

ACT 192

H. B. NO. 1222

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 1 of Act 194, Session Laws of Hawaii 1961, is amended to read:

“Section 1. Findings and Purpose. The capital needs of the economy of the State have grown to such an extent that available local capital is insufficient to meet those needs. Among the consequences of the inability of Hawaii to meet its capital requirements out of its own local funds have been a shortage of mortgage funds for home and commercial financing. Moreover, in consequence of the extremely high price of home ownership in Hawaii a buyer has to pay large down and monthly payments which many low income home buyers find difficult to meet. The purpose of this Act is to help remedy the shortage of mortgage investment funds with which Hawaii is faced; first, by making available loans to provide added capital with which qualified applicants can meet required down payments for home construction and to extend the normal terms of loans over a longer period of time, and second, by attracting out-of-state mortgage funds to Hawaii.”

SECTION 2. The caption of Part I, Chapter 207, Hawaii Revised Statutes, is amended to read:

“PART I. HOME LOANS FOR LOW INCOME HOME BUYERS ON STATE LAND”

SECTION 3. Section 356-39, Hawaii Revised Statutes, is amended to read:

“Sec. 356-39 Assistance to county governmental agencies and persons.

The authority may provide assistance and aid to a public agency or a person in developing and constructing new housing and rehabilitating old housing for the elderly of low income, other persons of low income and persons displaced by any governmental action, by making available long-term, low-interest mortgage loans from the proceeds of tax-exempt general obligation bonds, the payment of the principal and interest of which shall be reimbursed to the general fund from revenue and to be sold on the open market. The authority may charge service fees and premiums upon the issuance of any mortgage loan under this section. The service fees and premiums shall be paid into a special fund in the state treasury, and shall be paid first to reimburse the general fund for the payment of the interest on bonds issued under this section, and then to pay the expense of the Hawaii housing authority in administering the mortgage loan program established by this section.

The assistance or aid shall not be furnished with respect to any specific proposal or project unless the county governmental agency within whose jurisdiction the proposal or project is or is proposed to be situated shall have given its consent.

Debt service on the bonds would be reimbursed to the general fund, and administrative costs would be paid, from income received from rents and carrying charges. The agency may obtain from any federal agency any insurance or guarantee for the payment of interest or principal, or both, on any obligations issued pursuant to the provisions of this section.

The director of finance may issue general obligation bonds of the State pursuant to part I of chapter 39 in an amount not to exceed \$15,000,000 to effectuate the purposes of this section subject to prior approval of the governor.”

SECTION 4. Section 359G-1, Hawaii Revised Statutes, is amended to read:

“Sec. 359G-1 Purpose. The legislature of the State of Hawaii has determined that there exists in the State a critical shortage of housing units for lower income residents. Various studies have indicated the need for from between 40,000 to 50,000 units at the present time. These studies show that the forces of population increase and obsolescence will combine to create a need for over 250,000 units by 1985. Since 1961, the economy has been producing an average of less than 10,000 units annually. The population increase, the obsolescence of existing housing and the rate at which housing units are presently being built will combine to intensify the present shortage. The legislature has further determined and hereby determines that shortage of housing, or inadequate housing, for persons of whatever level of income has an effect upon the availability and quality of housing for persons of other levels of income; that a shortage of housing leads to impairment of existing housing through use of such existing housing for occupancy in excess of that for which it is designed; and that a shortage of housing contributes to the occurrence of slums, slum conditions and unsanitary and unsafe housing and to the recurrence of slums, slum conditions and unsanitary and unsafe housing in areas in which slums, slum conditions and unsanitary and unsafe housing have previously been eliminated.

The legislature has also determined that decent shelter and the responsibility of home ownership contributes to the pride and dignity of man and makes him a greater asset to the community and that the lack of decent shelter and the responsibility of home ownership contributes to harmful frustration in our community. The home is the basic source of shelter and security in society, the center of our society which provides the basis for the development of our future citizens. Frustration in the basic necessity of decent shelter, in the satisfaction of the basic drive in man to provide a decent home for his family, provokes an unrest in our community that is harmful to the overall fiber of our society.

