

ACT 304

H.B. NO. 2400

A Bill for an Act Relating to Mortgage Insurance.

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

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$5,000,000, or 0.16 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act are necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 2. The legislature finds that although private mortgage insurance providers offer the services to meet most of the demands generated for home mortgage insurance underwriting in Hawaii, there is an urgent need to establish a mechanism to address the demands of the market that private insurers have, thus far, failed to recognize. Presently, private insurers do not offer mortgage insurance services for multi-family rental homes.

To ensure the availability of mortgage insurance services for a broader range of mortgages, the legislature finds that a mortgage insurance program should be established and administered at the level of the State.

The purpose of this Act is to establish a mortgage insurance underwriting program within the state housing finance and development corporation to insure mortgage loans made for multi-family rental housing under which a private non-profit corporation or a government corporation is the mortgagee.

SECTION 3. Chapter 201E, part II, Hawaii Revised Statutes, is amended by adding a new subpart to be appropriately designated and to read as follows:

**“RESIDENTIAL MORTGAGE INSURANCE PROGRAM**

**§201E- Definitions.** As used in this subpart, unless the context clearly requires otherwise:

“Debt-coverage ratio” means revenues produced by the project including subsidy payments from governmental entities, net of operating expenses, divided by principal and interest payments due on outstanding mortgage indebtedness.

“Default” means mortgage loans on which principal or interest, or both, are due and unpaid for a period of sixty days.

“First mortgage” means those classes of first liens, together with all

appropriate credit instruments, as are commonly given to secure loans on real estate under the laws of the State.

“Loan-to-value ratio” means the unpaid principal balance of the loan, combined with prior liens, divided by the appraised value or purchase price, whichever is less.

“Mortgagee” means the original lender of the mortgage, including all successors and assigns.

“Mortgagor” means the borrower of a first or second mortgage.

“Revolving fund” means the multi-family rental housing mortgage insurance revolving fund established under this subpart.

“Second mortgage” means any class of second liens, together with all appropriate credit instruments, ranking immediately after a first mortgage on the same property, without intervening liens, as are commonly given to secure loans on real estate.

**§201E- Mortgage insurance program; establishment.** There is established within the corporation, a mortgage insurance program. All moneys to administer the residential mortgage insurance program under this subpart shall be allocated out of the revenues of the revolving fund established under this subpart. The corporation shall establish mortgage insurance premium levels that, together with all other fees, charges, and appropriations, payable to the revolving fund, would generate the revenues and receipts to the revolving fund necessary to ensure the maintenance of a fiscally-sound, self-sustaining mortgage insurance program.

**§201E- Insurance of mortgages.** (a) Upon receipt of an application from a prospective mortgagee, the corporation may insure, or make advance commitments to insure, principal amounts of a loan for housing subject to this subpart and upon such terms and conditions as the corporation may prescribe. Mortgages insured by the corporation under this subpart shall be restricted to loans for multi-family rental homes under which a private nonprofit corporation or a government corporation is the original lender. Mortgage loans made or insured by the corporation under this subpart shall be secured by a first or second mortgage. For mortgages to be eligible for insurance under this subpart, the underlying mortgage shall be one that is made to and held by a mortgagee approved by the corporation as responsible and serviced by a responsible mortgage servicer.

(b) The aggregate principal amount of insurance liability for loans which may be insured under this subpart shall not exceed \$50,000,000. The obligation of the corporation under any policy of insurance issued under this subpart shall constitute an instrument of indebtedness under which the State incurs a contingent liability, as guarantor, and shall constitute a general and moral obligation of the State, and the full faith and credit of the State is pledged toward the payment of such obligation.

(c) The corporation shall adopt rules in accordance with chapter 91 to define the guidelines, procedures, conditions, and details of mortgage insurance premium payments under this section; provided that the corporation shall establish actuarially sound premium schedules, loan-to-value ratios, and premium underwriting guidelines to protect the multi-family rental housing mortgage insurance revolving fund from inordinate risk; provided further that under no circumstances shall the rules permit the loan-to-value ratio to exceed seventy-five per cent; and provided further that the underwriting guidelines include a debt-coverage ratio of not less than 1.1 to 1.

(d) The underwriting guidelines established in accordance with subsection

(c) may be applied on a sliding scale such that a high loan-to-value ratio on a given loan will have a conservative debt-coverage ratio; and conversely, a loan with a low debt-coverage ratio will have a lower loan-to-value ratio than the maximum.

(e) In establishing the guidelines for mortgage insurance underwriting required under this subpart, the corporation shall seek to establish levels of permissible loan coverage that are adequate to make the insured mortgages acceptable to secondary market investors.

**§201E- Mortgage insurance; application procedures.** All applications for mortgage insurance under this subpart shall be forwarded, together with an application fee prescribed by the rules, to the corporation. The corporation shall review the application, investigate the type of housing to be financed to ensure conformance with the requirements of this subpart, and approve or deny the application. No application shall be approved unless the board finds that the financing plan for the rental project is sound and consistent with the purposes of this subpart. The corporation, within forty days of the receipt of the application, shall notify the applicant and the proposed lender of its determination. All approvals shall be subject to the payment of the fee prescribed by the corporation.

**§201E- Multi-family rental housing mortgage insurance revolving fund.** (a) There is established, within the corporation, a special fund to be known as the multi-family rental housing mortgage insurance revolving fund. Amounts in the fund shall be used to insure principal amounts of loans secured by mortgages for multi-family rental housing under which a private nonprofit corporation or a government corporation is the mortgagee.

