

ACT 196

S.B. NO. 179

A Bill for an Act Relating to Housing.

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

SECTION 1. The senate and house of representatives of the twenty-second legislature of the State of Hawaii, regular session of 2004, adopted senate concurrent resolution no. 135 S.D.1, requesting the housing and community development corporation of Hawaii to convene a task force to develop near-term solutions to Hawaii's affordable housing shortage problem with respect to ownership and rental

markets. The affordable housing task force issued its report with findings and recommendations in January 2005.

The purpose of this Act is to implement many of the recommendations of the task force.

PART I

SECTION 2. According to the “Consolidated Plan; Action Plan” of 2003, prepared by the housing and community development corporation of Hawaii, Hawaii’s greatest housing need is housing for those earning below fifty per cent and from fifty to eighty per cent of the median family income. Over twenty eight thousand units are expected to be needed, and nearly forty per cent of those will be needed by those earning below eighty per cent of the median family income. These households carry the heaviest burdens with regard to the cost of rent, substandard housing quality, and overcrowding. According to the “Hawaii Housing Policy Study, 2003,” over forty-seven per cent of all households (family of four) statewide have incomes at or below eighty per cent of the median family income.

The “Homeless Point-in-Time” report of 2003 found that approximately six thousand persons are homeless statewide at any given time. Of these six thousand persons, four thousand have no shelter, and the remainder live in temporary shelters. In 2003, the number of persons homeless during the year exceeded fourteen thousand persons. However, even more troubling is the dramatic increase in the number of “hidden homeless”. The “hidden homeless” are those relying on public assistance, relatives, or friends for shelter because they cannot afford to live on their own. From 1992 to 2003, the hidden homeless more than doubled, from over ninety thousand to over two hundred twenty thousand persons. The very tight housing market in Hawaii drives out those who can least afford to pay for housing.

In short, affordable rental housing in Hawaii is in short supply or nonexistent. Even moderate-income families are priced out of the housing market.

Currently, the rental housing trust fund, established to increase the number of available rental housing units in the State, helps provide about two hundred to two hundred fifty units per year. But additional units are needed immediately to relieve families caught in crisis. To augment the housing and community development corporation of Hawaii’s ability to provide additional rental housing units the legislature enacted House Bill 1303, during the 2005 regular session. House Bill 1303 amended section 247-7, Hawaii Revised Statutes, to raise the percentage of the conveyance tax allocated to the rental housing trust fund and consequently provide more funding for rental housing purposes.

The purpose of this part is to provide mechanisms and incentives that will help to increase the supply of low-income rental housing units for persons and families earning less than eighty per cent of the median family income.

SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Land use density; low-income rental units. Notwithstanding any other law to the contrary, the counties are authorized to provide flexibility in land use density provisions to encourage the development of any rental housing project where at least a portion of the rental units are set aside for persons and families with incomes at or below one hundred forty per cent of the area median family income, of which twenty per cent are set aside for persons and families with incomes at or below eighty per cent of the area median family income.”

SECTION 4. Section 201G-116, Hawaii Revised Statutes, is amended to read as follows:

“§201G-116 Exemption from general excise taxes. (a) In accordance with section 237-29, the corporation may approve and certify for exemption from general excise taxes any qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project:

- (1) Developed under this subpart;
- (2) Developed under a government assistance program approved by the corporation, including but not limited to, the United States Department of Agriculture 502 program and¹ Federal Housing Administration 235 program; [or]
- (3) Developed under the sponsorship of a private nonprofit corporation providing home rehabilitation or new homes for qualified families in need of decent, low-cost housing[-]; or
- (4) Developed by a qualified person or firm to provide affordable rental housing where at least fifty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income, as determined by the United States Department of Housing and Urban Development, of which at least twenty per cent of the available units are for households with incomes at or below sixty per cent of the area median family income as determined by the United States Department of Housing and Urban Development.

(b) All claims for exemption under this section shall be filed with and certified by the corporation and forwarded to the department of taxation. Any claim for exemption that is filed and approved, shall not be considered a subsidy for the purpose of this subpart.

(c) For the purposes of this section, “moderate rehabilitation” means rehabilitation to upgrade a unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure. “Substantial rehabilitation” means the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements and may include, but is not limited to, the gutting and extensive reconstruction of a unit or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance. “Substantial rehabilitation” also includes renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use (e.g., conversion of a hotel to housing for elders).

(d) The corporation may establish, revise, charge, and collect a reasonable service fee, as necessary, in connection with its approvals and certifications under this section. The fees shall be deposited into the dwelling unit revolving fund.”

SECTION 5. Section 201G-432, Hawaii Revised Statutes, is amended to read as follows:

“§201G-432 Rental housing trust fund. (a) There is hereby established a rental housing trust fund to be placed within the corporation.

(b) An amount from the fund, to be set by the corporation and authorized by the legislature, may be used for administrative expenses incurred by the corporation in administering the fund; however, fund moneys may not be used to finance day-to-day administrative expenses of projects allotted fund moneys.

(c) The following may be deposited into the fund: appropriations made by the legislature, private contributions, repayment of loans, interest, other returns, and moneys from other sources.

(d) The fund shall be used to provide loans or grants for the development, pre-development, construction, acquisition, preservation, and substantial rehabilitation of rental housing units. Permitted uses of the fund may include but are not limited to planning, design, land acquisition, costs of options, agreements of sale, downpayments, equity financing, capacity building of nonprofit housing developers, or other housing development services or activities as provided in rules adopted by the corporation pursuant to chapter 91. The rules may provide for a means of recapturing loans or grants made from the fund if a rental housing project financed under the fund is refinanced or sold at a later date. The rules may also provide that moneys from the fund shall be leveraged with other financial resources to the extent possible.