Studies have pointed out that the causes for the high cost of housing are multiple. They include the cost and availability of land, the cost of development, the cost and availability of financing, the cost added by government regulation, the cost and availability of labor and materials, the inflationary state of the economy that makes high cost housing more profitable to produce and more attractive to 'risk' capital. In the most elemental way the housing shortage is caused by conflicting priorities in our pluralistic society. Additionally, the legislature is aware that the housing market is a total market and that neglecting the interests of renters or higher income potential homeowners would not be proper.

When conflicting priorities, otherwise wholesome in a great state, combine to frustrate one of the basic needs of that state so as to endanger its general health and welfare, the elected representatives of the people of such state have the obligation to provide to the best of their ability the means whereby these priorities can be resolved.

The legislature of the State has determined that the problem of providing reasonable priced housing in Hawaii is so complex that existing institutions cannot solve it without a comprehensive overview and direction. The legislature has determined that the problem must be solved for the general well being of the State and that the legislature has the duty to provide the overview and the direction."

SECTION 5. Chapter 359G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 359G- Criteria. In administering the provisions of this chapter and the other laws of the State applicable to the supplying of housing or the assistance in obtaining housing, the authority shall give preference to those applicants most in need of assistance in obtaining housing, in light of the amount of moneys available for the various programs. In doing so the authority shall take into consideration the applicant's household income and number of dependents; the physical handicaps of the applicant or those living with him; whether or not the present housing of the applicant is below standard; whether or not the applicant's need for housing has arisen by reason of displacement of the applicant by governmental action; and such other factors as it may deem pertinent."

SECTION 6. Section 359G-4, Hawaii Revised Statutes, is amended to read:

"Sec. 359G-4 Powers and duties, generally. The authority shall: (a) De-

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velop fee simple or leasehold property, construct dwelling units thereon, including condominiums and planned units, and sell, lease or rent or cause to be leased or rented the land and the completed units at the lowest possible price to qualified residents of the State, and the authority shall perform such functions in partnership with a qualified partner or partners as herein-after defined, or shall act in its own behalf.

A qualified resident means a person who:

- (1) Is a citizen of the United States or a declarant alien who has resided in the State for a period of five 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 dwelling unit purchased or rented under this chapter; and
- (4) In the case of purchase of a dwelling unit in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase.

Any person whom the authority finds to be within one of the following classes, shall not be eligible to become a purchaser of a dwelling unit, 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 or leasehold lands suitable for dwelling purposes within the county and in or reasonably near the place of residence or place of business of the persons; 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 dwelling unit under this chapter from the authority.

The authority shall require all applicants for the purchase of dwelling units 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 chapter by the authority shall be conclusive as to all persons thereafter dealing with the property; but the making of any false statement knowingly by the applicant or other person to the authority in connection with any application shall constitute perjury and be punishable as such. The authority shall establish a system to determine preferences by lot in the event that it receives more qualified applications than it has units available.

(b) Adopt and promulgate, in accordance with chapter 91, all rules and regulations necessary to carry out the purpose of this chapter, including, upon direction from the governor and for such period as he shall authorize, rules and regulations on health, safety, building, planning, zoning, and land use which relate to the development, subdivision, and construction of dwelling units in projects in which the State, through the authority, shall participate. Upon the promulgation and adoption of such rules and regulations, they shall have the force and effect of law and shall supersede, for all projects in which the State through the authority shall participate, all other inconsistent laws, ordinances, and rules and regulations relating to the use, zoning, planning, and

development of land, and the construction of dwelling units thereon; provided, that such rules and regulations shall not contravene any safety standards or tariffs approved by the public utilities commission for public utilities. Such rules and regulations shall follow existing law as closely as is consistent with the production of low cost housing with standards which meet minimum requirements of good design, pleasant amenities, health, safety and coordinated development; provided, that any rules or regulations promulgated hereunder shall, before becoming effective, be presented to the legislative body of each county in which they will be effective and the legislative body of any county may within forty-five days approve or disapprove, for that county, any or all of the rules and regulations by a majority vote of its members. On the forty-sixth day after submission any rules and regulations not disapproved shall be deemed to have been approved by the county.

