

ACT 337

S.B. NO. 1318

A Bill for an Act Relating to Housing.

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

SECTION 1. Findings and purpose. The legislature finds that the Hawaii housing authority was established in 1935 as a public housing agency to manage federally-aided low-rent public housing projects, and that since its creation over fifty years ago, the role of the authority has been expanded considerably in housing and housing related activities. Programs dealing with land reform, lease rent renegotiation, development of housing projects, and housing financing (such as the Hula Mae program) were added to the Hawaii housing authority's purview because it seemed at the time to be the most appropriate agency to handle these functions.

The legislature further finds that the governor has proposed to reorganize the structure of state government by transferring the criminal justice

and corrections functions of the department of social services and housing to a newly established department of corrections. This will enable the department of social services and housing, which will be renamed the "department of human services", to focus its attention on human services functions.

The legislature further finds that it would be appropriate at this time to also reorganize the Hawaii housing authority by separating its functions not directly related to human services.

The purpose of this Act is to establish the housing finance and development corporation and to transfer the housing finance, housing development, and residential leasehold functions of the Hawaii housing authority to the new housing finance and development corporation. The corporation is placed within the department of planning and economic development for administrative purposes. The housing management function of the authority, which is currently the only major function which is closely related to other human services functions, will remain with the authority which will continue to be administratively placed within the department of social services and housing or the "department of human services".

SECTION 2. Section 26-18, Hawaii Revised Statutes, is amended to read as follows:

"§26-18 Department of planning and economic development. (a) The department of planning and economic development shall be headed by a single executive to be known as the director of planning and economic development.

The department shall undertake statewide planning and economic development activities, undertake energy development and management, provide economic research and analysis, plan for the use of Hawaii's ocean resources, and encourage the development and promotion of industry and international commerce through programs established by law.

(b) The following are placed in the department of planning and economic development for administrative purposes as defined by section 26-35: Aloha Tower [Development Corporation,] development corporation, Hawaii community development authority, land use commission, natural energy laboratory of Hawaii, housing finance and development corporation, and any other boards and commissions as shall be provided by law.

The department of planning and economic development shall be empowered to establish, modify, or abolish statistical boundaries for cities, towns, or villages in the State. The department shall publish annually an up-to-date list of cities, towns¹ and villages for which statistical boundaries have been set."

SECTION 3. Section 36-24, Hawaii Revised Statutes, is amended to read as follows:

"§36-24 Loans to state and county agencies. When there are moneys in the general, special, or revolving funds of the State which in the director of finance's judgment are in excess of the amounts necessary for the immediate state requirements, the director may make temporary loans therefrom to the employees retirement system, the board of water supply of the city and county of Honolulu, the [Hawaii housing authority,] housing finance and development corporation, or to any state or county department, board, commission, officer, authority, or agency authorized under the laws of the State to issue bonds, or to the several counties, if in the director's judgment the action will not impede or hamper the necessary financial operations of the State. The loans to any county shall not at any time be more than

\$100,000 over the amount of tax moneys which the director estimates will be paid by the director to the county during the balance of the calendar year, provided that in the case of the city and county of Honolulu the loans may be made up to \$250,000 over the amount of tax moneys which the director estimates will be paid by the director to the city and county during the balance of the calendar year. The loans to other organizations shall not at any time exceed the amount of moneys which the director estimates the organization will be in receipt of, from bond funds or other sources, during the twelve months following the loan. The loans shall be without interest. Loans to counties shall be made only upon the request of the county treasurer approved by the county council. All loans shall be repaid upon the demand of the director. In the absence of any demand, loans to counties shall be repaid before June 30 of the following year, pursuant to the following procedure: from time to time as tax moneys which are payable to the borrowing county are deposited into¹ the treasury, the director shall retain therefrom sufficient moneys to cover the amounts of all loans, and shall reimburse the general, special, or revolving funds therewith."

SECTION 4. Section 46-15.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any law to the contrary notwithstanding, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the [Hawaii housing authority] housing finance and development corporation pursuant to chapter [359G] _____ insofar as such powers may be reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing low and moderate income housing; provided that no county shall be empowered to cause the State to issue general obligation bonds to finance a project pursuant to this section; provided further that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the [Hawaii housing authority,] housing finance and development corporation, pursuant to section [359G-15.] ____-205. Such powers shall include the power, subject to applicable limitations, to:

- (1) Develop and construct dwelling units, alone or in partnership with developers;
- (2) Acquire necessary land by lease, purchase, exchange, or eminent domain;
- (3) Provide assistance and aid to a public agency or person in developing and constructing new housing and rehabilitating old housing for the elderly of low and moderate income, other persons of low and moderate income, and persons displaced by any governmental action, by making long-term mortgage or interim construction loans available;
- (4) Contract with any eligible bidders to provide for construction of urgently needed housing for persons of low and moderate income;
- (5) Guarantee the top twenty-five per cent of the principal balance of real property mortgage loans, plus interest thereon, made to qualified borrowers by qualified lenders;
- (6) Enter into mortgage guarantee agreements with appropriate officials of any agency or instrumentality of the United States in order to induce such officials to commit to insure or insure mortgages under the provisions of the National Housing Act, as amended;

- (7) Make a direct loan to any qualified buyer for the downpayment required by a private lender to be made by the borrower as a condition of obtaining a loan from the private lender in the purchase of residential property;
- (8) Provide funds for a share, not to exceed fifty per cent of the principal amount of a loan made to a qualified borrower by a private lender who is unable otherwise to lend the borrower sufficient funds at reasonable rates in the purchase of residential property; and
- (9) Sell or lease completed dwelling units.

For purposes of this section, a limitation is applicable to the extent that it may reasonably be construed to apply to a county."

SECTION 5. Chapter 53, Hawaii Revised Statutes, is amended as follows:

1. By amending section 53-6 to read as follows:

"§53-6 Initiation and approval of redevelopment plan. (a) Before adopting a redevelopment plan, the redevelopment agency shall be assured that satisfactory housing facilities are available or that reasonable provisions will be made for the temporary housing of [any] individuals and families displaced by the removal of living facilities from the redevelopment project. In making the determination the agency [shall] may confer with the Hawaii housing authority [respecting the handling of] with respect to the possible placement of displaced families [that would be eligible for occupancy of living facilities] in projects owned and operated by the authority.

(b) The agency shall submit the redevelopment plan to the planning commission for study and approval thereof. The planning commission may approve, amend and approve, or disapprove the plan. If the planning commission disapproves the plan or amends the plan and the amendment is not approved by the agency, the agency may submit the plan as disapproved or amended to the council which may nevertheless approve or amend and approve the plan by resolution, but only by the affirmative vote of at least five of its members, after holding a public hearing and subject to the procedure set forth in the next paragraph.

After the planning commission has approved a redevelopment plan, and upon acceptance thereof by the agency if amended, the agency shall submit the plan to the council which shall hold a public hearing thereon, after giving published notice thereof on three separate days, the first publication to be at least ten days before the date of the hearings, and may approve, amend and approve, or disapprove the plan by resolution; provided that the council shall not approve, or amend and approve, the plan unless it finds that the redevelopment project area is a blighted area within the urban limits of the county; and provided further that any amendment made by the council must be accepted by the agency before final approval by the council. If the council approves a redevelopment plan, published notice of the approval shall be given by at least three publications and further proceedings with respect to the redevelopment project covered by the plan shall be stayed for a period of thirty days after the first publication of the notice. Actions, suits, or proceedings to contest the validity of the proceedings prescribed by the foregoing provisions of this chapter or of the redevelopment plan shall be barred upon the expiration of the period of thirty days, and no action thereafter commenced shall raise any question concerning the validity of the proceedings provided by the foregoing provisions of this chapter or of the redevelopment plan, and in all actions, suits, or proceedings commenced

after the expiration of the period of thirty days, except as to matters affecting jurisdiction, the validity of the proceedings prescribed by the foregoing provisions of this chapter and of the plan shall be conclusively presumed. Upon the expiration of the thirty-day period, the agency may further proceed with the redevelopment project or projects covered by the redevelopment plan. Upon acquisition of the lands in the redevelopment project by the agency, the lands shall automatically be rezoned as to land use in conformance with provisions of the approved redevelopment plan.

(c) Hearings and trial upon any issue raised in any action, suit, or proceeding in any court involving the construction, interpretation, or validity of this chapter, or involving the legality or validity of any action taken or proposed to be taken under or pursuant to this chapter, whether by way of injunction, suit for declaratory judgment, submission on agreed statement of facts, or otherwise, shall be given precedence in both the lower courts and the supreme court, and an interlocutory appeal to the supreme court shall lie from any decision of any lower court holding valid or invalid any provision of this chapter, or any contract made or proposed, or other action taken or proposed to be taken, under or pursuant to this chapter.

(d) Whenever the agency determines that a proposed redevelopment project or an auxiliary redevelopment project initiated pursuant to this chapter may be undertaken by the owners of project lands therein or by developers of the owners as effectively, expeditiously, and economically as if undertaken as a public undertaking by the agency itself, then the redevelopment plan for the project approved and adopted pursuant to this section shall include a provision for the execution of the project by an alternative method of private development thereof on the basis of an agreement between the agency and the owners or developers and imposing such requirements, restrictions, and sanctions as the agency may deem necessary to effectuate the basic purposes of this chapter and to assure the successful completion of the project by private development.

If at any time after the initial adoption of the redevelopment plan, the agency determines that a change in the plan is in the public interest and in furtherance of the purpose of redevelopment, the plan or any part thereof may be amended by following the same procedure as set forth above for the adoption of the original plan."

2. By amending section 53-17 to read as follows:

"§53-17 Bonds of agency to be legal investments. Bonds issued by a redevelopment agency in connection with one or more redevelopment plans or redevelopment projects pursuant to this part shall be legal investments and security for public deposits to the same extent and for the same public officers and bodies, political subdivisions, persons, companies, corporations, associations, banks, institutions, and fiduciaries as bonds or obligations issued by the [Hawaii housing authority] housing finance and development corporation under chapter [356] _____ in connection with slum clearance and housing projects."

3. By amending subsection 53-22(e) to read as follows:

"(e) The governor shall submit to the legislature at each regular session in an odd-numbered year, estimates of the amount of additional appropriation necessary in the governor's judgment for [the] use [of] by the [Hawaii housing authority for] housing finance and development corporation in the succeeding fiscal biennium, in providing living facilities necessary to care for families displaced or to be displaced by redevelopment projects [and which are eligible to become tenants in public housing projects], so that

the legislature may make appropriations therefor if it deems the action advisable."

SECTION 6. Section 103-3, Hawaii Revised Statutes, is amended to read as follows:

"§103-3 Employment of attorneys. No department of the State, other than the attorney general, shall make any expenditure of public funds for the employment or retention by contract or otherwise of any attorney for the purpose of representing the State or such department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply:

- (1) To the [Hawaii housing authority] housing finance and development corporation or the public utilities commission;
- (2) To any court or judicial or legislative officer of the State;
- (3) To the legislative reference bureau;
- (4) To such compilation commission as may be constituted from time to time;
- (5) To the real estate commission in any action involving the real estate recovery fund, the contractors license board in any action involving the contractors recovery fund, and the trustees in any action involving the travel agency revolving¹ fund;
- (6) To the Hawaii criminal justice commission;
- (7) To grand jury counsel;
- (8) To the office of Hawaiian affairs;
- (9) To the department of commerce and consumer affairs; provided that such attorney shall be responsible for the prosecution of consumer complaints;
- (10) In the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines such representation or counsel, or approves such department's expenditures; provided the governor thereupon waives the provision of this section.

For the purpose of this section the term "department of the State" means any department, board, commission, agency, bureau, or officer of the State.

Every attorney employed by any department on a full-time basis, except an attorney employed by the Hawaii criminal justice commission or as a grand jury counsel, or the department of commerce and consumer affairs in prosecution of consumer complaints, shall become a deputy attorney general."

SECTION 7. Chapter 171, Hawaii Revised Statutes, is amended as follows:

1. By amending section 171-2 to read as follows:

"§171-2 Definition of public lands. "Public lands" means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including submerged lands, and lands beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;

- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the State Constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the Hawaii housing authority in its corporate capacity holds title; [and]
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title[.]; and
- (8) Lands to which the housing finance and development corporation in its corporate capacity holds title."

2. By amending section 171-50.2 to read as follows:

"[**§171-50.2**] **Exchanges for conversion of leasehold lands to fee simple ownership.** The board may exchange public lands for private lands to be condemned or involuntarily sold pursuant to chapter 516. Such exchange shall be requested by the executive director of the [Hawaii housing authority,] housing finance and development corporation, and shall be effected in conformity with section 171-50; provided that such exchange shall be subject to legislative disapproval; provided further that the private lands conveyed to the State shall be disposed¹ pursuant to chapter 516; and provided further that lands exchanged need not be of like-kind or comparable use; provided further that no lands classified as conservation shall be exchanged for private lands."

SECTION 8. Section 206E-15¹ is amended to read as follows:

"**§206E-15 Residential projects; cooperative agreements.** If the authority deems it desirable to develop a residential project, it may enter into an agreement with qualified persons to construct, maintain, operate, or otherwise dispose of the residential project. Sale, lease, or rental of dwelling units in the project shall be as provided by the rules established by the authority. The authority may enter into cooperative agreements with the Hawaii housing authority and the housing finance and development corporation for the financing, development, construction, sale, lease, or rental of dwelling units and projects."