(e) Moneys available in the fund shall be used for the purpose of providing, in whole or in part, loans or grants for rental housing projects [wherein:] in the following order of priority:

- (1) Projects or units in projects that are allocated low-income housing credits pursuant to the state housing credit ceiling under section 42(h) of the Internal Revenue Code of 1986, as amended, or projects or units in projects that are funded by programs of the United States Department of Housing and Urban Development and United States Department of Agriculture Rural Development wherein:
 - (1) (A) At least fifty per cent of the available units are for persons and families with incomes at or below ~~[sixty]~~ eighty per cent of the median family income;
 - (2) ~~At]~~ of which at least [ten] five per cent of the available units are for persons and families with incomes at or below thirty per cent of the median family income; and
 - (3) (B) The remaining units are for persons and families with incomes at or below one hundred per cent of the median family income; provided that the corporation may establish rules to ensure full occupancy of fund projects[-]; and
- (2) Mixed-income rental projects or units in a mixed-income rental project wherein all of the available units are for persons and families with incomes at or below one hundred forty per cent of the median family income.

(f) ~~[Commencing with fiscal year 1999-2000, at the close of each biennium, at least one-third of the funds allocated to construction projects for the period shall have been committed to projects that guarantee affordable units to persons or families with incomes at or below thirty per cent of the median income pursuant to [subsection] (c)(2). Commencing with the regular session of 2000, the]~~ The corporation shall submit an annual report to the legislature [documenting existing projects in compliance with this subsection] no later than twenty days prior to the convening of each regular session[-] describing the projects funded and, with respect to rental housing projects targeted for persons and families with incomes at or below thirty per cent of the median family income, its efforts to develop those rental housing projects, a description of proposals submitted for this target group and action taken on the proposals, and any barriers to developing housing units for this target group.

(g) For the purposes of this subpart, the applicable median family income shall be the median family income for the county or standard metropolitan statistical area in which the project is located as determined by the United States Department of Housing and Urban Development, as adjusted from time to time.

(h) ~~[Providing]~~ The corporation may provide loans and grants under this section; provided that the corporation shall establish loan-to-value ratios to protect the fund from inordinate risk and that under no circumstances shall the rules permit the loan-to-value ratio to exceed [ninety-five] one hundred per cent; and provided

further that the underwriting guidelines include a debt-coverage ratio of not less than ~~1.05~~ 1.0 to 1.

(i) For the period commencing July 1, 2005, through June 30, 2007, the fund may be used to provide grants for rental units set aside for persons and families with incomes at or below thirty per cent of the median family income in any project financed in whole or in part by the fund in proportion of those units to the total number of units in the project. At the conclusion of the period described in this subsection, the corporation shall report to the legislature on the number and use of grants provided and whether the grants were an effective use of the funds for purposes of developing rental housing for families at or below thirty per cent of median family income.”

SECTION 6. Section 201G-435, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§)201G-435]~~ **Eligible applicants for funds.** Eligible applicants for funds shall include nonprofit and for-profit ~~[developers, including]~~ corporations, limited liability companies, partnerships, and government agencies, who are qualified in accordance with rules adopted by the corporation pursuant to chapter 91.”

SECTION 7. Section 201G-436, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Preference shall be given to projects producing units in at least one of the following categories:

- (1) Multifamily units;
- (2) Attached single-family units;
- (3) Apartments;
- (4) Townhouses;
- (5) Housing units above commercial or industrial space;
- (6) Single room occupancy units;
- (7) Accessory apartment units;
- (8) Employee housing; ~~[and]~~
- (9) United States Department of Housing and Urban Development mixed finance development of public housing units; and
- (10) Other types of units meeting the criteria for eligibility set forth in subsection (c).

(c) The corporation shall establish an application process for fund allocation that gives preference to projects meeting the criteria set forth below that are listed in descending order of priority:

- (1) Serve the original target group;
- (2) Provide at least five per cent of the total number of units for persons and families with incomes at or below thirty per cent of the median family income;
- ~~[(2)]~~ (3) Provide maximum number of units for ~~[the least amount of subsidy]~~ persons or families with incomes at or below eighty per cent of the median family income;
- ~~[(3)]~~ (4) Are committed to serving the target population over a longer period of time;
- ~~[(4)]~~ (5) Increase the integration of income levels of the immediate community area;
- ~~[(5)]~~ (6) Meet the geographic needs of the target population of the proposed rental housing project, such as proximity to employment centers and services; and

[(6)] (7) Have favorable past performance [~~with fund moneys.~~] in developing, owning, managing, or maintaining affordable rental housing.

The corporation may include other criteria in the above process as it deems necessary to carry out the purposes of this part.

If the corporation, after applying the process described in this subsection, finds a nonprofit project equally ranked with a for-profit or government project, the corporation shall give preference to the nonprofit project in allotting fund moneys.”

SECTION 8. Section 235-110.8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The low-income housing tax credit shall be [~~thirty~~] fifty per cent of the applicable percentage of the qualified basis of each building located in Hawaii. [~~Applicable~~] The applicable percentage shall be calculated as provided in section 42(b) of the Internal Revenue Code.”

SECTION 9. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

“**§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;
- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale;
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value

- of each owner's interest in the property after partition is equal in value to that owner's interest before partition;
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;
 - (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
 - (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
 - (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 414, 414D, 415A, 421, 421C, 425, 425E, or 428 to the surviving or new entity; [and]
 - (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership[-]; and
 - (17) Any document or instrument conveying real property to any nonprofit or for-profit organization that has been certified by the housing and community development corporation of Hawaii for low-income housing development."

PART II

SECTION 10. The legislature finds that rehabilitating public housing that has been decommissioned by the State will increase the supply of low-income rental housing units.

The purpose of this part is to help the unsheltered and hidden homeless population by determining whether decommissioned public housing can be rehabilitated, including:

- (1) Prior to their demolition, offering decommissioned public housing to private nonprofit and for-profit entities to rehabilitate into rental housing for people in the lowest income bracket; and
- (2) Declaring a moratorium on the demolition of decommissioned public housing until a determination has been made whether to rehabilitate them.

SECTION 11. Section 201G-44, Hawaii Revised Statutes, is amended to read as follows:

“§201G-44 Administration of state [~~low-income~~] low-income housing projects and programs. (a) The corporation may construct, develop, and administer property or housing for the purpose of state [~~low-income~~] low-income housing projects and programs.