(b) All appropriations or loans made by the legislature for the purposes of this subpart from the general fund, all interest income, investment income, fees, receipts of mortgage insurance premiums, money, and other assets received as a result of loan defaults or delinquencies, proceeds from the sale, lease, or rental of real property, and all other moneys collected under this section by the director of finance or the corporation shall be deposited into the multi-family rental housing mortgage insurance revolving fund.

(c) Disbursements under this subpart shall be made for all payments required by loan defaults, all direct expenses and payments for the protection of the interest of the corporation in connection with delinquent or defaulted insured mortgages or property acquired as a result thereof, and any and all claims arising from the insurance coverage provided. All claims payments under this subpart shall be paid out on vouchers approved by the director of finance and warrants signed by the comptroller.

(d) The corporation shall establish a method of determining and maintaining the reserve adequacy of the fund based upon the potential claim liability and the degree of risk estimated for that liability; provided that under no circumstances shall available reserves be less than ten per cent of the outstanding liability.

(e) The reserve adequacy of the fund shall be monitored by the corporation at least once during each quarter of the year and shall be audited by a certified public accounting firm at least once annually.

**§201E- Default by mortgagor and subsequent action.** (a) In the event of default by the mortgagor, the mortgagee shall notify the corporation of the default and the mortgagee's proposed course of action. When it appears feasible, the corporation, upon default by the mortgagor, may authorize payments to be made, for a temporary period, from the revolving fund to the mortgagee for

delinquent payments; provided that all amounts so advanced shall become a lien on the property; and provided further that the actual amounts paid in the settlements of claims shall not exceed the actual amount of loss realized upon the sale of the foreclosed property, or the amount of insurance coverage provided, whichever is less. All resales of property acquired by foreclosure or deeded in lieu of foreclosure shall require the approval of the corporation.

(b) The corporation may also agree to revise the terms of financing when it appears to be prudent. In accordance with subsection (a), the mortgagee shall be entitled to receive the benefits of the insurance authorized under this subpart upon:

- (1) Any sale of the mortgaged property by court order in foreclosure or a sale with the consent of the corporation by the mortgagor or a subsequent owner of the property or by the mortgagee after foreclosure or acquisition by deed in lieu of foreclosure; provided all claims of the mortgagee against the mortgagor or others arising from the mortgage, foreclosure, or any deficiency judgment shall be assigned to the corporation without recourse except such claims as may have been released with the consent of the board;
- (2) The expiration of six months after the mortgagee has taken title to the mortgaged property under judgment of foreclosure, foreclosure by sale or other judicial sale, or under a deed in lieu of foreclosure if during such period the mortgagee has made a bona fide attempt to sell the property, and thereafter conveys the property to the corporation with an assignment, without recourse, to the corporation of all claims of the mortgagee against the mortgagor or others arising out of the mortgage foreclosure or deficiency judgment; or
- (3) The acceptance by the corporation of title to the property or an assignment of the mortgage, without recourse, to the corporation, in the event the corporation determines it imprudent to proceed under other options authorized under this section.

(c) Upon the exercise of any action under subsection (b), the obligation of the mortgagee to pay premium charges for insurance shall cease, and the corporation shall pay to the mortgagee, within thirty days, the sum of:

- (1) The unpaid principal balance of the insured indebtedness;
- (2) The unpaid interest to the date of conveyance or assignment to the corporation;
- (3) The amount of all payments made by the mortgagee for which it has not been reimbursed for taxes, insurance, assessments, and mortgage insurance premiums;
- (4) Any and all claims arising from the insurance coverage provided; and
- (5) All other necessary fees, costs, or expenses of the mortgagee as approved by the corporation; provided that the aggregate amount paid shall not exceed the amount of insurance coverage provided.

(d) Except as provided in subsection (c), chapters 661 and 662 or any other law to the contrary notwithstanding, nothing in this subpart shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity, without regard to whether that person or entity receives any benefits under this subpart, against the corporation, the State or its officers and employees, except as expressly provided in this subpart.

(e) Upon request of a mortgagee, the corporation, at any time, and under such terms and conditions as the corporation may prescribe, may:

- (1) Consent to the release of the mortgagor from liability;
- (2) Consent to the release of the property from the lien of the mortgage;
- (3) Approve a substitute mortgagor; or
- (4) Approve the sale of the property or any part thereof.

(f) No claim for the benefit of the insurance provided in this chapter shall be accepted by the corporation except within one year after any sale or acquisition of title of the mortgaged premises under subsection (b)(1) or (2)."

SECTION 4. Pursuant to Article VII, section 13, clause 8, of the State Constitution that states: "Bonds constituting instruments of indebtedness under which the State or any political subdivision incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under this section; provided that the State or political subdivision shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State or political subdivision as provided by law," the legislature finds and declares that the amount presented below satisfies the reserve requirement of the State Constitution.

SECTION 5. The director of budget and finance is authorized to transfer the sum of \$5,000,000, from the homes revolving fund to capitalize the multi-family rental housing mortgage insurance revolving fund. The sum transferred shall be expended by the housing finance and development corporation for the purposes of this Act.

SECTION 6. The housing finance and development corporation shall submit a report to the legislature of its findings and recommendations regarding the status and performance of the mortgage insurance underwriting program twenty days before the convening of the regular session of 1995.

SECTION 7. This Act shall take effect on July 1, 1992 and shall be repealed on June 30, 1995.

(Approved June 30, 1992.)