SECTION 9. Chapter 209, Hawaii Revised Statutes, is amended as follows:

1. By amending section 209-16 to read as follows:

"**§209-16 Housing relief.** (a) Whenever the governor pursuant to section 209-2 declares a state disaster, the governor may invoke this part. After the declaration by the governor and pursuant to the governor's proclamation, the [Hawaii housing authority] housing finance and development corporation shall construct [public] housing units on public lands which may be set aside by the governor, using for the purpose the funds available or made available to the authority.

(b) Housing so constructed shall be of standard quality and shall conform substantially to the specifications used on other projects controlled by the Hawaii housing authority.

(c) Once the housing finance and development corporation has completed the construction of such housing units, the units shall be turned over to the Hawaii housing authority for operational purposes."

2. By amending section 209-17 to read as follows:

"§209-17 Use of funds in relation to federal projects. The funds allocated to this part shall be expended by the [Hawaii housing authority for the designated purpose under chapters 356, or 359,] housing finance and development corporation only upon the finding that the [public] housing project found necessary does not qualify for federal aid or participation."

SECTION 10. Section 226-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established a policy council whose membership shall include the following:

- (1) The planning director from each county.
- (2) Nine public members, being four from the city and county of Honolulu, one from the county of Kauai, and two from each of the counties of Maui and Hawaii, provided that in the case of the county of Maui, one such public member shall be from Molokai or Lanai and, in the case of the county of Hawaii, one public member shall be from west Hawaii and one from east Hawaii, appointed by the governor from a list of public persons from each county which shall through its mayor or council, submit no less than three names for each appointive public member to which the county is entitled. The governor shall request lists of public persons from the respective mayors for appointment to the policy council. Within thirty days following the date of the governor's request, the mayor of the respective county shall submit the list to the council of the respective county for advice and consent. Within sixty days of the date of the governor's request, the mayor shall submit the list of public persons, with the advice and consent of the council of the respective county, to the governor for appointment to the policy council. If the mayor fails to submit a list to the council within thirty days of the date of the governor's request, the council shall submit a list to the governor within sixty days of the governor's request. If a list of public persons is not submitted by either the mayor or the council to the governor within sixty days following the date of the request for such a list, the governor shall appoint the public members from that county in accordance with the applicable geographic representation set forth above without nominations from that mayor.
- (3) The directors or chairmen from the departments of agriculture, budget and finance, planning and economic development, land and natural resources, health, social services and housing, transportation, and labor and industrial relations; from the office of environmental quality control; the superintendent of education; the president of the University of Hawaii; the executive director of the [Hawaii housing authority;] housing finance and development corporation; and the executive officer of the land use commission.

The director of [the department of] planning and economic development shall serve as chairman of the council.

The terms of the nine members from the public shall be for four years; provided that the governor may reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. Each such term shall commence on January 1 and expire on December 31; provided that the governor may establish the commencing and expiration dates of the terms of those initially appointed. No member from the public shall be appointed consecutively for more than two terms; provided that membership shall not exceed eight consecutive years. No member from the public shall serve on any other public board or commission. The governor may remove or suspend for cause any member of the council after due notice and public hearing.

Expenses incurred by a state governmental member participating in policy council deliberations shall be borne by the member's respective governmental agency. Travel expenses incurred by planning directors participating in policy council deliberations shall be reimbursed by the department of planning and economic development. A public member shall receive no compensation for the member's services, but each shall be reimbursed by the department of planning and economic development for necessary expenses incurred in the performance of the member's duties."

SECTION 11. Section 237-29, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) All claims for exemption under this section shall be certified first by the [Hawaii housing authority] housing finance and development corporation and forwarded to the director of taxation, except that any project previously granted an exemption need not reapply for an exemption until there is a change in use or ownership of the project."

SECTION 12. Chapter 356, Hawaii Revised Statutes, is amended as follows:

1. By amending section 356-2 to read as follows:

"**§356-2 Definitions.** The following terms, wherever used or referred to in this chapter shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Authority" means the Hawaii housing authority created by this chapter.

"Bonds" means any bonds, interim certificates, notes, debentures, or other evidences of indebtedness of the authority issued pursuant to this chapter.

"Community facilities" includes real and personal property, and buildings, equipment, lands, and grounds for recreational or social assemblies, for educational, health, or welfare purposes and necessary or convenient utilities, when designed primarily for the benefit and use of the authority or the occupants of the dwelling accommodations.

"Contract" means any agreement of the authority with an obligee or a trustee for such obligee whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

"Federal government" includes the United States and any agency, instrumentality, corporate or otherwise, of the United States.

"Government" includes the State and the United States and any political subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

"Housing project" or "project" includes all real and personal property, buildings and improvements, [stores, offices,] commercial spaces, lands

for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

- (1) To demolish, clear, remove, alter, or repair unsanitary or unsafe housing, or
- (2) To provide safe and sanitary dwelling accommodations, or
- (3) To do both.

The term "housing project" or "project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith; and the term includes all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

"Obligee of the authority" or "obligee" includes any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project, or any assignee or assignees of the lessor's interest or any part thereof, and the United States, when it is a party to any contract with the authority.

"Real property" includes lands, land under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise."

2. By repealing section 356-4.
3. By repealing section 356-6.
4. By repealing section 356-7.
5. By amending section 356-8 to read as follows:

"§356-8 Housing counseling. The authority shall be responsible for providing:

- (1) [Counseling to prospective homeowners seeking to purchase a home, and to homeowners seeking to rehabilitate or renovate existing homes;
- (2)] Listing and referral services to tenants seeking to rent homes; and
- (2) Counseling to tenants on such matters as financial management and budgeting, basic housekeeping, communicating effectively and getting along with others, and such other matters as may be desirable or necessary.
- [(3) Assistance to any person or government agency regarding the nature and availability of federal assistance for housing development and community development or redevelopment;
- (4) Counseling and guidance services to aid any person or government agency in securing the financial aid or cooperation of the federal government in undertaking, constructing, maintaining, operating, or financing of any housing designed for the elderly, persons displaced by governmental action, university and college students and faculty, and any other persons; and
- (5) Assistance to a county agency upon request from the agency in the development of programs to correct or eliminate blight and deterioration, and to effect community development.]"]

6. By amending subsection 356-29(b) to read as follows:

"(b) The bonds may be sold [at not less than par] at the discretion of the authority, either by 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.] or by negotiated sale without any public advertisement, in each case for a price as may be determined by the authority to be in the best interest of the State."

7. By repealing section 356-33.5.

8. By repealing parts II and III.

SECTION 13. Chapter 359, Hawaii Revised Statutes, is amended by repealing part VIII.

SECTION 14. Chapter 359G, Hawaii Revised Statutes, is repealed.

SECTION 15. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER HOUSING FINANCE AND DEVELOPMENT CORPORATION

PART I. GENERAL PROVISIONS

§ -1 Findings and declaration of necessity. The legislature of the State of Hawaii has determined that there exists in the State a critical shortage of safe and sanitary housing units which are affordable to lower income residents of the State and that consequently many persons are forced to occupy overcrowded, unsafe, or unsanitary dwelling accommodations, or become homeless. The legislature further determines that 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 finds that these conditions cause an increase in discontent, despair, and crime and constitute a menace to the health, safety, morals, and welfare of the inhabitants of the State and impair economic values; that these conditions cannot be remedied by the ordinary operations of private enterprises; that the clearance, replanning, reconstruction, master planning, development, and construction of units, and the providing of safe and sanitary dwelling accommodations are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be instituted as soon as possible to relieve the burden of residents who are in need of shelter; and that the necessity for this chapter is declared as a matter of legislative determination.

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 contribute to the pride and dignity of an individual and makes that individual a greater asset to the community, and that the lack of decent shelter and the responsibility of home ownership contribute 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 and to provide a decent home for 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 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.

§ -2 Definitions. The following terms, wherever used or referred to in this chapter, shall have the following respective meanings unless a different meaning clearly appears from the context:

"Bonds" means any bonds, interim certificates, notes, debentures, or other evidences of indebtedness of the corporation issued pursuant to this chapter.

"Community facilities" includes real and personal property, and buildings, equipment, lands, and grounds for recreational or social assemblies, for educational, health, or welfare purposes, and necessary or convenient utilities, when designed primarily for the benefit and use of the corporation or the occupants of the dwelling accommodations.

"Contract" means any agreement of the corporation with an obligee or a trustee for such obligee whether contained in a resolution, trust, indenture, mortgage, lease, bond, or other instrument.

"Corporation" means the housing finance and development corporation created under this chapter.

"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.

"Eligible bidder" means a person, partnership, firm, or corporation determined by the corporation:

- (1) To be qualified by experience and financial responsibility to construct housing of the type proposed to be contracted; and
- (2) To have submitted the lowest acceptable bid.

"Eligible developer" means any person, partnership, cooperative (including limited equity housing cooperatives as defined in chapter 421G, firm, nonprofit or profit corporation, or public agency determined by the corporation:

- (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;
- (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; and
- (3) To meet all other requisites the corporation deems to be just and reasonable, and all requirements stipulated in this chapter.

"Federal government" includes the United States and any agency, instrumentality, corporate or otherwise, of the United States.

"Government" includes the State and the United States and any political subdivision, agency, or instrumentality, corporate or otherwise, or either of them.

"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.

"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.

"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 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.

"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.

"Obligee of the corporation" or "obligee" includes any bondholder, trustee or trustees for any bondholders, any lessor demising property to the corporation used in connection with a housing project, or any assignee or assignees of the lessor's interest or any part thereof, and the United States, when it is a party to any contract with the corporation.

"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.

"Qualified resident" means a person who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;

- (3) Is a bona fide resident of the State and has a bona fide intent to reside in the dwelling unit purchased or rented under this chapter;
- (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
- (5) Is not found by the corporation to be within one of the following classes:
 - (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
 - (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 corporation.

"Real property" includes lands, land under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, and otherwise.

"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.

§ -3 Housing finance and development corporation; establishment; board; staff. (a) There is established the housing finance and development corporation to be placed within the department of planning and economic development for administrative purposes. The corporation shall be a public body and a body corporate and politic with perpetual existence.

(b) The corporation shall be headed by a board of directors which consists of eight members, of whom six shall be public members appointed by the governor as provided in section 26-34. Two public members shall be appointed at large; the remaining public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. The director of planning and economic development and the special assistant for housing shall be ex officio voting members.

(c) The governor shall select a chairperson and vice-chairperson from among the members. The director of planning and economic development shall not be ex officio chairperson of the board.

(d) Four members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the corporation. The members shall receive no compensation for services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the performance of their duties.

(e) The corporation shall employ, not subject to chapters 76 and 77 and section 26-35(4), an executive director. Effective July 1, 1988, the salary of the executive director shall be \$61,560 a year. The corporation may employ, subject to chapters 76 and 77, technical experts and officers, agents, and employees, permanent and temporary, as required. The corporation may also employ persons on a contractual basis not subject to chapters 76, 77, and 78 when in the determination of the corporation the services to be performed are unique and essential to the execution of the functions of the corporation; provided that no individual contract shall be for a period longer than two years per term. The corporation 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 corporation may delegate to one or more of its agents or employees such powers and duties as it deems proper.

§ -4 **Special assistant for housing.** There shall be in the office of the governor a special assistant for housing to be appointed by the governor without regard to chapters 76, 77, and 78.

§ -5 **General powers.** (a) The corporation may: sue and be sued; have a seal and alter the same at pleasure; make and execute contracts and other instruments necessary or convenient to the exercise of its powers; make, amend, and repeal bylaws and rules in accordance with chapter 91 for its organization, internal management, and to carry into effect its purposes, powers, and programs.

(b) In addition to other powers conferred upon it, the corporation may do all things necessary and convenient to carry out the powers expressly given in this chapter.

§ -10 **Housing information system.** (a) The corporation, with the assistance of other agencies of the State and counties with related responsibilities, shall develop and maintain a housing information system. The system shall make available current information as to housing conditions, needs, supply, characteristics, developments, trends, federal housing programs, and housing laws, ordinances, rules, and regulations.

(b) In establishing and maintaining the information system, the corporation 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 corporation shall maintain a current supply of information, including means to gather new information through surveys, contracted research and investigations.

§ -11 **Housing research.** (a) The corporation may study the plans of any government in relation to the problem of clearing, replanning, or reconstruction of an area in which unsafe, or unsanitary dwelling or housing conditions exist.

(b) The corporation may purchase materials for the development of land and the construction of dwelling units in the manner it shall conclude to be most conducive to lower costs including purchase from other states or from foreign countries for drop shipment in the State or on cost-plus contracts for such materials with persons or firms doing business in the State, or otherwise. The corporation may expend not more than \$100,000 a year for the purpose of this subsection.

(c) The corporation may conduct, or cause to be conducted, research on housing needs, materials, design, or technology, and for applying the findings of such investigation to housing projects, including the following:

- (1) Sociocultural investigation of housing and community utilization, preferences, or needs of residents within the housing need classification of the housing functional plan;
- (2) Development of technology for the application of innovative building systems or materials, to provide energy or resource

conservation or cost savings in the construction or operation of a housing project;

- (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, financing, or ownership, involving tenants, homeowners, financing agencies, and others; or
- (5) Other necessary or appropriate research which may lower the long-term costs of housing, conserve resources, or create communities best suited to the needs of residents.