Notwithstanding the foregoing, the authority shall, prior to developing any land designated as conservation or agriculture, obtain the approval of the land use commission. The authority shall not develop, subdivide or construct dwelling units in areas set aside as state monuments or historic sites.

The authority shall also adopt and promulgate rules and regulations relating to determining preference among applicants for housing and determining qualification for and recompense or profit distribution to any partner or partners as hereinafter defined.

(c) Acquire, by eminent domain, exchange or negotiation, property required for the purposes of this chapter.

(d) Make and execute contracts or other instruments necessary or convenient to carry out the purpose of this chapter.

(e) Upon authorization by the legislature, cause the State to issue general obligation bonds to finance:

- (1) Land acquisition;
- (2) The development and improving of land;
- (3) The construction of dwelling units;
- (4) The purchase, lease or rental of land and dwelling units by qualified residents under this chapter;
- (5) Payment of any services contracted for under this chapter, including profit or recompense paid to partners;
- (6) The cost of repurchase of units under section 359G-9; and
- (7) Any other moneys required to accomplish the purposes of this chapter.

(f) Do all things necessary and convenient to carry out the purposes of this chapter.”

SECTION 7. Section 359G-9(a), Hawaii Revised Statutes, is amended to read:

“**Sec. 359G-9 Restrictions on transfer and use of dwelling units.** (a) For a period of ten years after a dwelling unit is purchased from the authority or an agreement of sale is executed, whether on fee simple or leasehold property the following restrictions shall apply to the use and transfer of the unit and the property:

- (1) Any dwelling unit sold by the authority shall be owner occupied. Violation of this provision is sufficient cause for the authority to repurchase the dwelling unit as provided for in paragraph (2);
- (2) Title to the dwelling unit and the property or the lease may not be transferred except to the authority, and then only at a price which shall not exceed the greater of the amount of the original cost to the purchaser or the fair market value of the premises less any amounts subsidized by the State, as determined by the authority, and less also interest thereon at the same rate as that paid by the purchaser on his mortgage or other security agreement, provided, however, that title to a dwelling unit and the property or lease may pass to a family member by devise or through the laws of descent, who would otherwise qualify under the rules and regulations established by the authority.
- (3) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the authority or by any fee owner in the case of a lease shall expressly contain the restriction on transfer and use of the dwelling unit as prescribed in this section."

SECTION 8. Section 359G-11(a), Hawaii Revised Statutes, is amended to read:

"Sec. 359G-11 Private financing of projects. (a) The authority to enter into contracts with any eligible bidder to provide for the construction of urgently needed housing for the purpose of providing suitable living accommodations for persons of low income, including elderly persons of low income, or students or faculty of low income of institutions of higher education on lands owned or leased by the State and situated on suitable sites. Any such contract shall provide that the housing or housing project shall be placed under the control of the authority, as soon as the unit is available for occupancy. Any such contract shall also provide that the capital stock of the mortgagor (where the mortgagor is a corporation) be transferred to the authority, when the housing has been completed. Any such contract shall contain such terms and conditions as the authority may determine to be necessary to protect the interests of the State. Any such contract shall provide for the furnishing by the contractor of a performance bond and a payment bond with a surety or sureties satisfactory to the authority, and the furnishing of such bonds shall be deemed a sufficient compliance with the provisions of law and no additional bonds shall be required under law. Before the authority shall enter into any contract as authorized by this section for the construction of housing, it shall invite the submission of competitive bids after advertising in the manner prescribed by law."

SECTION 9. Section 359G-20, Hawaii Revised Statutes, is amended to read:

"Sec. 359-20 Downpayment fund. A downpayment fund is hereby created. When requested by the authority, the director of finance shall issue from time to time general obligation bonds not exceeding \$20,000,000, the proceeds of which shall be deposited into the downpayment fund and which

shall be used for the purpose of making downpayment loans as provided herein.

All moneys received or collected by the authority to repay downpayment loans shall be deposited into the downpayment fund. The proceeds of the fund shall first be used to reimburse the general fund for the payment from the latter fund of the principal and interest on the bonds issued for the purposes of this program, then for the necessary expenses in administering this program, and finally for making downpayment loans.”

