) Lands to which the high technology development
11 corporation in its corporate capacity holds title."

12 SECTION 38. All references to "Hawaii community
13 development authority", or like terms, as the case may be, in
14 sections 46-102 and 514A-14.5, Hawaii Revised Statutes, shall be
15 amended to "public land development corporation", or like terms,
16 as the case may be, as the context requires.

17 SECTION 39. All references to "Hawaii housing finance and
18 development corporation", or like terms, as the case may be, in
19 chapter 516 and sections 10-13.6, 36-24, 46-15.1, 53-17, 53-22,
20 111-8, 111-9, 171-18.5, 171-50.2, 171-64.7, 209-16, 209-17, 237-
21 29, 356D-161, 519-2, and 519-3, Hawaii Revised Statutes, shall



1 be amended to "public land development corporation", or like
2 terms, as the case may be, as the context requires.

3 SECTION 40. The revisor of statutes shall substitute all
4 references made to "chapter 201H" or any specific section, part,
5 or subpart of chapter 201H, as the case may be, in sections 10-
6 13.6, 29-15.5, 46-15.1, 46-15.2, 53-17, 91-13.5, 104-2, 171-
7 18.5, 171-19.5, 171-64.7, 205-4, 206-1, 235-110.8, 237-29, 247-
8 7, 356D-161, 514A-14.5, 514A-108, 514B-99.5, 516-1, 516-31, and
9 516-104, Hawaii Revised Statutes, with the corresponding
10 chapter, part, subpart, or section number of the new law created
11 and codified under this Act, as appropriate.

12 SECTION 41. The revisor of statutes shall substitute all
13 references made to "chapter 206E" or any specific section or
14 part of chapter 206E, as the case may be, in sections 36-27, 36-
15 30, 46-102, and 514A-14.5, Hawaii Revised Statutes, with the
16 corresponding chapter, part, or section number of the new law
17 created and codified under this Act, as appropriate.

18 **PART III**

19 SECTION 42. All rights, powers, functions, and duties of
20 the Hawaii housing finance and development corporation and the
21 Hawaii community development authority are transferred to the
22 public land development corporation.



1 All officers and employees whose functions are transferred
2 to the public land development corporation by this Act shall be
3 transferred with their functions and shall continue to perform
4 their regular duties upon their transfer, subject to the state
5 personnel laws and this Act.

6 No officer or employee of the State having tenure shall
7 suffer any loss of salary, seniority, prior service credit,
8 vacation, sick leave, or other employee benefit or privilege as
9 a consequence of this Act, and such officer or employee may be
10 transferred or appointed to a civil service position without the
11 necessity of examination; provided that the officer or employee
12 possesses the minimum qualifications for the position to which
13 transferred or appointed; and provided that subsequent changes
14 in status may be made pursuant to applicable civil service and
15 compensation laws.

16 An officer or employee of the State who does not have
17 tenure and who may be transferred or appointed to a civil
18 service position as a consequence of this Act shall become a
19 civil service employee without the loss of salary, seniority,
20 prior service credit, vacation, sick leave, or other employee
21 benefits or privileges and without the necessity of examination;
22 provided that such officer or employee possesses the minimum



1 qualifications for the position to which transferred or
2 appointed.

3 If an office or position held by an officer or employee
4 having tenure is abolished, the officer or employee shall not
5 thereby be separated from public employment, but shall remain in
6 the employment of the State with the same pay and classification
7 and shall be transferred to some other office or position for
8 which the officer or employee is eligible under the personnel
9 laws of the State as determined by the head of the department or
10 the governor.

11 SECTION 43. All appropriations, records, equipment,
12 machines, files, supplies, contracts, books, papers, documents,
13 maps, and other personal property heretofore made, used,
14 acquired, or held by the Hawaii housing finance and development
15 corporation and the Hawaii community development authority
16 relating to the functions transferred to the public land
17 development corporation shall be transferred with the functions
18 to which they relate.

19 SECTION 44. All rules, policies, procedures, guidelines,
20 and other material adopted or developed by the Hawaii housing
21 finance and development corporation and the Hawaii community
22 development authority to implement provisions of the Hawaii



1 Revised Statutes which are reenacted or made applicable to the
2 public land development corporation by this Act, shall remain in
3 full force and effect until amended or repealed by the public
4 land development corporation pursuant to chapter 91, Hawaii
5 Revised Statutes. In the interim, every reference to the Hawaii
6 housing finance and development corporation or the Hawaii
7 community development authority or the board of directors of the
8 Hawaii housing finance and development corporation in those
9 rules, policies, procedures, guidelines, and other material is
10 amended to refer to the public land development corporation as
11 appropriate.

12 SECTION 45. All deeds, leases, contracts, loans,
13 agreements, permits, or other documents executed or entered into
14 by or on behalf of the Hawaii housing finance and development
15 corporation or the Hawaii community development authority
16 pursuant to the provisions of the Hawaii Revised Statutes, which
17 are reenacted or made applicable to the public land development
18 corporation by this Act, shall remain in full force and effect.
19 Upon the effective date of this Act, every reference to the
20 Hawaii housing finance and development corporation or the Hawaii
21 community development authority therein shall be construed as a



1 reference to the public land development corporation as
2 appropriate.

3 SECTION 46. It is the intent of this Act not to jeopardize
4 the receipt of any federal aid nor to impair the obligation of
5 the State or any agency thereof to the holders of any bond
6 issued by the State or by any such agency, and to the extent,
7 and only to the extent, necessary to effectuate this intent, the
8 governor may modify the strict provisions of this Act, but shall
9 promptly report any such modification with reasons therefor to
10 the legislature at its next session thereafter for review by the
11 legislature.

12 SECTION 47. If any part of this Act is found to be in
13 conflict with federal requirements that are a prescribed
14 condition for the allocation of federal funds to the State, the
15 conflicting part of this Act is inoperative solely to the extent
16 of the conflict and with respect to the agencies directly
17 affected, and this finding does not affect the operation of the
18 remainder of this Act in its application to the agencies
19 concerned. The rules under this Act shall meet federal
20 requirements that are a necessary condition to the receipt of
21 federal funds by the State.



1 SECTION 48. This Act shall not be applied so as to impair
2 any contract existing as of the effective date of this Act in a
3 manner violative of either the Hawaii constitution or Article I,
4 section 10, of the United States Constitution.

5 SECTION 49. Notwithstanding any provision to the contrary,
6 the terms of the members appointed to the board of directors of
7 the Hawaii housing finance and development corporation and the
8 Hawaii community development authority shall terminate no later
9 than June 30, 2013.

10 SECTION 50. In codifying the new sections added by section
11 1 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 51. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 52. This Act shall take effect on July 1, 2013;
17 provided that the amendments made to section 46-15.1, Hawaii
18 Revised Statutes, in sections 39 and 40 of this Act shall not be
19 repealed when section 46-15.1, Hawaii Revised Statutes, is



1 reenacted on June 30, 2015 by section 3 of Act 141, Session Laws
2 of Hawaii 2009.

3

INTRODUCED BY:







S.B. NO. 2330

Report Title:

HHFDC; HCDA; Geothermal Resources; Public Land Development Corporation

Description:

Repeals the HHFDC and the HCDA and transfers their functions to the public land development corporation. Transfers all functions relating to the State's geothermal resources to the public land development corporation. Effective 7/1/13.

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

