

**ACT 225**

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**S.B. NO. 1758-76**

**A Bill For an Act Relating to Housing.**

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

SECTION 1. The legislature finds that the shortage of housing affordable by residents of low and moderate income remains one of Hawaii's major social problems. The legislature further finds that the primary form of public intervention in this problem must continue to be the housing development program initiated by the Hawaii housing authority pursuant to Act 105, Session Laws of Hawaii 1970. Five years of operation under Act 105 have resulted in solid accomplishments, and many citizens have obtained quality, affordable shelter that would not have been available without Act 105. To effectively fulfill its commitment of providing decent and reasonably priced shelter to residents of low and moderate means, the continuous employment of capable and qualified individuals must be maintained in order that the delivery of such housing may be effectively achieved and enhanced.

The legislature determines, however, that the housing development program is in need of improvement to provide for more efficient and extensive production of housing. The purpose of this Act is to make improvements in all aspects of the Act 105 housing development program.

SECTION 2. Chapter 356, Hawaii Revised Statutes, is amended to read as follows:

1. Section 356-5 is amended to read:

**“Sec. 356-5 Housing authority to be public corporation; commissioners.** An authority to be known as the Hawaii housing authority is created. The authority shall be a public body and a body corporate and politic with perpetual existence, and shall consist of eight commissioners of whom six shall be public members appointed by the governor with the consent of the senate. Not more than three of the public members shall be members of the same political party. Two of the public members of the commission shall be appointed at large, one shall be appointed from the city and county of Honolulu and one from each of the counties of Hawaii, Maui, and Kauai. The director of social services shall be an ex officio voting member of the authority as provided for in section 26-14, but shall not be an ex officio chairman. The special assistant for housing appointed pursuant to section 359G-2 shall be an ex officio voting member of the authority.

A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. Four commissioners shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the authority. The governor shall file with the lieutenant governor a certificate of the appointment or reappointment of any commissioner and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

The governor may appoint an acting commissioner to serve as such during the temporary absence from the State or the illness of any regular commissioner appointed as above provided. The governor shall file with the lieutenant governor a certificate of the appointment of any acting commissioner and the certificate shall be conclusive evidence of the due and proper appointment of the acting commissioner. The acting commissioner shall, during his term of service,

have the same powers and duties as the regular commissioner, and shall be known as an acting commissioner.

The authority shall select from among its members a chairman and a vice-chairman, and it shall employ, not subject to chapters 76 and 77 and section 26-35(4), an executive director. Technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require may be employed subject to chapters 76 and 77. The authority may call upon the attorney general for such legal services as it may require or it may employ its own counsel and legal staff. The authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. The staff provided under section 359G-3 shall be in addition to any staff provided for in this chapter.”

2. Section 356-20 is amended to read:

“**Sec. 356-20 Zoning and building laws to be observed.** All housing projects of the authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated; provided that housing projects developed pursuant to section 359G-4(d) and section 359G-4.1 shall be exempt from this section.”

3. Section 356-29 is amended to read:

“**Sec. 356-29 Form and sale of bonds.** (a) The bonds of the authority shall be authorized by its 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 eight per cent a year, 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 of redemption (with or without premium) as the resolution, its trust indenture, or mortgage may provide.

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

(c) In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons cease to be commissioners or officers before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

(d) In any suit action, or proceedings involving the validity or enforcement of any bond of the authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character and the project shall be conclusively deemed to have been planned, located, and

constructed in accordance with the purposes and provisions of this chapter.”

SECTION 3. Chapter 359, Hawaii Revised Statutes, is amended to read as follows:

1. Section 359-11 is amended by amending subsection (a) to read:

“(a) Notwithstanding any provision of law to the contrary, the authority shall fix the rentals for dwelling accommodations and other facilities in the housing projects provided for by part I of this chapter, at such rates as will produce revenues that will be sufficient to pay all expenses of management, operation, and maintenance, including the cost of insurance, a proportionate share of the administrative expenses of the authority to be fixed by it, and the costs of repairs, equipment, and improvements, to the end that the housing projects shall be and always remain self-supporting. The authority may, in its discretion, fix such rates as a percentage of tenant income, and in such amounts as will produce sufficient revenues out of which to amortize the cost of the housing projects, including equipment, over period or periods of time as the authority may deem advisable.”

