

CHAPTER 201H
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

Part I. General Provisions

Section

- 201H-1 Definitions
- 201H-2 Hawaii housing finance and development corporation; establishment, staff
- 201H-3 Board; establishment, functions, duties
- 201H-4 General powers
- 201H-4.5 Urban gardening programs
- 201H-5 Fair housing law to apply
- 201H-6 Housing advocacy and information system
- 201H-7 Housing research
- 201H-8 Housing counseling
- 201H-9 Acquisition, use, and disposition of property
- 201H-10 Cooperative agreements with other governmental agencies
- 201H-11 Agents, including corporations
- 201H-12 Development of property
- 201H-13 Eminent domain, exchange or use of public property
- 201H-14 Contracts with the federal government
- 201H-15 Administration of low-income housing credit allowed under section 235-110.8
- 201H-16 Administration of federal programs
- 201H-17 Federal funds outside of state treasury
- 201H-18 Public works contracts
- 201H-19 Remedies of an obligee: mandamus; injunction; possessory action; receiver; accounting; etc.
- 201H-20 Subordination of mortgage to agreement with government
- 201H-21 Duty to make reports
- 201H-22 Quitclaim deeds
- 201H-23 For-sale developments

Part II. Housing Development Programs

- 201H-31 Criteria
- 201H-32 Definitions
- 201H-33 Powers and duties, generally
- 201H-34 Additional powers; development
- 201H-34.5 Authority to modify and amend development agreements with eligible developers
- 201H-35 Bond financing
- 201H-36 Exemption from general excise taxes
- 201H-37 Exemption from tax on income and obligations
- 201H-38 Housing development; exemption from statutes, ordinances, charter provisions, and rules

- 201H-39 Starter homes; design standards; applicant eligibility; authority to incorporate starter homes into housing projects of the corporation
- 201H-40 Housing projects; construction and sponsorship
- 201H-41 Independent development of projects
- 201H-42 Private development of projects
- 201H-43 Interim financing of projects
- 201H-44 Commercial, industrial, and other uses
- 201H-45 Sale; mortgage, agreement of sale, and other instruments
- 201H-46 Co-mortgagor
- 201H-47 Real property; restrictions on transfer; waiver of restrictions
- 201H-48 Exception of current owners in corporation projects
- 201H-49 Real property; restrictions on use
- 201H-50 Restrictions on use, sale, and transfer of real property; effect of amendment or repeal
- 201H-51 Corporation's right to repurchase or rent real property; authority to seek recovery
- 201H-52 Nonprofit organizations and government agencies
- 201H-53 Rate of wages for laborers and mechanics
- 201H-57 Land leases to nonprofit organizations providing affordable housing
- 201H-58 Leases; self-help housing
- 201H-59 Affordable rental housing development program
- 201H-70 Additional powers

Part III. Financing Programs

A. General Provisions

- 201H-71 Bonds; authorization
- 201H-72 Issuance of bonds for the development of infrastructure
- 201H-73 Issuance of bonds for the preservation of low-income housing projects
- 201H-74 Bonds; interest rate, price, and sale
- 201H-75 Trustee; designation, duties
- 201H-76 Trust indenture
- 201H-77 Investment of reserves, etc.
- 201H-78 Security for funds deposited by the corporation
- 201H-79 Arbitrage provisions, interest rate
- 201H-80 Housing finance revolving fund; bond revolving funds
- 201H-81 Repealed
- 201H-82 Rate of wages for laborers and mechanics
- 201H-85 Repealed
- 201H-86 Low-income housing tax credit loan
- 201H-90 Additional powers

B. Housing Loan and Mortgage Program

- 201H-91 Definitions
- 201H-92 Owner-occupancy requirement
- 201H-93 Eligible borrowers
- 201H-94 Eligible loans
- 201H-95 Eligible project loans
- 201H-96 Eligible improvement loans
- 201H-97 Housing loan programs; procedures and requirements
- 201H-98 Housing loan programs; general powers
- 201H-99 Housing loan programs; self-supporting
- 201H-100 Housing loan programs; fees
- 201H-101 Housing loan programs; evidence of eligible loan,
eligible improvement loan, or eligible project loan
- 201H-102 to 104 Repealed
- 201H-105 Advance commitments program
- 201H-106 Loan funding programs
- 201H-107 Loans; service and custody
- 201H-108 Loans; sale, pledge, or assignment
- 201H-109 Loans; insurance and guarantees
- 201H-110 Loans; default
- 201H-120 Additional powers

C. Rental Assistance Program

- 201H-121 Purpose; findings and determinations
- 201H-122 Definitions
- 201H-123 Rental assistance revolving fund
- 201H-124 Rental assistance contracts
- 201H-125 Rental assistance program
- 201H-126 Benefits of program not exclusive
- 201H-140 Additional powers

D. Taxable Mortgage Securities Programs

- 201H-141 Definitions
- 201H-142 Housing loan programs; authorization
- 201H-143 Housing loan programs; procedures and requirements
- 201H-144 Housing loan programs; general powers
- 201H-150 Additional powers

E. State Mortgage Guarantee Program

- 201H-151 State mortgage guarantee
- 201H-152 Mortgage guarantee agreements
- 201H-160 Additional powers

F. Downpayment Loan Program

- 201H-161 Downpayment loans
- 201H-162 Qualifications for downpayment loans

201H-163 Restrictions on borrower
201H-164 Default
201H-170 Additional powers

G. Homebuyers' Club Program

201H-171 Homebuyers' club program
201H-180 Additional powers

H. Rent-to-Own Program

201H-181 Rent-to-own program
201H-190 Additional powers

I. Dwelling Unit Revolving Fund

201H-191 Dwelling unit revolving fund
201H-191.5 Regional state infrastructure subaccounts
201H-200 Additional powers

J. Rental Housing Revolving Fund

201H-201 Definitions
201H-202 Rental housing revolving fund
201H-203 Eligible applicants for funds
201H-204 Eligible projects
201H-210 Additional powers

Part IV. Expenditures of Revolving Funds Under
the Corporation Exempt from Appropriation
and Allotment

201H-211 Expenditures of revolving funds under the corporation
exempt from appropriation and allotment
201H-220 Additional powers

Note

Chapter heading amended by L 2006, c 180, §15.
Public land trust information system. L 2011, c 54; L 2013, c 110.

Law Journals and Reviews

The Scramble to Protect the American Dream in Paradise: Is Affordable Housing Possible in Hawaii? 10 HBJ 37 (2007).

"[PART I. GENERAL PROVISIONS]"

Revision Note

Part I designation added pursuant to §23G-15.

§201H-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:

"Board" means the board of directors of the Hawaii housing finance and development corporation.

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

"Community facilities" include 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 corporation or the occupants of the dwelling.

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

"Corporation" means the Hawaii housing finance and development corporation.

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

"Elderly housing project" means a housing project that is intended and operated as housing that satisfies the definition of housing for older persons under 42 United States Code section 3607(b)(2).

"Executive director" means the executive director of the Hawaii housing finance and development corporation.

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

"Government" or "government agency" 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 or leased from the corporation.

"Housing project" or "project":

- (1) 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; and
- (2) 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.

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

"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 corporation 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. [L 2005, c 196, pt of §20; am L 2006, c 180, §6; am L 2007, c 249, §40]

" §201H-2 Hawaii housing finance and development

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

(b) The corporation 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 the salary of the director of business, economic development, and tourism. The executive assistant shall be paid

a salary not to exceed ninety per cent of the executive director's salary. The corporation may employ, subject to chapter 76, technical experts and officers, agents, and employees, permanent and temporary, as required. The corporation 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 corporation, the services to be performed are unique and essential to the execution of the functions of the corporation. The corporation may call upon the attorney general for legal services as it may require. The corporation may delegate to one or more of its agents or employees its powers and duties as it deems proper.