The corporation may expend not more than \$100,000 a year for the development of innovative techniques and research.

(d) In the development and construction of a housing project, the corporation may provide for an on-the-job training program or such other projects as it may deem justifiable including innovative projects for the purpose of developing a larger qualified work force in the State. For this purpose, the corporation may expend such sums as it deems appropriate but not to exceed \$100,000 a year.

§ -12 Housing counseling. The corporation shall be responsible for providing:

- (1) Counseling to prospective homeowners on the rudiments of owning a home;
- (2) Assistance to any person or government agency regarding the nature and availability of federal assistance for housing development and community development or redevelopment;
- (3) Counseling and guidance services to aid any person or government agency in securing the financial aid or cooperation of the federal government in undertaking, constructing, maintaining, operating, or financing of any housing designated for the elderly, persons displaced by governmental action, university and college students and faculty, and any other persons; and
- (4) Assistance to a county agency upon request from the agency in the development of programs to correct or eliminate blight and deterioration, and to effect community development.

§ -20 Acquisition, use, disposition of property. (a) The corporation may acquire any real or personal property or interest therein by purchase, exchange, gift, grant, lease, or other means from any person or government for the purpose of providing housing. Exchange of real property shall be in accordance with section 171-50.

(b) The corporation may own or hold real property. All real property owned or held by the corporation shall be exempt from mechanics or materialmen's liens and also from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the corporation be a charge or lien upon its real property; provided that this subsection shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of the corporation or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the corporation on its rents, fees, or revenues. The corporation and its property shall be exempt from all taxes and assessments.

(c) The corporation may sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein to any person or government.

(d) The corporation may insure or provide for the insurance of its property or operations against such risks as it deems advisable.

§ -21 Cooperative agreements with other governmental agencies. (a)

The corporation may:

- (1) Obtain the aid and cooperation of governments in the planning, construction, and operation of housing projects and enter into such agreements and arrangements as it deems advisable to obtain such aid and cooperation;
- (2) Arrange or enter into agreements with any government for the acquisition by the government of property, options, or property rights or for the furnishing, installing, opening, or closing of streets, roads, alleys, sidewalks, or other places, or for the furnishing of property, services, parks, sewage, water, and other facilities in connection with housing projects, or for the changing of the map of a political subdivision or the planning, replanning, zoning, or rezoning of any part of a political subdivision;
- (3) Procure insurance or guarantees from any government for the payment of any debts or parts thereof incurred by the corporation, including the power to pay premiums on any such insurance; and
- (4) Agree to make payments to the state or county government, if the government is authorized to accept, as the corporation deems consistent with the maintenance of the character of housing projects or the purposes of this chapter.

(b) For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects located within their respective territorial boundaries, the state or county government, upon such terms, with or without consideration, as it determines, may:

- (1) Dedicate, grant, sell, convey, or lease any of its property, or grant easements, licenses, or any other rights or privileges therein to the corporation or to the federal government;
- (2) To the extent that it is within the scope of each of their respective functions:
 - (A) Cause the services customarily provided by each of them to be rendered for the benefit of housing projects and the occupants thereof;
 - (B) Open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other such facilities; and
 - (C) Change the map of a political subdivision or plan, replan, zone, or rezone any part of a political subdivision;
- (3) Enter into agreements with the corporation with respect to the exercise of their powers relating to the repair, closing, or demolition of unsafe, unsanitary, or unfit dwellings;
- (4) Employ, notwithstanding any other law as to what constitutes legal investments, any available funds belonging to them or within their control, including funds derived from the sale or furnishing of property or facilities to the authority, in the purchase of the bonds or other obligations of the corporation to the extent provided by section -56; and exercise all the rights of any holder of such bonds or other obligations;
- (5) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, and construction of such housing projects; and
- (6) Enter into contracts with the corporation or the federal government for any period agreeing to exercise any of the powers

conferred hereby or to take any other action in aid of such housing projects.

In connection with the exercise of this power, any political subdivision may incur the entire expense of any such public improvements located within its territorial boundaries without assessment against abutting property owners.

For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects, the department of land and natural resources, the Hawaiian homes commission, the Hawaii housing authority, and any other agency of the State having power to manage or dispose of its public lands, with the approval of the governor and with or without consideration, may grant, sell, convey, or lease for any period, any parts of such public lands, without limit as to area, to the corporation or to the federal government.

Any law or statute to the contrary notwithstanding, any gift, grant, sale, conveyance, lease, or agreement provided for in this section may be made by the state or county government without appraisal, public notice, advertisement, or public bidding.

If at any time title to, or possession of, any housing project is held by any government authorized by law to engage in the development or administration of housing projects, any agreement made under this chapter relating to such project shall inure to the benefit of and may be enforced by that government.

Insofar as this subsection is inconsistent with the provisions of any other law, this subsection shall be controlling.

(c) The government of any county in which a housing project is located or is about to be located may make donations or advances to the authority in such sums as the county in its discretion may determine. The advances or donations shall be made for the purpose of aiding or cooperating in the construction and operation of the housing project. The corporation, when it has money available therefor, shall reimburse the county for all advances made by way of a loan to it.

§ -22 Investigatory powers. (a) The corporation may:

- (1) Investigate living, dwelling, and housing conditions and the means and methods of improving such conditions;
- (2) Enter upon any building or property in order to conduct investigations or to make surveys or soundings;
- (3) Conduct examinations and investigations and hear testimony and take proof under oath at public or private hearings on any matter material for its information;
- (4) Issue subpoenas requiring the attendance of witnesses or the production of books and papers, and order the examination of witnesses who are unable to attend before the corporation, are excused from attendance, or by leave of courts as provided by chapter 624, are out of the State; and
- (5) Make available to any government agency charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.

(b) Investigations or examinations may be conducted by the corporation or by a committee appointed by it, consisting of one or more members,

or by counsel, by an officer or employee specially authorized by the corporation to conduct it. Any person designated by the corporation to conduct an investigation or examination shall have power to administer oaths, take affidavits, and issue subpoenas or orders for the taking of depositions.

§ -23 Agents, including corporations. The corporation may exercise any or all of the powers conferred upon it, either generally or with respect to any specific housing project through an agent which it may designate, including any corporation which is formed under the laws of this State, and for such purposes the corporation may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation. Any corporate agent, all of the stock of which shall be owned by the corporation or its nominee, to the extent permitted by law, may exercise any of the powers conferred upon the corporation by this chapter.

§ -30 Development of property. (a) The corporation, in its own behalf or on behalf of any government, may:

- (1) Clear, improve, and rehabilitate property; and
- (2) Plan, develop, construct, and finance housing.

(b) The corporation may develop state lands but not federal lands, state monuments or historical sites or parks in an agricultural district subject to the prior approval of the land use commission when developing lands greater than fifteen acres in size, and in a conservation district subject to the prior approval of the board of land and natural resources. When the corporation proposes to develop public land, it shall file with the department of land and natural resources a petition setting forth such purpose. The petition shall be conclusive proof that the intended use is a superior public use to that which the land has been appropriated.

(c) The corporation shall not develop any public land where the development may endanger the receipt of any federal grant, impair the eligibility of any public body for a federal grant, prevent the participation of the federal government in any government program, or impair any covenant between the government and the holder of any bond issued by the government.

(d) The corporation may contract or sponsor with any county, housing authority, or person, subject to the availability of funds, an experimental or demonstration project for housing designed to meet the needs of the elderly, handicapped, displaced or homeless persons, low and moderate income persons, employees, teachers, or other government workers, or university and college students and faculty.

§ -31 Eminent domain, exchange or use of public property. (a) The corporation may acquire any real property, including fixtures and improvements, or interest therein, through voluntary negotiation; through exchange of land in accordance with section 171-50, provided that the public land to be exchanged need not be of like use to that of the private land; or by the exercise of the power of eminent domain which it deems necessary by the adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The corporation shall exercise the power of eminent domain granted by this section in the same manner and procedure as is provided by chapter 101, and otherwise in accordance with all applicable provisions of the general laws of the State.

The corporation may acquire by the exercise of the power of eminent domain property already devoted to a public use; provided that no property belonging to any government may be acquired without its consent; and

provided further that no property belonging to a public utility corporation may be acquired without the approval of the public utilities commission.

(b) The federal government may acquire by eminent domain any real property which it deems necessary or convenient for a housing project to be constructed, operated, or aided by the federal government. The power of eminent domain may be exercised in conformity with chapter 101. For the purposes of this subsection, federal government includes any corporation borrowing money or receiving other financial assistance from the federal government for the purposes of financing the construction of any housing project.

§ -32 **Contracts with federal government.** (a) The corporation may:

- (1) Borrow money or accept grants from the federal government for any housing project which the authority is authorized to undertake;
- (2) Take over any land acquired by the federal government for the construction of a housing project;
- (3) Procure insurance or guarantees from the federal government of the payment of any debts or parts thereof secured by mortgages made or held by the corporation on any property included in any housing project; and
- (4) Comply with any conditions required by the federal government in any contract for financial assistance.

(b) It is the purpose and intent of this chapter to authorize the corporation to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the undertaking, construction, maintenance, and operation of any housing project which the corporation is empowered to undertake.

§ -33 **Public works contracts.** The corporation may make, execute, and carry out contracts for, or in connection with, any housing project in the manner provided in sections 103-26 to 103-38 and 103-53; and, with regard to such contracts, the term "officers", as used in sections 103-26 to 103-38, shall mean the authority of such officer authorized by the corporation to act as its contracting officer. Unless made and executed in the name of the State, each contract made and executed as authorized in this section shall state therein that it is so made and executed.

§ -34 **Performance bond, procedure.** Whenever the housing finance and development corporation makes or enters into any contract under, or in the manner authorized in, section -33, it shall require a performance bond which shall be conditioned, executed, and delivered as provided in section 507-17. Whenever a performance bond is so required, section 507-17 shall apply with equal force and effect to all such contracts so entered into by or with the corporation, in which case the word "State" as used in section 507-17, shall be construed to mean and include the corporation and the references to the officer or officers of the State in the section shall be construed to also mean and include the corporation.

§ -35 **Remedies of an obligee: mandamus; injunction; possessory action; receiver; accounting; etc.** An obligee of the corporation shall have the right in addition to all other rights which may be conferred on the obligee subject only to any contractual restrictions binding upon the obligee, and subject to the prior and superior rights of others:

- (1) By mandamus, suit, action, or proceeding in law or equity to compel the corporation and the members, officers, agents, or employees thereof to perform each and every item, provision,

and covenant contained in any contract of the corporation, and to require the carrying out of any or all covenants and agreements of the corporation and the fulfillment of all duties imposed upon the corporation by this chapter;

- (2) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of the obligee of the corporation;
- (3) By suit, action, or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the corporation;
- (4) By suit, action, or proceeding in any court of competent jurisdiction, upon the happening of an event of default (as defined in a contract of the corporation); and
- (5) By suit, action, or proceeding in any court of competent jurisdiction to require the corporation and the members thereof to account as if it and they were the trustees of an express trust.

§ -36 Subordination of mortgage to agreement with government. The corporation may agree in any mortgage made by it that the mortgage shall be subordinate to a contract for the supervision by a government of the operation and maintenance of the mortgaged property and the construction of improvements thereon. In such event, any purchaser or purchasers at a sale of the property of the corporation pursuant to a foreclosure of the mortgage or any other remedy in connection therewith shall obtain title subject to the contract.

§ -40 Duty to make reports. The housing finance and development corporation shall at least once a year file with the governor a report of its activities for the preceding year. The corporation shall report to the state comptroller on moneys deposited in depositories other than the state treasury under section 40-81, and rules adopted thereunder.

PART II. FINANCING

A. General Provisions

§ -50 Bonds; authorization. (a) The corporation, with the approval of the governor, may issue from time to time bonds (including refunding bonds for the purpose of paying or retiring or providing for the retirement of bonds previously issued by the corporation) in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for any of its corporate purposes.

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

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

(d) The corporation may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable:

- (1) Exclusively from the income and revenues of the housing project financed with the proceeds of the bonds, or with the proceeds together with a grant from the federal government in aid of the project;
- (2) Exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of the bonds; or
- (3) From its revenues generally.

(e) Any of the bonds may be additionally secured by a pledge of any revenues or a mortgage of any housing project, or other property of the corporation.

(f) Any pledge made by the corporation shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the corporation from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon such filing, the revenues, moneys, or property so pledged and thereafter received by the corporation 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 by any kind in tort, contract, or otherwise against the corporation, irrespective of whether such parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this part.

(g) Neither the members of the corporation nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

§ -51 Bonds; interest rate, price, and sale. (a) The bonds shall bear interest at such rate or rates payable at such time or times as the corporation may, with the approval of the governor, determine except for deeply discounted bonds which are subject to redemption or retirement at their accreted value; provided that the discounted value of such bonds shall not exceed ten per cent of any issue; and provided further that no such bonds may be issued without the prior approval of the director of finance and the governor.