2. By adding a new section to read:

“**Sec. 359-72.1 Bond issues authorized.** (a) In accordance with the powers contained in Public Law 93-383, as amended, the authority may, with the approval of the governor, issue and sell taxable housing bonds, including refunding bonds for the purpose of paying or refunding bonds previously issued by the authority under this section, from time to time, at such times and in such amounts as it may deem advisable for the purposes of acquiring, constructing, or developing housing projects under this chapter or any other chapter it administers.

(b) The principal and interest on these bonds shall be payable exclusively from the income and revenues of the housing project acquired, constructed, or developed with the proceeds of these bonds and the federal government grants to the authority under section 802(c) (2), Public Law 93-383, as amended.

(c) The taxable housing bonds issued may be additionally secured by a mortgage of a project acquired, constructed, or developed with the proceeds of these bonds.”

3. Section 359-79 is amended by amending subsection (a) to read:

“(a) Housing bonds issued pursuant to section 359-72 shall bear interest at such rate or rates not exceeding eight per cent a year; and housing bonds issued pursuant to section 359-72.1 shall bear interest at such rate or rates not exceeding ten per cent a year. All bonds shall be payable semiannually, may be term or serial bonds, may be callable at the option of the Hawaii housing authority, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective date, may be payable in such medium of payment, at such place or places, may carry such registration privileges, may have such rank or priority, may be subject to such terms of redemption (with or without premium), may be executed in such manner, may contain such terms, covenants, and conditions, may be in such denomination or denominations, and may be in such form, either coupon or registered, as the resolution of issuance may provide, subject to this part. A resolution of issuance may also provide for the refunding of any bonds subject to this part except that

refunding bonds may mature within forty years from the date of the bonds or any series thereof.”

SECTION 4. Chapter 359G, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to read:

“**Sec. 359G-1.1 Definitions.** Unless otherwise clear from the context, as used in this chapter:

- (1) “Eligible bidder” means a person, partnership, firm, or corporation determined by the authority:
  - (A) To be qualified by experience and financial responsibility to construct housing of the type proposed to be contracted;
  - (B) To have submitted the lowest acceptable bid; and
  - (C) To form a corporation to comply with chapter 416 to receive a lease of lands.
- (2) “Eligible developer” means any person, partnership, cooperative, firm, non-profit or profit corporation or public agency determined by the authority:
  - (A) To be qualified by experience and financial responsibility and support to construct housing of the type described and of the magnitude encompassed by the given project;
  - (B) To have submitted plans for a project adequately meeting the objectives of this chapter, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes, and rules;
  - (C) To be fully capable, on the basis of experience and reputation to complete all sales of the project in a nondiscriminatory fashion and without encountering complaints under chapters 342, 378, 396, 515, or suits under any applicable state or federal civil or human rights statute; if applicable; and
  - (D) To meet all other requisites the authority deems to be just and reasonable, and all requirements stipulated in this chapter.
- (3) “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.
- (4) “Mortgage holder” includes the United States Department of Housing and Urban Development, Federal Housing Administration, United States Department of Agriculture, Farmers Home Administration, any other federal or state agency engaged in housing activity, Administrator of Veterans Affairs, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, private mortgage lender, private mortgage insurer, and their successors, grantees, and assigns.
- (5) “Mortgage lender” means any bank or trust company, savings bank, national banking association, savings and loan association maintaining an office in the State, any insurance company authorized to transact business in the State, or any mortgagee approved by the Federal Hous-

ing Administration and maintaining an office in the State.

- (6) "Purchaser's equity" means the difference between the original cost of the dwelling unit to the purchaser, and the principal amount of any mortgages, liens, or notes outstanding.
- (7) "Qualified resident" means a person who:
- (A) Is a citizen of the United States or a declarant alien;
  - (B) Is at least eighteen years of age;
  - (C) 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
  - (D) 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:

- (A) 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 any lands suitable for dwelling purposes; and
  - (B) 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.
- (8) "Short term project notes" means evidences of indebtedness issued by the State for specified housing projects and secured by such projects the terms of which call for complete repayment by the State of the face amount in not less than two nor more than ten years."

2. Section 359G-3 is amended to read:

**"Sec. 359G-3 Housing authority; staff and contract services.** The Hawaii housing authority shall administer this chapter. The authority may employ staff, subject to chapters 76, 77, and 78. Other persons may be hired on a contractual basis not subject to chapters 76, 77, and 78, when, in the judgment of the authority, the services to be performed are unique and essential to the execution of the functions and purposes of this chapter. No contract shall be for a period longer than two years, and no person hired under contract shall be employed beyond a maximum of six years; provided that services may be contracted for a time, for the completion of specified tasks, or for the duration of the development of a dwelling unit project; provided further that where services are to be contracted for the duration of the development of a dwelling unit project, the two-year contract limitation shall not apply."