(c) The board shall submit a report to the legislature no later than twenty days prior to the convening of the regular session immediately following each adjustment of salary of the executive director. [L 2005, c 196, pt of §20; am L 2006, c 180, §7; am 1 2016, c 91, §1]

" **§201H-3 Board; establishment, functions, duties.** (a) There is created a board of directors of the Hawaii housing finance and development corporation 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 financing 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 ex officio[,] voting members. The corporation 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 corporation. 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. [L 2005, c 196, pt of §20; am L 2006, c 180, §8]

" **§201H-4 General powers.** (a) The corporation 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;
- (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; and
- (5) Notwithstanding any law to the contrary, establish and collect fees for administrative expenses incurred by the corporation to process applications for loans, grants, services, and real estate documents related to the corporation's functions under this chapter.

(b) In addition to other powers conferred upon it, the corporation may do all things necessary and convenient to carry out the powers expressly provided in this chapter. [L 2005, c 196, pt of §20; am L 2006, c 180, §15; am L 2009, c 143, §2]

" **[§201H-4.5] Urban gardening programs.** Notwithstanding any other provision of law, the corporation may develop programs that provide incentives for the development of housing projects that incorporate urban gardening programs; provided that the college of tropical agriculture and human resources of the University of Hawaii at Manoa shall be consulted regarding best practices in urban gardening, including vertical gardening, aquaponics, and community gardening. [L 2013, c 202, §2]

" **[§201H-5] Fair housing law to apply.** Notwithstanding any law to the contrary, the provisions of chapter 515 shall apply in administering this chapter. [L 2005, c 196, pt of §20]

" **§201H-6 Housing advocacy and information system.** (a) The corporation, with the assistance of other agencies of the State and counties with related responsibilities, shall develop and maintain a housing advocacy and information system to aid the corporation in meeting the needs and demands of housing consumers.

(b) In establishing and maintaining the housing advocacy and information system, the corporation 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 corporation shall analyze the information received and make recommendations to the appropriate agencies and developers.

(d) The corporation, 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 corporation shall maintain a current supply of information, including means to gather new information through surveys, contracted research, and investigations.

(f) The corporation, through the housing advocacy and information system, shall develop and maintain an affordable housing inventory registry to identify:

- (1) Affordable housing projects developed by the corporation utilizing moneys in the rental housing revolving fund established pursuant to section 201H-202 or the dwelling unit revolving fund established pursuant to section 201H-191;
- (2) State and federal public housing projects identified by the Hawaii public housing authority;
- (3) United States Department of Housing and Urban Development Region 9 federally supported and privately managed housing projects; and
- (4) State and county lands that may be developed for affordable housing, as defined in section 201H-57(b).
[L 2005, c 196, pt of §20; am L 2006, c 180, §15; am L 2007, c 222, §2; am L 2015, c 237, §22]

" **§201H-7 Housing research.** (a) The corporation may study the plans of any government regarding the clearing, replanning, or reconstruction of an area where unsafe or unsanitary dwelling or housing conditions exist.

(b) The corporation may purchase materials for the development of land and the construction of dwelling units in the manner it 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 corporation 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 corporation 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. [L 2005, c 196, pt of §20; am L 2006, c 180, §9]

" **[§201H-8] Housing counseling.** The corporation 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. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

" **§201H-9 Acquisition, use, and disposition of property.**

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

(b) The corporation may own or hold real property. All real property owned or held by the corporation shall be exempt from 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 corporation be a charge or lien upon its real property; provided that this subsection shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of the corporation or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the corporation on its rents, fees, or revenues. The corporation and its property shall be exempt from all taxes and assessments.

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

(d) The corporation may insure or provide for the insurance of its property or operations against risks as it deems advisable. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

" **§201H-10 Cooperative agreements with other governmental agencies.**

- (a) The corporation may:
- (1) Obtain the aid and cooperation of governmental agencies in the planning, construction, and operation of 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 corporation, 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 corporation deems consistent with the maintenance of the character of housing projects or the purposes of this chapter.

(b) For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects located within their respective territorial boundaries, 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 corporation 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, 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 corporation with respect to the exercise of their powers relating to

the repair, closing, or demolition of unsafe, unsanitary, or unfit dwellings;

- (4) Employ, notwithstanding any other law as to what constitutes legal investments, any available funds belonging to them or within their control, including funds derived from the sale or furnishing of property or facilities to the corporation, in the purchase of bonds or other obligations of the corporation; 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 those housing projects; and
- (6) Enter into contracts with the corporation or the federal government for any period agreeing to exercise any of the powers conferred hereby or to take any other action in aid of those housing projects.

In connection with the exercise of this power, any political subdivision may incur the entire expense of any 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 those public lands, without limit as to area, to the corporation 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-income 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 housing project is located or is about to be located may make donations or advances to the corporation 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 corporation, when it has money available therefor, shall reimburse the county for all advances made by way of a loan to it. [L 2005, c 196, pt of §20; am L 2006, c 180, §15; am L 2007, c 249, §14; am L 2009, c 143, §3]

" **[§201H-11] Agents, including corporations.** The corporation may exercise any or all of the powers conferred upon it, either generally or with respect to any specific housing project through an agent that it may designate, including any corporation that is formed under the laws of this State, and for such purposes the corporation may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation. Any corporate agent, all of the stock of which shall be owned by the corporation or its nominee, to the extent permitted by law, may exercise any of the powers conferred upon the corporation in this chapter. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

" **§201H-12 Development of property.** (a) The corporation, 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, including mixed-use developments; and
- (3) In cooperation with any state or county department or agency, including the department of education and department of accounting and general services, plan facilities and related infrastructure as an integral part of its housing projects, including mixed-use developments, using all its innovative powers toward achieving that end expeditiously and economically; provided that facilities developed in cooperation with the department of education comply with the department of education's educational objectives and requirements.

For purposes of this subsection, "mixed-use developments" means a development that contains affordable residential dwelling units that may be combined with governmental, educational, commercial, cultural, institutional, or industrial uses; is approved by the county in which the project is located; and is subject to: chapter 104; title 40 United States Code sections 3141, 3142, 3143, 3144, 3146, and 3147; or a project labor agreement by law or contract in the construction of the project.

(b) The corporation 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 corporation shall not develop state monuments, historical sites, or parks. When the corporation proposes to develop public land, it shall file with the department of land and natural resources a petition setting forth the purpose for the development. 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 corporation may develop or assist in the development of federal lands with the approval of appropriate federal authorities.

(d) The corporation shall not develop any public land where the development may endanger the receipt of any federal grant, impair the eligibility of any government agency 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 corporation 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. [L 2005, c 196, pt of §20; am L 2006, c 180, §10; am L 2016, c 131, §2]

" **[§201H-13] Eminent domain, exchange or use of public property.** The corporation may acquire any real property, including fixtures and improvements, or interest therein: through voluntary negotiation; through exchange of land in accordance with section 171-50, provided that the public land to be exchanged need not be of like use to that of the private land; or by the exercise of the power of eminent domain which it deems necessary by the adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and required for public use. The corporation shall exercise the power of eminent domain granted by this section in the same manner and procedure as is provided by chapter 101 and otherwise in accordance with all applicable provisions of the general laws of the State; 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 corporation may acquire by the exercise of the power of eminent domain property already devoted to a public use; provided that no property belonging to any government may be acquired without its consent, and 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. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

" **§201H-14 Contracts with the federal government.** (a) The corporation may:

- (1) Borrow money or accept grants from the federal government for or in aid of any housing project that the corporation 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 for the payment of any debts or parts thereof secured by mortgages made or held by the corporation on any property included in any housing project;
- (4) Comply with any conditions required by the federal government in any contract for financial assistance; and
- (5) Execute contracts with the federal government.

(b) It is the purpose and intent of this part to authorize the corporation to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the undertaking, construction, maintenance, and operation of any housing project that the corporation is empowered to undertake. [L 2005, c 196, pt of §20; am L 2006, c 180, §11]

" **[\$201H-15] Administration of low-income housing credit allowed under section 235-110.8.** (a) The corporation 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 corporation 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 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 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 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 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 corporation.

(d) All claims for allocation of the low-income housing credit under section 235-110.8 shall be filed with the corporation. The corporation 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. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

" **[\$201H-16] Administration of federal programs.** (a) The corporation may carry out federal programs designated to be carried out by a housing finance or housing development entity.