(b) The corporation may offer any decommissioned low-income public housing project, except for federal housing projects, to nonprofit or for-profit organizations or government agencies for rehabilitation into emergency or transitional shelter facilities for the homeless or rehabilitation into rental units that set

aside at least fifty per cent of the units to persons or families with incomes at or below fifty per cent of the area median family income; provided that:

- (1) The housing project is wholly owned by the State on either state-owned or ceded lands;
- (2) The corporation has determined that the housing project is no longer suitable for its original use and intends to demolish the housing project;
- (3) The corporation has determined that the housing project is not eligible for rehabilitation using the corporation's current resources; and
- (4) The nonprofit or for-profit organization or government agency demonstrates expertise in rehabilitation of housing projects and has community, public, and private resources to substantially pay for the rehabilitation.

The land and improvements may be leased to the nonprofit or for-profit organization or government agency for a period not to exceed ninety-nine years for a sum of \$1 per year.

[(b)] (c) The corporation shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the projects or programs and to carry out any state program under [{}subsection{}] (a).”

SECTION 12. The legislature declares a moratorium on the demolition of all decommissioned housing projects administered by the housing and community development corporation of Hawaii for two years or until such time that the housing projects may be offered for rehabilitation to nonprofit or for-profit organizations and government agencies in accordance with section 201G-44, Hawaii Revised Statutes, whichever occurs first.

PART III

SECTION 13. The legislature finds that reducing the hidden homeless population through the development of low-income rental housing is equally important to helping the unsheltered homeless population or those who have a primary nighttime residence that is a public or private place not ordinarily used as a regular sleeping accommodation, such as a beach. The legislature finds that there are about four thousand unsheltered homeless in Hawaii.

The legislature finds that even though the housing and community development corporation of Hawaii's "Strategic Plan" 2005-2010 states that its goal is to end chronic homelessness by 2010, its strategic objectives for calendar year 2005 offer no immediate solutions to assist the homeless population.

The legislature further finds that the funds appropriated in House Bill 100, the General Appropriations Act of 2005-2007,² in the sum of \$1,650,000 for each year of the 2005-2007 fiscal biennium, will be used for the expansion and operation of emergency and transition shelter facilities serving the homeless.

Accordingly, the purpose of this part is to help the unsheltered homeless population by establishing measurable goals to determine that more homeless are being served and transitioned into permanent housing.

SECTION 14. Section 201G-461, Hawaii Revised Statutes, is amended to read as follows:

“§201G-461 Annual performance audits. (a) The corporation shall require any provider agency that dispensed shelter or assistance for any homeless facility or any other program for the homeless authorized by this part to submit to the corporation a financial audit and report on an annual basis conducted by a certified

public accounting firm. This audit and report shall contain information specific to the funds received under state homeless programs contracts. The audit shall include recommendations to address any problems found.

(b) Continuing contracts with provider agencies to participate in any program for the homeless authorized by this part shall require that the provider agency address the recommendations made by the auditing agency, subject to exceptions as set by the corporation.

(c) Failure to carry out the recommendations made by the auditing agency may be grounds for the corporation to bar a provider agency from further contracts for programs authorized by this part until the barred provider has addressed all deficiencies.

(d) As a condition of continued contracts, the corporation shall require all provider agencies to submit an annual report that contains statistical information to enable the corporation to measure the effectiveness of contracted services in transitioning homeless into permanent housing.'

PART IV

SECTION 15. The legislature finds that private-public partnerships encourage the development of affordable ownership housing programs. A family of four with one hundred forty per cent of median income, currently \$91,980 in Honolulu, \$71,400 on the island of Hawaii, \$84,980 on Maui, and \$78,820 on Kauai, are part of a gap group that are shut out of the median-priced homes in their communities. For example, a typical family of four in Honolulu that earns \$92,000 may qualify for a home priced at \$376,800, assuming a six per cent interest rate on their home mortgage. However, the median price of a home in Honolulu is nearly \$500,000.

The purpose of this part is to provide incentives to develop affordable moderate income housing, aimed at households whose income does not exceed one hundred forty per cent of median family income.

SECTION 16. Section 201G-118, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 project primarily or exclusively includes housing units affordable to households with incomes at or below one hundred forty per cent of the median family income;
- ~~(1)~~ (2) The corporation finds the project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
- ~~(2)~~ (3) The development of the proposed project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or the various boards of water supply authorized under chapter 54; ~~and~~
- ~~(3)~~ (4) 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 by resolution 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; and
- (C) The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the zoning, building, construction, and subdivision standards for that project. For purposes of sections 501-85 and 502-17, the executive director of the 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 the maps and plans shall be accepted for registration or recordation by the land court and registrar; and
- (4) (5) 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.”

SECTION 17. Section 201G-123, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The interim loans shall be secured by a duly recorded [~~first~~] primary or secondary mortgage upon the fee simple or leasehold interest in the land upon which the dwelling units are constructed, or the corporation may require 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.”

SECTION 18. Section 201G-411, Hawaii Revised Statutes, is amended to read as follows:

“**§201G-411 Dwelling unit revolving fund.** There is created a dwelling unit revolving fund. The funds appropriated for the purpose of the dwelling unit revolving fund and all moneys received or collected by the corporation for the purpose of the revolving fund shall be deposited in the revolving fund. The proceeds in the revolving fund shall be used to reimburse the general fund to pay the interest on general obligation bonds issued for the purposes of the revolving fund, for the necessary expenses in administering subpart F, part II, and for carrying out the purposes of subpart F, part II, including but not limited to the expansion of community facilities constructed in conjunction with housing projects, permanent primary or secondary financing, 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 or low-income housing tax credits for housing projects.”

PART V

SECTION 19. The affordable housing task force recommended that the housing and community development corporation of Hawaii be split into two organizations to more effectively concentrate on the development of affordable housing. The legislature finds that the State’s role in maintaining affordable housing in Hawaii has evolved into two parts:

- (1) Administering the State’s public housing programs; and
- (2) Financing and developing affordable housing.

The housing and community development corporation of Hawaii has managed both of these functions since its inception. However, the burden of administering the public housing projects in the State has overshadowed the ability of the corporation to pay sufficient attention to the financing and development of affordable housing.

