

ACT 6

An Act Providing for the Development of Lands for Residential Uses and Other Related Facilities and for the Purchase or Condemnation of Private Property in Connection Therewith on the Island of Oahu; and Providing for the Financing Thereof.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and declaration of necessity. The Legislature hereby finds and declares that: (a) there exists a critical shortage of residential fee simple property on the island of Oahu; (b) this shortage has created an artificial scarcity and resulting high prices making it extremely difficult or impossible for persons of moderate means to own their own homes; (c) a large and expanding population in a growing economy will further aggravate the already existing shortage; (d) a prime goal of land policy in the United States has been to promote the public welfare through the greatest possible attainment of individual home ownership; (e) the high percentage of private land held by relatively few owners coupled with the inability or unwillingness of some of these large owners, because of trust indentures or tax problems, to sell or adequately develop their lands is a strong contributing factor in creating this critical shortage and the accompanying artificial price inflation; (f) available and suitable public lands on Oahu are insufficient to adequately relieve the existing shortage of residential lands either in fee or in lease; (g) where the goal of home ownership is not immediately attainable for people of moderate means, leasing or leasing with an option to purchase house lots can provide an interim method of meeting a portion of the housing need; (h) it is therefore necessary that the government acquire through its power of eminent domain sufficient lands to develop to meet the present need and establish a well-balanced community where fee ownership is a right, and in which limited land areas may be put to their highest and best use; and (i) it is hereby declared as a matter of legislative determination that acquisition and development of land hereunder is declared to be a public use and purpose.

SECTION 2. Definitions. Unless a different meaning clearly appears from the context, as used in this Act:

1. "Board" means the board of land and natural resources as provided in chapter 14A of the Revised Laws.

2. "State," "governor," "secretary," "government" and "federal government" shall have the respective meanings set forth in section 74-2 of the Revised Laws.

3. "Political subdivision" means a county.
4. "Revised Laws" means the Revised Laws of Hawaii 1955, as amended.
5. "Development project" means a specific unit for development within a designated area for which a program of acquisition and development is established.
6. "Development area" means an area so designated pursuant to section 6.
7. "Lands" means either undeveloped lands or land together with improvements and appurtenances and includes real property as defined in section 74-4 of the Revised Laws of Hawaii 1955. All lands owned by the state or any political subdivision or the Federal Government are "government lands". All other lands are "private lands".
8. "Residence lot" means a lot not exceeding one half acre in size, obtained by subdivision of lands acquired pursuant to this Act and used for one or two family residential use only, except as may otherwise be provided herein.
9. "Residential use" or "residential purpose" means the devotion of a residence lot to use for one or two family dwelling purposes only.
10. "Bonds" means any bonds, notes, interim certificates, debentures or other obligations.
11. "Obligee" means any bondholder, agents or trustees for any bondholders, or lessor demising to the board property used in conjunction with a development project, or any assignee of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the board.

SECTION 3. Administration of Act. The Board of land and natural resources is charged with the administration of this Act.

SECTION 4. Interested members, officers or employees. No member of the board or officer or employee administering the provisions of this Act shall acquire any interest, direct or indirect, in any development project or in any property included or planned to be included in any development project other than by gift, devise or inheritance, nor shall he have or acquire any interest, direct or indirect, in the financing of any development project or in any contract or proposed contract for materials or services to be furnished or used in connection with or relating to any development project. If any such member, officer or employee has or acquires an interest, by gift, devise or inheritance, direct or indirect, in any development project or in any property included or planned to be included in any development project, he shall immediately disclose the same in writing to the board and such disclosure shall be entered upon the minutes of the board and he shall dispose of such interest within six months of such acquisition or initiation or project, which shall last occur. Such member, officer or employee shall not participate in any action by the board relating to the property, project or contract in which he has or acquires any such interest. Violation of any of the foregoing provisions of this section shall constitute, in case of such member or officer, misconduct in office or, in case of an employee, cause for dismissal.

SECTION 5. General powers. The board shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including, without limitation, the following powers in addition to others herein granted:

- (a) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the board;

(b) To make, amend or repeal any rule or regulation, having the force and effect of law, in accordance with the provisions of chapter 7 of the Revised Laws;

(c) To prepare, carry out and operate development projects in any development area; and to provide for the construction, reconstruction, improvement, alteration or repair of any development project or any part thereof;

(d) To provide for the regulation of development projects financed by private funds and instituted under the terms of this Act;

(e) To sell, to lease or to lease with option to purchase lands; and

(f) In addition to all of the other powers conferred upon it, to do all things necessary and convenient to carry out the powers expressly given by this Act.

