

ACT 205

H.B. NO. 1512

A Bill for an Act Relating to Taxable Mortgage Securities Programs.

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

SECTION 1. Findings and purpose. The legislature finds that existing loan programs may not provide sufficient resources to meet the future demand for lower interest residential mortgage loans.

The legislature further finds that the housing loan program, popularly known as the "Hula Mae Loan Program", which was established by the state legislature in 1979 has been a very successful program in providing below-market-interest-rate loans to first-time homebuyers. Working with the private sector, the Hawaii housing authority to date has assisted approximately 4,400 families in purchasing a home of their own since the first tax-exempt bond issue in 1980.

The legislature further finds that despite the success of the Hula Mae loan program, mortgage financing alternatives must be sought due to passage of the Tax Reform Act of 1986. Provisions in the tax reform measure have placed much stricter income and purchase price limits on the Hula Mae program; in fact, it is estimated that a large percentage of the families and properties which have previously qualified for Hula Mae financing would no longer qualify under the new federal laws regarding tax-exempt mortgage revenue bond programs.

The legislature further finds that there is a need to assist homebuyers in the "gap group" who will no longer qualify under the new stringent provisions governing the tax-exempt revenue bond program, and who are unable to qualify for a conventional mortgage loan.

The legislature further finds that the state constitution was amended by the people of Hawaii on November 7, 1978, to permit mortgage revenue securities to be issued without being counted toward the State's debt ceiling since such securities are not financial obligations of the State.

The legislature further finds and declares that the powers conferred, the issuance of mortgage securities, and the expenditure of public moneys under this Act serve a valid public purpose, and that this enactment is in the public interest.

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 nationally from private investors through the sale of taxable mortgage securities, and to make those funds available at affordable interest rates through mortgage lenders to meet the needs of persons and families of moderate income. The availability of such funds will encourage further increases of the housing inventory within an affordable price range. 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 should be made available on a non-exclusive basis to interested mortgage lenders who are otherwise active in mortgage lending in the State.

SECTION 2. Chapter 356, Hawaii Revised Statutes, is amended by adding a new part to be designated and to read as follows:

**"PART IV. TAXABLE MORTGAGE
SECURITIES PROGRAMS**

§356-401 Definitions. Whenever used in this part, unless the context otherwise requires:

"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 personally, or whose spouse if the person 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" or "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" include all or any part of the loan programs authorized in section 356-403.

"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.

"Securities" as used in this part means revenue bonds, participation certificates, pass-through certificates, mortgage-backed obligations, and other obligations 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 securities, the security therefor, and other provisions as deemed necessary or convenient by the authority to secure the securities.

§356-402 Housing loan programs; authorization. (a) The authority may establish under this part one or more eligible loan programs.

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

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

(d) The authority may acquire any obligation under conditions which require the seller of such obligation to use the proceeds of the sale for the purpose of financing eligible loans.

§356-403 Housing loan programs; procedures and requirements. (a)

The authority may establish procedures and requirements for:

- (1) The purchase of loans from mortgage lenders by auction, invitation of tender, advance commitment, or other negotiation;
- (2) The making of loans through mortgage lenders to eligible borrowers or qualified sponsors;
- (3) The allocation to mortgage lenders of money made available under this part; and
- (4) The participation by mortgage lenders as originators and processors of loans on behalf of the authority under this part.

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

§356-404 Housing loan programs; general powers. (a)

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

(b) The authority may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient in connection with its housing loan programs established under this part. The fees, premiums, and charges shall be deposited into such funds as are determined by the authority.

(c) The authority may contract for the servicing and custody of any loans or other obligations acquired under this part.

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

(e) Subject to any agreements with the holders of its securities, the authority may renegotiate, refinance, or foreclose any loan in default; and may commence any action to protect or enforce any right conferred upon it by any law, or as provided in any mortgage, insurance policy, contract, or other agreement; and 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 and may operate, manage, lease, dispose of, or otherwise deal with the property securing the loan.

§356-405 Securities; authorization. (a)

The authority, with the approval of the governor, may issue and sell from time to time securities in amounts determined by the authority for the purpose of undertaking and maintaining any of the housing loan programs established under this part.

