

ACT 50

H.B. NO. 1686

A Bill for an Act Relating to the Hawaii Housing Authority.

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

SECTION 1. Findings and purpose. The Legislature finds that a major

determinant of the continuing housing problem in Hawaii is the lack of long term mortgage financing at affordable interest rates available from lending institutions in the State; that this lack of affordable long term mortgage financing has hindered the purchase of residences in the State, particularly for first-time buyers, younger families, persons and families of lower and moderate income, and the elderly; and that this lack of affordable financing has significantly reduced construction starts of new residential housing units in the lower and moderate sales price range.

The Legislature further finds that existing loan programs will not provide sufficient resources to meet the future demand for affordable financing of residential mortgage loans for persons and families of lower and moderate income, younger families, and the elderly.

The Legislature further finds that there exists a critical need for the Hawaii Housing Authority to be granted comprehensive housing loan program powers, such as:

- (1) The power to purchase existing loans, whether or not eligible loans, as defined in this Act, from originating mortgage lenders and other sources within the State;
- (2) The power to enter into advance commitments with mortgage lenders to purchase and then to purchase eligible loans from such mortgage lenders;
- (3) The power to make loans to mortgage lenders who will then make eligible loans; and
- (4) The power to fund and to commit to fund eligible loans made through mortgage lenders;

providing such loans have in each case, been made pursuant to the provisions of this Act and the criteria established by the Authority.

The Legislature further finds that the State Constitution was amended by the people of Hawaii on November 7, 1978, to permit revenue bonds issued for these housing loan programs to be excluded in determining the power of the State to issue general obligation bonds.

The Legislature further finds that the powers conferred, the issuance of revenue bonds, and the expenditure of public moneys under this Act constitute a serving of a valid public purpose, and that this enactment is in the public interest and is so declared as an express legislative determination.

The purpose of this Act is to alleviate the shortage of long term investment funds for housing in this State by authorizing the Hawaii Housing Authority to raise funds from private investors through the sale of revenue bonds, and to make those funds available at affordable interest rates through mortgage lenders to meet the needs of persons and families of lower and moderate income. These funds will be used in the housing loan programs in accordance with this Act and the criteria established by the Authority.

It is the intent of this Act that the housing loan programs provided herein be made available on a non-exclusive basis to interested mortgage lenders who are otherwise active in mortgage lending in the State.

SECTION 2. This Act shall be known as the "Housing Loan and Mortgage Act".

SECTION 3. Chapter 356, Hawaii Revised Statutes, is amended by designating all existing sections to read:

“PART I. GENERAL PROVISIONS”

SECTION 4. Chapter 356, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read:

“PART II

HOUSING LOAN AND MORTGAGE PROGRAMS

Sec. 356-201 Definitions. The following words or terms as used in this part shall have the following meanings unless a different meaning clearly appears from the context:

“Eligible borrower” means any person or family, irrespective of race, creed, national origin, or sex, who:

- (1) Is a citizen of the United States or a declarant alien;
- (2) Is a bona fide resident of the State;
- (3) Is at least of legal age;
- (4) Does not himself, or whose spouse if he is married, own any interest in any residential property in the State; and
- (5) Meets other qualifications as established by rules adopted by the authority.

“Eligible loan” means a loan to an eligible borrower for the purchase of a housing unit, including a condominium unit; provided that the property financed is located in the State, will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the authority.

“Housing loan programs” includes all or any part of the loan to lenders program, the purchase of existing loans program, the advance commitments program, and the eligible loan funding program authorized under this part.

“Mortgage lender” means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, which: (1) Is authorized to do business in the State; (2) Customarily provides service or otherwise aids in the financing of mortgages on single family or multi-family residential property; and (3) Is a financial institution whose accounts are federally insured or is an institution which is an approved mortgagee for the Federal Housing Administration or is an approved lender for the Veterans Administration or the Farmers Home Administration or is an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

“Revenue bonds” means bonds, notes, or other evidence of indebtedness of the authority issued to finance any of the housing loan programs under this part.

“Trustee” means a national or state bank or trust company within or without the State which enters into a trust indenture.

“Trust indenture” means an agreement by and between the authority and the trustee, which sets forth the duties of the trustee with respect to the revenue bonds, the security therefor, and other provisions as deemed necessary or convenient by the authority to secure the revenue bonds.

