

ACT 329

H.B. NO. 1796

A Bill for an Act Relating to Housing.

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

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

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

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

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

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

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

SECTION 2. Section 359G-1.1, Hawaii Revised Statutes, is amended to read as follows:¹

“Authority” means the Hawaii housing authority created under chapter 356.

“Develop” or “development” means the planning, financing, acquisition of real and personal property, demolition of existing structures, clearance of real property, construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services, or other site improvements, or construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures, or any combination of the foregoing, of any housing project. It also includes any and all undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

“Dwelling”, “dwelling unit”, or “unit” means any structure or room, for sale, lease, or rent, which provides shelter.

[(1)] “Eligible bidder” means a person, partnership, firm, or corporation determined by the authority:

- [(A)] (1) To be qualified by experience and financial responsibility to construct housing of the type proposed to be contracted; and
- [(B)] (2) To have submitted the lowest acceptable bid[; and
- (C) To form a corporation to comply with the general corporation laws to receive a lease of lands].

[(2)] “Eligible developer” means any person, partnership, cooperative, firm, nonprofit or profit corporation, or public agency determined by the authority:

- [(A)] (1) 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)] (2) 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)] (3) To meet all other requisites the authority deems to be just and reasonable, and all requirements stipulated in this chapter.

“Eligible developer” includes limited-equity housing cooperatives as defined in section 421G-1(2) which provide housing for persons and families of low or moderate income.

“Housing” or “housing project” includes all real and personal property, buildings and improvements, commercial space, lands for farming and gardening, community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project.

[(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, the United States Department of Agriculture, Farmers Home Administration,

or 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 Housing 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)] (1) Is a citizen of the United States or a resident alien;
- [(B)] (2) Is at least eighteen years of age;
- [(C)] (3) Is a bona fide resident of the State and has a bona fide intent to reside in the dwelling unit purchased or rented under this chapter;
- [(D)] (4) In the case of purchase of a dwelling unit in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and
- [(E)] (5) Is not found by the authority to be within one of the following classes:
 - [(i)] (A) A person who oneself 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; or
 - [(ii)] (B) A person who oneself or whose husband or wife (when husband and wife are living together) has pending another 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."

SECTION 3. Section 359G-3.3, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 359G-4 is amended by amending subsection (a) to read as follows:¹

"(a) The authority may 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, at the lowest possible price to qualified residents of the State, [in partnership with a qualified partner] with an eligible developer or in its own behalf, either:

- (1) Fully completed dwelling units with the appropriate interest in the land on which the dwelling unit is located; or
- (2) Units which are substantially complete and habitable with the appropriate interest in the land on which the dwelling unit is located; or
- (3) The land with site improvements (other than the dwelling unit) either partially or fully developed."

SECTION 5. Section 359G-4 is amended by amending subsection (d) to read as follows:¹

“(d) The authority shall adopt upon direction from the governor and for such period as the governor 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 law as closely as is consistent with the production of [low] lower 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.”

SECTION 6. Section 359G-4.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The authority may develop, on behalf of the State or [in partnership] with an eligible developer, or may assist under a government assistance program in the development of housing projects which shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of units thereon; provided that:

- (1) The authority finds the project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
- (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 legislative body of the county in which the project is to be situated or, where a land designation amendment is required, the land use commission shall have approved the project.
 - (A) The legislative body or land use commission shall approve or disapprove the project within forty-five days after the authority has submitted the preliminary plans and specifications for the project to the legislative body or land use commission. If [after] on the [forty-fifth] forty-sixth day a project is not disapproved, it shall be deemed approved by the legislative body or land use commission.
 - (B) 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 the plans and specifications.
 - (C) The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and

specifications for the project shall constitute the zoning, building, construction, and subdivision standards for that project. For purposes of sections 501-85 and 502-17, the executive director of the authority or the responsible 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."

SECTION 7. Section 359G-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The authority shall, on behalf of the State, or [in partnership] with [qualified] eligible 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."

SECTION 8. Section 359G-10.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In any county, the authority may develop or may enter into agreements for housing projects with [a private developer where] an eligible developer if in the authority's reasonable judgment a project is primarily designed for [low-income] lower 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."

SECTION 9. Section 359G-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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.”

SECTION 10. Section 359G-11.1, Hawaii Revised Statutes, is amended to read as follows:

“§359G-11.1 Interim financing of projects. (a) The authority may provide interim construction loans to [qualified] eligible 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], or 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.”

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored².

SECTION 12. This Act shall take effect upon its approval.

(Approved June 26, 1987.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.