SECTION 6. Declaration of development areas. Whenever the board, after due notice and public hearing, the time and place of which have been duly advertised in a newspaper of general circulation in the city and county of Honolulu on at least three different days, the last publication being not less than five days before the date of hearing, finds:

(a) That in any locality on the island of Oahu an acute shortage of residential property exists;

(b) That such shortage is attributable in whole or to a major degree to a scarcity of land available for purchase for residential use or to exorbitant prices or unreasonable terms and conditions demanded for or imposed upon land in such locality;

(c) That residence lots, or dwellings and lots, in a proposed development area under this Act, can be made available, whether for sale or for lease, at a total cost to the purchasers or lessees at least 15 per cent below the going market prices of comparable properties determined in accordance with generally accepted appraisal principles; and

(d) That the shortage of housing and land cannot practicably be alleviated within the reasonably near future by means other than those provided under this Act; the board may declare a suitable area, not less than 25 contiguous acres in extent and reasonably regular in shape, as a development area. The development area shall be reasonably accessible to persons in the locality and shall consist of lands available for a development project. Any such finding of fact, if supported by substantial evidence, shall be conclusive in any suit, action or proceeding.

In declaring a development area on the basis of residential need, the board shall find that there are sufficient persons, registered with the board, who are unable, because of high prices or unavailability, to purchase land in the area, but who would be willing, able, and apparently qualifying under section 10 of this Act, to purchase such land in a development project if it were made available.

All development areas shall be compatible with any general plan for the long range development of land in the political subdivision concerned under the terms of chapter 98F of the Revised Laws, and shall conform to and with all subdivision and zoning ordinances and requirements of the political subdivision.

SECTION 7. Acquisition of land within a development area. After the declaration of a development area, the board may acquire a parcel or parcels of land which it shall thereafter designate for the appropriate development project or projects within such area. In the event that necessary lands cannot reasonably be acquired by voluntary transaction, the board may institute eminent domain proceedings to acquire such lands and improvements; provided, that

negotiations for such acquisition by voluntary transaction shall not be required before the institution of eminent domain proceedings. The board shall, within 12 months next following its designation, acquire or institute eminent domain proceedings to acquire the lands so designated; if the lands are not acquired or eminent domain proceedings instituted within the 12 month period, it shall reimburse the owner of the lands so designated for out-of-pocket expenses of appraisal, survey and attorney fees as the owner may have incurred as a result of the designation.

Subject to the restrictions in the following section, the board may acquire for development projects any lands suitable for residential use, or suitable for such use or uses upon subdivision and development. The board may also acquire, in connection with such development projects, lands necessary for roads, sidewalks, parks, schools, utilities, and playground and recreational facilities, and rights to water and access. The board may also acquire, in connection with such development projects, lands for business use where such use is reasonably necessary to provide services to the prospective occupants of the projects. Plans and specifications for projects shall include provisions for roads, sidewalks, parks, schools, utilities, playground and recreational facilities, and other appropriate improvements, so that they will be suitable for disposition as hereinafter provided.

SECTION 8. Property which shall not be acquired for development projects. In declaring development areas, and acquiring land therein, the board shall avoid disturbing existing uses which are in accord with the highest use permitted under any existing zoning ordinance in the political subdivision concerned.

The board shall not acquire for development projects: (1) lands already developed and improved as business or industrial areas where use of such lands for residential purposes or as a part of a development project would be economically unsound or where an undue hardship would be suffered by the community through loss of service because of such acquisition; (2) lands already in use for residential purposes by the owner thereof or by a lessee holding a lease with an original term of 20 years or more, except where the acquisition of parts of such lands is reasonably necessary for the proper development of a project, but in no case shall any part of such lands be taken where the taking will reduce the parcel to less than three acres in extent; (3) lands in the process of subdivision and development where the owner or his agent has prepared subdivision and construction plans, arranged for financing, and applied to government agencies and otherwise as may be appropriate for the construction of the proposed development and is diligently prosecuting such development in good faith and has filed an affidavit with the board to that effect; (4) lands used or to be used as sites for churches, private or parochial schools, clubs, meeting houses, or other private uses of a community, civic, social or religious nature; provided, that portions of the lands mentioned under (1), (2), (3) and (4) of this section, or interests therein, may be taken to provide access and utility easements where no other reasonable means of access or utility easements are available; (5) any private lands if there are available state lands comparable in size and topography and otherwise suitable for residential development, in, adjacent to, or reasonably near the development area, and such state lands are not prohibited for comparable residential use under Act 234, Session Laws 1957, or where such state land is not under planned development for a use, or being put to a use of substantial benefit to the economy of the State.

In acquiring agricultural land for a development project, where such land though used for agricultural purposes is not being used in accord with the highest use permitted under any existing zoning ordinance, the board shall exercise all reasonable care not to jeopardize the agricultural enterprise concerned. If, however, the board finds that such land is necessary for a development project, it may provide assistance, monetary or otherwise, in relocating the enterprise elsewhere or pay such damages to the owner or operator of such enterprise as will reasonably compensate him for his loss, if he has not already been so compensated under a lease agreement, or both.

SECTION 9. Development of lands acquired. Where lands are acquired by the board with its own funds, it shall subdivide and develop such lands into residence lots or dwellings and lots in a manner best designed to carry out the purposes of this Act.