(b) The corporation 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 and may be used to cover the administrative expenses of the corporation. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

" **[\$201H-17] Federal funds outside of state treasury.** Notwithstanding chapter 38, the corporation may establish and manage federal funds outside of the state treasury to be used for federal housing programs. The corporation shall invest

those funds in permitted investments in accordance with chapter 36. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

" **[§201H-18] Public works contracts.** The corporation 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 corporation or officer authorized by the corporation to act as its contracting officer. Unless made and executed in the name of the State, each contract made and executed as authorized in this section shall state therein that it is so made and executed. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

" **[§201H-19] Remedies of an obligee: mandamus; injunction; possessory action; receiver; accounting; etc.** An obligee of the corporation shall have the right, in addition to all other rights 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 corporation, and the members, officers, agents, or employees thereof to perform each and every item, provision, and covenant contained in any contract of the corporation, and to require the carrying out of any or all covenants and agreements of the corporation and the fulfillment of all duties imposed upon the corporation by this chapter;
- (2) By suit, action, or proceeding in equity to enjoin any acts or things that may be unlawful, or the violation of any of the rights of the obligee of the corporation;
- (3) By suit, action, or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to possession pursuant to any contract of the corporation;
- (4) By suit, action, or proceeding in any court of competent jurisdiction, upon the happening of an event of default (as defined in a contract of the corporation), to obtain the appointment of a receiver of any housing project of the corporation 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 corporation 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 corporation as the court shall direct; and

- (5) By suit, action, or proceeding in any court of competent jurisdiction to require the corporation and the members thereof to account as if it and they were the trustees of an express trust. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

Case Notes

Mentioned: 903 F. Supp. 2d 1037 (2012).

" **[\$201H-20] Subordination of mortgage to agreement with government.** The corporation may agree in any mortgage made by it that the mortgage shall be subordinate to a contract for the supervision by a 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 corporation pursuant to a foreclosure of the mortgage or any other remedy in connection therewith shall obtain title subject to the contract. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

" **[\$201H-21] Duty to make reports.** Except as otherwise provided by law, the corporation 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 corporation 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 [chapter]. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

" **[§201H-22] Quitclaim deeds.** Unless otherwise provided by law, the corporation shall issue quitclaim deeds and leases whenever it conveys, transfers, sells, or assigns any property developed, constructed, or sponsored under this chapter. [L 2005, c 196, pt of §20; am L 2006, c 180, §15]

" **[§201H-23] For-sale developments.** Any law to the contrary notwithstanding, new multifamily for-sale housing condominium developments of seventy-five units or more per acre on privately owned lands and privately financed without federal, state, or county financing assistance or subsidies, including tax credits, shall:

- (1) Be exempt from the corporation's shared appreciation equity program;
- (2) Be subject to three-year occupancy requirements and transfer restrictions; provided that the three-year occupancy requirement shall begin upon the sale of each unit; and
- (3) Not be subject to the ten-year occupancy requirements and transfer restrictions in sections 201H-47 and 201H-49, respectively;

provided that, in order for paragraphs (1), (2), and (3) to apply, the primary purpose of constructing the new multifamily for-sale housing condominium development of seventy-five units or more per acre shall be to augment the existing affordable housing unit inventory in the State and not for the purpose of satisfying any affordable housing or reserved housing

requirement under this chapter, section 206E-4(18), or any other law or ordinance.

As used in this section:

"Affordable housing" means the same as defined under section 201H-57.

"Reserved housing" means the same as defined under section 206E-101. [L 2008, c 123, §1]

"[PART II.] HOUSING DEVELOPMENT PROGRAMS

[\$201H-31] Criteria. In administering this chapter and other laws of the State applicable to the supplying of housing or the assistance in obtaining housing, the corporation shall give preference to those applicants most in need of assistance in obtaining housing, in light of the amount of moneys available for the various programs. In doing so, the corporation shall take into consideration the applicant's household income and number of dependents; the age of the applicant; the physical disabilities of the applicant or those living with the applicant; whether or not the present housing of the applicant is below standard; whether or not the applicant's need for housing has arisen by reason of displacement of the applicant by governmental actions; and other factors as it may deem pertinent. [L 2006, c 180, pt of §3]

" **[\$201H-32] Definitions.** The following terms, wherever used or referred to in this part, shall have the following respective meanings unless a different meaning clearly appears from the context:

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

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

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

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

- (1) To be qualified by experience, financial responsibility, and support to construct housing of the type described and of the magnitude encompassed by the given project;
- (2) To have submitted plans for a housing project adequately meeting the objectives of this chapter, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and
- (3) To meet all other requirements the corporation deems to be just and reasonable, and all requirements stipulated in this chapter.

"Purchaser's equity" means the difference between the original cost of the dwelling unit to the purchaser, and the principal amount of any mortgages, liens, or notes outstanding.

"Qualified resident" means a person who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is domiciled in the State and physically resides in the dwelling unit purchased or rented under this chapter;
- (4) In the case of the purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; or in the case of a rental, demonstrates an ability to pay rent as determined by the corporation and meets any additional criteria established by the corporation for the respective rental housing development for which the applicant is applying; and
- (5) Meets the following qualifications:
 - (A) Is a person who either by the person's self, or together with spouse or household member, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land; and
 - (B) Is a person whose spouse or household member does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or more than a majority interest in lands under any trust agreement or other fiduciary arrangement in

which another person holds the legal title to the land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71;

provided that for purchasers of market-priced units in an economically integrated housing project, the term "qualified resident" means a person who is a citizen of the United States or a resident alien; is domiciled in the State and shall physically reside in the dwelling unit purchased; is at least eighteen years of age; and meets other qualifications as determined by the developer.

"Short-term project notes" means evidences of indebtedness issued by the State for specified housing projects and secured by the projects, the terms of which call for complete repayment by the State of the face amount in not less than two nor more than ten years. [L 2006, c 180, pt of §3]

" **§201H-33 Powers and duties, generally.** (a) The corporation may develop fee simple or leasehold property, construct dwelling units thereon, including condominiums, planned units, and cluster developments, and sell, lease, or rent or cause to be leased or rented, at the lowest possible price to qualified residents, nonprofit organizations, or government agencies, with an eligible developer or in its own behalf:

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

(b) The corporation shall require all applicants for the purchase of dwelling units to make application therefor under oath, and may require additional testimony or evidence under oath in connection with any application. The determination of any applicant's eligibility under this chapter by the corporation shall be conclusive as to all persons thereafter dealing with the property; provided that the making of any false statement knowingly by the applicant or other person to the corporation in connection with any application shall constitute perjury and be punishable as such. The corporation shall establish a system to determine preferences by lot in the event that it receives more qualified applications than it has dwelling units available.

(c) The corporation shall adopt, pursuant to chapter 91, rules on health, safety, building, planning, zoning, and land use that relate to the development, subdivision, and construction of dwelling units in housing projects in which the State, through the corporation, shall participate. The rules shall not contravene any safety standards or tariffs approved by the public utilities commission, and shall follow existing law as closely as is consistent with the production of lower cost housing with standards that meet minimum requirements of good design, pleasant amenities, health, safety, and coordinated development.

When adopted, the rules shall have the force and effect of law and shall supersede, for all housing projects in which the State, through the corporation, shall participate, all other inconsistent laws, ordinances, and rules relating to the use, zoning, planning, and development of land, and the construction of dwelling units thereon. The rules, before becoming effective, shall be presented to the legislative body of each county in which they will be effective and the legislative body of any county may within forty-five days approve or disapprove, for that county, any or all of the rules by a majority vote of its members. On the forty-sixth day after submission, any rules not disapproved shall be deemed to have been approved by the county.

(d) The corporation may acquire, by eminent domain, exchange, or negotiation, land or property required within the foreseeable future for the purposes of this chapter. Whenever land with a completed or substantially complete and habitable dwelling or dwellings thereon is acquired by exchange or negotiation, the exchange value or purchase price for each dwelling, including land, shall not exceed its appraised value. Land or property acquired in anticipation of future use may be leased for the interim period by the corporation for such term and rent as it deems appropriate.