(b) The corporation shall include the costs of undertaking and maintaining the housing project for which the bonds are issued in determining the principal amount of bonds to be issued. In determining the cost of undertaking and maintaining the housing projects, the corporation may include the cost of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and other services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period not to exceed one year beyond the estimated completion of the housing project for which the bonds are issued.

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

§ -52 Trustee; designation, duties. (a) The corporation may designate a trustee for each issue of 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 corporation to receive and receipt for, hold, and administer the proceeds of the bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the corporation to hold and administer the housing project bond special fund established pursuant to section -57, and to receive and receipt for, hold, and administer the revenues derived by the corporation from the housing project for which the bonds are issued or the system of housing projects pledged to the payment of such bonds, and to apply such revenues to the payment of the cost of administering, operating, and maintaining the housing project or system of housing projects, to pay the principal of the interest on the bonds, to the

establishment of reserves, and to other purposes as may be authorized in the proceedings providing for the issuance of the 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 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 bonds and coupons, if any, 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 bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections.

§ -53 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 corporation for the purposes of this part.

(b) A trust indenture may allow the corporation to pledge and assign to the trustee such agreements related to the housing project or system of housing projects and the rights of the corporation thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any 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 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 bonds, the investment of any reserve for the bonds, the investment of the revenues of the housing project or system of housing projects, and the use and application of the earnings from investments; and
- (2) The terms and conditions upon which the holders of the bonds or any portion of them or any trustee thereof may institute proceedings for the enforcement of any 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 therefrom.

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

§ -54 Investment of reserves, etc. The corporation may invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to the corporation unless the legislature shall specifically so state.

§ -55 Security for funds deposited by corporation. The corporation may by resolution provide that all moneys deposited by it shall be secured:

- (1) By any securities by which funds deposited by the director of finance may be legally secured as provided in section 38-3; or
- (2) By an undertaking with such sureties as are approved by the corporation faithfully to keep and pay over upon the order of the corporation any such deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits.

§ -56 Bonds as legal investments. The State and all of its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations, and other persons carrying on an insurance business in the State, and all personal representatives, guardians, trustees, and other fiduciaries in the State may legally invest any moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the housing finance and development corporation, or in any bonds or other obligations issued by any public housing authority or agency in the United States when the bonds or other obligations of the public housing authority or agency are secured by a pledge of annual contributions or other financial assistance to be paid by the federal government or any agency thereof, and the bonds and other obligations of the corporation and the bonds and other obligations of any such public housing authority or agency shall be authorized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by sections 406-22 and 554-6.

§ -57 Housing finance revolving fund; housing project bond special funds. (a) There is created a housing finance revolving fund to be administered by the corporation. Notwithstanding sections 36-21 and -204, the proceeds in the fund shall be used for long-term and other special financings of the corporation and for the necessary expenses in administering this chapter.

(b) All moneys received and collected by the corporation, not otherwise pledged or obligated nor required by law to be placed in any other special fund, shall be deposited in the housing finance revolving fund.

(c) A separate special fund shall be established for each housing project or system of housing projects financed from the proceeds of bonds secured under the same trust indenture. Each fund shall be designated "housing project bond special fund" and shall bear additional designation as the corporation deems appropriate to properly identify the fund.

(d) Notwithstanding any other law to the contrary, all revenues, income, and receipts derived from a housing project or system of projects financed from the proceeds of bonds or pledged to the payment of principal of and interest and premium on bonds, shall be paid into the housing project bond special fund established for such housing project or system of housing

projects and applied as provided in the proceedings authorizing the issuance of such bonds.

B. Housing Loan and Mortgage Programs

§ -60 **Definitions.** The following words or terms as used in this subpart shall have the following meanings unless a different meaning clearly appears from the context:

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

- (1) Is a citizen of the United States or a resident 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 a principal residence within or without the State and who has not owned a principal residence within the three years immediately prior to the application for an eligible loan under this part, except this requirement shall not apply to any eligible loan for a targeted area residence as defined in the Mortgage Subsidy Bond Tax Act of 1980, Public Law 96-499, which residence is to replace a housing unit which has been declared structurally unsalvageable by a governmental board or agency having the power to make such a declaration; and provided further that this requirement shall not apply to up to ten per cent of eligible loans of a bond issue made to single parent household borrowers. No such loans, however, shall be made if they adversely affect the tax-exempt status of the bonds issued. For the purpose of this section, “single parent household” means a household headed by a single person who has legal custody of one or more dependent children;
- (5) Has never before obtained a loan under this part; and
- (6) Meets other qualifications as established by rules adopted by the corporation.

“Eligible improvement” means alterations, repairs, or improvements to an existing housing unit which substantially protect or improve the basic livability of the unit.

“Eligible improvement loan” means a loan to finance an eligible improvement to the owner of the housing unit, which may be a condominium unit, where the eligible improvement is to be made; provided that the owner meets the requirements of an eligible borrower, except that the requirements of paragraph (4) set forth in the definition of “eligible borrower” need not apply, the unit to be financed is located in the State, the unit will be occupied as the principal place of residence of the borrower, and meets other requirements as established by rules adopted by the corporation.

“Eligible loan” means a loan to an eligible borrower for the permanent financing of a dwelling 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 corporation.

“Eligible project loan” means an interim or permanent loan, which may be federally insured or guaranteed, made to a qualified sponsor for the financing of a rental housing project, and which meets other requirements as established by rules adopted by the corporation.

"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 loan funding programs authorized under this subpart.

"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.

"Qualified sponsor" means any person or entity determined by the corporation:

- (1) To be qualified by experience, financial responsibility, and support to construct a housing project of the type and magnitude described;
- (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; and
- (3) To meet other qualifications as established by rules adopted by the corporation pursuant to chapter 91.

"Revenue bond" means bonds, notes, or other evidence of indebtedness of the corporation issued to finance any of the housing loan programs under this part.

"Trust indenture" means an agreement by and between the corporation 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 corporation to secure the revenue bonds.

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

§ -61 Owner-occupancy requirement. (a) An eligible borrower shall utilize the dwelling unit purchased under this subpart as the eligible borrower's permanent and primary residence.

(b) From time to time, the corporation may submit a verification of owner-occupancy form to the eligible borrower. Failure to respond to this verification in a timely manner may result in an immediate escalation of the interest rate or acceleration of the eligible loan.

§ -62 Rules; eligible borrower. (a) The corporation shall establish the qualifications of the 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 the amount established by the corporation pursuant to this section. For an eligible borrower with a family of four persons, the amount shall be equal to one hundred seventy-two and one-half per cent of the median annual income for households of four persons in the State as published by the United States Department of Health and Human Services in November 1980; provided that the amount may be increased by four per cent for each one-half per cent that the annual interest rate on the eligible loan exceeds ten per cent. For an eligible borrower with a family of other than four persons, the amount computed above for a family of four persons shall be adjusted in accordance with rules adopted by the corporation. As used in this subsection, "adjusted household income" means the total income, before taxes and personal deductions, received by all members of the eligible borrower's household, including, but not limited to, wages, social security payments, retirement benefits, unemployment benefits, welfare benefits, interest and dividend payments, and such other income as provided by rules adopted by the corporation under chapter 91, but not including business deductions and income received by dependent members of an eligible borrower's household.

(c) The assets of an eligible borrower shall not exceed an annual amount equal to the adjusted household income for an eligible borrower as set forth in subsection (b). As used in this section, assets include, but are not limited to, all cash, securities, and real and personal property, less any outstanding liabilities secured by such assets and less twenty-five per cent of a downpayment required for the purchase of property financed by an eligible loan. For purposes of this section, the value of a vacant lot owned by an eligible borrower shall not be included as an asset when a dwelling unit is or shall be constructed on the property and financed by an eligible loan.

(d) For the purpose of determining the qualification of an eligible borrower for an eligible improvement loan:

- (1) The housing unit for which the eligible improvement loan is to be made and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower's assets; and
- (2) The mortgage secured by the housing unit and property shall not be included in the calculation of the eligible borrower's liabilities.

(e) For the purpose of determining the qualification of an eligible borrower for an eligible loan for a targeted area residence:

- (1) The housing unit being replaced and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower's assets; and
- (2) The mortgage secured by the housing unit and the property shall not be included in the calculation of the eligible borrower's liabilities.

§ -63 Rules; eligible loans. (a) The corporation 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 corporation shall establish restrictions on the terms, maturities, interest rates, collateral, and other requirements for eligible loans.

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

§ -64 Rules; eligible project loans. (a) The corporation shall establish requirements for projects to be financed by an eligible project loan, and may consider, but not be limited to the location, age, condition, and other characteristics of the project.

(b) The corporation shall establish restrictions on the terms, maturities, interest rates, and other requirements for eligible project loans.

(c) The corporation shall establish restrictions on the prepayment of eligible project loans and on the transfer of ownership of the projects securing eligible project loans.

(d) The corporation shall require that any sums deferred on land leased at nominal rates by the corporation to the owner of an eligible project shall be recovered by the corporation at the time an eligible project loan is prepaid, whether as a result of refinancing of the eligible project loan or otherwise, to the extent that funds are available therefor from the refinancing or other method by which the eligible project loan is paid in full prior to its due date.

(e) The corporation shall enter into an agreement with the owner of an eligible project to be financed with an eligible project loan which shall provide that in the event that the eligible project loan is at any time prepaid for the purpose of converting the rental units of such project to ownership units, all tenants at the time of the proposed conversion shall have the first option to purchase their units.

(f) All eligible project loans shall comply with applicable state and federal laws.

§ -65 Rules; eligible improvement loans. (a) The corporation shall establish requirements for property financed by an eligible improvement loan, and may consider, but not be limited to, the location, age, condition, value, and other characteristics of the property.

(b) The corporation shall establish restrictions on the terms, maturities, interest rates, collateral, and other requirements for eligible improvement loans.

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

§ -67 Revenue bonds; authorization. (a) The corporation, 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 authorized by this subpart.

(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 corporation, 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; except that the final maturity date of the revenue bonds issued to finance eligible project loans may be any date not exceeding fifty years from the date of issuance.

§ -68 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, eligible improvement loans, or eligible project 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 corporation 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 corporation to secure the loans.

(d) Any pledge made by the corporation shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the corporation from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon such filing, the revenues, moneys, or property so pledged and thereafter received by the corporation 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 corporation, irrespective of whether such parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this subpart.

§ -69 Revenue bonds; interest rate, price, and sale. (a) The revenue bonds shall bear interest at a rate or rates payable at such time or times as the corporation may determine with the approval of the governor, except for deeply discounted bonds which are subject to redemption or retirement at their accreted value; provided that the discounted value of such bonds shall not exceed ten per cent of any issue; and provided further that no such bonds may be issued without the prior approval of the director of finance and the governor.

(b) The corporation 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 corporation 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 corporation to be in the best interest of the State.

§ -70 Revenue bonds; investment of proceeds, and redemption. Subject to any agreement with the holders of its revenue bonds, the corporation may:

- (1) Invest its moneys not required for immediate use, including proceeds from the sale of any revenue bonds, in accordance with section -54; and
- (2) Purchase its revenue bonds out of any fund or money of the corporation available therefor, and hold, cancel, or resell the revenue bonds.

§ -71 Trustee; designation, duties. (a) The corporation 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 corporation 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 corporation to hold and administer the housing loan program revenue bond special fund established pursuant to section -73, and to receive and receipt for, hold, and administer the revenues derived by the corporation from each of the housing loan programs for which the revenue bonds were issued, and apply those revenues to pay the cost of administering, operating, and maintaining the respective housing loan programs, to pay the principal of and interest on those bonds, establish reserves, and for any other purpose 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.

§ -72 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 corporation for the purposes of this part.

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

§ -73 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 corporation deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, including particularly section -204, 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.

§ -75 Housing loan programs; procedures and requirements. (a) The corporation 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, eligible improvement loans, or eligible project 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 or qualified sponsors.

(b) The corporation 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, eligible improvement loans, or eligible project loans from mortgage lenders;
- (4) The participation by mortgage lenders as originators and processors of eligible loans, eligible improvement loans, or eligible project loans on behalf of the corporation.

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

§ -76 **Housing loan programs; general powers.** (a) The corporation may make, enter into, and enforce all contracts or agreements which are necessary, convenient, or desirable for the purposes of the performance of its duties in executing the housing loan programs.

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

§ -77 **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.

§ -78 **Housing loan programs; fees.** The corporation 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 determined by the corporation.

§ -79 **Housing loan programs; evidence of eligible loan, eligible improvement loan, or eligible project loan.** (a) Each mortgage lender who participates in any housing loan program shall submit evidence, as deemed satisfactory by the corporation, that eligible loans, eligible improvement loans, or eligible project loans have been made from the proceeds of the revenue bonds.

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

§ -80 **Loans to lenders program.** (a) The corporation may make loans to mortgage lenders under terms and conditions requiring that the loan proceeds be used within a time period prescribed by the corporation to make eligible loans, eligible improvement loans, and eligible project 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 corporation 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 corporation 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 corporation is a party.

§ -81 **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 corporation deems necessary to assure the payment of principal of and interest on the loans as they become due.

(b) The corporation 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 corporation'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 corporation in all matters relating to the pledged collateral.

(d) Subject to any agreement with the holders of its revenue bonds, the corporation may collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders. The corporation 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.