The board may contract with any private developer to provide for the financing of the acquisition of lands, the subdivision and development of acquired lands, and the disposition of residence lots or the construction of dwellings on such lots and the disposition of both. Such contracts may be entered into after published advertisement for sealed tenders, setting forth the terms of the proposed contract, including necessary plans, specifications and time schedules. The contract shall provide for the establishment of such sale prices of the residence lots or dwellings and lots as will repay to the developer the amount of the actual cost or expense incurred in the acquisition and development of the land, together with a developer's profit computed thereon, provided that such prices shall be at least 15 per cent below the going market prices of comparable properties determined in accordance with generally accepted appraisal principles. The contract shall also provide for the sale of residence lots or dwellings and lots only to persons entitled to purchase from the board, upon the terms and conditions provided in section 10 with respect to sales by the board. Every contract shall be made with the responsible bidder whose proposal complies with the requirements of the call for tenders and states the lowest rate of developer's profit, which shall in no case exceed 15 per cent. Publication of the call for tenders shall be made as required by section 9-25 of the Revised Laws, and the time for opening of such tenders shall be not less than thirty (30) days after the last publication.

SECTION 10. Disposition of lands.

(a) Generally. It shall be the policy of the board to encourage insofar as possible the widespread fee simple ownership of residential lots of modest size and price. Where necessary or desirable, the board may issue residential leases or leases with an option to purchase the fee in any development area upon such reasonable terms and conditions as may be determined by the board. Disposition of lands shall be by such public method as shall most likely carry out the purposes of this Act.

(b) Land disposed of by private developers. Land disposed of through private developers shall be sold in accord with the terms prescribed by the board. A reasonable developer's profit shall be allowed, but the board shall reserve the right to inspect books, records and construction, take necessary precautions against speculation by the private developer in lands acquired under this Act and renegotiate any contract to prevent unconscionable profit by the private developer.

An unconscionable profit means any profit or return in excess of 15 per

cent of the private developer's actual cost or expense, which cost or expense shall not include any overhead.

(c) Land disposed of by the board. To be eligible to purchase or lease a residence lot from the board, the buyer shall furnish satisfactory evidence to the board, under oath, and otherwise as required by the board, that he:

(1) Is a citizen of the United States or a declarant alien who has resided in the state for a period of five (5) years or more;

(2) Is at least twenty years of age;

(3) Is a bona fide resident of the State and has a bona fide intent to reside in the development area concerned if successful in purchasing or leasing a lot in such area under this Act; and

(4) Has a gross income not in excess of \$6,500 per annum, including the gross income of his spouse. In determining gross income, however, a \$200 exemption for each of his minor dependents shall be allowed. Any person whom the board finds to be within one of the following classes, shall not be eligible to become an original purchaser or lessee of a residence lot, to wit:

(1) A person who himself or whose husband or wife or both (when husband and wife are living together) owns or own in fee simple lands suitable for residential purposes within the political subdivision and in or reasonably near the place of residence or place of business of such person; and

(2) A person who himself or whose husband or wife (when husband and wife are living together) has pending an unrefused application to purchase a lot in a development area under this Act from the board.

Any person, firm, association or corporation may purchase business lots within a development project for business necessary to service such project. Such lots shall be sold at public auction to the highest bidder for cash.

The board shall require all applicants for the purchase or lease of residence lots to make application therefor under oath, and may require additional testimony or evidence under oath in connection with any application. The determination of any applicant's eligibility under this Act by the board shall be conclusive as to all persons thereafter dealing with the property; but the making of any false statement knowingly by applicant or other person to the board in connection with any application shall constitute perjury and be punishable as such.

When a development project or projects has or have been sufficiently completed to be suitable for disposition to individual purchasers or lessees, the board shall sell or lease the lots therein to eligible purchasers or lessees and shall give notice of such disposition by publication in at least two newspapers of general circulation on the island of Oahu. Such notice shall state in general terms the size, location and prices or rental of lots to be sold or leased, the terms of sale or lease, and the last date on which application will be received by the board, which date shall not be less than thirty days after the first publication of such notice. Such notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested persons. Not more than one such lot shall be sold or leased to each applicant.

Provided, that where any land within a development project is acquired from an eleemosynary organization the member or beneficiaries of such organization shall be entitled, if otherwise qualified under the terms of this Act, to first preference to purchase or lease such lands.

The purchaser at his option may pay the purchase price in full on delivery of a deed or pay not less than ten per cent of the purchase price and execute with the board an agreement of sale under the terms of which the unpaid balance is to be paid in monthly installments and over such period as the board determines, with interest on unpaid balances at a rate not to exceed $6\frac{1}{2}$ per cent, payable monthly, deed to be delivered on final payment; provided, that not less than $\frac{1}{2}$ of 1 per cent on account of principle shall be required by such agreement to be paid each month. Taxes shall be prorated as of the date of delivery of deed in the case of a cash sale and as of the date of execution of the agreement of sale in the case of a sale in other cases. Each such agreement of sale shall provide that the whole or any part of the unpaid balance of the purchase price plus accrued interests may be paid at any time.

(d) Restrictions on sale and use of residential lots by purchaser.