The purpose of this part and parts VI and VII is to establish:

- (1) The Hawaii public housing administration to perform the function of developing and maintaining public housing; and
- (2) The Hawaii housing finance and development administration to perform the function of housing financing and development.

SECTION 20. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII HOUSING FINANCE AND DEVELOPMENT
ADMINISTRATION**

§ -1 **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:

“Administration” means the Hawaii housing finance and development administration.

“Board” means the board of directors of the Hawaii housing finance and development administration.

“Bonds” means any bonds, interim certificates, notes, debentures, participation certificates, pass-through certificates, mortgage-backed obligations, or other evidences of indebtedness of the administration issued pursuant to this chapter.

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

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

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

“Elder” or “elderly” means a person who is a resident of the state and has attained the age of sixty-two years.

“Elder or elderly households” means households in which at least one member is at least sixty-two years of age, the spouse or partner of that member has attained the age of majority, and the remaining members have attained the age of fifty-five years at the time of application to a public housing project. A live-in aide shall cease to be a resident therein upon the recovery of, or removal from the project of, the elder.

“Elder or elderly housing” means:

- (1) A housing project intended for and occupied by elder or elderly households; or
- (2) Housing provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elders or elderly persons, which, upon a determination by the Secretary, may also be occupied by persons with disabilities who have reached the age of majority.

“Executive director” means the executive director of the Hawaii housing finance and development administration.

“Federal government” includes the United States and any agency or 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.

“Household member” means a person who:

- (1) Is a co-applicant; or
- (2) Will reside in the dwelling unit purchased from the corporation.

“Housing project” or “project” includes all real and personal property, buildings and improvements, commercial spaces, lands for farming and gardening, and 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.

The term “housing project” or “project” may also be applied to the planning of the buildings and improvements, the acquisition of property by purchase, lease, or otherwise, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

“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.

“Live-in aide” means a person who:

- (1) Is eighteen years of age or older;
- (2) Is living in the unit solely to assist the elder or elderly person in daily living activities, including bathing, meal preparation and delivery, medicinal care, transportation, and physical activities;
- (3) Is not legally obligated to support the elder or elderly person; and
- (4) Is verified by the administration as meeting these requirements.

“Mortgage holder” includes the United States Department of Housing and Urban Development, Federal Housing Administration, the United States Department of Agriculture, 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, 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, that:

- (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 multifamily residential property; and
- (3) Is a financial institution whose accounts are federally insured or is an institution that is an approved mortgagee for the Federal Housing

Administration, an approved lender for the United States Department of Veterans Affairs or the United States Department of Agriculture, or an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

“Nonprofit organization” means a corporation, association, or other duly chartered entity that is registered with the State and has received a written determination from the Internal Revenue Service that it is exempt under either section 501(c)(3), section 501(c)(4), or so much of section 501(c)(2) as applied to title holding corporations that turn over their income to organizations that are exempt under either section 501(c)(3) or 501(c)(4), of the Internal Revenue Code of 1986, as amended.

“Obligee of the administration” or “obligee” includes any bondholder, trustee or trustees for any bondholders, any lessor demising property to the administration 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 administration.

“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.

“Trustee” means a national or state bank or trust company located within or outside the State that enters into a trust indenture.

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

§ -2 Hawaii housing finance and development administration; establishment, staff. (a) There is established the Hawaii housing finance and development administration to be placed within the department of business, economic development, and tourism for administrative purposes only. The administration shall be a public body and a body corporate and politic.

(b) The administration shall employ, exempt from chapter 76 and section 26-35(a)(4), an executive director and an executive assistant. The executive director shall be paid a salary not to exceed eighty-five per cent of the salary of the director of human resources development. The executive assistant shall be paid a salary not to exceed ninety per cent of the executive director’s salary. The administration may employ, subject to chapter 76, technical experts and officers, agents, and employees, permanent and temporary, as required. The administration may also employ officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, not subject to chapter 76, when in the determination of the administration, the services to be performed are unique and essential to the execution of the functions of the administration. The administration may call upon the attorney general for legal services as it may require. The administration may delegate to one or more of its agents or employees its powers and duties as it deems proper.

§ -3 Board; establishment, functions, duties. (a) There is created a board of directors of the Hawaii housing finance and development administration consisting of nine members, of whom six shall be public members appointed by the governor as provided in section 26-34. At least four of the public members shall have knowledge and expertise in public or private finance and development of affordable housing. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. At least one public member shall represent community advocates for low-income housing, affiliated with private nonprofit

organizations that serve the residents of low-income housing. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows:

- (1) Two members to be appointed for four years;
- (2) Two members to be appointed for three years; and
- (3) Two members to be appointed for two years.

The director of business, economic development, and tourism and the director of finance, or their designated representatives, and a representative of the governor's office, shall be an ex officio voting member. The administration shall be headed by the board.

(b) The board of directors shall select a chairperson and vice chairperson from among its members; provided that the chairperson shall be a public member. The director of business, economic development, and tourism, director of finance, and the governor's representative shall be ineligible to serve as chairperson of the board.

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

§ -4 General powers. (a) The administration may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and
- (4) Adopt 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 administration may do all things necessary and convenient to carry out the powers expressly provided in this chapter.

§ -5 Fair housing law to apply. Notwithstanding any law to the contrary, the provisions of chapter 515 shall apply in administering this chapter.

§ -6 Housing advocacy and information system. (a) The administration, with the assistance of other agencies of the State and counties with related responsibilities, shall develop and maintain a housing advocacy and information system to aid the administration in meeting the needs and demands of housing consumers.

(b) In establishing and maintaining the housing advocacy and information system, the administration shall conduct market studies, engage in community outreach, and solicit recommendations from and 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, individuals at the University of Hawaii, and housing consumers.

(c) The administration shall analyze the information received and make recommendations to the appropriate agencies and developers.

(d) The administration, through the housing advocacy and information system, shall act as a clearinghouse for information relating to housing conditions, needs, supply, demand, characteristics, developments, trends in federal housing programs, and housing laws, ordinances, rules, and regulations.

(e) The housing advocacy and information system may be used by housing researchers, planners, administrators, and developers and shall be coordinated with

other housing research efforts. The administration shall maintain a current supply of information, including means to gather new information through surveys, contracted research, and investigations.