§ -85 Purchase of existing loans program. (a) The corporation may contract with a mortgage lender to purchase, in whole or in part, existing loans, whether or not eligible loans, eligible improvement loans, or eligible project loans. The contract may contain provisions as determined by the corporation 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 corporation;
- (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 corporation.

(b) The corporation 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, eligible improvement loans, or eligible project loans in an aggregate principal amount substantially equal to the amount of the proceeds from the purchase by the corporation of loans therefrom.

§ -90 Advance commitments program. (a) The corporation may contract with a mortgage lender for the advance commitment to purchase eligible loans, eligible improvement loans, or eligible project loans.

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

§ -95 Loan funding programs. (a) The corporation may contract with mortgage lenders to fund eligible loans and eligible improvement loans and may directly make or contract with mortgage lenders to fund eligible project loans.

(b) Any such contract with a mortgage lender may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its revenue bonds.

§ -100 Loans; service and custody. The corporation 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.

§ -101 Loans; sale, pledge, or assignment. (a) Subject to any agreements with the holders of its revenue bonds, the corporation 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 holders of its revenue bonds, the corporation may pledge or assign its loans, other agreements, notes, or property to secure the loans or agreements.

§ -102 Loans; insurance and guarantees. The corporation may procure insurance or guarantees against any default of its loans, in amounts and from insurers or guarantors, as it deems necessary or desirable.

§ -103 Loans; default. The corporation may renegotiate, refinance, or foreclose any loan in default.

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

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

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

§ -104 Arbitrage provisions. Any other provisions of the law to the contrary notwithstanding, the corporation 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.

C. Taxable Mortgage Securities Programs (Reserved)

D. Rental Assistance Program

§ -130 Purpose; findings and determinations. The legislature finds and declares that the health and general welfare of the people of the State require that the people of this State have safe and sanitary rental housing accommodations available at affordable rents; that a grave shortage in the number of such accommodations affordable by families and individuals of low and moderate income in the State exists; that it is essential that owners of rental housing accommodations be provided with appropriate additional means to assist in reducing the cost of rental housing accommodations to the people of the State; that it is the purpose of this part to assist such owners in maintaining the rentals at levels affordable by families and individuals of low and moderate income by providing such owners with rental assistance payments which, with rentals received by tenants of low and moderate income, will provide such owners with limited but acceptable rates of return on their investments in rental housing accommodations; and that assisting such owners by entering into contracts with them which provide for rental assistance payments is a valid public purpose and in the public interest.

§ -131 Definitions. The following words or terms as used in this subpart shall have the following meanings unless a different meaning clearly appears from the context:

"Eligible project" means a rental housing project which:

- (1) Is financed by the corporation pursuant to subpart II.B. or II.C. of this chapter, or the corporation determines will require rental assistance to make it financially feasible;
- (2) Is subject to a regulatory agreement with the corporation;
- (3) Maintains at least twenty per cent of its units for eligible tenants;
- (4) Other than a unit reserved for a manager of the project, maintains the remainder of its units for moderate income persons and families, whose incomes shall not exceed the limits set forth in section -62(b); and
- (5) Meets other qualifications as established by rules adopted by the corporation.

"Eligible tenant" means a family or an individual of low or moderate income as determined by the Secretary of the United States Treasury Department in accordance with the Internal Revenue Code of 1954, as amended.

"Owner" means the owner of an eligible project.

"Regulatory agreement" means an agreement between the corporation and the owner relating to an eligible project which includes provisions relating to rents, charges, profits, return on owner's equity, development costs, and methods of operation.

"Rental assistance contract" means an agreement between an owner and the corporation providing for periodic rental assistance payment for units in an eligible project.

§ -132 **Rental assistance revolving fund.** (a) There is created a rental assistance revolving fund to be administered by the corporation.

(b) The aggregate principal sum in the rental assistance revolving fund which may without limitation include sums made available from any government program or grant, from private grants or contributions, or by appropriation, shall be invested by the corporation in a manner which will preserve the principal sum and maximize the rate of return on investment of the fund; provided that any investment shall be consistent with section -54 but need not comply with section 36-21.

(c) Earnings on the investment of the rental assistance revolving fund and amounts recovered by the corporation pursuant to section -134(f) may be applied by the corporation to payments under the rental assistance contracts.

§ -133 **Rental assistance contracts.** (a) The corporation may enter into a rental assistance contract and a regulatory agreement with an owner of an eligible project.

(b) Prior to the execution of a rental assistance contract, the corporation may execute an agreement to enter into a rental assistance contract with an owner, which agreement shall provide for the execution of a rental assistance contract upon satisfaction of the terms set forth in such agreement and otherwise established by the corporation.

(c) The corporation shall not enter into any rental assistance contract which would require the corporation to make payments at any time in excess of the amount available at such time or times in the rental assistance revolving fund pursuant to section -132 for the funding of such payments. Each rental assistance contract shall provide that rental assistance payments shall be made solely from the earnings on the investment of the rental assistance revolving fund.

(d) A rental assistance contract shall be for a term of not less than ten years and shall not be for a term in excess of the period for which the

corporation has invested the principal of the rental assistance revolving fund at a known rate of return.

(e) Each rental assistance contract shall set forth a maximum annual rental assistance payment amount. The corporation shall establish procedures for determining the maximum annual rental assistance payment amount and may consider, but not be limited to, the following:

- (1) The cost of constructing the eligible project;
- (2) The estimated annual operating cost of the eligible project;
- (3) The estimated maximum rentals which may be charged for units in the eligible project;
- (4) The amount of funds available for the funding of rental assistance contracts;
- (5) The number of eligible projects requiring assistance under this part; and
- (6) A restricted rate of return on equity to the owner, which rate shall be established by the corporation by rule.

§ -134 Rules, rental assistance program. (a) Prior to the execution of a rental assistance contract and annually thereafter, the owner shall submit a proposed rental schedule to the corporation for approval, which schedule shall list every rental unit in the project and shall designate which units are to be maintained for eligible tenants.

(b) The corporation shall establish procedures for evaluating the rental schedules submitted pursuant to this section, and may consider, but not be limited to, the following:

- (1) The size of and number of bedrooms in the units comprising the eligible project;
- (2) The location of the project and its type (whether high-rise, mid-rise, or low-rise);
- (3) The percentage of units being maintained for eligible tenants; and
- (4) The rentals prevalent in the open market for comparable units.

(c) Annually, following the approval of the rental schedule submitted pursuant to the preceding section, the corporation shall determine the amount of rental assistance payments payable to the owner for the forthcoming year, which amount shall under no circumstances exceed the maximum annual rental assistance payment amount determined in accordance with section -133. The amount determined pursuant to this subsection shall take into account the estimated amount to be derived by the owner from rentals to be charged for the forthcoming year and the limited rate of return on equity permitted in accordance with section -133(e)(6).

(d) The corporation shall establish standards and requirements for:

- (1) The awarding of rental assistance contracts and the allocation of annual rental assistance payments;
- (2) The form of lease to be utilized by the owner in renting units in an eligible project;
- (3) The marketing and tenant selection and admission processes to be employed by the owner with respect to an eligible project; and
- (4) The maintenance and operation of eligible projects.

(e) The corporation shall establish procedures for:

- (1) The annual review of rental schedules for eligible projects;
- (2) The periodic review of the income of tenants renting units in eligible projects; and

- (3) The periodic inspection of eligible projects to monitor the owners' compliance with the terms and conditions of their rental assistance contracts.

(f) The corporation shall be entitled to share in any appreciation in value of an eligible project realized at the time of refinancing or prepayment of the eligible project loan. The corporation's share shall be calculated by multiplying the appreciation of the eligible project realized upon refinancing or prepayment by the ratio of the owner's equity to the discounted value of the aggregate rental assistance payments. The discount rate shall be established by rules adopted by the corporation.

§ -135 **Benefits of program not exclusive.** Nothing in this part contained shall be construed to prohibit, with respect to an eligible project, the operation of the rental assistance program in conjunction with other state or federal programs including, but not limited to, the state rent supplements provided for in part VI of chapter 359.

E. Housing Opportunity Allowance Program

§ -140 **Purpose.** Subject to the provisions of this subpart, the corporation may provide funds to assist a prospective home buyer who is ineligible to obtain home purchase assistance under other subsidy programs of the state and federal government, and whose income is insufficient to permit the prospective home buyer to obtain a mortgage loan providing for monthly payments within the prospective home buyer's financial ability from a private lender on either a conventional or a guaranteed or insured, but unsubsidized, basis.

§ -141 **Definitions.** As used in this subpart:

"Allowance" means a housing opportunity allowance to be credited against interest due on a qualifying loan as further described in section -142.

"Eligible borrower" means a borrower who, at the time of making application for an allowance and at the time of closing of a qualified loan:

- (1) Is either spouse of a married couple living together, or both such spouses, or the head of a household with one or more dependents;
- (2) Has an annual aggregate gross family income not in excess of two hundred fifty per cent of the income limits set by the Hawaii housing authority for a family of the same size to be admitted to low-rent public housing owned by the authority;
- (3) Is a citizen of the United States or a resident alien who now resides in the State;
- (4) Is at least eighteen years of age;
- (5) Is a bona fide resident of the State for one year or more;
- (6) Has a bona fide intent to reside in the residential property to be purchased;
- (7) Is accepted by a mortgagee as a person to whom it is willing to make a qualifying loan provided an allowance is paid under this subpart; and
- (8) Has assets not in excess of \$10,000 as defined in rules adopted by the corporation.

Any person who has a majority interest in fee simple or in leasehold lands, or in any other residential property within or without the State, or who has or has had a loan made under this program shall be deemed ineligible to become a borrower under this subpart. A person shall be

deemed to own a residential property if the person, the person's spouse, or both the person and the person's spouse (unless separated and living apart under a decree of a court of competent jurisdiction) own such residential property.

"Mortgagee" means any bank or other institution authorized by law to make loans on dwelling units.

"Qualifying loan" means a loan which:

- (1) Is for the purpose of financing the purchase of a dwelling unit to be owned and occupied by an eligible borrower as the primary residence;
- (2) Is secured or is to be secured by a first lien on such dwelling unit;
- (3) Is in a principal amount which is:
 - (A) Not less than an amount equal to seventy per cent of the fair market value of the security property; and
 - (B) Not more than the lesser of an amount equal to one hundred per cent of the fair market value of the security property, or the purchase price of the security property.

§ -142 **Housing opportunity allowance.** (a) Any eligible borrower who has obtained a qualifying loan and a commitment from a mortgagee, and who has certified that all information provided in the eligible borrower's application for the allowance is accurate at the time of closing, is eligible to receive an allowance from such mortgagee. An allowance in the amount determined by the corporation under subsection (e) shall be credited against the interest charged on each of the first sixty monthly installments paid on the qualifying loan, subject to terms and conditions included in the commitment.

(b) The borrower may make application for an allowance to the mortgagee to which the borrower has applied for a qualifying loan. The application for an allowance shall be on a form prescribed by the corporation.

(c) In making such application, the applicant shall sign a statement of intention that, if the qualifying loan is made, the borrower:

- (1) Will be the title owner of the real estate securing the loan;
- (2) Will occupy the dwelling unit comprising such real estate as a primary residence;
- (3) Will not give or execute any lien or charge in connection with the purchase of such real estate without the approval of the corporation.

(d) At the time of closing of the qualifying loan, the mortgagee shall furnish to the eligible borrower a commitment, signed by an officer of the mortgagee, stating the terms and conditions under which the eligible borrower shall be entitled to receive an allowance from the mortgagee. The terms and conditions to be included in the commitment shall be prescribed by the corporation by rule.

(e) The monthly allowance to be provided under this section shall be the lesser of \$50 or the excess of the monthly payment of principal and interest payable on the qualifying loan over twenty per cent of one-twelfth of the eligible borrower's annual aggregate gross family income. For the purposes of computing the amount of the allowance, the corporation shall determine the family income of the eligible borrower at the time of closing for the qualifying loan; provided that the family income shall be redetermined by the corporation according to rules adopted pursuant to chapter 91 to determine if the allowance should be discontinued.

(f) The eligible borrower shall be required to certify annually the fact that the eligible borrower is occupying the dwelling unit and that it is the eligible borrower's primary residence.

(g) Failure by the borrower to occupy the dwelling unit as the borrower's primary residence shall make all allowance funds paid to the mortgagee on the borrower's account immediately due and payable in accordance with section -144 and shall terminate the borrower's entitlement to future housing opportunity allowances.

§ -143 Approval and payment of housing allowances. (a) Prior to the closing of the qualifying loan, the mortgagee may request the corporation to confirm that allowance funds are available to reimburse the mortgagee for all amounts credited under commitments approved by the corporation.

(b) The corporation shall approve any commitment for payment of an allowance if funds are available and if it finds that the commitment, certifications, and all closing documents comply with the conditions of this section and requirements prescribed by the corporation by rule.

(c) The corporation shall pay to each mortgagee holding an approved commitment the allowance credited to the qualified borrower under that commitment. The mortgagee shall report the total dollar amounts of allowances so credited on a form prescribed by the corporation.

§ -144 Repayment of allowance. (a) The eligible borrower shall repay to the corporation all allowance funds paid to the mortgagee on the borrower's account plus interest to the date of repayment at the rate established by the corporation.