(1) For a period of five years after the date of purchase of any lot under this Act (which date shall be deemed to be the date of the agreement of sale or deed under which the lot was originally purchased or agreed to be purchased) such lot shall not be sold by the original purchaser thereof unless the same, together with the improvements thereon, has first been offered in writing to the board under the option reserved by this Act and the board has either refused or failed within the time required by this section to exercise such option.

(2) Any such original purchaser intending to sell such lot and improvements within such five-year period shall first notify the board in writing of such intention, which notice shall specify the original purchaser's address and shall expressly offer to sell such property to the board at a price which shall not exceed the sum of (a) the original cost of the land plus 15 per cent thereof, and (b) the replacement value, less depreciation at the rates used for real property tax purposes, of all buildings and improvements thereon, to be determined by three appraisers, one appointed by the board, one appointed by the owner, and the third by said two appraisers so appointed, the cost of such to be borne equally by the parties. Within thirty days after the receipt of such notice, the board shall in writing notify the original purchaser at the address so specified whether it elects to exercise such option. If the board refuses, or fails within the thirty-day period, to reply to the offer, the original purchaser may sell the property to any other person free from any price restrictions, provided, that if the board elects to purchase, the board shall thereupon use its best efforts to dispose of it as soon as practicable, subject to the lien of any mortgage, to a qualified and responsible person who will assume the obligation of mortgage and debt secured thereby.

(3) The board may resell any lot and improvements so purchased at a price not to exceed the actual cost thereof to the board, with the addition of a reasonable amount to cover overhead and estimated and actual expenses.

(4) Any original deed or original agreement of sale from the board to any original purchaser of a residence lot shall contain a covenant running with the land (and shall, whether or not such condition is contained in such instrument, be subject to the requirement) that the original purchaser shall erect on such lot, within two years following the date of purchase, a suitable residence building to conform to the terms set forth in such instrument, with a proviso that the board may, on application of the original purchaser, extend the period from time to time for good cause shown. Other reasonable restrictions designed to prevent such lots from becoming slum areas may be established by the board for

any development project and included in such agreement of sale or deeds as covenants running with the land for a term of twenty-one years.

(5) No residence lot shall be used for any purpose other than residence purposes for a period of twenty-one years following the date of the first sale of such lot by the board; provided, that in the event the lot is zoned or rezoned by governmental authority for non-residence purposes, such restriction shall be relaxed to the extent permitted by such zoning laws or regulations.

(6) The provisions of subparagraphs 1 and 2 under (d) of this section shall not be applicable to a sale under foreclosure by a mortgagee of any lot, or to the transfer of title by a mortgagee after foreclosure or otherwise to any agency of the United States government pursuant to the terms of any insurance or guarantee of mortgage loan by such agency, or to any subsequent purchaser.

(e) Effect of breach of restriction. Except as otherwise provided in this Act, any sale or attempted sale, contract or conveyance contrary to the provisions of subsection (d) hereof shall be void. Any use contrary to the provisions of subsection (d) may be enjoined by the State, the board, or an owner or owners of the residence lots within the same development project. Except as otherwise provided in this Act, in the event that a sale, contract or conveyance contrary to the provisions of subsection (d) is attempted, or a use contrary to the provisions of subsection (d) is not voluntarily remedied or is not or cannot be remedied by injunction, or a building is not erected in accordance with subsection (d) (4), the lot affected shall be forfeited and the title vested in the State upon suit by the State establishing any of the foregoing. Upon such forfeiture, the board shall sell such lot at public auction, or at private sale, for the current market value, to a purchaser eligible to purchase from the board in the first instance, and the original purchaser shall be reimbursed, insofar as possible, after deduction of costs of resale. Provided, that in the event title to any lot passes to any obligee, or to any agency of the United States government, pursuant to the terms of any insurance or guarantee of mortgage loss by such agency, no such forfeiture or revesting in the board shall be enforced.

(f) Mortgage of residence lots. Nothing herein contained shall prevent the conveyance of a residence lot by way of mortgage to any person or corporation.

(g) Nothing in this Act shall be construed as limiting the power of the board: (1) to vest in an obligee the right, in the event of a default by the board or by the purchaser, to take possession of a development project or lot or cause the appointment of a receiver thereof, free from all the restrictions imposed by this Act; or (2) to vest in the obligee the right, in the event of a default by the purchaser, to acquire title to a lot or the property mortgaged by the purchaser free from all the restrictions imposed by this Act.

(h) Requirement to develop. Any land acquired by the board, which is not subdivided and developed either by the board or a private developer, or is not in the process of subdivision and development for residential use, within two years from the date of its acquisition, shall be offered for sale by the board, free of any liens or encumbrances created by the board, to the owner or owners from whom the fee simple ownership of the same was acquired by the board, or their respective successors in interest, at the price at which the land was purchased. Land shall be considered to be in the process of subdivision and development when the board or the private developer has prepared subdivision and construction plans, arranged for financing, and applied to government agencies, and otherwise taken such steps as may be appropriate for the con-

struction of the proposed development and is diligently prosecuting such development in good faith.