(b) All securities issued under this part shall be issued pursuant to part III of chapter 39, except as provided in this part, and except that the term "revenue bonds" as used in part III of chapter 39 shall mean the securities.

(c) All securities issued under this part shall be issued in the name of the authority and not in the name of the State.

§356-406 Securities; payment and security. (a) The securities may be payable from and secured by the revenues derived from the housing loan program for which such securities are issued, from designated sources as the authority may determine, or from the revenues and other property of the authority.

(b) The authority may pledge any revenues or other property described in subsection (a) to pay the principal, interest, and redemption premium, if any, on the securities, and may provide for priorities or distinctions among securities of the same issue in the application of such pledge.

(c) The securities may represent interests in eligible loans and other obligations acquired by the authority under this part.

(d) Any pledge made by the authority shall create a perfected security interest in the revenues or property so pledged thereafter received by the authority from and after the time that a financing statement with respect to such revenues or property shall be filed with the bureau of conveyances or, if appropriate, with the assistant registrar of the land court. Upon such filing, the revenues or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be prior to the lien of all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof.

§356-407 Securities; terms. (a) The securities shall mature and be payable at such times, at such places, and in such amounts as may be determined by the authority. Interest bearing securities shall bear interest at such rate or rates, fixed or variable, determined in such manner or manners, as may be determined by the authority.

(b) The authority may include the costs of undertaking and maintaining the housing loan programs for which the securities are issued in determining the principal amount of securities to be issued, including interest on such securities or the cost of carrying such securities for such period as may be determined by the authority.

(c) The securities may be sold at public or private sale and for such prices as may be determined by the authority to be in the best interests of the State.

§356-408 Securities; investment of proceeds. The authority may invest the proceeds from the sale of any securities and any other moneys relating to such securities or the housing loan programs for which such securities are sold, in any manner permitted by the agreements, including any trust indenture, relating to such securities.

§356-409 Securities; trustee designation and duties. (a) The authority may designate a trustee for each issue of securities.

(b) The trustee shall perform such duties relating to the securities and the housing loan programs financed thereby as may be determined by the authority.

(c) The trustee may be designated by the authority to serve as fiscal agent of the authority for:

(1) The payment of the principal of and interest and redemption premium, if any, on and any other amounts payable with respect to the securities;

- (2) The purchase, authentication, registration, transfer, exchange, and redemption of the securities and such other functions related to the foregoing as the authority may deem necessary, advisable, or expeditious.

§356-410 Securities; trust indenture. (a) Any trust indenture relating to the securities 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, including any pledge authorized by section 356-406.

(b) When a trust indenture provides that any security issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee or any other authenticating agent, all signatures of the officers of the authority or the State upon the securities required by section 39-64 may be facsimiles of their signatures.

§356-411 Securities; special funds. (a) Separate special funds may be established, as determined by the authority, for each housing loan program financed under this part. Each fund shall bear such designation as the authority deems appropriate to properly identify the fund.

(b) Revenues, income, and receipts derived from the housing loan programs for which securities are issued under this part shall be paid into such fund or funds as determined by the authority in the proceedings authorizing the issuance of the securities.

§356-412 State not liable on securities; securities tax exempt. (a) The securities shall not be a debt of the State and the State shall not be liable thereon. The securities shall not be payable out of any funds or properties other than those of the authority. The securities shall not constitute an indebtedness within the meaning of any debt limitation or restriction. The securities shall contain recitals to the effect of the foregoing.

(b) The securities under this part are declared to be issued for a public purpose and, together with interest thereon, shall be exempt from all state and county taxation except estate and transfer taxes. Interest on the securities need not be exempt from federal income taxation."

SECTION 3. Securities may be issued by the Hawaii housing authority pursuant to part III of chapter 39, Hawaii Revised Statutes, and this Act in an aggregate principal amount not to exceed \$400,000,000 at such times and in such amounts as it deems advisable for the purpose of undertaking and maintaining any of the housing loan programs authorized by this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 6, 1987.)