(b) Repayment shall be due at the end of the tenth year after the closing of the qualifying loan or on or before the date of conveyance if the eligible borrower conveys the dwelling unit pursuant to section -221.

(c) In the event the dwelling unit is not conveyed after the tenth year, the eligible borrower may repay the loan account balance to the corporation over a five-year period at an interest rate established by the corporation. The corporation may approve such a loan based on the capacity of the eligible borrower at that time.

(d) To secure the indebtedness of the allowance in the event the dwelling unit is not conveyed, the borrower shall execute a promissory note or any other instrument of indebtedness as the corporation may require.

§ -145 Eligibility of spouse or dependents. Any spouse or dependent of the eligible borrower to whom a dwelling unit approved for allowance descends by devise or by the laws of descent who would qualify as an eligible borrower under rules adopted by the corporation is eligible to continue to receive the allowance for the remaining term of such allowance, and shall be liable to repay such allowance as provided in section -144 upon any subsequent conveyance but not later than the end of the tenth year.

§ -146 Financing. For purposes of this subpart, the corporation may use funds available from general obligation bonds of the State issued under section -203.

F. Loan Participation Program

§ -150 Participation in loans. The corporation may make participation loans in accordance with this subpart of up to fifty per cent of the principal amount of a loan made to a qualified borrower by a mortgage lender who is unable to otherwise lend a borrower sufficient funds at reasonable rates for the purchase or renovation of a residential property; provided

that at no time shall the corporation's total outstanding level of participation exceed the sum of \$10,000,000.

§ -151 Loans qualifying for participation loans. Except as otherwise provided, the requirements for a loan to qualify under this subpart shall be the same as those prescribed for loans qualifying for mortgage loan guarantee under subpart II.G. The mortgage 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 corporation's share. The first mortgage document shall be held by the mortgage lender. Division of interest in the collateral shall be in proportion to the participation of the corporation and the mortgage lender.

§ -152 Qualification of borrowers. (a) The corporation shall not participate in any loan unless the borrower to whom the private lender is willing to make the loan:

- (1) Is a citizen of the United States or a resident 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) Has the ability to repay the loan; and
- (6) Has a gross income of not more than \$20,000 a year (the gross income of the borrower's spouse, if the borrower is married, shall be counted, except where the borrower is living separate and apart from the borrower's spouse under a decree of a court of competent jurisdiction) or is fifty-five years of age or more, or is a person displaced by government action other than eviction due to the person's fault.

(b) No person who owns in fee simple or in leasehold any other residential property within the State, or who has a loan made under this program shall be eligible to become a qualified borrower. A person shall be deemed to own a residential property if the person, the person's spouse or both the person and the person's spouse (unless separated and living apart under a decree of a court of competent jurisdiction) owns such residential property.

§ -153 Application and review of application. (a) All applications for participation loans shall be made on forms prescribed by the corporation. It shall be signed both by the borrower and the lender. The application shall contain a description of the residential property to be purchased, the purchase price, and the amount of the downpayment to be made by the borrower. It shall contain a statement of the mortgage lender indicating the portion of the total loan it is able to meet. The application shall be processed by the mortgage lender and forwarded to the corporation.

(b) The corporation shall review all applications and determine the corporation's share of the loan, provided that it shall approve for participation only those loans to be made to persons who qualify under section -152 and the rules adopted by the corporation pursuant to chapter 91. The corporation may insure the private lender's share of the loan as provided in section -160.

(c) When an application for a mortgage insurance loan has been approved by the corporation, the corporation's share shall be paid to the mortgage lender for disbursement to the borrower. The mortgage lender shall collect all payments from the borrower and otherwise service the loan.

§ -154 Service fee. Out of the interest collected for the State, the private lender may deduct a service fee of one-half of one per cent of the

unpaid principal balance of the corporation's portion of the loan as a fee for servicing the corporation's portion of the loan; provided that this fee shall not be added to any amount which the borrower is obligated to pay.

§ -155 **Mortgage lender take-over.** The mortgage lender, with the approval of the corporation, may take over a larger percentage or the full principal balance of the loan at any time that it has determined, to the satisfaction of the corporation, that the borrower is able to pay any increased interest charges resulting.

§ -156 **Default.** When the mortgage lender or the corporation deems that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall notify the other and the proceeding shall be promptly initiated by the mortgage lender, unless the corporation elects to request an assignment of the loan. Within thirty days of the notification by either the mortgage lender or the corporation to the other, the corporation may request an assignment of the loan on payment in full of the mortgage lender's share of the principal balance due. Foreclosure proceedings shall be held in abeyance in the interim.

§ -157 **Restrictions on borrower.** Every loan made under this part shall be subject to the following conditions:

- (1) The borrower shall expend no portion of the loan for purposes other than to purchase a residential property.
- (2) The residential property purchased with the loan and mortgaged to the mortgage lender to secure the repayment of the loan shall not be sold or assigned without the prior written approval of the corporation and the mortgage lender.
- (3) The borrower shall pay when due all taxes, liens, judgments, or assessments which may be lawfully levied against the residential property and all costs and expenses of any foreclosure of the mortgage brought by the private lender.
- (4) The borrower shall maintain fire and casualty insurance in such amounts equal to the replacement value of all improvements and insurable portions of the residential property with such insurance company authorized to do business in the State. All proceeds of such insurance shall be made payable to the corporation and the mortgage lender as their respective interests may appear at the time of any loss or damage. Subject to the rules of the corporation, in the event of any loss or damage to the improvement or property covered by such insurance, the proceeds received by the corporation and the mortgage lender shall be applied toward the reconstruction of the improvement or property destroyed or damaged.
- (5) The borrower shall maintain the improvements on the residential property in good repair.

All of the above conditions shall be deemed to be a part of any mortgage executed by the borrower to the mortgage lender, regardless of whether or not they are expressly incorporated in the mortgage document. The mortgage lender may impose other conditions in its mortgage, provided that the form of the mortgage has the prior approval of the corporation.

§ -158 **Arbitrage provisions; interest rate.** (a) Any other provision of the law to the contrary notwithstanding, neither the corporation nor the director of finance shall make loans or purchase mortgages with the proceeds of general obligation bonds of the State or from a revolving fund established or maintained with 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 the Internal Revenue Code of 1954, as amended, of the United States of America.

(b) The rates of interest on loans made under this subpart shall be established by the corporation, 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 subpart. In the event that no such sale intervenes in a twelve-month period after the last rate fixing, the corporation may review the then existing rates on loans made under this subpart 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 the United States Internal Revenue Code of 1954, as amended, on the assumption that the general obligation bonds, the proceeds of which are to be used for the purposes of this subpart, 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.

G. State Mortgage Guarantee Program

§ -160 State mortgage guarantee. (a) The corporation 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; up to one hundred per cent of the principal balance of real property mortgage loans of single-family or multi-family developed under self-help or shell housing programs; plus the interest due thereon, made to qualified borrowers by qualified private lenders; provided that at no time shall the corporation'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; provided that at least two-thirds of the participating homeowners are qualified by income for assistance under this subpart; and provided further that the program is carried out under sponsorship of a nonprofit community organization. For the purposes of this section, the term "shell housing program" means development of housing which is habitable but unfinished and can be completed or expanded; provided that at least one hundred per cent of the participating homeowners are qualified by income for assistance under this chapter; and provided further that the program is carried out under sponsorship of a public nonprofit or private 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 the borrower's 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.

(c) Loans secured under this section shall be limited to qualified single-family and multi-family housing in accordance with rules adopted by the corporation.

(d) To be eligible for loans under this section, a qualified borrower shall be:

- (1) A citizen of the United States or a resident alien;
- (2) A sound credit risk with ability to repay the money borrowed;
- (3) Qualified under the rules adopted by the corporation; and
- (4) Willing to comply with the rules as may be adopted by the director of finance.

The corporation shall process all applications and determine who is a qualified borrower under this chapter.

(e) When the application for an insured loan has been approved by the corporation, the director of finance shall issue to the lender a guarantee for that percentage of the loan on which it guarantees payment of principal and interest. The private lender shall collect all payments from the borrower and otherwise service the loan.

(f) In return for the corporation's guarantee, the private lender shall remit out of interest collected an insurance fee as may be established by the corporation. The funds remitted shall be placed in the state mortgage guarantee fund provided for in subsection (k).

(g) When any installment of principal and interest has been due for sixty days and has not been paid by the borrower, the private lender may file a claim for the guaranteed portion of the overdue payments with the director of finance who may then authorize vouchers for these payments, thereby acquiring a division of interest in the collateral pledged by the borrower in proportion to the amount of the payment. The director of finance shall be reimbursed for any amounts so paid plus the applicable interest rate, where payment is collected from the borrower.

(h) If there is any default in any payment to be made by the borrower, the lender shall notify the director of finance within fifteen days. Should the lender deem that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall so notify the director of finance. Within thirty days of either notification, the director of finance may elect to request an assignment of the loan on payment in full to the lender of the principal balance and interest due. Foreclosure proceedings shall be held in abeyance in the interim.

(i) Every qualified borrower who is granted a loan under this section shall comply with the following conditions:

- (1) Extend no portion of the qualified borrower's loan for purposes other than those sanctioned by the corporation;
- (2) Not sell or otherwise dispose of the mortgage property except upon the prior written consent of the director of finance, and except upon such conditions as may be prescribed in writing by the private lender;
- (3) Undertake to pay when due all taxes, liens, judgments, or assessments which may be lawfully assessed against the property mortgaged, together with cost and expense of any foreclosure of such mortgage;
- (4) Keep insured to the satisfaction of the private lender all improvements and other insurable property covered by the mortgage. Insurance shall be made payable to the mortgagee as its interest may appear at the time of the loss. At the option of the private lender, subject to the regulations and standards of the corporation, sums so received may be used to pay for reconstruction of the improvements destroyed, or for decreasing the amount of the indebtedness;
- (5) Keep the improvements in good repair;

- (6) All of the above conditions shall be held and construed to be a provision of any mortgage executed by virtue of this section whether appearing as a provision of the mortgage or not; and
- (7) The private lender may impose such other conditions in its mortgage, provided the form of such mortgage has the prior approval of the corporation.

(j) Loans guaranteed and made under this subpart shall be repaid in accordance with a payment schedule specified by the private lender with payments applied first to interest and then to principal. Additional payments in any sums, the payment of the entire principal, may be made at any time within the time period of the loan. The private lender may for satisfactory cause and at its discretion extend the time within which the installments of principal may be made for a period not to exceed two years.

(k) There is created a special fund to be known as the "state mortgage guarantee fund". All interest and fees collected under this subpart by the director of finance and the corporation shall be deposited into this fund. The purpose of the fund is to guarantee payment of loans made under this subpart and to carry on the operations of the director of finance and the corporation in administering and granting loans under this subpart. All disbursements from the state mortgage guarantee fund shall be paid out on vouchers approved by the director of finance and warrants signed by the comptroller.

§ -161 Mortgage guaranty agreements. (a) In order to induce appropriate officials of any agency or instrumentality of the United States to commit to insure and insure mortgages under the provisions of the National Housing Act, as amended, the corporation may enter into guaranty agreements with such officials whenever:

- (1) The purchaser-mortgagor in question is ineligible for mortgage insurance purposes under the National Housing Act because of credit standing, debt obligation or income characteristics;
- (2) The purchaser-mortgagor in question is a "displaced person" as defined in chapter 111 and the guaranty agreement will enable the purchaser-mortgagor to obtain suitable replacement housing in accordance with that chapter; and
- (3) The corporation finds that such purchaser-mortgagor would be a satisfactory credit risk with ability to repay the mortgage loan if the purchaser-mortgagor were to receive budget, debt, management and related counseling.

Such guaranty agreements may obligate the corporation to:

- (1) Provide or cause to be provided such counseling; and
 - (2) Indemnify an agency or instrumentality of the United States for a period not to exceed five years for any loss sustained by such agency or instrumentality by reason of insurance of a mortgage.
- (b) The total of guaranties made pursuant to this section and guaranties made pursuant to section -160 shall not exceed \$10,000,000.

H. Downpayment Loan Program

§ -170 Downpayment loans. (a) The corporation 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 corporation 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 corporation 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 corporation may assign the second mortgage held by it to secure the repayment of the downpayment loan to such mortgage lender.

§ -171 Qualifications for downpayment loan. (a) No person shall be qualified for a downpayment loan unless the person:

- (1) Is a citizen of the United States or a resident 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 the person, the person's spouse or both the person and person's spouse (unless separated and living apart under a decree of a court of competent jurisdiction) own such residential property.

§ -172 Restrictions on borrower. Every loan made under this subpart shall be subject to the following conditions:

- (1) The borrower shall expend no portion of the borrower's downpayment loan for purposes other than to make a downpayment for the purchase of a residential property.
- (2) The residential property purchased with the downpayment loan and mortgaged to the State to secure the repayment of the loan shall not be sold or assigned without the prior approval in writing of the corporation and the first mortgage lender.
- (3) The borrower shall pay when due all taxes, liens, judgments, or assessments which may be lawfully levied against the residential property and all costs and expenses of any foreclosure of the mortgage made to the State.
- (4) The borrower shall maintain fire and casualty insurance in such amounts equal to the replacement value of all improvements and insurable portions of the residential property with an insurance company authorized to do business in the State. All proceeds of such insurance shall be made payable to the first mortgage lender and the corporation as their respective interests may appear at the time of any loss or damage. Subject to the rules of the corporation, in the event of any loss or damage to the

improvements or property covered by such insurance, the proceeds receivable by the State shall be applied toward the reconstruction of the improvements or property destroyed or damaged, unless otherwise determined by the corporation on behalf of the State.