SECTION 11. Power to lease, pledge or mortgage. The board also may lease or rent any of the dwellings or other accommodations or any of the lands, buildings, structures or facilities embraced in any development project until such time as it is practicable to sell the same in accordance with this Act and establish and revise the rents or charges therefor; mortgage or pledge any property, real or personal, or any interest therein to any person, firm, corporation or government; enter upon any building or property in order to conduct investigations or to make surveys or soundings; purchase, obtain options upon, acquire by gift, grant, bequest, devise or otherwise, any property, real or personal, or any interest therein, from any person, firm, corporation or government; own, hold, clear and improve property; insure or provide for the insurance of the property or operations of the board against such risks as the board may deem advisable; procure insurance or guarantees from the federal government of the payment of any debts or parts thereof secured by mortgages made or held by the board on any property included in any development project.

SECTION 12. Cooperative agreements with other government agencies. The board may obtain the aid and cooperation of governments in the planning, construction and operation of development projects and enter into such agreements and arrangements as it deems advisable to obtain such aid and cooperation; arrange or enter into agreements with any government for the acquisition by such government of property, options or property rights, or for the furnishing, installing, opening or closing of streets, roads, alleys, sidewalks or other places, or for the furnishing of property services, parks, sewage, water and other facilities in connection with development projects, or for the changing of the map of a political subdivision, or for the planning, replanning, zoning or rezoning of any part of the land included in a development project.

SECTION 13. Hearings, witnesses, etc. The board may hold hearings for the purpose of receiving evidence and, in addition, may exercise all the powers set forth in section 7-27 of the Revised Laws; all such hearings shall be public. The board may require such agencies, boards or commissions as are charged with the duty of making investigations and studies of land and land uses to investigate and study such areas as it may designate and, if investigations and studies have been made, to present findings and recommendations with regard to such areas which the board may consider as possible development areas. Any of the investigations or examinations provided for in this Act may be conducted by the board or by a committee appointed by it, or by counsel, or by an officer or employee specially authorized by the board to conduct such investigation or examination. Any committee counsel for the board, or any person designated by it to conduct an investigation or examination may administer oaths, take affidavits and issue subpoenas or commissions.

SECTION 14. Investment of reserves. The board may invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to the board under this Act unless otherwise specifically provided by law.

SECTION 15. Additional powers. The board, in addition to its powers and notwithstanding anything to the contrary contained in this Act or in any other provision of law, may:

(a) Agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and include in any construction contract, let in connection with a project, stipulations requiring that the contractor and any sub-contractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may attach to its financial aid of the projects;

(b) Procure or agree to the procurement of insurance of guarantees from a government for the payment of any debts, or parts thereof, incurred by the board, including the payment of premiums on any such insurance;

(c) Purchase its bonds at a price not more than the principle amount thereof and accrued interest, and all bonds so purchased shall be cancelled.

SECTION 16. Security for funds deposited by board. The board may, by resolution, provide that all moneys deposited by it shall be secured: (a) by any securities by which funds deposited by the treasurer of the State may be legally secured as provided in section 133-3 of the Revised Laws, or (b) by an undertaking with such sureties as are approved by the board faithfully to keep and pay over upon the order of the board any such deposits and agreed interest thereon, and all banks and trust companies may give any such security for such deposits.

SECTION 17. Eminent domain. The board may acquire, by the exercise of the power of eminent domain, the real property or interest in real property authorized to be acquired by section 7, after the adoption of a resolution declaring that the acquisition of the property described in the resolution is in the public interest and necessary for a development project within a development area. The board may exercise the power of eminent domain in the same manner and procedures provided in chapter 8 of the Revised Laws, and otherwise in accordance with all applicable provisions of the general laws of the State.

SECTION 18. Contracts with federal government. In addition to the powers conferred upon the board by other provisions of this Act, the board may borrow money or accept grants from the federal government for or in aid of any project which the board is authorized to undertake, take over any land acquired by the federal government for the construction or operation of a development project, take over or lease or manage any development project constructed or owned by the federal government, and to these ends, enter into such contracts, mortgages, leases or other agreements as the federal government may require, including agreements authorizing the federal government to supervise and approve the construction, maintenance and operation of the project. It is the purpose and intent of this Act to authorize the board to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the undertaking, construction, maintenance and operation of any project which the board is empowered to undertake.

SECTION 19. Contracts. The board, in addition to its other powers, may make, execute and carry out contracts for, or in connection with, any project in the name of the State, in the manner provided in sections 9-25 to 9-35 and 9-46 of the Revised Laws; and, with regard to such contracts, the term "officers", as used in sections 9-25 to 9-35 of the Revised Laws, means the board or such officer as is authorized by the board to act as its contracting officer. Each contract authorized in this section shall state therein that it is made and executed in the name of the State.

SECTION 20. Performance bond, procedure. Whenever the board makes or enters into any contract as provided in section 19 above, it shall require a performance and payment bond conditioned, executed and delivered as provided in chapter 9 of the Revised Laws.