§ -7 **Housing research.** (a) The administration may study the plans of any government in relation to the problem of clearing, replanning, or reconstructing an area in which unsafe or unsanitary public dwelling or public housing conditions exist.

(b) The administration may purchase materials for the development of land and the construction of dwelling units in the manner it concludes 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 materials with persons or firms doing business in the State, or otherwise.

(c) The administration may conduct, or cause to be conducted, research on housing needs, materials, design, or technology, and apply the findings of the 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 that may lower the long-term costs of housing, conserve resources, or create communities best suited to the needs of residents.

(d) In the development and construction of a housing project, the administration may provide for an on-the-job training program or other projects as it may deem justifiable, including innovative projects to develop a larger qualified work force in the State.

§ -8 **Housing counseling.** The administration may provide the following services for the programs it administers:

- (1) Listing and referral services to tenants seeking to rent homes;
- (2) Counseling to tenants on matters such as financial management and budgeting, basic housekeeping, communicating effectively and getting along with others, and other matters as may be desirable or necessary;
- (3) Counseling to prospective homeowners on the rudiments of owning a home;
- (4) Assistance to any person or government agency regarding the nature and availability of federal assistance for housing development and community development or redevelopment;
- (5) 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 any housing designated for elders; persons displaced by governmental action; university and college students and faculty; and any other persons; and

- (6) 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.

§ -9 Acquisition, use, and disposition of property. (a) The administration may acquire any real or personal property or interest therein by purchase, exchange, gift, grant, lease, or other means from any person or government to provide housing. Exchange of real property shall be in accordance with section 171-50.

(b) The administration may own or hold real property. All real property owned or held by the administration shall be exempt from mechanic's or materialman'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 administration 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 administration or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the administration on its rents, fees, or revenues. The administration and its property shall be exempt from all taxes and assessments.

(c) The administration may lease or rent all or a portion of any housing project and establish and revise the rents or charges therefor. The administration may sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein to any person or government.

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

§ -10 Cooperative agreements with other governmental agencies. (a) The administration may:

- (1) Obtain the aid and cooperation of governmental agencies in the planning, construction, and operation of public housing projects and enter into agreements and arrangements as it deems advisable to obtain aid and cooperation;
- (2) Arrange or enter into agreements with any governmental agency for the acquisition 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 governmental agency for the payment of any debts or parts thereof incurred by the administration, including the power to pay premiums on any such insurance; and
- (4) Agree to make payments to any state or county agency, if the agency is authorized to accept payments, as the administration 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, any state or county agency, upon those 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 administration or to the federal government;
- (2) To the extent that it is within the scope of the agency:

- (A) Cause the services customarily provided by the agency to be rendered for the benefit of housing projects and the occupants thereof;
 - (B) Provide and maintain parks and sewage, water, lights, and other facilities adjacent to or in connection with housing projects;
 - (C) Open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other related facilities; and
 - (D) 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 administration 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 administration, in the purchase of bonds or other obligations of the administration to the extent provided under section 201G-161; and exercise all the rights of any holder of the 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 administration 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, 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 administration or to the federal government.

Any law 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 governmental agency authorized by law to engage in the development or administration of low-rent housing or slum clearance projects, any agreement made under this chapter relating to the project shall inure to the benefit of and may be enforced by that governmental agency.

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

(c) Any county in which a public housing project is located or is about to be located may make donations or advances to the administration in 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 administration, when it has money available therefor, shall reimburse the county for all advances made by way of a loan to it.

§ -11 **Agents, including corporations.** The administration may exercise any or all of the powers conferred upon it, either generally or with respect to any

specific housing project through an agent that it may designate, including any corporation that is formed under the laws of this State, and for such purposes the administration 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 administration or its nominee, to the extent permitted by law, may exercise any of the powers conferred upon the administration in this chapter.

§ -12 Development of property. (a) The administration, in its own behalf or on behalf of any federal, state, or county agency, may:

- (1) Clear, improve, and rehabilitate property;
- (2) Plan, develop, construct, and finance housing projects; and
- (3) In cooperation with the department of education and department of accounting and general services, plan educational facilities and related infrastructure as a necessary and integral part of its public housing projects, using all its innovative powers toward achieving that end expeditiously and economically; provided that the educational facilities comply with the department of education's educational specifications, timelines, and siting requirements.

(b) The administration may develop public land in an agricultural district subject to the prior approval of the land use commission, when developing lands greater than fifteen acres in size, and public land in a conservation district subject to the prior approval of the board of land and natural resources. The administration shall not develop state monuments or historical sites or parks. When the administration 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 public use superior to that which the land has been appropriated.

(c) The administration may develop or assist in the development of federal lands with the approval of appropriate federal authorities.

(d) The administration 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.

(e) The administration may contract or sponsor with any county, housing authority, or person, subject to the availability of funds, an experimental or demonstration housing project designed to meet the needs of: elders; the disabled; displaced or homeless persons; low- and moderate-income persons; teachers or other government employees; or university and college students and faculty.

§ -13 Eminent domain, exchange or use of public property. The administration 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 required for public use. The administration 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; provided that condemnation of parcels greater than fifteen acres shall be subject to legislative disapproval expressed in a concurrent resolution

adopted by majority vote of the senate and the house of representatives in the first regular or special session following the date of condemnation.

The administration 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 that no property belonging to a public utility corporation may be acquired without the approval of the public utilities commission, and subject to legislative disapproval expressed in a concurrent resolution adopted by majority vote of the senate and the house of representatives in the first regular or special session following the date of condemnation.

§ -14 Contracts with federal government. (a) The administration may:

- (1) Borrow money or accept grants from the federal government for or in aid of any housing project that the administration is authorized to undertake;
- (2) Take over any land acquired by the federal government for the construction or operation of a housing project with the approval of the federal government or at the request of the federal government;
- (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 administration 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 part to authorize the administration 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 that the administration is empowered to undertake.