3. Section 359G-3.1 is amended to read:

**"Sec. 359G-3.1 Housing assistance unit.** The governor by executive order may establish a housing counseling and referral unit within the authority. The unit shall be responsible for providing counseling to prospective homeowners seeking to purchase a home, and for providing listing and referral services to tenants seeking to rent homes."

4. Section 359G-4 is amended to read:

**“Sec. 359G-4 Powers and duties, generally.** (a) The authority shall develop 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, in partnership with a qualified partner or in its own behalf.

(b) 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.

(c) The authority shall adopt, in accordance with chapter 91 all rules necessary to carry out the purpose of this chapter, including rules relating to determining preference among applicants for housing and determining qualification for and recompense or profit distribution to any partner.

(d) Upon direction from the governor and for such period as he shall authorize, rules 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; provided that these rules shall not contravene any safety standards or tariffs approved by the public utilities commission; provided further that these rules shall follow existing laws 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.

Upon the adoption of such rules, 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 relating to the use, zoning, planning, and development of land, and the construction of dwelling units thereon; provided, that any rules 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 by a majority vote of its members. On the forty-sixth day after submission any rules not disapproved shall be deemed to have been approved by the county.

(e) The authority may acquire, by eminent domain, exchange, or negotiation, land or property required within the foreseeable future for the purposes of this chapter. Whenever land with a completed dwelling or dwellings thereon is acquired by exchange or negotiation, the exchange value or purchase price for such dwelling, including land, shall not exceed its appraised value. Land or property acquired in anticipation of future use may be leased for the interim period by the authority for such term and rent as it deems appropriate.

(f) The authority may make and execute contracts or other instruments necessary or convenient to carry out the purpose of this chapter.

(g) Upon authorization by the legislature, the authority shall cause the

State to issue general obligation bonds to finance:

- (1) Land acquisition;
- (2) The development and improvement 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, and including community information and advocacy services deemed necessary by the authority to provide for citizen participation in the development of housing projects, the implementation of this chapter, and the staffing of any citizen advisory committee the authority may establish;
- (6) The cost of repurchase of units under section 359G-9.2; and
- (7) Any other moneys required to accomplish the purposes of this chapter.
- (h) Do all things necessary and convenient to carry out the purposes of this chapter.”

5. By adding a new section to read:

**“Sec. 359G-4.1 Housing development; exemption from statutes, ordinances, charter provisions, rules.** The authority may develop, on behalf of the State or in partnership, housing projects which shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to zoning and construction standards for subdivisions, development and improvement of land and the construction and sale of homes thereon; provided that:

- (1) The authority finds the project is consistent with the production of housing under this chapter, and meets minimum requirements of good design, pleasant amenities, health, safety and coordinated development and in harmony with the general purpose and intent of this chapter;
- (2) The development of the proposed project does not contravene any safety standards or tariffs approved by the public utilities commission for public utilities; and
- (3) The authority shall have first presented the plans and specifications for the project to the legislative body of the county in which the project is to be situated, and the legislative body, which shall have the right to approve or disapprove the project within forty-five days after presentment, shall have approved the project within forty-five days. On the forty-sixth day after presentment, a project not disapproved shall be deemed approved by the legislative body of the county. The approval shall be based, or deemed to be based, upon a finding that the spirit of any applicable ordinance of that county in maintaining public welfare and safety is not prejudiced by the variance of the proposed project from such ordinance.

The final plans and specifications for the project approved by the legislative body, shall constitute the zoning, building, construction and subdivision standards for that project. No action shall be prosecuted or maintained against any county, its officials or employees, on account of actions taken by them in reviewing, approving or disapproving such plans and specifications. For purposes of sections 501-85 and 502-17, the executive director of the authority or the respon-



sible county official may certify maps and plans of lands connected with the project as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and such maps and plans shall be accepted for registration or recordation by the land court and registrar.”

6. Section 359G-6 is amended to read:

**“Sec. 359G-6 Dwelling unit project, construction and sponsorship of.**

(a) The authority shall, on behalf of the State, or in partnership with qualified developers and contractors, develop real property and construct dwelling units thereon. Qualifications for developers and contractors shall be provided by rules to be adopted by the authority in accordance with chapter 91. Any person, if qualified, may act as both the developer and the contractor.