SECTION 21. Exemption from taxation and assessments. The board and its property, until resold or leased, shall be exempt from any and all taxes and assessments. Bonds, notes, debentures and other evidences of indebtedness of the board are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes.

SECTION 22. Exemption of property from execution sale. All real property of the board shall be exempt from mechanic's or materialmen's liens; provided, that recovery for such claims may be had from any bond supplied as required by section 20 above. Such real property shall also be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the board be a charge or lien upon its real property; provided, that the provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of the board or to pursue any remedies for the enforcement of any pledge or lien given by or with the consent of the board.

SECTION 23. Duty to make reports. The board shall, at least once a year, file with the governor and with the Legislature, within ten days after the convening of a regular session, general and budget, a report of its activities for the preceding year, and shall recommend such additional legislation or other action that may be necessary in order to carry out the purposes of this Act.

SECTION 24. Disclosure by private developer; public records. A private developer or assign, as the term is used in this Act, shall file with the board an enumeration or list of all persons directly or indirectly connected with him or it as a condition precedent to his or its acceptance as such private developer or assign by the board. A private developer or assign who fails to comply with this requirement shall automatically forfeit all rights to any profit under this Act.

All bids and any or all records of a private developer or assign, relating to any and all transactions with the State, shall be public records, as defined in chapter 7 of the Revised Laws, and subject to such use as permitted by chapter 7.

SECTION 25. Bonds. The board may issue revenue bonds, and also refunding bonds for the purpose of paying or retiring bonds previously issued, from time to time in such amounts as it may deem advisable for the purpose of this Act. The board may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable: (a) exclusively from the income and revenues of the development project financed with the proceeds of such bonds or with such proceeds together with a grant from the federal government in aid of such project; or (b) exclusively from the income and revenues of certain designated development projects, whether or not they were financed in whole or in part with the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any revenues of any project or projects.

Neither the members of the board nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

SECTION 26. State and political subdivisions not liable on bonds. The bonds and other obligations of the board under this Act (and such bonds and obligations shall so state on their face) shall not be a debt of the State or of any political subdivision; neither the State nor political subdivisions shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the board under this Act. The bonds shall not be considered public indebtedness within the meaning of paragraph 2 of section 3, Article VI of the Constitution of the State of Hawaii, nor shall such bonds constitute an indebtedness within the meaning of any other debt limitation or restriction. Bonds may be issued under this Act notwithstanding any debt or other limitation prescribed by any statute.

SECTION 27. Form and sale of bonds. The bonds of the board shall be authorized by resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from the date thereof, bear interest at such rate or rates, not exceeding six per centum per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms or redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

The bonds shall be sold at not less than par at public sale held after notice published once at least five days prior to such sale in a newspaper having a general circulation in the State; provided, that such bonds may be sold at not less than par to the federal government at private sale without any public advertisement.

If any member or officer of the board whose signature appears on any bond or coupon ceases to be such member or official before the delivery of such bond, his signature shall, nevertheless, be valid and sufficient for all purposes, the same as if such member or officer had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, all bonds issued pursuant to this Act shall be fully negotiable.

In any suit, action or proceedings, involving the validity or enforcement of any bond of the board or the security therefor, any such bond, reciting in substance that it has been issued by the board to aid in financing a development project, shall be conclusively deemed to have been issued for a development project, and the project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of this Act.

SECTION 28. Provisions of bonds. In connection with the issuance of bonds or the incurring of any obligation and to secure the payment of such bonds or obligations, the board in addition to its other powers may:

(a) Pledge all or any part of its revenues under this Act to which its right then exists or may thereafter come into existence;

(b) Covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, in connection with development projects or against permitting or suffering any lien thereon;

(c) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof;

(d) Covenant against pledging all or any part of its revenues from any development project to which its right then exists or may thereafter come into

existence, or against permitting or suffering any lien thereon ;

(e) Covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof ;

(f) Covenant as to what other, or additional debts may be incurred by it in the exercise of its authority under this Act ;

(g) Provide for the replacement of lost, destroyed or mutilated bonds ;

(h) Covenant that the board warrants title ;

(i) Covenant as to the amount to be raised each year or other period of time by revenues under this Act, and as to the use and disposition to be made thereof ;

(j) Covenant as to the use of any or all of its property, real or personal acquired or held for use in connection with development projects under this Act ;

(k) Create or authorize the creation of special funds segregating the proceeds of any loans or grants, the revenue of any project or projects, reserves for principal and interest on its bonds and for operating contingencies, and other reserves ; and covenant as to the use and disposal of the moneys held in such funds ;

(l) Redeem the bonds, and covenant for their redemption, and provide the terms and conditions thereof ;

(m) Covenant against extending the time for the payment of its bonds or interest thereon ;

(n) Prescribe the procedure, if any, by which the terms of any contract with bond holders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given ;

(o) Covenant as to the maintenance of its property acquired or held for use in connection with development projects under this Act, and replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys ;