(e) Upon authorization by the legislature, the corporation shall cause the State to issue general obligation bonds to finance:

- (1) Land acquisition;
- (2) The development and improvement of land;
- (3) The construction of dwelling units;
- (4) The purchase, lease, or rental of land and dwelling units by qualified residents, nonprofit organizations, or government agencies under this chapter;
- (5) Payment for any services contracted for under this chapter, including profit or recompense paid to partners, and including community information and advocacy services deemed necessary by the corporation

to provide for citizen participation in the development of housing projects, the implementation of this chapter, and the staffing of any citizen advisory committee the corporation may establish;

- (6) The cost of the repurchase of units under section 201H-47;
- (7) Loans for the rehabilitation and renovation of existing housing; and
- (8) Any other moneys required to accomplish the purposes of this chapter.

(f) The corporation shall do all other things necessary and convenient to carry out the purposes of this chapter. [L 2006, c 180, pt of §3]

" **[§201H-34] Additional powers; development.**

Notwithstanding section 103-7, but with the approval of the governor, the corporation may enter into and carry out agreements and undertake projects or participate in projects authorized by this chapter. [L 2006, c 180, pt of §3]

" **[§201H-34.5] Authority to modify and amend development agreements with eligible developers.** The corporation is authorized to amend, delete, restate, and otherwise modify the terms, conditions, plans, specifications, and all other matters relating, directly or indirectly, to any housing project that was previously approved by the corporation, including the terms, covenants, and conditions of any development agreement for a housing project between the corporation and an eligible developer. [L 2009, c 143, §1]

" **[§201H-35] Bond financing.** The director of finance may issue general obligation bonds and short-term project notes of the State in an aggregate amount not to exceed \$105,000,000 for the dwelling unit revolving fund created by section 201H-191. Pending the receipt of funds from the issuance and sale of the bonds and notes, the amount required for the purposes of this chapter shall be advanced from the general fund of the State. Upon the receipt of the bond or note funds, the general fund shall be reimbursed. The director of finance may sequester and separate the proceeds from the sale of the bonds and notes into separate funds and the amounts in either fund may be used for any of the purposes set forth in this chapter. [L 2006, c 180, pt of §3]

" **§201H-36 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 part;
- (2) Developed under a government assistance program approved by the corporation, including but not limited to the United States Department of Agriculture 502 program and Federal Housing Administration 235 program;
- (3) Developed under the sponsorship of a private nonprofit organization 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) To obtain certification for exemption under this section, rental housing projects shall, unless exempted by the corporation, enter into a regulatory agreement with the corporation to ensure the project's continued compliance with the applicable eligibility requirements set forth in subsection (a), as follows:

- (1) For moderate rehabilitation projects, a minimum term of five years as specified in a regulatory agreement;
- (2) For substantial rehabilitation projects, a minimum term of ten years as specified in a regulatory agreement; or
- (3) For new construction projects, a minimum term of thirty years from the date of issuance of the certificate of occupancy.

(c) 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 part.

(d) For the purposes of this section:

"Moderate rehabilitation" means rehabilitation to upgrade a dwelling unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure.

"Substantial rehabilitation":

- (1) Means the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements. It may include but is not limited to the gutting and extensive reconstruction of a dwelling unit, or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance; and
 - (2) Includes renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use, such as conversion of a hotel to housing for elders.
- (e) 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. [L 2006, c 180, pt of §3; am L 2015, c 95, §1]

Note

The 2015 amendment applies to projects with an initial certification date after June 30, 2015. L 2015, c 95, §4.

" **§201H-37 Exemption from tax on income and obligations.** Income earned and obligations issued by a nonprofit entity determined to constitute a "public housing agency" pursuant to section 3(b)(6) of the United States Housing Act of 1937, as amended, and which income and obligations are declared by the United States Department of Housing and Urban Development to be exempt from all taxation imposed by the United States pursuant to section 11(b) of the United States Housing Act of 1937, shall be exempt from all taxation now or hereafter imposed by the State. [L 2006, c 180, pt of §3; am 1 2016, c 55, §2]

" **§201H-38 Housing development; exemption from statutes, ordinances, charter provisions, and rules.** (a) The corporation may develop on behalf of the State or with an eligible developer, or may assist under a government assistance program in the development of, housing projects that shall be exempt from all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwelling units thereon; provided that:

- (1) The corporation finds the housing project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;

- (2) The development of the proposed housing project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or of the various boards of water supply authorized under chapter 54;
- (3) The legislative body of the county in which the housing project is to be situated shall have approved the project with or without modifications:
 - (A) The legislative body shall approve, approve with modification, 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, modifying, 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) The land use commission shall approve, approve with modification, or disapprove a boundary change within forty-five days after the corporation has submitted a petition to the commission as provided in section 205-4. If, on the forty-sixth day, the petition is not disapproved, it shall be deemed approved by the commission.
 - (b) For the purposes of this section, "government assistance program" means a housing program qualified by the

corporation and administered or operated by the corporation or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise. [L 2006, c 180, pt of §3; am L 2007, c 249, §32]

Law Journals and Reviews

The Scramble to Protect the American Dream in Paradise: Is Affordable Housing Possible in Hawaii? 10 HBJ, no. 13, at 37 (2007).

" **[\$201H-39] Starter homes; design standards; applicant eligibility; authority to incorporate starter homes into housing projects of the corporation.** (a) The corporation shall adopt rules in accordance with chapter 91 to establish design and construction standards for starter homes configured to expand incrementally over time. For the purposes of this section, "starter home" means a dwelling unit that is designed to meet the basic living capacity requirements of homebuyers with families of limited size by eliminating unnecessary design and space amenities, but which nonetheless enables future expansion, modification, and improvement by the owner to accommodate increased occupancy over time as may be necessary. The rules shall include building, setback, minimum lot size, infrastructure, and architectural standards for the construction and development of starter homes.

(b) In addition to the requirements of subsection (a), the corporation shall adopt rules in accordance with chapter 91 to establish the basic requirements for families eligible to purchase starter homes under this section. The rules shall include guidelines and restrictions on occupancy standards initially permitted in a starter home, as well as the income ranges of families eligible to qualify for purchases under this section.

(c) The corporation may incorporate starter homes into any affordable housing project developed by the corporation under this chapter. The corporation shall determine on a project-by-project basis the number of starter home units to be included in each particular project.

(d) The corporation shall include in its annual report to the legislature a report on the number of starter homes constructed and developed by the corporation in accordance with the authorization provided in this section. [L 2006, c 180, pt of §3]

" **[\$201H-40] Housing projects; construction and sponsorship.** (a) The corporation, on behalf of the State or with eligible

developers and contractors, shall develop real property and construct dwelling units thereon; provided that not less than ten per cent of the total number of units in single-family projects consisting of fifty units or more sponsored by the corporation shall be first offered to owner-builders or to nonprofit organizations assisting owner-builders in the construction of units thereon. Qualifications for developers and contractors shall be provided by rules adopted by the corporation in accordance with chapter 91. Any person, if qualified, may act as both the developer and the contractor.

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

(c) If working in partnership with an eligible developer, the corporation shall have sole control of the partnership, shall keep all books of the partnership, and shall ascertain all costs of the partnership, including the cost of services performed by any other partners, and the corporation shall audit the same. The other partners shall perform services for the partnership under the direction of the corporation and shall be reimbursed for all costs relating to the project as certified by the corporation, including administrative and overhead costs. Additionally, the other partners, upon transfer of title by the corporation to the purchaser, shall be entitled to a guaranteed gross share if the actual cost of the project does not exceed the original project cost. The gross share shall not exceed fifteen per cent of the original project cost prorated to the dwelling units, less any amount subsidized by the State. Subsidies shall include unrecovered development and land costs and any other subsidized items as defined in rules adopted by the corporation pursuant to chapter 91. The percentage of the share shall be determined by the corporation by contract with the partners based upon the nature of the services rendered by them. For purposes of this subsection, "original project cost" means the original budget of a project as approved by the corporation without modification at a later date.