Sec. 356-206 Rules; eligible borrower. (a) The authority shall establish the qualifications of an eligible borrower, and may consider, but not be limited to, the following:

- (1) The proportion of income spent for shelter;
- (2) Size of the family;
- (3) Cost and condition of housing available to the total housing market; and
- (4) Ability of the person to compete successfully in the normal housing market and to pay the amounts on which private enterprise is providing loans for safe, decent, and sanitary housing in the State.

(b) The adjusted household income of an eligible borrower shall not exceed one hundred fifteen per cent of the median income for households in the State as most recently published by the United States Department of Health, Education and Welfare.

(c) The authority shall require that the assets of an eligible borrower not exceed an amount as established by the authority.

Sec. 356-207 Rules; eligible loans. (a) The authority shall establish requirements for property financed by an eligible loan, and may consider, but not be limited to the location, age, condition, and other characteristics of the property.

(b) The authority shall establish restrictions on the terms, maturities, interest rates, collateral, and other requirements for eligible loans; provided that no initial payment or down payment on property securing an eligible loan shall exceed twenty per cent of the fair market value of the property.

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

Sec. 356-211 Revenue bonds; authorization. (a) The authority, with the approval of the governor, may issue from time to time revenue bonds in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for the purpose of undertaking and maintaining any of the housing loan programs.

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

(c) The revenue bonds shall be issued in the name of the authority, and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding forty years from the date of issuance.

Sec. 356-212 Revenue bonds; payment and security. (a) The revenue bonds shall be payable from and secured by the revenues derived from the benefits of the housing loan programs for which the revenue bonds are issued, including:

- (1) Any payment made for eligible loans or other agreements entered into for the housing loan programs;
- (2) Revenues derived from insurance proceeds;
- (3) Reserve accounts and earnings thereon; and

(4) Revenues resulting from loans to mortgage lenders or from the payment on account of principal of and interest on loans purchased from mortgage lenders.

(b) The authority may pledge any revenues derived from the housing loan programs financed from the proceeds of the revenue bonds to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any note or other undertaking, obligation, or property held by the authority to secure the loans.

Sec. 356-213 Revenue bonds; interest rate, price, and sale. (a) The revenue bonds shall bear interest at a rate or rates payable monthly, quarterly, or semi-annually.

(b) The authority shall include the costs of undertaking and maintaining the housing loan programs for which the revenue bonds are issued in determining the principal amount of revenue bonds to be issued. In determining the cost of undertaking and maintaining the housing loan programs, the authority may include the cost of purchasing or funding loans or other agreements entered into for the housing loan programs; the costs of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and marketing services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period not to exceed one year from the date of issuance.

(c) The revenue bonds may be sold at public or private sale, and for a price as may be determined by the authority to be in the the best interest of the State.

Sec. 356-214 Revenue bonds; investment of proceeds, and redemption. Subject to any agreement with the holders of its revenue bonds, the authority may:

(1) Invest its moneys not required for immediate use, including proceeds from the sale of any revenue bonds, in accordance with section 356-31;

(2) Purchase its revenue bonds out of any fund or money of the authority available therefor, and hold, cancel, or resell the revenue bonds.

Sec. 356-217 Trustee; designation, duties. (a) The authority shall designate a trustee for each issue of revenue bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the authority to receive and receipt for, hold, and administer the proceeds of the revenue bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the authority to hold and administer the housing loan program revenue bond special fund established pursuant to section 356-221, and to receive and receipt for, hold, and administer the revenues derived by the authority from the benefits of the housing loan programs for which the revenue bonds are issued and to apply these revenues to the payment of the cost of administering, operating, and maintaining the housing loan programs, to pay the principal of and interest on these bonds, to the establishment of reserves, and to other purposes as may be authorized in the proceedings providing for the issuance of the revenue bonds.

(d) Notwithstanding section 39-65, the director of finance may appoint the trustee to serve as fiscal agent for:

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

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

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the director of finance in sections 36-3 and 39-12, and the third sentence of section 39-65, to appoint the trustee or others as fiscal agents, paying agents and registrars for the revenue bonds or to authorize and empower those fiscal agents, paying agents and registrars to perform the functions referred to in those sections.

Sec. 356-218 Trust indenture. (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as deemed necessary or convenient by the authority for the purposes of this part.

(b) A trust indenture may allow the authority to pledge and assign to the trustee loans and other agreements related to the housing loan programs, and the rights of the authority thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any revenue bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the revenue bonds required by section 39-64 may be facsimiles of their signatures.