(p) Vest in an obligee, in the event of a default by the board, the right to cure any such default and to advance any moneys necessary for such purpose, and covenant that the moneys so advanced be an additional obligation of such board with such interest, security and priority as may be provided in any lease or contract ;

(q) Covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived ;

(r) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation ;

(s) Covenant to surrender possession of a project or projects or parts thereof upon the happening of an event of default ; and vest in any obligee the right, upon such default and without judicial proceedings, to take possession and use, operate, manage and control such projects or any parts thereof, and to collect and receive revenues arising therefrom in the same manner as such board itself might do, and to dispose of the moneys collected in accordance with the agreement of such obligee with the board ;

(t) Vest in a trustee or trustees the right to enforce any covenant to secure, or pay the bonds, or otherwise relating to such bonds ; provide for the powers

and duties of such trustee or trustees, limit the liabilities thereof, and provide the terms and conditions upon which the trustee or trustees, or the holders of bonds, or any proportion of them may enforce any such covenant ;

(u) Make covenants other than, and in addition to, the covenants herein expressly authorized, of like or different character ; and execute all instruments necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as the government or any purchaser of the bonds of the board may require ;

(v) Make such covenants and do any and all such acts and things as may be necessary, convenient or desirable in order to secure its bonds, or, in the absolute discretion of the board, tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein.

SECTION 29. Remedies of an obligee; mandamus, injunction; possessory action; receiver; accounting, etc. An obligee of the board may, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee, and subject to the prior and superior right of others :

(a) By mandamus, suit, action or proceeding in law, compel the board, and the members, officers, agents or employees thereof, to perform each and every term, provision and covenant contained in any contract of the board, and require the carrying out of any or all covenants and agreements of the board and the fulfillment of all duties imposed upon the board by this Act ;

(b) By suit, action or proceeding in equity, enjoin any act or thing which may be unlawful, or the violation of any of the rights of such obligee of the board ;

(c) By suit, action or proceeding in any court of competent jurisdiction, cause possession of any project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the board ;

(d) By suit, action or proceeding in any court of competent jurisdiction, upon the happening of an event of default (as defined in a contract of the board), obtain the appointment of a receiver of any development project of the board or any part or parts thereof, and, if such receiver be appointed, he may enter and take possession of such project or any part or parts thereof and operate and maintain same, and collect and receive all revenues or other charges thereafter arising therefrom in the same manner as the board itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the board as the court shall direct ;

(e) By suit, action or proceeding in any court of competent jurisdiction, require the board and the members thereof to account as if it and they were the trustees of an express trust.

SECTION 30. Subordination of mortgage to agreement with government. The board may agree in any mortgage made by it that such mortgage shall be subordinate to a contract for the supervision by a government of the operation and maintenance of the mortgaged property and the construction of improvements thereon. In such event, any purchaser or purchasers at a sale of the property of the board pursuant to a foreclosure of such mortgage or any other remedy in connection therewith, shall obtain title to such contract.

SECTION 31. Development project bonds as legal investments. The State and all of its public officers, municipal corporations, political subdivisions,

and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations and other persons carrying on an insurance business in the State, and all executors, administrators, guardians, trustees and other fiduciaries in the State may legally invest moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the board, and such bonds and other obligations of the board or agency shall be authorized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations; provided, that nothing contained in this section shall operate to relieve any person, firm or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by sections 179-14 and 340-6, of the Revised Laws.

SECTION 32. Policy as to sale prices and rentals. It is hereby declared to be the policy of the State that the board (acting directly or by an agent or agents) shall manage and operate its development projects in an efficient manner so as to enable it to fix the rentals or prices for lands at the lowest possible rates or sales prices consistent with the purpose of this Act; and that the board shall not construct or operate any such project for profit, or as a source of revenue to the State. To this end, the board shall fix the sales prices for residential lots or rentals for lots or buildings in its projects at no higher rates or prices than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts of the board from whatever sources derived under the administration of this Act) will be sufficient: (a) to pay, as the same become due, the principal and interest on the bonds of the board; (b) to meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the board; and (c) to create a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve; provided that such rates or prices shall be at least 15 per cent below the going market prices of comparable properties determined in accordance with generally accepted appraisal principles.

SECTION 33. Agreement to secure federal contributions. In addition to the powers conferred upon the board by other provisions of this Act, the board, in any contract for annual contributions with the federal government, may obligate itself (which obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other laws) to convey to the federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the board is subject. Such contract may provide, further, that in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the project in accordance with the terms of such contract; provided, that the contract shall require that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that

the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the board the project as then constituted.

SECTION 34. Payments to public bodies. The board may agree to make such payments to the State, or any political subdivisions thereof (which payments such bodies are hereby authorized to accept), as the board finds consistent with the achievement of the purposes of this Act.