(b) In selecting the partners or in contracting any services or materials for the purposes of this chapter, the authority shall not be subject to the competitive bidding laws.

(c) The authority shall have sole control of the partnership, shall keep all books of the partnership, and shall ascertain all costs of the partnership, including the cost of services performed by any other partners and it shall audit the same. The other partners shall perform services for the partnership under the direction of the authority and shall be reimbursed for all costs relating to the project as certified by the authority including administrative and overhead costs. Additionally the other partners shall, upon occupancy of the dwelling unit by the purchaser be entitled to a guaranteed gross share of not more than fifteen per cent of the actual cost of the project pro rated to such dwelling unit less any amount subsidized by the State. Subsidies shall include tax relief granted under section 359G-15, unrecovered development and land costs and any other subsidized items as defined in rules to be adopted by the authority pursuant to chapter 91. The percentage of such share shall be determined by the authority by contract with the partner based upon the nature of the services rendered by them.

(d) The authority may require the performance bonds be posted to the benefit of the State with surety satisfactory to it guaranteeing performance by the other partners, or the State may act as a self insurer requiring such security, if any, from the other partners, as the authority shall deem necessary.

(e) The authority may also contract, subject to rules adopted pursuant to chapter 91 but without reference to competitive bidding laws, with any developer, contractor, engineer, architect or any other person or firm whose services would aid in accomplishing the purposes of this chapter.”

7. Section 359G-7 is amended to read:

**“Sec. 359G-7 Bond financing.** (a) General obligation bonds and short term project notes of the State in the aggregate amount not to exceed ~~\$125,000,000~~ \$105,000,000† may be authorized for the dwelling unit revolving fund under this chapter.

(b) Pending the receipt of funds from the issuance and sale of such bonds and notes, the amount required for the purposes of this chapter shall be advanced from the general fund of the State. Upon the receipt of the bond or note funds, the

†Vetoed as indicated.

general fund shall be reimbursed. The director of finance may sequester and separate the proceeds from sale of the bonds and notes into separate funds. The amounts in either fund may be used for any of the purposes set forth in this chapter, including permanent financing, and the state director of finance shall have the authority to use the moneys in the general obligation bond fund for projects which are receiving no federal assistance in the form of insurance, guarantee, or subsidy.”

8. Section 359G-8 is amended to read:

**“Sec. 359G-8 Sale, mortgages, agreement of sale, other instruments.**

(a) The authority shall sell completed dwelling units developed and constructed hereunder to qualified residents in fee simple, or shall cause them to be leased or rented to qualified residents, at a price or rental based on cost as determined by the authority; provided that the authority may retain such units as necessary in a project for lease or rental to nonprofit community organizations for community activity or facility purposes. The gross share to the other partners, or contract payments, and any amounts subsidized by the State, including but not limited to the land, need not be counted as cost so as to increase the price. Such may be borne by the State, under rules adopted pursuant to chapter 91, subject to reimbursement upon sale as is provided for in section 359G-9.2.

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

(c) Every mortgage, agreement of sale, other instrument to secure the indebtedness, or instrument of indebtedness executed by the authority may contain such other provisions as are usually found in such instruments and shall provide that the purchaser may repay the whole or any part of the unpaid balance of the purchase price plus accrued interest at any time without repayment penalty.

(d) If the purchaser defaults on the payment of any loan, the authority shall take all necessary action to collect the delinquent principal and interest on the loan and may take all actions allowed to holders of obligations, including the power to repossess, lease, rent, repair, renovate, modernize, and sell the property foreclosed, subject to the restrictions hereinafter described.

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

9. Section 359G-9.1 is repealed.

10. By adding a new section to read:

**“Sec. 359G-9.2 Dwelling units; restrictions on transfer, waiver of**

**restrictions.** (a) The following restrictions shall apply to the transfer of a dwelling unit purchased from the authority, whether on fee simple or leasehold property;

- (1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed or agreement of sale, if the purchaser wishes to transfer title to the dwelling unit and the property or the lease, the authority shall have the first option to purchase the unit and property or lease at a price which shall not exceed the sum of:
  - (A) The original cost to the purchaser;
  - (B) The cost of any improvements added by the purchaser; and
  - (C) Simple interest on the purchasers' equity in the property at the rate of seven per cent a year.