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

(1) The investment of the proceeds of the revenue bonds, the investment of any reserve for the bonds, the investment of the revenues of the housing loan programs, and the use and application of the earnings from investments; and

(2) The terms and conditions upon which the holders of the revenue bonds or any portion of them or any trustee thereof may institute proceedings for the foreclosure of any loan or other agreement or any note or other undertaking, obligation or property securing the payment of the bonds and the use and application of the moneys derived from the foreclosure.

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

Sec. 356-221 Revenue bonds; special funds. (a) A separate special fund shall be established for each housing loan program or part thereof financed from the proceeds of the revenue bonds secured under the same trust indenture. Each fund shall be designated "housing loan program revenue bond special fund" and shall bear additional designation as the authority deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, including particularly section 359G-10, all revenues, income, and receipts derived from the benefits of the

housing loan program for which the revenue bonds are issued shall be paid into the housing loan program revenue bond special fund established for that program and applied as provided in the proceedings authorizing the issuance of the revenue bonds.

Sec. 356-231 Housing loan programs; procedures and requirements.

(a) The authority shall establish procedures for:

- (1) The submission of requests or the invitation of proposals for loans to mortgage lenders;
- (2) The purchase of existing loans by auction, invitation of tenders, or negotiation;
- (3) The making of advance commitments to purchase and the purchasing of eligible loans to be made by mortgage lenders by auction, invitation of tenders, or negotiation; and

(4) Loan applications made through mortgage lenders to eligible borrowers.

(b) The authority shall establish standards and requirements for:

- (1) The allocation of loans to mortgage lenders;
- (2) The allocation of funds to purchase existing loans from mortgage lenders;
- (3) The making of advance commitments and allocation of funds to purchase eligible loans from mortgage lenders; and
- (4) The participation by mortgage lenders as originators and processors of eligible loans on behalf of the authority.

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

(e)† The authority may adopt rules necessary or convenient for the operation of the housing loan programs under this part.

Sec. 356-232 Housing loan programs; general powers. (a) The authority may make, enter into, and enforce all contracts or agreement which are necessary, convenient, or desirable for the purposes of the performance of its duties in executing the housing loan programs.

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

Sec. 356-233 Housing loan programs; self supporting. The interest rate, fees, charges, premiums, and other terms of the loans made under the housing loan programs shall be at least sufficient to pay the cost of administering and maintaining the portion of the specific housing loan programs for which the revenue bonds have been issued, and to assure payment of the principal of and interest on the revenue bonds as they become due.

Sec. 356-234 Housing loan programs; fees. The authority may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, for its housing loan programs.

The fees, premiums, and charges shall be deposited into the housing loan program revenue bond special fund established for the particular housing loan program or part thereof from which the fees, premiums and charges are derived as

†So in original. There is no subsection (d).

determined by the authority.

Sec. 356-235 Housing loan programs; evidence of eligible loan. (a) Each mortgage lender who participates in any housing loan program shall submit evidence, as deemed satisfactory by the authority, that eligible loans have been made from the proceeds of the revenue bonds.

(b) The authority may inspect the books and records of the mortgage lenders as may be necessary for this section.

Sec. 356-241 Loans to lenders program. (a) The authority may make loans to mortgage lenders under terms and conditions requiring that the loan proceeds be used within a time period prescribed by the authority to make eligible loans in an aggregate principal amount substantially equal to the amount of the loan.

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

(c) The loan as determined by the authority shall:

- (1) Bear a date or dates;
- (2) Mature at a time or times;
- (3) Be evidenced by a note, bond or other certificate of indebtedness;
- (4) Be subject to prepayment; and
- (5) Contain other provisions consistent with this part.

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

Sec. 356-242 Loan to lenders program; collateral security. (a) Loans made to mortgage lenders shall be additionally secured by a pledge of a lien upon collateral security in an amount as the authority deems necessary to assure the payment of principal of and interest on the loans as they become due.

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

(c) A statement designating the collateral security pledged, the mortgage lender pledging the collateral, and the authority's interest in the pledged collateral may be filed with the bureau of conveyances. Where a statement has been filed, no possession, further filing, or other action under any state law shall be required to perfect any security interest which may be deemed to have been created in favor of the authority. The mortgage lender shall be deemed the trustee of an express trust for the benefit of the authority in all matters relating to the pledged collateral.

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

Sec. 356-251 Purchase of existing loans program. (a) The authority may contract with a mortgage lender to purchase, in whole or in part, existing loans, whether or not eligible loans. The contract may contain provisions as determined by the authority to be necessary or appropriate to provide security for its revenue bonds,

including but not limited to provisions requiring the:

- (1) Repurchase of the loans, in whole or in part, by mortgage lenders at the option of the authority;
- (2) Payments of premiums, fees, charges, or other amounts by mortgage lenders to provide a reserve or escrow fund for the purposes of protecting against loan defaults; and
- (3) Guarantee by, or for recourse against, mortgage lenders, with respect to defaults on these loans of the authority.