§ -15 Administration of low-income housing credit allowed under section 235-110.8. (a) The administration is designated as a state housing credit agency to carry out section 42(h) (with respect to limitation on aggregate credit allowable with respect to a project located in a state) of the Internal Revenue Code of 1986, as amended. As a state housing credit agency, the administration shall determine the eligibility basis for a qualified low-income building, make the allocation of housing credit dollar amounts within the State, and determine the portion of the State's housing credit ceiling set aside for projects involving qualified nonprofit organizations. The administration shall file any certifications and annual reports required by section 42 (with respect to low-income housing credit) of the Internal Revenue Code of 1986, as amended.

(b) The state aggregate housing credit dollar amount shall be allocated annually as required by section 42 of the Internal Revenue Code of 1986, as amended, by the administration in an amount equal to \$1.25 multiplied by the state population in the calendar year or such greater or lesser amount as provided by section 42(h) of the Internal Revenue Code of 1986, as amended.

(c) The administration shall adopt rules under chapter 91 necessary to comply with federal and state requirements for determining the amount of the tax credit allowed under section 42 of the Internal Revenue Code of 1986, as amended, and section 235-110.8. The administration may establish and collect reasonable fees for administrative expenses incurred in providing the services required by this section, including fees for processing developer applications for the credit. All fees collected for administering these provisions, including developer application fees, shall be used to cover the administrative expenses of the administration.

(d) All claims for allocation of the low-income housing credit under section 235-110.8 shall be filed with the administration. The administration shall determine the amount of the credit allocation, if necessary, and return the claim to the taxpayer.

The taxpayer shall file the credit allocation with the taxpayer's tax return with the department of taxation.

§ **-16 Administration of federal programs.** (a) The administration may carry out federal programs designated to be carried out by a housing finance or housing development entity.

(b) The administration shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the program, to carry out any federal program in subsection (a).

(c) All fees collected for administering the program may be deposited into an appropriate special fund of the administration and may be used to cover the administrative expenses of the administration.

§ **-17 Federal funds outside of state treasury.** Notwithstanding chapter 38, the administration may establish and manage federal funds outside of the state treasury to be used for federal housing programs. The administration shall invest those funds in permitted investments in accordance with chapter 36.

§ **-18 Public works contracts.** The administration may make, execute, and carry out contracts for, or in connection with, any housing project in the manner provided under chapter 103D and section 103-53; provided that with regard to the contracts, the term "officers", as used in chapter 103D, shall mean the administration or officer authorized by the administration 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.

§ **-19 Remedies of an obligee: mandamus; injunction; possessory action; receiver; accounting; etc.** An obligee of the administration shall have the right, in addition to all other rights that 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 administration, 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 administration and the fulfillment of all duties imposed upon the administration by this chapter;
- (2) By suit, action, or proceeding in equity to enjoin any acts or things that may be unlawful, or the violation of any of the rights of the obligee of the administration;
- (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 possession pursuant to any contract of the administration;
- (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 administration), to obtain the appointment of a receiver of any housing project of the administration or any part or parts thereof, and if the receiver is appointed, the receiver may enter and take possession of the housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the administration itself might do and shall keep the moneys in a separate account

or accounts and apply the same in accordance with the obligations of the administration as the court shall direct; and

- (5) By suit, action, or proceeding in any court of competent jurisdiction to require the administration and the members thereof to account as if it and they were the trustees of an express trust.

§ **-20 Subordination of mortgage to agreement with government.** The administration may agree in any mortgage made by it that the mortgage shall be subordinate to a contract for the supervision by a governmental agency of the operation and maintenance of the mortgaged property and the construction of improvements thereon. In that event, any purchaser or purchasers at a sale of the property of the administration pursuant to a foreclosure of the mortgage or any other remedy in connection therewith shall obtain title subject to the contract.

§ **-21 Duty to make reports.** Except as otherwise provided by law, the administration shall:

- (1) File at least once a year with the governor a report of its activities for the preceding fiscal year;
- (2) Report to the state comptroller on moneys deposited in depositories other than the state treasury under section 40-81 and rules adopted thereunder; and
- (3) Submit an annual report to the legislature on all administration program areas and funds organized by program area, and by fund within each program area, no later than twenty days prior to the convening of each regular session, which shall provide the following information on the status of its programs and finances:
 - (A) A description of programs being developed in the current fiscal biennium, including a summary listing of the programs, the status of each program, the methods of project financing or loans, and other information deemed significant;
 - (B) A description of programs planned for development during the two ensuing fiscal bienniums, including a summary listing of the proposed programs, the methods of project financing or loans, and other information deemed significant;
 - (C) A status report of actual expenditures made in the prior completed fiscal year from each fund established under this chapter, estimated expenditures anticipated for the current fiscal year, and projected expenditures for the ensuing fiscal years to be described in relation to specific projects developed to implement the purposes of any program or fund established under this chapter;
 - (D) A financial audit and report conducted on an annual basis by a certified public accounting firm; and
 - (E) Recommendations with reference to any additional legislation or other action that may be necessary to carry out the purposes of this part.

§ **-22 Quitclaim deeds.** Unless otherwise provided by law, the administration shall issue quitclaim deeds and leases whenever it conveys, transfers, sells, or assigns any property developed, constructed, or sponsored under this chapter.”

PART VI

SECTION 21. The functions of the housing and community development corporation of Hawaii described in subpart F of part II of chapter 201G, Hawaii

Revised Statutes, relating to state housing programs, and part III of chapter 201G, Hawaii Revised Statutes, relating to financing programs, except for subparts D and M, shall be transferred to the Hawaii housing finance and development administration.

SECTION 22. Transfer of officers and employees. All rights, powers, functions, and duties of the housing and community development corporation of Hawaii under subpart F of part II of chapter 201G, Hawaii Revised Statutes, relating to state housing programs and part III of chapter 201G, Hawaii Revised Statutes, relating to financing programs, except for subparts D and M, are transferred to the Hawaii housing finance and development administration.

All officers and employees whose functions are transferred by this Act shall be transferred with their 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 having tenure 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, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If 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 or the governor.

SECTION 23. Transfer of records, equipment, and other personal property. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the housing and community development corporation of Hawaii relating to the functions transferred to the Hawaii housing finance and development administration shall be transferred with the functions to which they relate.