The authority may purchase the unit either: (1) outright, free and clear of all liens and encumbrances; or (2) by transfer subject to an existing mortgage.

If by outright purchase, the authority shall insure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the purchaser.

In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the purchaser to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority. In such cases, the amount to be paid to the purchaser by the authority shall be the difference between the above-mentioned price and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the authority.

- (2) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the unit and sell or assign the property to any person free from any price restrictions; provided that the purchaser shall be required to pay to the authority the sum of:
  - (A) The balance of any mortgage note, agreement of sale, or other amount owing to the authority;
  - (B) Any subsidy made by the authority or the State not counted as cost under section 359G-8 but charged to the dwelling unit by good accounting practice as determined by the authority whose books shall be prima facie evidence of the correctness of the cost; and
  - (C) Interest on the subsidy prescribed under subparagraph (B) above computed from the date of purchase, or execution of the agreement of sale, at the rate of seven per cent a year; provided that if any proposed sale or transfer will not generate an amount sufficient to pay the authority the sum as computed under paragraph (2) above the authority shall have the first option to purchase the dwelling unit at a price which shall not exceed the sum as computed under paragraph (1) above.
- (b) The restrictions prescribed in subsection (a) above may be waived if:
  - (1) The purchaser wishes to transfer title to the dwelling unit and the property or lease by devise or through the laws of descent to a family

member who would otherwise qualify under rules established by the authority; or

- (2) The authority determines, in accordance with adopted rules, that the sale or transfer of a dwelling unit, at a price and upon terms as it shall set, preserves the intent of this section without the necessity of the State to repurchase the unit; provided that the restrictions prescribed in subsection (a) above shall be reinstated after the transfer of title and shall be fully effective and applicable to the transferee.

(c) The restrictions prescribed in subsection (a) above shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder becomes the owner of a dwelling unit and the land or leasehold interest pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering a dwelling unit and land or leasehold interest encumbered by the first option to purchase in favor of the authority shall, prior to commencing mortgage foreclosure proceedings, notify the authority of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and (2) any intention of the mortgagee to foreclose the mortgage under chapter 667. The authority shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of subparagraphs (a) (1) (B) and (C) and the purchaser's equity in the property.

(d) The provisions of this section shall be incorporated in any deed, lease, mortgage, agreement of sale, or other instrument of conveyance issued by the authority.”

11. By adding a new section to read:

“**Sec. 359G-9.3 Dwelling units; restrictions on use.** (a) A dwelling unit purchased from the authority shall be occupied by the purchaser at all times.

(b) Violation of subsection (a) shall be sufficient reason for the authority, at its option, to purchase the unit as provided in section 359G-9.2(a) (1), or 359G-9.2(a) (2), as applicable.

(c) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the authority shall expressly contain the restrictions on use prescribed in this section.”

12. Section 359G-10 is amended to read:

“**Sec. 359G-10 Revolving fund.** There is created a dwelling unit revolving fund. The funds appropriated for the purpose of this chapter and all moneys received or collected by the authority under the provisions of this chapter shall be deposited in the revolving fund. The proceeds in the fund shall be used to reimburse the general fund to pay the interest on general obligation bonds issued for the purposes of this chapter, for the necessary expenses in administering the chapter, and for carrying out the purposes of this chapter, including, but not limited to, the expansion of community facilities constructed in conjunction with

housing projects for elderly persons, and supplementing buildings costs, federal guarantees required for operational losses, and all things required by any federal agency in the construction and receipt of federal funds for housing projects for the elderly.”

13. Section 359G-10.1 is repealed.

14. Section 359G-10.5 is amended to read:

**“Sec. 359G-10.5 Independent development of projects.** (a) In any county, the authority may enter into agreements for housing projects with a private developer where a project was initiated by the private developer and in the authority’s reasonable judgment is primarily designed for low-income housing. The agreement may provide for the housing to be placed under the control of the authority, or to be sold by the authority or to be sold to the authority as soon as the units are completed and shall contain such terms, conditions, and covenants as the authority, by rules made in conformity with this chapter and chapter 91 deems appropriate, and every agreement shall provide for the developer to furnish a performance bond, in favor of the authority, assuring the timely and complete performance of the housing project. Sureties on the bond must be satisfactory to the authority.