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

Sec. 356-261 Advance commitments program. (a) The authority may contract with a mortgage lender for the advance commitment to purchase eligible loans.

(b) The contract may contain provisions as determined by the authority to be necessary or appropriate to provide security for its revenue bonds.

Sec. 356-271 Eligible loan funding program. (a) The authority may contract with mortgage lenders to fund eligible loans.

(b) The contract may contain provisions as determined by the authority to be necessary or appropriate to provide security for its revenue bonds.

Sec. 356-281 Loans; service and custody. The authority may contract for the service and custody of its loans. The contract may provide for the payment of fees or charges for the services rendered; provided that the fees or charges shall not exceed the usual, customary, and reasonable charges for the services rendered.

Sec. 356-282 Loans; sale, pledge, or assignment. (a) Subject to any agreements with the holders of its revenue bonds, the authority may sell its loans at public or private sale at a price and upon terms and conditions as it determines.

(b) Subject to any agreements with the holders of its revenue bonds, the authority may pledge or assign its loans, other agreements, notes, or property to secure the loans or agreements.

Sec. 356-283 Loans; insurance and guarantees. The authority may procure insurance or guarantees against any default of its loans, in amounts and from insurers or guarantors, as it deems necessary or desirable.

Sec. 356-284 Loans; default. The authority may renegotiate, refinance, or foreclose any loan in default.

The authority may waive any default or consent to the modification of the terms of any loan or security agreement.

The authority may commence any action to protect or enforce any right conferred upon it by any law, mortgage, insurance policy, contract, or other agreement.

The authority may bid for and purchase the property secured by the loan at any foreclosure or other sale, or acquire or take possession of the property secured by the loan.

The authority may operate, manage, lease, dispose of, or otherwise deal with the property secured by the loan.

Sec. 356-291 Arbitrage provisions. Any other provision of the law to the contrary notwithstanding, the authority shall not make or cause to be made loans from the proceeds of the revenue bonds issued pursuant to this part under terms or conditions which would cause any revenue bond to be an "arbitrage bond" as defined in Section 103 of the Internal Revenue Code of 1954, as amended."

SECTION 5. Advisory Council. The authority shall appoint an advisory council to advise in the implementation and operation of the housing loan programs authorized under this part.

The council shall serve without compensation and shall consist of six members, one of which shall be the executive director of the Hawaii housing authority, two of which shall be selected from the general public, and three of which shall be selected, one each from the Hawaii league of savings associations; the mortgage bankers association, and the Hawaii bankers association. The chairman of the council shall be selected from its membership. All appointees shall serve for a two year term.

SECTION 6. Construction. The powers conferred by this Act shall be in addition and supplemental to the powers conferred by any other law. The housing loan programs authorized under this Act may be undertaken, and revenue bonds may be issued under this Act and part III of chapter 39, notwithstanding that any other law may provide for a loan program similar to that authorized under this Act, and may be undertaken for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations or other provisions contained in any other law. Insofar as the provisions of this Act are inconsistent with the provisions of any other law, this Act shall be controlling.

SECTION 7. Issuance of revenue bond; amount authorized. Revenue bonds may be issued by the authority pursuant to part III, chapter 39 and part II, chapter 356 in an aggregate principal amount not to exceed \$125,000,000 at such times and in such amounts as it deems advisable for the purpose of undertaking and maintaining any of the housing loan programs in part II of chapter 356.

SECTION 8. Severability. If any provision of this Act, or any provision of the part to be added pursuant hereto to chapter 356, Hawaii Revised Statutes, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect any other provision of this Act or said part or the application thereof to other persons or circumstances which can be given effect without the invalid provision or application, and to this end the provisions of this Act and said part are severable.

SECTION 9. Litigation affecting revenue bonds. Any provision of law to the contrary notwithstanding, no revenue bond shall be deemed authorized herein, if a final decision by a court of competent jurisdiction is rendered, the effect of which decision would cause such revenue bond to be included in determining the power of the State to issue general obligation bonds or authorized indebtedness. It is the intent of this Act that the revenue bonds herein shall not be deemed authorized, if such bonds will be included in determining the power of the State to issue general obligation bonds or authorized indebtedness.

SECTION 10. Effective date. This Act shall take effect upon its approval.

(Approved May 14, 1979.)