(d) The corporation may require that performance bonds be posted to the benefit of the State with surety satisfactory to the corporation guaranteeing performance by the other partners, or the State may act as a self-insurer requiring security, if any, from the other partners, as the corporation shall deem necessary. [L 2006, c 180, pt of §3]

" **[§201H-41] Independent development of projects.** (a) In any county, the corporation may develop or may enter into agreements to develop housing projects with an eligible

developer if in the corporation's reasonable judgment a project is primarily designed for lower income housing. The agreement may provide for the housing to be placed under the control of the corporation, or to be sold by the corporation, or to be sold to the corporation as soon as the units are completed and shall contain terms, conditions, and covenants as the corporation, by rules, deems appropriate. Every agreement shall provide for the developer to furnish a performance bond in favor of the corporation, assuring the timely and complete performance of the housing project. Sureties on the bond shall be satisfactory to the corporation.

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

- (1) Provide for economically integrated housing by stipulation and design;
- (2) Provide for the sale of all dwelling units in fee simple or in leasehold either to the corporation or to the purchaser and in all cases subject to all of the provisions of sections 201H-47, 201H-49, and 201H-50 excepting units sold at market price; and
- (3) Encompass the use of lands adequately suited to the size, design, and types of occupancies designated in subsection (a), properly located for occupancy by the group for which the project was primarily designed, properly districted for the use intended prior to the agreement, and appropriately zoned within an urban land use district or appropriate in its situation and surroundings for more intensive or denser zoning.

(c) The corporation may accept and approve housing projects independently initiated by private developers that fully comply with subsections (a) and (b). The corporation may review the plans, specifications, districting, and zoning of the project for the purpose of exempting the project from all statutes, ordinances, charter provisions, and rules of any government agency relating to zoning and construction standards for subdivisions, development, and improvement of land and the construction, improvement, and sale of dwelling units thereon; provided that the procedures in section 201H-38(a)(1), (2), and (3) have been satisfied. [L 2006, c 180, pt of §3]

" **[§201H-42] Private development of projects.** (a) The corporation may enter into contracts with any eligible bidder to provide for the construction of a housing project or projects. Each contract shall provide that the housing project or projects shall be placed under the control of the corporation as soon as the unit is available for occupancy. Each contract also shall provide that the capital stock of the mortgagor (where the

mortgagor is a corporate entity) be transferred to the corporation when the housing project or projects have been completed. Each contract shall contain terms and conditions that the corporation may determine to be necessary to protect the interests of the State. Each contract shall provide for the furnishing by the contractor of a performance bond and a payment bond with sureties satisfactory to the corporation, and the furnishings of the bonds shall be deemed a sufficient compliance with the provisions of law and no additional bonds shall be required. Before the corporation shall enter into any contract as authorized by this section for the construction of a housing project or projects, it shall invite the submission of competitive bids after giving public notice in the manner prescribed by law.

(b) Notwithstanding any other law to the contrary, the corporation may:

- (1) Acquire the capital stock of mortgagors holding property covered by a mortgage guarantee under this chapter and established by this section; to exercise the rights as holder of the capital stock during the life of the mortgage and, upon the termination of the mortgage, to dissolve the mortgagor;
- (2) Guarantee the payment of notes or other legal instruments of the mortgagors; and
- (3) Make payments thereon.

All housing projects placed under the control of the corporation pursuant to this section shall be deemed to be housing projects under the jurisdiction of the State.

(c) On request by the corporation, the attorney general shall furnish to the corporation an opinion as to the sufficiency of title to any property on which a housing project is proposed for construction, or on which housing projects have been constructed, under this section. If the opinion of the attorney general is that the title to the property is good and sufficient, the corporation is authorized to guarantee, or enter into a commitment to guarantee, the mortgagee against any losses that may thereafter arise from adverse claims to the title. None of the proceeds of any mortgage loan hereafter insured shall be used for title search and title insurance costs; provided that, if the corporation determines in the case of any housing project that the financing of the construction of the project is impossible unless title insurance is provided, the corporation may provide for the payment of the reasonable costs necessary for obtaining title search and title insurance. Any determination by the corporation under this subsection shall be set forth in writing, together with the reasons therefor.

(d) The State shall be authorized to guarantee the repayment of one hundred per cent of the principal and interest of loans from commercial lenders for the purposes of this section pursuant to rules adopted by the corporation which shall conform as closely as is possible to the practices of the Federal Housing Administration in insuring loans under sections 203 and 207 of the United States Housing Act of 1937, as amended; provided that at no time shall the State's liability, contingent or otherwise, on the guarantees exceed \$10,000,000. [L 2006, c 180, pt of §3]

" **[\$201H-43] Interim financing of projects.** (a) The corporation may provide interim construction loans to eligible developers. In addition to the rate of interest charged on interim loans, the corporation may charge loan commitment fees to be determined by rules adopted by the corporation.

(b) The interim loans shall be secured by a duly recorded 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 eligible developer and the corporation to secure the loan and the performance of the developer to complete the project. [L 2006, c 180, pt of §3]

" **§201H-44 Commercial, industrial, and other uses.** (a) In connection with the development of any dwelling units under this chapter, the corporation may also develop commercial, industrial, and other properties if it determines that the uses can be an integral part of the development or can help to enhance the lifestyles of residents of the development. The corporation may designate any portions of the development for commercial, industrial, or other use and shall have all the powers granted under this chapter with respect thereto, including the power to bypass statutes, ordinances, charter provisions, and rules of any government agency pursuant to section 201H-38. For this purpose, the corporation may use any of the funds authorized under this chapter.

(b) The corporation shall adopt rules that shall provide the manner in which the uses of properties shall be designated, and shall provide that any commercial, industrial, or other properties so developed shall be sold or leased at cost or at economic rents or sales prices. The net proceeds of all such

sales or leases, less costs to the corporation, shall be deposited in the dwelling unit revolving fund.

The rules may also provide that during the first twenty years after its purchase, any commercial, industrial, or other property so developed and sold may be resold or assigned only to the corporation at the original purchase price plus the cost of any improvements made by the purchaser together with simple interest on all of the purchaser's equity in the property at the rate of seven per cent a year. [L 2006, c 180, pt of §3; am L 2016, c 131, §3]

" **[\$201H-45] Sale; mortgage, agreement of sale, and other instruments.** (a) The corporation shall sell completed dwelling units or dwelling units that are substantially completed and habitable, developed and constructed hereunder, to qualified residents in fee simple, or shall cause them to be leased or rented to qualified residents at a price or rental based on costs as determined by the corporation. The gross share to the other partners or contract payments and any amounts subsidized by the State, including but not limited to the land, need not be counted as cost so as to increase the price. These costs may be borne by the State, pursuant to rules adopted by the corporation subject to reimbursement upon sale as provided in section 201H-47.

(b) If a qualified purchaser is unable to obtain sufficient funds at reasonable rates from private lenders, the corporation, by way of mortgage, agreement of sale, or other instrument to secure the indebtedness, may loan to the purchaser up to one hundred per cent of the purchase price. The purchaser in that event shall execute with the corporation an agreement of sale, mortgage, or other instrument under the terms of which the unpaid principal and the interest thereon shall be paid in monthly installments over a period of not more than forty years.

(c) Every mortgage, agreement of sale, other instrument to secure the indebtedness, or instrument of indebtedness executed by the corporation may contain other provisions as are usually found in such instruments and shall provide that the purchaser may repay the whole or any part of the unpaid balance of the purchase price plus accrued interest at any time without prepayment penalty.

(d) If the purchaser defaults on the payment of any loan, the corporation shall take all necessary action to collect the delinquent principal and interest on the loan and may take all actions allowed to holders of obligations, including the power to repossess, lease, rent, repair, renovate, modernize, and sell the property foreclosed, subject to the restrictions described in this section.

(e) The mortgages, agreements of sale, and other instruments of indebtedness, at the direction of the corporation, may be assigned to and serviced by commercial banks and other lending institutions doing business in the State at a fee of not more than one-half of one per cent of the amount loaned to the purchaser.