SECTION 24. Transfer of functions; continuity of rules, policies, and other material. All rules, policies, procedures, guidelines, and other material adopted or developed by the housing and community development corporation of Hawaii to implement provisions of the Hawaii Revised Statutes that are made applicable to the Hawaii housing finance and development administration by this Act, shall remain in full force and effect until amended or repealed by the Hawaii housing finance and development administration, pursuant to chapter 91, Hawaii Revised Statutes.

In the interim, every reference to the housing and community development corporation of Hawaii or the executive director of the housing and community development corporation of Hawaii in those rules, policies, procedures, guidelines, and other material is amended to refer to the Hawaii housing finance and development administration or the executive director of the Hawaii housing finance and development administration, as appropriate.

SECTION 25. Transfer of functions; effect on deeds, permits, and other documents. All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the housing and community development corporation of Hawaii or the housing finance and development corporation pursuant to the Hawaii Revised Statutes, which are made applicable to the Hawaii housing finance and development administration by this Act, shall remain in full force and effect.

Effective on the same day that legislation transferring the functions of the housing and community development corporation of Hawaii to the Hawaii housing finance and development administration is approved, every reference to the housing and community development corporation of Hawaii or the executive director of the housing and community development corporation of Hawaii therein shall be construed as a reference to the Hawaii housing finance and development administration or the executive director of the Hawaii housing finance and development administration, as appropriate.

SECTION 26. (a) All references to the “housing and community development corporation of Hawaii”, or “corporation”, or similar terms as the case may be in chapter 201G, and sections 27-11, 53-6, 76-16, 209-16(b), 290-1(b), 290-8, and 521-7, Hawaii Revised Statutes, shall be amended to “Hawaii public housing administration”, “administration”, or similar terms, as the case may be, as the context requires.

(b) All references to the “housing and community development corporation of Hawaii”, or “corporation”, or similar terms as the case may be in chapter 516, and sections 10-2, 10-13.6, 36-24, 46-15.1, 53-17, 53-22(e), 111-8, 111-9, 171-2, 171-18.5, 171-50.2, 206E-15, 209-16(a), 209-17, 237-29, 290-1(c), 519-2(b), and 519-3(b), Hawaii Revised Statutes, shall be amended to “Hawaii housing finance and development administration”, “administration”, or similar terms, as the case may be, as the context requires.

PART VII

SECTION 27. Section 201G-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is created a board consisting of nine members, of whom ~~[six]~~ eight shall be public members appointed by the governor as provided in section 26-34. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. ~~[One public member shall be the chairperson of the rental housing trust fund advisory commission.]~~ At least one public member shall be a person who is directly assisted by the corporation under the federal low-rent public housing or federal section 8 tenant-based housing assistance payments program while serving on the board. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows: ~~[two]~~ three members to be appointed for four years; two members to be appointed for three years; and ~~[one member]~~ three members to be appointed for two years. ~~[The chairperson of the rental housing trust fund advisory commission shall serve a concurrent term on the board.]~~ The director ~~[of business, economic development, and tourism and the director]~~ of human services, or ~~[their designated representatives, and a representative of the governor’s office,]~~ a designated representative, shall be an ex officio voting ~~[members.]~~ member. The corporation shall be headed by the board.

(b) The board of directors shall select a chairperson and vice-chairperson from among its members. The ~~[director of business, economic development, and tourism or the]~~ director of human services shall be ineligible to serve as chairperson of the board.”

SECTION 28. Section 201G-15, Hawaii Revised Statutes, is amended to read as follows:

“§201G-15 Administration of federal programs. (a) The ~~[corporation]~~ administration may carry out federal programs designated to be carried out by a ~~[housing finance entity, housing development entity,]~~ public housing agency, or entity designated by the ~~[corporation.]~~ administration.

(b) The ~~[corporation]~~ administration shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the program, to carry out any federal program in subsection (a).

(c) All fees collected for administering the program may be deposited into an appropriate special fund of the ~~[corporation,]~~ administration and may be used to cover the administrative expenses of the ~~[corporation.]~~ administration.”

SECTION 29. Sections 201G-7 and 201G-8, Hawaii Revised Statutes, are repealed.

SECTION 30. Section 201G-14, Hawaii Revised Statutes, is repealed.

PART VIII

SECTION 31. Section 201G-431, Hawaii Revised Statutes, is amended by deleting the definition of “advisory commission”.

[~~““Advisory commission” means the rental housing trust fund advisory commission established by this subpart.”~~]

SECTION 32. Sections 201G-433 and 201G-434, Hawaii Revised Statutes, are repealed.

SECTION 33. Section 201G-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a board consisting of nine members, of whom six shall be public members appointed by the governor as provided in section 26-34. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. ~~[One public member shall be the chairperson of the rental housing trust fund advisory commission.]~~ One member shall be a person appointed from a list of nominees submitted by the continuum of care systems of each county. Each county continuum of care system shall submit three nominees. For the purposes of this subsection, “continuum of care system” shall have the same meaning as in title 24, Code of Federal Regulations, section 586.5. At least one public member shall be a person who is directly assisted by the corporation under the federal low-rent public housing or federal section 8 tenant-based housing assistance payments program while serving on the board. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows: two members to be appointed for four years; two members to be appointed for three years; and one member to be appointed for two years. ~~[The chairperson of the rental housing trust fund advisory commission shall serve a concurrent term on the board.]~~ The director of business, economic development, and tourism and the director of human services, or their designated representatives, and a representative of the governor’s office, shall be ex officio voting members. The corporation shall be headed by the board.”

PART IX

SECTION 34. The legislature finds that the urgency of the affordable housing shortage situation in Hawaii requires that the State, in addition to developing long-range plans, develop more immediate solutions that can be implemented in the near future to help ease Hawaii's housing shortage and the needs of the homeless. The purpose of this part is to establish a joint legislative affordable housing and homeless task force.

SECTION 35. (a) There is established a joint legislative housing and homeless task force in the senate and house of representatives to further identify near-term solutions to Hawaii's affordable housing and homeless problem. The task force shall be exempt from chapter 92, Hawaii Revised Statutes.