(b) Whenever the authority determines a developer to be eligible, it may accept its application for approval of a project provided the plans and specifications for the project and the terms of the agreement to be entered:

- (1) Provide for economically integrated housing by stipulation and design; that not less than sixty per cent of the units shall be sold in price ranges established by the authority under this chapter and chapter 91 as being within the purchasing power of lower income purchasers and the balance of the units to be sold at these or other prices; provided further that the variously priced units shall not be segregated and shall be randomly dispersed throughout the project horizontally, and if applicable, vertically;
- (2) Provide for the sale of all units in fee simple or in leasehold either to the authority or to the purchaser and in all cases subject to all of the provisions of section 359G-9.2; and
- (3) Encompass the use of lands adequately suited to the size, design, and types of occupancies designated in subsection (a), properly located for occupancy by the groups for which primarily designed under this section, properly districted for the use intended prior to this application, and appropriately zoned within an urban land use district, or appropriate in its situation and surroundings for more intensive or denser zoning.

(c) The authority may accept and approve projects independently initiated by private developers which fully comply with subsections (a) and (b). The authority may review the plans, specifications, districting, and zoning of the project for the purpose of exempting the project from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to zoning and construction standards for subdivisions, development, and improvement of the land and the construction, improvement, and sale of homes thereon; pro-

vided that the procedures in section 359G-4.1(1), (2), and (3) have been satisfied.”

15. Section 359G-11 is amended to read:

**“Sec. 359G-11 Private development of projects.** (a) The authority may 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 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.

(b) Notwithstanding any other provision of law, the authority is authorized to acquire the capital stock of mortgagors holding property covered by a mortgage guaranty under this chapter and established by this section, and to exercise the rights as holder of such capital stock during the life of such mortgage and, upon the termination of the mortgage, to dissolve the corporation; to guarantee the payment of notes or other legal instruments of such mortgagors; and to make payments thereon. All housing facilities placed under the control of the authority pursuant to the provisions of this section shall be deemed to be housing facilities under the jurisdiction of the State.

(c) On request by the authority, the attorney general shall furnish to the authority, an opinion as to the sufficiency of title to any property on which it is proposed to construct housing, or on which housing has been constructed, under this section. If the opinion of the attorney general is that the title to such property is good and sufficient, the authority is authorized to guarantee, or enter into a commitment to guarantee, the mortgagee, against any losses that may thereafter arise from adverse claims to title. None of the proceeds of any mortgage loan hereafter insured shall be used for title search and title insurance costs; provided that if the authority determines in the case of any housing project, that the financing of the construction of such project is impossible unless title insurance is provided, the authority may provide for the payment of the reasonable costs necessary for obtaining title search and title insurance. Any determination by the authority under the foregoing proviso shall be 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 authority which shall conform as closely as is possible to the practices of the federal housing administration in insuring loans under the Capehart Housing Act (Title 42, USC); provided that at no time shall the State's liability, contingent or otherwise, on such guarantees exceed \$10,000,000."

16. Section 359G-11.1 is amended to read:

**"Sec. 359G-11.1 Interim financing of projects.** (a) The authority may provide interim construction loans to qualified developers and nonprofit corporations whose projects for the development and construction of dwelling units qualify for any federal or state housing program for low income housing. In addition to the rate of interest charged on interim loans the authority may charge loan commitment fees, to be determined by rules adopted by the authority.

(b) The interim loans shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest in the land upon which the dwelling units are constructed. The authority may require such other security interests and instruments as it deems necessary to secure the indebtedness and such other conditions consistent with the production and marketing of dwelling units at the lowest possible prices. The authority may also set the conditions of the loan in a building and loan agreement between the borrower and the authority in order to secure the loan and the performance of the borrower to complete the project."

17. Section 359G-12 is amended by amending subsections (a) and (b) to read:

"(a) At the request of the authority the director of finance may guarantee the top twenty-five per cent of the principal balance of real property mortgage loans of qualified single-family or multi-family housing; a maximum of one hundred per cent of the principal balance of real property mortgage loans of qualified single-family housing under section 213 of the Hawaiian Homes Commission Act; the top twenty-five per cent of the principal balance of real property mortgage loans of single-family and multi-family housing developed under self-help housing programs; plus the interest due thereon, made to qualified borrowers by qualified private lenders; provided that at no time shall the State's liability, contingent or otherwise, on such guarantees exceed \$10,000,000. For the purposes of this section, the term "self-help housing program" means development or conservation of housing in which prospective homeowners have contributed labor, materials, or real property; which at least two-thirds of the participating homeowners are qualified by income for assistance under this chapter; and which is carried out under sponsorship of a nonprofit community organization.