(f) Subsections (a) to (e) need not apply to market-priced dwelling units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units. [L 2006, c 180, pt of §3]

" **[§201H-46] Co-mortgagor.** For purposes of qualifying for a mortgage loan to finance the purchase of a dwelling unit under this part, a "qualified resident" as defined in section 201H-32 may be assisted by a co-mortgagor who is a family member as defined by the corporation, who may own other lands in fee simple or leasehold suitable for dwelling purposes, whose interest in the dwelling unit to be purchased is limited to no more than one per cent, and who certifies that the co-mortgagor does not intend to reside in the dwelling unit. The income and assets of the co-mortgagor shall not be counted in determining the eligibility of the "qualified resident" under this chapter. [L 2006, c 180, pt of §3]

" **§201H-47 Real property; restrictions on transfer; waiver of restrictions.** (a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

- (1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum of:
 - (A) The original cost to the purchaser, as defined in rules adopted by the corporation;
 - (B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and
 - (C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one per cent a year;
- (2) The corporation may purchase the real property either:
 - (A) By conveyance free and clear of all mortgages and liens; or

(B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The corporation's interest created by this section shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien except for:

- (i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
- (ii) Any mortgage insured or held by a federal housing agency; and
- (iii) Any mortgage or lien created for any other purpose; provided that the corporation has previously consented to it in writing.

The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation;

- (3) A purchaser may refinance real property developed and sold under this chapter; provided that the purchaser shall not refinance the real property within ten years from the date of purchase for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C); provided further that the purchaser shall obtain the corporation's written consent if any restriction on the transfer of the real property remains applicable;
- (4) After the end of the tenth year from the date of initial purchase or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:

- (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
 - (B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount expended by the corporation not counted as costs under section 201H-45 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;
 - (C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, from the date of purchase or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase or execution of the agreement of sale of the real property. If any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum as computed under paragraphs (1) and (2); and
 - (D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91, when applicable;
- (5) Notwithstanding any provision in this section to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to paragraph (4)(C) may be paid, in part or in full, at any time; and
- (6) Notwithstanding any provision in this section to the contrary, the corporation's share of appreciation in the real property described in paragraph (4)(D):
- (A) Shall apply when the sales price of the real property that is developed and sold under this chapter is less than the then-current, unencumbered, fair market value of the real property as determined by a real property appraisal obtained prior to the closing of the sale;

- (B) Shall be a restriction that runs with the land until it is paid in full and released by the corporation, or extinguished pursuant to subsection (e); and
- (C) May be paid, in part or in full, at any time after recordation of the sale.

(b) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, and if the corporation does not exercise the option to purchase the real property as provided in subsection (a), then the corporation shall require the purchaser to sell the real property to a "qualified resident" as defined in section 201H-32, and upon the terms that preserve the intent of this section and sections 201H-49 and 201H-50, and in accordance with rules adopted by the corporation.

(c) The corporation may waive the restrictions prescribed in subsection (a) or (b) if:

- (1) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation;
- (2) The sale or transfer of the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the real property; provided that, in this case, the purchaser shall sell the real property and sell or assign the real property to a person who is a "qualified resident" as defined in section 201H-32; and provided further that the purchaser shall pay to the corporation its share of appreciation in the real property as determined in rules adopted pursuant to chapter 91, when applicable; or
- (3) The sale or transfer is of real property subject to a sustainable affordable lease as defined in section 516-1.

(d) The corporation may release the restrictions prescribed in subsection (a) or (b) if the real property is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner.

(e) The restrictions prescribed in this section and sections 201H-49 to 201H-51 shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the real property pursuant to a mortgage foreclosure, foreclosure under

power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; provided that the mortgage is the initial purchase money mortgage, or that the corporation consented to and agreed to subordinate the restrictions to the mortgage when originated, if the mortgage is not the initial purchase money mortgage; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering real property or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation in writing of:

- (1) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and
- (2) Any intention of the mortgagee to foreclose the mortgage under chapter 667 forty-five days prior to commencing mortgage foreclosure proceedings;

provided that the mortgagee's failure to provide written notice to the corporation shall not affect the mortgage holder's rights under the mortgage. The corporation shall be a party to any foreclosure action, and shall be entitled to its share of appreciation in the real property as determined under this chapter in lien priority when the payment is applicable, and if foreclosure occurs within the ten-year period after the purchase, the corporation shall also be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount that shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).

(f) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of real property for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection (a)(4)(B), a description of the cost items that constitute the subsidy or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation. In any sale in which the corporation's share of appreciation in real property is a restriction, the terms of the shared appreciation equity program shall be clearly stated and included as an exhibit in any deed, lease, agreement of sale, or any other instrument of conveyance.

(g) This section need not apply to market-priced units in an economically integrated housing project, except as otherwise

determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

(h) The corporation is authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal law or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants. [L 2006, c 180, pt of §3; am L 2007, c 186, §1; am L 2009, c 38, §2]

" **[§201H-48] Exception of current owners in corporation projects.** The corporation may allow a person who is a current owner of a dwelling unit in a multifamily housing project sponsored by the corporation to apply for the purchase of a larger dwelling unit in a project sponsored by the corporation if the applicant's current family size exceeds the permissible family size for the applicant's current dwelling unit, as determined by prevailing county building or housing codes. The applicant shall be required to sell the applicant's current dwelling unit back to the corporation. Notwithstanding any law to the contrary, any applicant, as it pertains to for-sale housing, shall be a "qualified resident" who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is domiciled in the State and shall physically reside in the dwelling unit purchased under this section;
- (4) In the case of purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and
- (5) Except for the applicant's current residence, meets the following qualifications:
 - (A) Is a person who either oneself or together with the person's spouse or a household member, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land; and
 - (B) Is a person whose spouse or a household member does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land, except when husband and wife are living apart

under a decree of separation from bed and board issued by the family court pursuant to section 580-71. [L 2006, c 180, pt of §3]

" **[§201H-49] Real property; restrictions on use.** (a) Real property purchased under this chapter shall be occupied by the purchaser at all times during the ten-year restriction period set forth in section 201H-47, except in hardship circumstances where the inability to reside on the property arises out of unforeseeable job or military transfer, a temporary educational sabbatical, serious illness of the person, or in other hardship circumstances as determined by the corporation on a case-by-case basis.

The corporation may waive the owner-occupancy requirement for a total of not more than ten years after the purchase of the dwelling, during which time the dwelling unit may be rented or leased. Waivers may be granted only to qualified residents who have paid resident state income taxes during all years in which they occupied the dwelling, who continue to pay resident state income taxes during the waiver period, and whose inability to reside on the property does not stem from a natural disaster. The ten-year owner-occupancy requirement shall be extended by one month for every month or fraction thereof that the owner-occupancy requirement is waived.

The corporation shall adopt rules under chapter 91 to implement the letter and spirit of this subsection and to prescribe necessary terms and conditions. The rules shall include:

- (1) Application and approval procedures for the waivers;
- (2) Exceptions authorized by this subsection;
- (3) The amounts of rents that may be charged by persons allowed to rent or lease a dwelling unit; and
- (4) Schedules of fees needed to cover administrative expenses and attorneys' fees.

No qualified resident who fails to reoccupy a dwelling unit after any waiver period shall receive more than the maximum to which the person would be entitled under section 201H-47. Any person who disagrees with the corporation's determination under this section shall be entitled to a contested case proceeding under chapter 91.

(b) From time to time the corporation may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the corporation, at its option, to purchase the unit as provided in section 201H-47(a)(1), (2), or (4), as applicable.

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

(d) The restrictions prescribed in subsection (a) shall terminate and shall not attach in subsequent transfers of title if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(e) Subsections (a) to (c) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

(f) The corporation shall be authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal law or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants. [L 2006, c 180, pt of §3]

" **§201H-50 Restrictions on use, sale, and transfer of real property; effect of amendment or repeal.** (a) Restrictions on the use, sale, and transfer of real property shall be made as uniform as possible in application to purchasers of all real property, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent legislative act, ordinance, rule, or regulation. Purchasers shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer; provided that the corporation is paid its share of appreciation in the real property as determined by rules adopted pursuant to chapter 91, as applicable.

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

(c) For all purchasers of real property prior to June 25, 1990, where the restrictions on use and transfer of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase.