SECTION 35. Conveyance, lease or agreement in aid of development projects, purchase of bonds. For the purpose of aiding and cooperating in the planning, construction and operation of development projects located within their respective territorial boundaries, the political subdivisions of the State or other departments and agencies of the State may, upon such terms, with or without consideration, as it may determine:

(a) Dedicate, grant, sell, convey, lease any of its property, or grant easements, licenses or any other rights or privileges therein to the board or to the United States or any agency thereof;

(b) To the extent that it is within the scope of each of their respective functions: (1) cause the services customarily provided by each of them to be rendered for the benefit of development projects and the occupants thereof; (2) provide and maintain parks and sewage, water, lights and other facilities adjacent to or in connection with such projects; (3) open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other such facilities; and (4) change the map of a political subdivision or plan, replan, zone or rezone any part of a political subdivision;

(c) Enter into agreements with the board with respect to the exercise of their powers relating to the preparation of designated development areas for such projects;

(d) Employ (notwithstanding the provisions of any other laws as to what constitute legal investments) any available funds belonging to them or within their control, including funds derived from the sale or furnishing of property or facilities to the board, in the purchase of the bonds or other obligations of the board to the extent provided by section 31, and exercise all the rights of any holder of such bonds or other obligations;

(e) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction of such development projects;

(f) Enter into contracts with the board or the United States for any period, agreeing to exercise any of the powers conferred hereby or to take any other action in aid of such development projects.

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

For the purpose of aiding and cooperating in the planning, construction and operation of development projects, the board, in its powers of management of the public lands, may use public lands for the purposes of this Act, and the Hawaiian homes commission and any other officers of the State having power to manage or dispose of its public lands, may, with the approval of the governor and with or without consideration, grant, sell, convey or lease for any period, any parts of such public lands (without limit as to area) to the board for the purposes of this Act or to the United States or any agency hereof.

Any law or statute to the contrary notwithstanding, any gift, grant, sale, conveyance, lease or agreement provided for in this section may be made by

any other department or agency of the State or political subdivisions of the State, without appraisal, public notice, advertisement or public bidding.

If at any time title to, or possession of, any development project is held by any public body or governmental agency authorized by law to engage in development projects or administration of development projects, including any agency or instrumentality of the United States, the provisions of any agreement made under this Act relating to such project shall inure to the benefit of, and may be enforced by, such public body or governmental agency.

Insofar as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall be controlling.

SECTION 36. Governmental advances and donations. The board shall submit to the legislature at each regular session estimates of the amount of the administrative expenses and overhead of the board for the succeeding annual period for the purposes of this Act so that the legislature may make an appropriation therefor if it deems such action advisable.

Any political subdivision within the territorial boundaries of which a development project or projects are located or about to be located may, from time to time, make donations or advances to the board of such sums as such political subdivision in its discretion may determine; such advances or donations shall be made for the purpose of aiding or cooperating in the construction and operation of such development project or projects. The board, when it has money available therefor, shall reimburse political subdivisions for all advances made by way of a loan to it.

SECTION 37. Action of political subdivision by resolution. All action authorized to be taken under this Act by any political subdivision may be by resolution adopted by a majority of all the members of its governing body, which resolution may be adopted at the meeting of the governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted.

SECTION 38. Purpose of Act. It is the purpose and intent of the legislature that other departments and agencies of the State and the political subdivisions of the State shall do any and all things necessary to aid and cooperate in the planning, construction, sale, lease and operation of development projects by the board or the United States.

SECTION 39. Revolving fund. The director of the budget shall set up, out of any moneys heretofore or hereafter appropriated for the purposes of this Act, a revolving fund to be known as the development revolving fund. All unexpended balances of appropriations, allocations, allotments, special revolving funds or other funds heretofore created and made available for the purposes of developing or administering any project subject to this Act shall be transferred to the development project revolving fund; provided, that any unexpended balances in any special revolving funds or other funds created and made available, in whole or in part, with federal funds or with assistance from the federal government or for housing undertaken pursuant to a contract between the federal government and the State or the board shall be segregated from other funds and shall be deposited and maintained as required by the federal government.

All moneys received by the board under or pursuant to this Act, including refunds, reimbursements, and revenues, shall be deposited in the revolving fund, to the extent permitted by federal law or regulation. Except as otherwise

provided by this Act, the revolving fund may be expended by the board for any and all of the purposes of this Act, including, without prejudice to the generality of the foregoing, the acquisition, clearance and improvement of property ; the construction and reconstruction of building sites ; and the development and administration of development projects and administration expenses. The provisions of this section shall be subject to applicable federal law and regulation, to any contract between the federal government and the State or the board relating to development projects subject to this Act, and to the terms and conditions of contributions or other assistance from the federal government.

SECTION 40. Conformity with federal law. In carrying out this Act the State and the board shall cooperate, to the fullest extent consistent with the provisions of this Act, with the federal government, and shall respectively take such action through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this State all advantages available under the provisions of any federal law or regulation.

SECTION 41. Existing obligations, no impairment. Nothing contained in this Act shall impair or affect any outstanding notes, contracts or obligations of the State or of the board.

SECTION 42. Severability. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 43. Effective date. This Act shall take effect upon its approval.

(Approved May 4, 1961.) **S.B. 378.**