(5) The borrower shall maintain the improvements in good repair.

All of the above conditions shall be deemed to be a part of any downpayment mortgage executed under this part, regardless of whether or not they are expressly incorporated in the mortgage document.

§ -173 **Default.** If the borrower defaults in the payment of any installment of principal or interest of the downpayment loan, the corporation shall take all necessary action to collect the delinquent amounts and may, on behalf of the State, take all actions generally allowed holders of mortgages, including the power to foreclose. Upon any foreclosure of the second mortgage, the corporation on behalf of the State, may purchase the interest of the borrower in and to the residential property, take possession thereof and assume all of the obligations of the borrower under the first mortgage held by the private lender and such other liens having priority over the second mortgage as may then exist. On such acquisition of the borrower's interest, the corporation at its option, may pay in full the unpaid balance of the borrower's obligation secured by the first mortgage and other prior liens, repair, renovate, modernize, or improve the residential property, and, with or without clearing the property of all prior mortgages and liens, sell, lease, or rent the property or use or dispose of the same in any manner that the corporation is authorized to do so by law.

I. Rehabilitation Loan Program

§ -180 **Rehabilitation and renovation of existing housing.** (a) The corporation may make loans to qualified residents for the purpose of rehabilitating or renovating an existing housing unit. Loans under this subpart shall not be in excess of \$10,000, or \$3,500 as prescribed by subsection (h), to any resident or for any housing unit and shall be issued upon execution of a written contract for the performance of the rehabilitation or renovation.

(b) Loans made under this subpart shall be limited to rehabilitating or renovating housing units to meet minimum standards of habitability and all applicable county or state laws. Loans made under this subpart shall be available for rehabilitation or renovation of owner-occupied, single-family and duplex housing.

Applications for loans under this subpart shall be made on forms prescribed by the corporation. The application shall specify the property to be improved, the amount to be loaned, the downpayment to be made by the qualified resident, the schedule of repayment, and such other conditions as are established by the corporation. If the loan is assigned to and serviced by a mortgage lender, the application shall be processed by the mortgage lender and forwarded to the corporation. The corporation shall review all applications and determine the amount of the loan; provided that it shall approve loans only to qualified residents as defined by this subpart. When an application is approved by the corporation, the amount of the loan shall be paid to the mortgage lender for disbursement to the qualified resident, if the loan is assigned to or serviced by a mortgage lender. The mortgage lender shall collect all payments from the qualified resident and otherwise service the loan.

The corporation may establish other minimum requirements which shall be met by owners to qualify for loans, as are conducive to carrying out

this section. The corporation shall establish a system to determine preferences by lot in the event that it receives more qualified applications than it has funds available.

(c) A qualified resident under this subpart means a person who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is the owner and occupant of existing housing otherwise qualified under this subpart;
- (4) Is a bona fide resident of the State and has a bona fide intent to reside in the dwelling unit for which a loan is requested under this section;
- (5) Does not own individually or, when husband and wife are living together, does not own jointly with spouse, and whose spouse does not own any other property in the State which is suitable for dwelling purposes, whether such property is held in fee simple or leasehold;
- (6) Has applied for and has been refused a home improvement loan by at least one bank or other financial institution in the State;
- (7) Is not eligible for a loan, or a combination of grant and loan, in the sum requested from any other program or programs sponsored by the State, the county, or the federal government for which funds are then available;
- (8) Has adjusted family income below the maximum limit established by the corporation; and
- (9) Is, in determination of the corporation, able to repay the loan on terms satisfactory to the corporation.

(d) Applicants shall submit to the corporation plans and specifications for each rehabilitation or renovation project, which, as a condition to the granting of an application, shall be found by the corporation to be in conformity with applicable county codes or ordinances; or approved by the appropriate county authority by permit, exception, variance, waiver, or other means.

(e) Loans received by the qualified resident under this subpart shall be used exclusively and entirely for the planning and financing of rehabilitation and renovation of qualified housing, which shall be completed within two years of the contract date. Any written contract executed pursuant to this subpart shall expressly contain the provisions of this subsection, the form of which shall be established by rules adopted by the corporation.

(f) All rehabilitation or renovation undertaken pursuant to this subpart shall be performed under the supervision of a contractor licensed pursuant to chapter 444; provided this shall not prevent a project from being completed substantially with donated labor under licensed supervision. The owner shall indemnify the corporation for any loss suffered by the corporation as a result of any claim or action arising from a mechanic's or materialman's lien relating to a rehabilitation or renovation project of such owner under this section.

(g) Every loan made under this subpart shall be subject to the following terms and conditions:

- (1) Loans made under this subpart shall be repaid within ten years, in accordance with a payment schedule and at a rate of interest to be specified by the corporation; provided that the rate of interest shall be in conformance with section -158.
- (2) In the event that an owner transfers title to a housing unit rehabilitated or renovated under this section, the outstanding balance of the loan shall be paid at the maximum rate of interest

allowed under paragraph (g)(1); provided that there shall be no prepayment penalty.

- (3) The loan, at the direction of the corporation, may be assigned to and serviced by mortgage lenders doing business in the State at a service fee established by contract between the corporation and the mortgage lender, but in no event will the service fee be greater than the service fee charged by the mortgage lender for similar loans ordinarily made by them.
- (4) When the mortgage lender or the corporation deems that foreclosure proceedings are necessary to collect moneys due from the qualified resident, it shall notify the other and the proceeding shall be promptly initiated by the mortgage lender, unless the corporation elects to request an assignment of the loan. Within thirty days of the notification by either the mortgage lender or the corporation to the other, the corporation may request an assignment of the loan on payment in full of the mortgage lender's share of the principal balance due. Foreclosure proceedings shall be held in abeyance in the interim.

(h) For the purpose of more effectively carrying out this subpart, the corporation may contract with any legally constituted county housing agency to participate in loans under this subpart. Such contract shall specify rules of the administration; provided that no contract shall prevent the county agency from establishing by rule more specific policies for assistance not in conflict with this section. To facilitate the application of elderly citizens in either the lower income or "gap groups" who own their homes and whose needs are for smaller loans that are sufficient to better maintain their homes, if the applicant borrower is otherwise qualified, is fifty-five years of age or older, and is applying for a loan not exceeding \$3,500, then the applicant shall not be required to:

- (1) Submit plans and specifications to the corporation, but in lieu thereof may submit a written statement as to the scope of the intended renovation work, including a cost estimate therefor and evidence of a building permit from the county having jurisdiction;
- (2) Perform the work under the supervision of a contractor licensed pursuant to chapter 444; provided that the corporation shall inspect the premises before the work begins and after completion, for which two inspections the corporation may charge a fee (deductible from the loan) of \$50; or
- (3) Execute a mortgage securing the loan, but may in lieu thereof provide the corporation with a chattel mortgage on personal property, or make an assignment to the corporation of a personal asset or assets, or provide a third party guaranty in a form acceptable to the corporation, which alternative in any case shall provide the corporation with a secondary source of repayment in the event of default.

(i) When requested by the corporation, the director of finance shall issue general obligation bonds of the State pursuant to part I of chapter 39 to effectuate the purposes of this section, subject to prior approval of the governor.

PART III. HOUSING DEVELOPMENT

A. General Provisions

§ -200 Criteria. In administering this chapter and other laws of the State applicable to the supplying of housing or the assistance in obtaining housing, the corporation shall give preference to those applicants most in need of assistance in obtaining housing, in light of the amount of moneys available for the various programs. In doing so the corporation shall take into consideration the applicant's household income and number of dependents; the age of the applicant; the physical handicaps of the applicant or those living with the applicant; whether or not the present housing of the applicant is below standard; whether or not the applicant's need for housing has arisen by reason of displacement of the applicant by governmental actions; and such other factors as it may deem pertinent.

§ -201 Powers and duties, generally. (a) The corporation may develop fee simple or leasehold property, construct dwelling units thereon, including condominiums, planned units and cluster developments, and sell, lease, or rent or cause to be leased or rented, at the lowest possible price to qualified residents of the State, 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.

(b) The corporation 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 corporation 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 corporation in connection with any application shall constitute perjury and be punishable as such. The corporation 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 corporation 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 corporation, 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 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 corporation 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.

(d) The corporation 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 or substantially complete and habitable dwelling or dwellings thereon is acquired by exchange or negotiation, the exchange value or purchase price for each 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 corporation for such term and rent as it deems appropriate.

(e) Upon authorization by the legislature, the corporation 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 corporation 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 corporation may establish;
- (6) The cost of repurchase of units under section -221;
- (7) Loans for the rehabilitation and renovation of existing housing; and
- (8) Any other moneys required to accomplish the purposes of this chapter.

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

§ -202 **Additional powers.** Notwithstanding and without compliance with sections 103-7 and 103-22 but with the approval of the governor, the corporation may enter into and carry out agreements and undertake projects or participate in projects authorized by this chapter.

§ -203 **Bond financing.** The director of finance may issue general obligation bonds and short term project notes of the State in the aggregate amount not to exceed \$105,000,000 for the dwelling unit revolving fund created by section -204.

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 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 and the amounts in either fund may be used for any of the purposes set forth in this chapter.

§ -204 **Dwelling unit 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 corporation under 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 building 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.

§ -205 Exemption from general excise taxes. (a) The corporation may certify for exemption from general excise taxes any qualified person or firm involved with a newly constructed or rehabilitated project developed under this chapter or chapter 356, or section 46-15.1.

(b) In accordance with rules established by the corporation, existing low and moderate income housing projects receiving government assistance under an agreement with a governmental body that regulates rents and operations of the projects may receive an exemption annually upon review and certification by the corporation for any qualified period. The corporation shall notify the department of taxation of any such certification provided to existing projects.

(c) All claims for exemption under this section shall be filed with and certified by the corporation and forwarded to the department of taxation. Such exemption as filed and approved, shall not be considered a subsidy for the purpose of this chapter.

(d) For the purpose of this section, "government assistance" means assistance under a low or moderate income housing program from the State or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise which is approved by the corporation.

§ -206 Exemption from tax on income and obligations. Income earned and obligations issued by a nonprofit entity determined to constitute a "public housing agency" pursuant to section 3(6) of the United States Housing Act of 1937, as amended, and which income and obligations are declared by the United States Department of Housing and Urban Development to be exempt from all taxation imposed by the United States pursuant to section 11(b) of such Act shall be exempt from all taxation now or hereafter imposed by the State.

B. Development of Housing Projects

§ -210 Housing development; exemption from statutes, ordinances, charter provisions, rules. (a) The corporation may develop, on behalf of the State or 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 corporation 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 shall have approved the project.

- (A) The legislative body shall approve or disapprove the project within forty-five days after the corporation has submitted the preliminary plans and specifications for the project to the legislative body. If on the forty-sixth day a project is not disapproved, it shall be deemed approved by the legislative body.
- (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 section 501-85 and 502-17, the executive director of the corporation 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.
- (4) The land use commission shall approve or disapprove a boundary change within forty-five days after the corporation has submitted a petition to the commission as provided in section 205-4. If on the forty-sixth day the petition is not disapproved, it shall be deemed approved by the commission.
- (b) For the purposes of this section, "government assistance program" means a housing program qualified by the corporation and administered or operated by the corporation or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise.

§ -211 Dwelling unit project, construction and sponsorship of. (a) The corporation, on behalf of the State or with eligible developers and contractors, shall develop real property and construct dwelling units thereon. Qualifications for developers and contractors shall be provided by rules to be adopted by the corporation in accordance with chapter 91. Any person, if qualified, may act as both the developer and the contractor.

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

(c) If working in partnership with an eligible developer, the corporation 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 corporation and shall be reimbursed for all costs relating to the project as certified by the corporation including administrative and overhead costs. Additionally the other partners, upon transfer of title by the corporation to the purchaser, shall be entitled to a guaranteed gross share if the actual cost of the project does not exceed the original project cost. The gross share shall not exceed fifteen per cent of the original project cost pro rated to the dwelling units, less any amount subsidized by the State. Subsidies shall

include unrecovered development and land costs and any other subsidized items as defined in rules to be adopted by the corporation pursuant to chapter 91. The percentage of such share shall be determined by the corporation by contract with the partner based upon the nature of the services rendered by them. For purposes of this subsection, "original project cost" means the original budget of a project as approved by the corporation without modification at a later date.

(d) The corporation may require that 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 corporation shall deem necessary.

§ -212 Independent development of projects. (a) In any county, the corporation may enter into agreements for housing projects with an eligible developer if in the corporation's reasonable judgment a project is primarily designed for lower income housing. The agreement may provide for the housing to be placed under the control of the corporation, or to be sold by the corporation or to be sold to the corporation as soon as the units are completed and shall contain such terms, conditions, and covenants as the corporation, by rules deems appropriate, and every agreement shall provide for the developer to furnish a performance bond, in favor of the corporation, assuring the timely and complete performance of the housing project. Sureties on the bond must be satisfactory to the corporation.