SECTION 10. Section 359G-29, Hawaii Revised Statutes, is amended to read:

“Sec. 359G-29 Participation loan fund. A participation loan fund is hereby created. When requested by the authority, the director of finance shall issue general obligation bonds not exceeding \$10,000,000, the proceeds of which shall be deposited into this fund for the purposes of this part.

All income received by the State on the investment of State funds under this program shall be dedicated to this fund. Such income and all moneys received or collected by the authority under this program shall be deposited into the fund. The proceeds in the fund shall first be used to reimburse the general fund of the State for the payment from the latter fund of the principal and interest of the bonds issued and thereafter for the purposes of this program.”

SECTION 11. Section 2 of Act 278, Session Laws of Hawaii 1967, is amended to read:

“SECTION 2. Findings and purpose. The purpose of this Act is to encourage the development of housing units to serve low income families by private developers, and to provide safe, sanitary, and decent housing at rental levels that low income families can afford as the rapidly expanding population increases the congestion and demand for adequate shelter in urban areas. Private developers can be assisted in meeting this critical state need by providing rent supplements to tenants who cannot otherwise afford privately developed rentals; by providing for low interest loans to certain private developers and individuals; by authorizing the state permanent housing program to make greater use of private development through sales of such dwellings, to tenants, and by authorizing the better use of residential public lands to certain developers at minimal leases to reduce tenant rentals.”

SECTION 12. Section 361-1, Hawaii Revised Statutes, is amended to read:

“Sec. 361.1 Definitions. As used herein ‘Director’ means the director of finance. ‘Community home mortgage’ means a mortgage loan made to a resident of the State for the purchase of his first parcel of residential property, or for the construction of his first dwelling to be occupied as his home, or for making repairs, alterations, or improvements in property owned by him and occupied as his home, or for refinancing his first home, or to a developer as defined herein.

‘Resident’ means any person who has an annual gross income which does not exceed the income limitations under the rules and regulations

promulgated by the Secretary of Housing and Urban Development pursuant to section 221(d) (3) of the National Housing Act by twenty percent and who has resided in Hawaii for more than one year.

'Mortgagee' means any financial institution which is a mortgagee of a community home mortgage and which has been certified by the director as being eligible to sell community home mortgages to the director and adequately equipped to service them.

'Service' of a community home mortgage, or 'servicing' a community home mortgage includes the collection of, and the attempting to collect all sums payable on the community home mortgage; the depositing of all such collections in accounts for the State; notification to the director that the mortgaged premises are damaged or vacant; periodic inspection of the mortgaged premises and notification to the director concerning the condition thereof; notification to the director of all community home mortgages that are delinquent for nonpayment of one or more monthly installments; and the using of due diligence to protect the mortgaged property and to prevent the attachment to the mortgaged property of any liens superior thereto.

'Developer' means a developer of housing under sections 202, 207, 213, 221(d) (3), 221(d) (5), or 231 of the National Housing Act or a public agency, limited dividend corporation, or a private nonprofit corporation as defined in section 221(d) (3) which conforms to the standards of those sections but which is not a mortgagor under those sections or any other private mortgagor under the National Housing Act for low or moderate-income family housing, regulated or supervised under federal or state laws or by political subdivisions of the State, or agencies thereof, as to rents, charges, capital structure, rate of return, and methods of operation, from the time of issuance of the building permit for the project."

SECTION 13. Section 361-3, Hawaii Revised Statutes, is amended to read:

"Sec. 361-3 Community home mortgage requirements. No community home mortgage shall be purchased:

- (1) If the effective date of the original mortgage was prior to July 1, 1967, or in the case of refinancing of an existing home, if the home was purchased prior to August 21, 1959.
- (2) If the dwelling unit is more than one single family residence in the case of a resident, except in the case of cooperative units wherein ninety percent of the members are eligible under this chapter.
- (3) If, in the case of a resident or developer, the unpaid principal balance of the loans exceed \$22,500 per unit.
- (4) If, in the case of a resident or developer, the unpaid principal balance of the loan exceeds ninety-five percent of the appraised market value of the property.
- (5) If the interest rate of the community home mortgage exceeds one-half of one percent a year over the charges on bonds issued for such mortgage; provided that this paragraph shall not preclude a resident from refinancing an existing mortgage if he qualifies for refinancing under paragraph (1).