(b) The task force shall consist of eight members to be appointed without regard to section 26-34, Hawaii Revised Statutes, of which four members shall be appointed by the president of the senate and four members shall be appointed by the speaker of the house of representatives. The task force shall be co-chaired by the chair of the senate committee on commerce, consumer protection and housing and the chair of the house of representatives committee on housing.

(c) The task force may determine, among other things:

- (1) The inventory of all state lands used for low-income and public housing, the condition of public housing units on the lands, and whether other state lands and properties are available and suitable for the development of transitional shelters for the homeless or low-income rental housing;
- (2) The inventory and condition of all public and private low-income rental housing units;
- (3) The number of decommissioned units still in existence and if those units could possibly be used for low-income rental housing or homeless shelters if they are repaired or renovated;
- (4) Strategies for public partnerships with private and nonprofit entities to renovate housing units and develop low-income rental housing and homeless facilities;
- (5) Strategies and incentives for public partnerships with private and nonprofit entities to develop moderate-income affordable ownership homes and lower-income rental units;
- (6) Strategies to streamline the permitting and approval process and address infrastructure barriers to development of new housing projects;
- (7) The role the land use commission should play in the approval process for affordable housing projects; and
- (8) Other matters relating to housing and the homeless that the task force deems appropriate.

(f)³ The task force may also act in an oversight capacity and conduct a review of and hold public hearings on the performance and operations of the housing and development corporation of Hawaii.

(e) The task force shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2006.

(f) The task force may request assistance from appropriate state agencies in fulfilling the purposes of the task force.

PART X

SECTION 36. Notwithstanding any other law to the contrary, if prior to July 1, 2007, the United States Department of Housing and Urban Development declares

the housing and community development corporation of Hawaii to be in substantial default of the Memorandum of Understanding dated September 30, 2004, the responsibility and administration of funds described under sections 201G-153, 201G-170, 201G-170.5, 201G-223, 201G-411, and 201G-432, Hawaii Revised Statutes, shall be transferred from the housing and community development corporation of Hawaii to the department of budget and finance to fulfill the purposes of those funds. Within ten days of the United States Department of Housing and Urban Development's declaration of the housing and community development corporation of Hawaii's substantial default, the governor shall:

- (1) Inform the president of the senate, the speaker of the house of representatives, and the acting director of the legislative reference bureau of the declaration and the date upon which the transfer of functions from the housing and community development corporation of Hawaii to the department of budget and finance will take effect; and
- (2) Issue a public notice pursuant to section 1-28.5, Hawaii Revised Statutes, regarding the declaration and the transfer of responsibilities to the department of budget and finance.

SECTION 37. Section 201G-14, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§201G-14**~~]]~~ **Administration of low-income housing credit allowed under section 235-110.8.** (a) The ~~[corporation]~~ department of budget and finance is designated as the state housing credit agency to carry out section 42(h) (with respect to limitation on aggregate credit allowable with respect to a project located in a state) of the Internal Revenue Code of 1986, as amended. As the state housing credit agency⁴ for purposes of this section, the ~~[corporation]~~ department of budget and finance shall determine the eligibility basis for a qualified low-income building, make the allocation of housing credit dollar amounts within the State, and determine the portion of the State's housing credit ceiling set aside for projects involving qualified nonprofit organizations. The ~~[corporation]~~ department of budget and finance shall file any certifications and annual reports required by section 42 (with respect to low-income housing credit) of the Internal Revenue Code of 1986, as amended.

(b) The state aggregate housing credit dollar amount shall be allocated annually as required by section 42 of the Internal Revenue Code of 1986, as amended by the ~~[corporation]~~ department of budget and finance in an amount equal to \$1.25 multiplied by the state population in the calendar year or such greater or lesser amount as provided by section 42(h) of the Internal Revenue Code of 1986, as amended.

(c) The ~~[corporation]~~ department of budget and finance shall adopt rules under chapter 91 necessary to comply with federal and state requirements for determining the amount of the tax credit allowed under section 42 of the Internal Revenue Code of 1986, as amended and section 235-110.8. The ~~[corporation]~~ department of budget and finance may establish and collect reasonable fees for administrative expenses incurred in providing the services required by this section, including fees for processing developer applications for the credit. All fees collected for administering these provisions, including developer application fees, shall be deposited into the ~~[corporation's]~~ housing finance revolving fund ~~[to be used to cover the administrative expenses of the corporation]~~.

(d) All claims for allocation of the low-income housing credit under section 235-110.8 shall be filed with the ~~[corporation.]~~ department of budget and finance. The ~~[corporation]~~ department of budget and finance shall determine the amount of the credit allocation, if necessary, and return the claim to the taxpayer. The taxpayer shall file the credit allocation with the taxpayer's tax return with the department of taxation.”

PART XI

SECTION 38. The housing and community development corporation of Hawaii shall prepare an implementation plan for the reorganization of the State's housing functions as required under this Act and shall submit a report to the legislature not later than twenty days prior to the convening of the 2006 regular session. The report shall include but not be limited to the corporation's implementation plan, recommendations for any additional statutory amendments that may be necessary to fully effectuate the implementation plan and the purposes of this Act, and proposed legislation containing the recommended statutory amendments.

PART XII

SECTION 39. If any part of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, the conflicting part of this Act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this Act in its application to the agencies concerned. The rules under this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

SECTION 40. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁵

SECTION 41. This Act shall take effect on July 1, 2005; provided that:

- (1) Sections 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 shall take effect on July 1, 2006;
- (2) Section 37 shall take effect upon the date specified by the governor pursuant to the notice provided under section 36 of this Act if, prior to July 1, 2007, the United States Department of Housing and Urban Development declares the housing and community development corporation of Hawaii to be in substantial default of the Memorandum of Understanding dated September 30, 2004;
- (3) Sections 36 and 37 shall be repealed on July 1, 2007; and
- (4) Section 5 shall be repealed on June 30, 2010, and section 201G-432, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Approved July 6, 2005.)

Notes

1. Should be bracketed.
2. Act 178.
3. Should be subsection (d).
4. "Agency" should not be underscored.
5. Edited pursuant to HRS §23G-16.5.