(b) The plans and specifications for the project shall:

- (1) Provide for economically integrated housing by stipulation and design; provided that not less than sixty per cent of the units shall be sold in price ranges established by the corporation 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 individually or in clusters 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 corporation or to the purchaser and in all cases subject to all of the provisions of sections -221, -222, and -223, excepting units sold at market price; 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 corporation may accept and approve projects independently initiated by private developers which fully comply with subsections (a) and (b). The corporation 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 land and the construction, improvement, and sale of homes thereon; provided that the procedures in section -210(1), (2), and (3) have been satisfied.

§ -213 Private development of projects. (a) The corporation may enter into contracts with any eligible bidder to provide for the construction of housing. Any such contract shall provide that the housing or housing project shall be placed under the control of the corporation, 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 corporation, when the housing has been completed. Any such contract shall contain such terms and conditions as the corporation 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 corporation, and the furnishings 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 corporation 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 corporation 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 corporation 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 corporation, the attorney general shall furnish to the corporation, 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 corporation is authorized to guarantee, or enter into a commitment to guarantee, the mortgagee, against any losses that may thereafter arise from the 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 corporation 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 corporation may provide for the payment of the reasonable costs necessary for obtaining title search and title insurance. Any determination by the corporation under the foregoing proviso shall be set forth in writing, together with the reasons thereto.

(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 corporation 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.

§ -214 Interim financing of projects. (a) The corporation may provide interim construction loans to eligible developers. In addition to the rate of interest charged on interim loans the corporation may charge loan commitment fees, to be determined by rules adopted by the corporation.

(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, or the corporation 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 corporation may also set the conditions of a loan in a building and loan agreement between the borrower and the corporation in order to secure the loan and the performance of the borrower to complete the project.

§ -215 **Commercial, industrial, and other uses.** (a) In connection with the development of any residential units under this chapter the corporation 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 lifestyles of the purchasers of residences in the development. The corporation 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 -210. For this purpose the corporation may use any of the funds authorized under this chapter.

(b) The corporation shall establish rules 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 corporation. All other leases or sales shall be at economic rents or sales prices determined by the corporation, 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 corporation, shall be deposited in the dwelling unit revolving fund.

The rules may also provide that during the first twenty years after its purchase, any commercial property so developed and sold or leased may be resold or assigned only to the corporation 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.

§ -216 **Employee housing.** The corporation may develop or may assist in the development and construction of employee housing for persons of low and moderate income. The corporation may adopt rules and prescribe terms and conditions to carry out the purpose of this section.

§ -217 **Hawaii development revolving fund.** (a) There shall be a revolving fund to be known as the Hawaii development revolving fund which shall be administered by the corporation. All repayments of principal and interest on loans made by the corporation from the fund shall be placed in the Hawaii development revolving fund to be used for the purposes of this section.

(b) The corporation may make loans, either before or after final subdivision approval, to cover planning, development, and initial costs, including the costs of options, agreements of sale, and downpayments, of commencing projects to provide low or moderate cost housing through government assistance programs.

(c) In managing the fund, the corporation may cooperate with other public and private nonprofit agencies or entities and may enter into loan

agreements with them. The necessity for the extent and nature of security required for a loan shall be determined by the corporation. The security may include, but is not limited to, a borrowing resolution of the nonprofit entity.

The foregoing powers are subject, however, to the following restrictions and limitations:

- (1) No single loan shall exceed two per cent of the project cost;
- (2) The loan shall be repaid with simple interest in the amount of six per cent per year;
- (3) The moneys loaned shall be used only for the planning, development, and initial costs of commencing projects to provide nonprofit low or moderate cost housing.
- (d) The corporation may adopt rules to carry out the purposes of this section.

(e) For the purposes of this section, "government assistance programs" means housing programs qualified by the corporation and administered or operated by the corporation or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise. For the purposes of this section, a "nonprofit entity" is a corporation, association, or other duly chartered organization registered with the State, which organization has received charitable status under the Internal Revenue Code or as defined by rules adopted by the corporation.

C. Sale of Dwelling Units

§ -220 Sale, mortgages, agreement of sale, other instruments. (a) The corporation shall sell completed dwelling units or dwelling units which are substantially completed and habitable, 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 costs as determined by the corporation; provided that the corporation 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 subject to reimbursement upon sale as provided for in section -221.

(b) If a qualified purchaser is unable to obtain sufficient funds at reasonable rates from private lenders, the corporation, by way of mortgage, agreement of sale, or other instrument to secure the indebtedness, may loan to the purchaser up to one hundred per cent of the purchase price. The purchaser in such event shall execute with the corporation 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 corporation 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 prepayment penalty.

(d) If the purchaser defaults on the payment of any loan, the corporation 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 corporation, 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.

§ -221 Dwelling units; restrictions on transfer, waiver or restrictions. (a) Except for dwelling units which are financed under a federally subsidized mortgage program, the following restrictions shall apply to the transfer of dwelling units purchased from the corporation, 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 corporation 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 purchaser's equity in the property at the rate of seven per cent a year.

The corporation may purchase the unit either outright, free and clear of all liens and encumbrances, or by transfer subject to an existing mortgage.

If by outright purchase, the corporation 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 corporation 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 corporation. In such cases, the amount to be paid to the purchaser by the corporation 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 corporation.

(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 corporation the sum of:

- (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
- (B) Any subsidy made by the corporation in the acquisition, development, construction, and sale of the unit, and any other amount expended by the corporation not counted as cost under section -220 but charged to the dwelling unit

by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs; and

- (C) Interest on the subsidy and any other amount expended at the rate of seven per cent a year computed as to the subsidy, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that if any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the dwelling unit at a price which shall not exceed the sum as computed under paragraph (1).

(b) The restrictions prescribed in subsection (a) 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 corporation; or
- (2) The corporation determines, in accordance with adopted rules, that the sale or transfer of a dwelling unit would be at a price and upon terms that preserves the intent of this section without the necessity of the State to repurchase the unit; provided that the restrictions prescribed in subsection (a) 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) shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder becomes the owner of 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 corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation 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 corporation 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 amounts determined pursuant to subsection (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 any other instrument of conveyance issued by the corporation.

§ -222 Dwelling units; restrictions on use. (a) A dwelling unit purchased from the corporation shall be occupied by the purchaser at all times during the ten-year restriction period set forth in section -221.

(b) From time to time the corporation may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the corporation, at its option, to purchase the unit as provided in section -221(a)(1) or (2), as applicable.

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

(d) The restrictions prescribed in subsection (a) shall be automatically extinguished and shall not attach in subsequent transfers of title as prescribed in section -221(c).

§ -223 Restrictions on use, sale and transfer of dwelling units; effect of amendment or repeal. (a) Restrictions on the use, sale and transfer of dwelling units shall be made as uniform as possible in application to purchasers of all units, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent legislative act, ordinance, rule or regulation. Dwelling unit purchasers shall be permitted at their election to sell or transfer units subject to restrictions in effect at the time of their sale or transfer.

(b) The corporation, any other department of the State, or any county housing agency maintaining restrictions, through contract, deed, other instrument, or by rule, shall notify purchasers of any substantial change in restrictions made by law, ordinance, rule or regulation not more than one hundred eighty days after a change in restrictions, and such notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of dwelling units constructed and sold prior to such effective date an opportunity to modify the existing contract or other instrument to incorporate the most recent provisions. The notice shall be published at least three times in a newspaper of general circulation in the State for state agencies and at least three times in a county newspaper for county agencies.

(c) Where the restrictions on transfer of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase.

(d) No dwelling unit purchaser shall be entitled to modify the restrictions on use, transfer, or sale of the dwelling unit, without the written permission of the holder of a duly-recorded first mortgage on the dwelling unit and the owner of the fee simple or leasehold interest in the land underlying the unit, unless the holder of the first mortgage or the owner is an agency of the State or its political subdivisions.

(e) This section shall apply to all dwelling units developed, constructed, and sold pursuant to this chapter and similar programs in the State or its political subdivisions and which are sold on the condition that the purchaser accepts restrictions on the use, sale, or transfer of interest in the dwelling unit purchased.

(f) The provisions of this section shall be incorporated in any deed, lease, instrument, rule, or regulation relating to restrictions on use, sale or transfer of dwelling units, entered into after June 20, 1977.

D. Housing for Elderly Persons (Reserved)

VI.¹ MISCELLANEOUS PROVISIONS

§ -240 Quitclaim deeds. Unless otherwise provided by law, the corporation shall issue quitclaim deeds and leases whenever it conveys, transfers, sells, or assigns any property developed, constructed or sponsored under this chapter."

SECTION 16. Chapters 111, 516, and 519, Hawaii Revised Statutes, are amended by substituting the words "housing finance and development corporation" wherever the words "Hawaii housing authority" appear.

SECTION 17. All rights, powers, functions, and duties previously conferred on the Hawaii housing authority by any provision of chapters 111, 356, 359, 359G, 516, and 519, Hawaii Revised Statutes, which are transferred to or conferred upon the housing finance and development corporation by this Act shall be performed and enforced by the corporation in the same manner as the Hawaii housing authority was previously authorized, entitled, or obligated.

All rules, regulations, policies, procedures, guidelines, and other material adopted or developed by the Hawaii housing authority to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the corporation by this Act, in effect on the effective date of this Act, shall remain in full force and effect for not more than twelve months after the effective date of this Act, unless adopted by the corporation pursuant to chapter 91, Hawaii Revised Statutes. In that interim, every reference to the Hawaii housing authority in those rules, regulations, policies, procedures, guidelines, and other material is amended to refer to the housing finance and development corporation.

All deeds, leases, contracts, loans, agreements, or other documents executed or entered into by or on behalf of the Hawaii housing authority pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the corporation by this Act, shall remain in full force and effect. After the effective date of this Act, every reference to the Hawaii housing authority therein shall be construed as a reference to the housing finance and development corporation.

SECTION 18. **Transfer of personnel.** Except as provided in section 19 of this Act, all officers and employees whose functions are transferred to or conferred upon the housing development and finance corporation by this Act shall be transferred with their current functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act. No officer or employee of the State shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department of personnel services or the governor.

SECTION 19. Notwithstanding the provisions of section -3 in section 15 of this Act, three of the six initial public members of the board of directors of the housing development and finance corporation shall be selected by the governor from among the public members of the Hawaii housing authority. Notwithstanding the provisions of section 26-34, Hawaii Revised Statutes, the three public members of the corporation's board of directors selected by the governor from the Hawaii housing authority shall serve for no more than the remainder of their Hawaii housing authority terms; provided that their combined membership on both boards shall not

exceed eight consecutive years. The vacancies on the Hawaii housing authority which result from the governor's selection of the three public members of the corporation under this section shall be filled as provided by section 26-34, Hawaii Revised Statutes.

SECTION 20. Transfer of records, equipment, authorization, and other property. All appropriate records, equipment, files, supplies, contracts, books, papers, documents, maps, authorizations, and other property heretofore made, used, acquired, or held in conjunction with functions transferred by this Act shall be transferred with the functions to which they relate.

SECTION 21. Transfer of funds. All funds appropriated for the 1987-89 fiscal biennium, directly or indirectly, relating to the functions, programs, or organizational segments transferred under this Act shall be appropriately transferred to the department of human services with the functions, programs, or segments to which they relate, or to the department of planning and economic development.

The balances outstanding in and obligations payable from any revolving, special, or trust fund administered by the Hawaii housing authority under parts II and III of chapter 356, part VIII of chapter 359, and chapter 359G, Hawaii Revised Statutes, are transferred to and made the obligations of the revolving, special, or trust funds of the same names established under the new chapter added to the Hawaii Revised Statutes by section 15 of this Act.

SECTION 22. Federal aid, contract and bond obligations; not impaired. It is the intent of this Act to neither jeopardize the receipt of any federal aid nor impair the obligation of the State or any agency thereof to persons with which it has existing contracts or to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 23. Conflict with provisions of this Act. All laws and parts of laws heretofore enacted which are in conflict with the provisions of this Act are hereby amended to conform to this Act. All acts passed during this Regular Session of 1987, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such acts specifically provide that this Act is being amended. Any amendment made by an act of the Regular Session of 1987 to a provision of the Hawaii Revised Statutes administered by the Hawaii housing authority which is reenacted and made applicable to the housing development and finance corporation by the new chapter in section 15 of this Act, shall be an amendment to the new chapter. If S.B. No. 776² is enacted, every reference to the Hawaii housing authority shall be amended to refer to the housing development and finance corporation and the provisions of S.B. No. 776² shall be inserted into subpart D of part III of the new chapter added by section 15 of this Act. If S.B. No. 1723 or H.B. No. 1512³ is enacted, every reference to the Hawaii housing authority shall be amended to refer to the housing development and finance corporation and the provisions of S.B. No. 1723 or H.B. No. 1512³ shall be inserted into subpart C of part II of the new chapter added by section 15 of this Act.

SECTION 24. Statutory material to be repealed is bracketed. New statutory material is underscored.⁴

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SECTION 25. This Act shall take effect on July 1, 1987.

(Approved June 29, 1987.)

Notes

1. So in original.
2. Act 354, this volume.
3. Act 205, this volume.
4. Edited pursuant to HRS §23G-16.5.