- (6) If the community home mortgage is not secured by property in the State.
- (7) If the community home mortgage is not offered by the original mortgagee prior to any other sale thereof.
- (8) If the community home mortgage does not provide for periodic payments thereon to include the pro rata portion of taxes, insurance, ground rent, and assessment, if any.
- (9) If the resident has an annual gross income which exceeds the income limitations under the rules and regulations promulgated by the Secretary of Housing and Urban Development pursuant to section 221 (d)(3) of the National Housing Act by twenty percent.

Prior to the sale of a community home mortgage the mortgagee shall certify to the effect that no default or defaults exist and that the mortgagee knows of no existing condition affecting the mortgagor or his affairs which in the opinion of the mortgagee will cause the community home mortgage to become delinquent.

The director of finance may, by rule and regulation, establish such other minimum requirements which must be met by community home mortgages to qualify for purchase, as are conducive to carrying out this chapter and are not in conflict therewith.”

SECTION 14. Section 361-11, Hawaii Revised Statutes, is amended to read:

“Sec. 361-11 Community home mortgage bonds fund. All repayments of principal on mortgages made under this chapter and all realizations on foreclosure of such mortgages, as secured, shall be paid into a special fund in the state treasury, to be called the community home mortgage bonds fund and used to reimburse the general fund for the payment from the latter fund of the principal on bonds issued under this chapter.”

SECTION 15. Section 361-12, Hawaii Revised Statutes, is amended to read:

“Sec. 361-12 Community home mortgage bonds special fund. All interest received on mortgages made under this chapter and all fees and charges received under this chapter shall be paid into a special fund in the state treasury, to be called the community home mortgage bonds special fund, and shall be used first to reimburse the general fund for the payment from the latter fund of the interest on bonds issued under this chapter, and then to pay the expenses of the director of finance in administering this chapter.”

SECTION 16. Section 361-13, Hawaii Revised Statutes, is amended to read:

“Sec. 361-13 Bonds. The director, may with the approval of the governor, issue from time to time general obligation bonds of the State to an amount not exceeding \$5,000,000 as provided by part I of chapter 39. The proceeds of sale of such bonds shall be used solely for the making of community home mortgages as provided in this chapter.

SECTION 17. Section 361-15, Hawaii Revised Statutes, is amended to read:

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“Sec. 361-15 Exceeding income limitations by residents. Residents’ income shall be verified every biennium and shall not exceed the limitation imposed under section 361-3(9) except that if a resident exceeds such limitation subsequent to participating in the program the director of finance shall renegotiate the mortgage and place additional charges upon the mortgage up to but not to exceed the going market rate for similar mortgages in an amount of one-half of one percent; provided that no renegotiated mortgage shall result in payments by the resident in excess of twenty percent of his income.”

SECTION 18. Section 361-18, Hawaii Revised Statutes, is amended to read:

“Sec. 361-18 Appropriations. All moneys in the community home mortgage bonds fund created by section 361-11 are appropriated for the reimbursement of the general fund for the payment from the latter fund of principal on bonds issued under this chapter and all moneys in the community home mortgage bonds special fund created by section 361-12 are appropriated for the reimbursement of the general fund for the payment from the latter fund of interest on bonds issued under this chapter and the payment of service charges to mortgagees, as the same become due and payable. There is appropriated from the community home mortgage bonds special fund such amounts of money as may be necessary to pay the salaries of employees of the department of budget and finance charged with the administration of this chapter and the cost of supplies and equipment therefor, and for other expenses in connection therewith.

If there are moneys in general, special, or revolving funds in the State which, in the director of finance’s judgment, are in excess of the amounts necessary for the immediate state requirements, and if in his judgment the necessary financial operations of the State will not be impeded or hampered thereby, the director may make temporary loans therefrom for the purposes of this chapter. The loans shall in general comply with sections 36-23 and 36-24.”

SECTION 20. **Severability.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 21. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 22. This Act shall take effect upon its approval.

(Approved June 8, 1971.)

* Edited accordingly.