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

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

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

(g) The restrictions of this section shall terminate as to a particular real property and shall not attach in subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program. [L 2006, c 180, pt of §3; am L 2009, c 38, §3]

" **[§201H-51] Corporation's right to repurchase or rent real property; authority to seek recovery.** (a) Notwithstanding any provisions to the contrary, during the period in which the restrictions in section 201H-47 are in effect, the following provisions shall apply when dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect, or when vacant lands developed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial soil defect:

(1) The corporation shall have the right, but not the obligation, to repurchase a dwelling unit or land that has a defect, regardless of whether or not the owner wishes to sell; provided that those repurchases shall be in accordance with the following provisions:

(A) The corporation may repurchase a dwelling unit or land if:

- (i) The dwelling unit or land is deemed unsafe by the county building department;
 - (ii) The defects are irreparable; or
 - (iii) In the opinion of the corporation, the defect is of such magnitude that it will take longer than one year to repair;
- (B) The corporation's purchase price shall be based on the formula set forth in section 201H-47(a)(1);
 - (C) After repairs to the unit or land are completed, the former owner shall have the first right of refusal to repurchase the real property;
 - (D) The corporation shall give preference in all other projects of the corporation to all owners whose real property is repurchased by the corporation under this subsection, and the corporation may waive certain eligibility requirements for these owners; and
 - (E) If the corporation exercises its right to repurchase defective real property against an owner's wishes pursuant to this paragraph, the corporation shall provide relocation assistance to that owner as provided in chapter 111;
- (2) If the corporation does not opt to repurchase defective real property, the corporation shall also have the right, but not the obligation, to enter into a contract to repair a dwelling unit which has a construction defect or land which has a soil defect. During the period that the real property is being repaired, the corporation shall rent that real property from the owner for an amount not to exceed the owner's present mortgage payments; and
 - (3) If the corporation does not execute either a contract to repurchase the real property or an agreement to repair and rent the real property within ninety days after written notice is given to the corporation of a construction defect, the owner may pursue any other available legal remedies.

For the purposes of this section:

"Substantial construction defect" includes but is not limited to:

- (1) Structural defects such as shifting foundations and bearing walls;
- (2) Structural deficiencies due to the use of defective or undersized materials; and
- (3) Defects affecting the health and safety of occupants.

"Substantial soil defect" means shifting, sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.

(b) If moneys are expended by the corporation pursuant to subsection (a)(1) and (2), the corporation shall have the authority to take necessary legal action against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding chapter 657.

(c) If real property developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, is found to have a substantial construction or soil defect, the corporation shall have the right, but not the obligation, to file or cause to be filed a legal action on behalf of or by the owner or lessee of the real property for the recovery of damages or for injunctive relief against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding chapter 657. Additionally, notwithstanding any provision of rule 23 of the Hawaii rules of civil procedure, the corporation may file or cause to be filed a legal action brought under this subsection as a class action on behalf of or by at least two owners or lessees of real property that have similar substantial construction or soil defects.

(d) Nothing in this chapter shall be construed to diminish the rights or remedies of the corporation otherwise provided under common law, by law, or by contract.

(e) The corporation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.

(f) This section shall not apply to a particular real property and shall not apply after subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(g) If any subsection, sentence, clause, or phrase of this section, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining subsections, sentences, clauses, and phrases of this section, or the application of this section to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this section and each subsection, clause, or phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, or phrases of this section, or its application to any person or transaction or other circumstance, may be declared unconstitutional or invalid. [L 2006, c 180, pt of §3]

" **[\$201H-52] Nonprofit organizations and government agencies.** (a) The corporation may retain dwelling units in a project to the extent it determines necessary and appropriate, for sale, lease, or rental to nonprofit organizations and government agencies. The dwelling units shall be used by the nonprofit organizations and government agencies to provide housing opportunities and related support services to special needs individuals or families. These purposes include but are not limited to the use of dwelling units for group homes and congregate living facilities and for government employees in special situations. The corporation, in consultation with other appropriate government agencies, shall adopt rules pursuant to chapter 91 necessary to implement this subsection, including but not limited to rules relating to the eligibility and qualifications of nonprofit organizations and government agencies; the eligibility and qualifications of clients of nonprofit organizations and government agencies to whom housing opportunities may be made available; and restrictions on the use, sale, or transfer of, and authorizing repurchase of, dwelling units sold, leased, or rented pursuant to this subsection.

The corporation, to the extent appropriate, shall have the same powers with respect to nonprofit organizations and government agencies purchasing, leasing, or renting dwelling units as the corporation has with respect to qualified residents purchasing, leasing, or renting dwelling units.

(b) In connection with the development of any residential units under this chapter, the corporation may provide for the development of appropriate community facilities. The corporation may:

- (1) Sell, lease, or rent vacant land or land with site improvements to nonprofit organizations or government agencies to develop community facilities; or
- (2) Develop, on behalf of the State or with an eligible developer, the community facilities and then sell, lease, rent, or otherwise transfer or make available these facilities to nonprofit organizations or government agencies.

The corporation shall adopt rules pursuant to chapter 91 necessary to implement this subsection. [L 2006, c 180, pt of §3]

" **[\$201H-53] Rate of wages for laborers and mechanics.** The corporation shall require an eligible bidder or eligible developer of a housing project developed under this part to comply with the requirements of section 104-2 for those laborers and mechanics hired to work on that housing project; provided

that this section shall not apply to a housing project developed under this part if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit organization. [L 2006, c 180, pt of §3]

" **[§201H-57] Land leases to nonprofit organizations providing affordable housing.** (a) Notwithstanding any provision to the contrary, the [corporation], pursuant to section 201H-4(b), may lease land to any qualified nonprofit organization providing affordable housing, under the following terms and conditions:

- (1) Leases shall be for ninety-nine years at \$1 per year per parcel; and
- (2) The instrument of lease shall include provisions, enforceable by the [corporation], that the land shall:
 - (A) Be used only for providing affordable housing through long-term, renewable, and transferable leases or other means that are in accordance with rules adopted by the [corporation] under chapter 91; and
 - (B) Revert back to the [corporation] if:
 - (i) The land is used for any purpose other than as provided under subparagraph (A); or
 - (ii) The qualified nonprofit organization ceases operations.

(b) For the purposes of this section:

"Affordable housing" means housing that is affordable to households with incomes at or below one hundred forty per cent of the median family income as determined by the United States Department of Housing and Urban Development.

"Qualified nonprofit organization" means any private entity that is organized and operated:

- (1) In accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and
 - (2) For the purpose of providing affordable housing through long-term, renewable, and transferable leases.
- [L 2006, c 101, §1]

" **[§201H-58] Leases; self-help housing.** (a) The [corporation] may lease parcels that it deems suitable for affordable housing at \$1 per year for up to fifty years to organizations or community trusts to develop the parcel with ownership units through self-help development.

(b) The [corporation] may extend or modify the fixed rental period of the lease or extend the term of the lease.

(c) Parcels leased under this section may be transferred or assigned by devise, bequest, or intestate succession, and may

be sublet with the approval of the [corporation]. [L 2006, c 179, §4]

" **[\$201H-59] Affordable rental housing development program.**

(a) There is established the affordable rental housing development program under the Hawaii housing finance and development corporation.

(b) The purpose of this program shall be to preserve affordable rental housing units.

(c) For the purposes of this section, activities eligible for assistance from the affordable rental housing development program shall include rehabilitation, acquisition, or preservation of multifamily rental housing units for persons and families with incomes at or below eighty per cent of the median family income, as determined by the United States Department of Housing and Urban Development.

(d) The corporation shall identify properties whose contracts with either the United States Department of Housing and Urban Development or the United States Department of Agriculture are set to expire on or before January 1, 2012, and the corporation shall contact the project owners to initiate negotiations to renew or preserve the existing subsidy contracts; provided that:

- (1) Nonprofit organizations shall be given priority to take over expiring subsidy contracts; and
- (2) Nonprofit organizations shall be given priority over for-profit organizations, if federal government funds are needed for the acquisition or rehabilitation of a project. [L 2011, c 193, §2]

Note

Affordable unit requirements for redeveloped or reconstructed public housing projects. L 2011, c 193, §4.