(b) The loans shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest of the borrower in the single-family or multi-family dwelling owned and occupied by the borrower and his permitted assigns. Private lenders shall include all banks, savings and loan associations, mortgage companies, and other qualified companies and trust funds whose business includes the making of loans in the State."

18. Section 359G-15 is amended to read:

**"Sec. 359G-15 Exemption from general excise tax.** Notwithstanding any

other law to the contrary, all rents and proceeds received from housing or housing projects, including all gross proceeds received by contractors for the construction of such housing or housing projects, developed pursuant to section 359G-6 and section 359G-11 shall be exempt from general excise or receipts taxes. At the request of the authority, the department of taxation shall exempt such items from general excise or receipts taxes for projects developed pursuant to section 359G-10.5 and section 359G-11.1. A claim for such exemption shall be filed with the director of taxation pursuant to rules adopted by the director of taxation.”

19. Section 359G-16 is amended to read:

**“Sec. 359G-16 Downpayment loans.** (a) The authority may make direct downpayment loans to qualified borrowers. The downpayment loan to any borrower shall not exceed thirty per cent of the purchase price of the residential property or \$15,000, whichever is less.

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

(c) The principal of the downpayment loan, together with accrued interest, shall be repaid by the borrower in such installments as determined by the authority over a period not exceeding forty years. The period over which the principal and interest shall be paid need not coincide with the period over which the loan from the mortgage lender for the balance of the purchase price must be repaid. The borrower may repay the whole or any part of the unpaid balance of the downpayment loan, plus accrued interest, at any time without penalty.

(d) The authority may secure the services of the mortgage lender who loans to the borrower the balance of the purchase price of the residential property or the services of any other mortgage lender doing business in the State to collect, in behalf of the State, the principal and interest of the downpayment loan and otherwise to service the downpayment loan, for a servicing fee not in excess of then prevalent loan servicing fees. For this purpose, the authority may assign the second mortgage held by it to secure the repayment of the downpayment loan to such mortgage lender.”

20. Section 359G-17 is amended to read:

**“Sec. 359G-17 Qualifications for downpayment loan.** (a) No person shall be qualified for a downpayment loan, unless he:

- (1) Is a citizen of the United States or a declarant alien;
- (2) Is at least eighteen years of age;
- (3) Is a bona fide resident of the State of one year or more;
- (4) Has a bona fide intent to reside in the residential property to be purchased;
- (5) Is accepted by a mortgage lender as a person to whom it is willing to lend money for the purchase of the residential property provided the required downpayment is made; and
- (6) Has the financial capacity to repay the downpayment loan.

(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 he, his spouse or both he and his spouse (unless separated and living apart under a decree of a court of competent jurisdiction) owns such residential property.”

21. Section 359G-20 is repealed.

22. Section 359G-21 is amended to read:

“**Sec. 359G-21 Participation in loans.** The authority may participate up to fifty per cent of the principal amount of a loan made to a qualified borrower by a mortgage lender who is unable otherwise to lend the borrower sufficient funds at reasonable rates in the purchase of a residential property; provided that at no time shall the State’s total outstanding share exceed the sum of \$10,000,000.”

23. Section 359G-22 is amended to read:

“**Sec. 359G-22 Loans qualifying for participation loans.** Except as otherwise provided, the requirements for a loan to qualify under this part shall be the same as those prescribed for loans qualifying for mortgage loan guarantee under section 359G-12. The private lender’s share of the loan shall bear interest at a rate not more than one and one-half per cent higher than the interest on the State’s share. The first mortgage document shall be held by the private lender. Division of interest in the collateral shall be in proportion to the participation of the State and the private lender.”

24. Section 359G-29 is repealed.

25. Section 359G-30 is amended to read:

“**Sec. 359G-30 Arbitrage provision; interest rate.** (a) Any other provision of law to the contrary notwithstanding, neither the authority nor the director of finance shall make loans or purchase mortgages from the proceeds of general obligation bonds of the State or from a revolving fund established or maintained from the proceeds of such bonds, at a rate of interest which would cause any general obligation bond of the State to be an “arbitrage bond,” as defined in subsection (d) (2) of section 103 of the Internal Revenue Code of 1954 of the United States of America as now in effect, subject to treatment under subsection (d) (1) of such section 103 as an obligation not described in subsection (a) (1) of said section 103.

(b) The rates of interest on loans made under this chapter shall be established by the authority, with the approval of the director of finance, after each sale of general obligation bonds of the State, the proceeds of which are to be used for the purposes of this chapter. In the event that no such sale intervenes in a twelve-month period after the last rate fixing, the authority may review the then existing rates on loans made under this chapter and retain the existing rate or, with the approval of the director of finance, establish different rates.

(c) The director of finance shall approve such rates, so as to produce up to but not in excess of the maximum yield to the State permitted under such section 103(d) (2) of the United States Internal Revenue Code of 1954, on the assumption that the general obligation bonds, the proceeds of which are to be used for the purposes of this chapter, would otherwise be “arbitrage bonds” under that section were such maximum yield to be exceeded. The establishment of the rates of interest shall be exempt from chapter 91.”

26. Section 359G-31 is amended to read:

**“Sec. 359-31 Commercial, industrial, and other uses.** (a) In connection with the development of any residential units under this chapter the authority may also develop commercial, industrial, and other properties if it determines that such uses can be an integral part of the development and can help to preserve the life styles of the purchasers of residences in the development. The authority may designate any portions of the developments as for commercial, industrial, or other use and shall have all the powers granted under this chapter with respect thereto including the power to by-pass statutes, ordinances, charter provisions and rules of any governmental agency pursuant to section 359G-4.1. For this purpose the authority may use any of the funds authorized under this chapter.

(b) The authority shall establish rules pursuant to chapter 91 which shall provide the manner of designation of such uses and shall provide that any commercial, industrial, or other properties so developed shall be sold or leased at cost or at economic rents or sales prices. Sale or lease shall be made at cost to owners of commercial, industrial, or other facilities displaced by the authority. All other leases or sales shall be at economic rents or sales prices determined by the authority, after appraisal, to be consistent with rents or sales prices in similar locations or terms. The net proceeds of all such sales or leases, less costs to the authority, shall be deposited in the dwelling unit revolving fund.

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

SECTION 5. Chapter 359G, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“Sec. 359G- Housing information system.** (a) The authority shall, with the assistance of other agencies of the State and its political subdivisions with related responsibilities, develop and maintain a housing information system. The system shall make available current information as to housing conditions, needs, supply, characteristics, developments, trends, and federal housing programs.

(b) In establishing and maintaining the information system, the authority shall assemble necessary and appropriate information, including but not limited to statistics and research developed by agencies of the United States, the State, the counties, private research organizations, nonprofit community groups, trade associations, including those of the construction and real estate industries, departments, and individuals at the University of Hawaii.

(c) The information system may be used by housing researchers, planners, administrators, and developers, and shall be coordinated with other housing research efforts. The authority shall maintain a current supply of information, including means to gather new information through surveys, contracted research and investigations, and shall by rule under chapter 91 provide for access to the information system at reasonable rates on an equitable basis.

**Sec. 359G- Housing design research.** (a) The authority may, and is encouraged to conduct, or cause to be conducted, research on housing needs, materials, design, and technology, and should develop means for applying the findings of such investigation to dwelling unit projects created under this chapter.

(b) Such studies should include, but not be limited to, the following subjects:

- (1) Sociocultural investigation of the housing and community utilization, preferences, and needs of residents within the housing need classification of this chapter;
- (2) Research and development of innovative technology for more efficient, low cost building construction, and operation through application of building systems, materials, and energy and resource conservation;
- (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, and ownership, involving tenants, homeowners, financing agencies, and others;
- (5) Other necessary and appropriate research areas related to lowering the long-term costs of housing, conserving resources, or creating communities best suited to the needs of residents.”

SECTION 6. The development projects manager, sales manager, finance manager and housing program analyst employed under the authority of section 359G-3, Hawaii Revised Statutes, prior to the effective date of this Act and still so employed on such date shall be accorded all the rights, benefits, and privileges as of the effective date of this Act. Such rights and privileges shall include seniority, prior service credit for retirement purposes, vacation and sick leave credit, and salary level, and each such employee shall become a civil service employee without necessity of examination.

SECTION 7. No officer of the State having tenure shall suffer any loss of salary, prior service credit, vacation, sick leave, or other employee benefits or privileges as a consequence of this Act.

Although an office or position held by an officer having tenure is abolished, the officer shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification.

SECTION 8. Statutory 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 9. This Act shall take effect upon approval.

(Approved June 9, 1976.)

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\*Edited accordingly.