" **[\$201H-70] Additional powers.** The powers conferred upon the corporation by this part shall be in addition and supplemental to the powers conferred by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities so conferred. [L 2006, c 180, pt of §3]

"[PART III.] FINANCING PROGRAMS

A. General Provisions

[\$201H-71] Bonds; authorization. (a) The corporation, with the approval of the governor, may issue from time to time bonds (including refunding bonds to pay, retire, or provide for the retirement of bonds previously issued by the corporation) in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for any of its corporate purposes. Bonds may also be issued in connection with any program whose primary purpose is to provide housing for active or retired United States military personnel, their families, and other persons authorized by any branch of the United States military to reside in the housing; provided that the aggregate principal amount of all outstanding bonds issued by the corporation for military housing projects shall total no more than \$2,000,000,000.

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

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

(d) The corporation may issue such types of bonds as it may determine, including without limitation bonds payable from and secured, in whole or in part, by:

- (1) Income and revenues derived from the housing project or projects financed from the proceeds of bonds;
- (2) Receipts derived from any grant from the federal government made in aid of a housing project or projects financed from the proceeds of bonds;
- (3) Income and revenues derived from a particular designated housing project or projects whether or not financed, in whole or in part, from the proceeds of bonds;
- (4) Receipts derived from any payment for "eligible loans", "eligible improvement loans", or "eligible project loans", as the terms are defined in subpart B, or any other agreement or agreements entered into for a "housing loan program", as the term is defined in subpart B or D, or any other loan program administered by the corporation and financed from the proceeds of bonds;
- (5) Receipts derived from loans to mortgage lenders or from the payment on account of principal of or interest on loans purchased from mortgage lenders, as provided in subpart B which loans to mortgage lenders or loans purchased are financed from the proceeds of bonds;

- (6) Moneys in any funds or accounts established in connection with the issuance of bonds, and any earnings thereon;
- (7) Proceeds derived from any insurance;
- (8) Income and revenues of the corporation generally; or
- (9) Any combination of paragraphs (1) through (8).

The term "income and revenues" includes income and revenues derived from the sale of land or from both land and improvements thereon serviced from infrastructure financed from the proceeds of bonds as permitted by this subpart. The provisions of this subsection are in addition and supplemental to part III of chapter 39.

(e) Any of the bonds may be additionally secured by a pledge of any revenues or a mortgage of any housing project, other property of the corporation, the pledge or assignment of any loans or other agreements, or any note or other undertaking, obligation, or property held by or on behalf of the corporation to secure loans made from the proceeds of bonds for any "housing loan program", as the term is defined in subpart B or D, or any other loan program administered by the corporation and financed from the proceeds of bonds.

(f) Any pledge made by the corporation shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the corporation from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon the filing, the revenues, moneys, or property so pledged and thereafter received by the corporation shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be prior to the lien of all parties having claims of any kind in tort, contract, or otherwise against the corporation, irrespective of whether the parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this part.

(g) Any housing project or projects authorized by, and undertaken pursuant to, this chapter shall constitute an "undertaking" within the meaning of that term as defined and used in part III, chapter 39. Any loan program authorized by, and undertaken pursuant to, this chapter, including without limitation "housing loan programs" defined in and authorized by subparts B and D, shall constitute a "loan program" within the meaning of that term as defined and used in part III, chapter 39. The corporation shall constitute a "department" and the

board shall constitute a "governing body" within the meaning of those terms as defined and used in part III, chapter 39.

(h) Neither the members of the board nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. [L 2006, c 180, pt of §4]

" **§201H-72 Issuance of bonds for the development of infrastructure.** Without limiting section 201H-71, the corporation, pursuant to and in accordance with this subpart or section 46-80.1(a), is authorized to issue bonds for the purpose of financing the development of infrastructure for land owned by the corporation or for land owned by an eligible developer as defined in section 201H-32 whose housing project approval by a state or county agency requires the construction of affordable housing. [L 2006, c 180, pt of §4; am L 2014, c 194, §1; am L 2015, c 156, §2]

" **[\$201H-73] Issuance of bonds for the preservation of low-income housing projects.** The corporation, pursuant to and in accordance with this subpart, may issue bonds to purchase low-income housing projects financed by the United States Department of Housing and Urban Development to preserve these projects. Upon the payment of all interest and principal stemming from the issuance of these bonds, the corporation may transfer title to these projects to qualified nonprofit organizations. Nothing in this section shall be construed to:

- (1) Prohibit qualified nonprofit or for-profit organizations from operating these projects on behalf of the corporation, or providing for the repair and maintenance of these projects, before the payment of all interest and principal stemming from the issuance of these bonds; or
- (2) Prohibit the corporation from transferring title to these projects to qualified nonprofit or for-profit organizations if these bonds can be secured to the satisfaction of the bondholders.

As used in this section, "qualified nonprofit organization" includes community-based nonprofit organizations and resident councils. [L 2006, c 180, pt of §4]

" **[\$201H-74] Bonds; interest rate, price, and sale.** (a) The bonds shall bear interest at rates payable at times that the corporation, with the approval of the governor, may determine except for deeply discounted bonds that are subject to redemption or retirement at their accreted value; provided that the discounted value of the bonds shall not exceed ten per cent of any issue; and provided further that no bonds may be issued

without the approval of the director of finance and the governor. Notwithstanding any other law to the contrary, the corporation, subject to the approval of the director of finance and the governor, may issue bonds pursuant to section 201H-72, in which the discounted value of the bonds exceeds ten per cent of the issue.

(b) The corporation may include the costs of undertaking and maintaining any housing project or projects or loan program for which the bonds are issued in determining the principal amount of bonds to be issued. In determining the costs of undertaking and maintaining the housing projects, the corporation may include the cost of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and other services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period determined by the corporation, or the estimated expenditure of borrowed funds for any loan program for which the bonds are issued. [L 2006, c 180, pt of §4]

" **§201H-75 Trustee; designation, duties.** (a) The corporation may designate a trustee for each issue of bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the corporation to receive and receipt for, hold, and administer the proceeds of the bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the corporation to hold and administer any housing project bond revolving funds and housing loan program revenue bond revolving funds established pursuant to section 201H-80. The trustee may receive and receipt for, hold, and administer the revenues derived by the corporation from any housing project or projects or loan program for which the bonds are issued or the projects or loan programs pledged to the payment of the bonds. The trustee shall apply the revenues to the payment of the cost of administering, operating, and maintaining the housing project or projects or loan program; to pay the principal of and the interest on the bonds; to the establishment of reserves; and to other purposes as may be authorized in the proceedings providing for the issuance of the bonds.

(d) Notwithstanding section 39-68, the director of finance may appoint the trustee to serve as fiscal agent for:

- (1) The payment of the principal of and interest on the bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the bonds and coupons, if any, that have been paid and the supervision of their destruction in accordance with law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the director of finance in sections 36-3, 39-13, and 39-68(a), to appoint the trustee or others as fiscal agents, paying agents, and registrars for the bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections. [L 2006, c 180, pt of §4; am L 2015, c 237, §15]

" **[\$201H-76] Trust indenture.** (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as deemed necessary or convenient by the corporation for the purposes of this part.

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

(c) Where a trust indenture provides that any bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the bonds required by section 39-56 may be facsimiles of their signatures.

(d) A trust indenture shall also contain provisions as to:

- (1) The investment of the proceeds of the bonds, the investment of any reserve for the bonds, the investment of the revenues of the housing project or system of housing projects or the loan program, and the use and application of the earnings from investments; and
- (2) The terms and conditions upon which the holders of the bonds or any portion of them or any trustee thereof may institute proceedings for the enforcement of any agreement or any note or other undertaking, obligation, or property securing the payment of the bonds and the use and application of the moneys derived therefrom.

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

maintaining the housing projects or loan programs. [L 2006, c 180, pt of §4]

" **[\$201H-77] Investment of reserves, etc.** The corporation may invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, including the proceeds of bonds, in property or securities in which the director of finance may legally invest, as provided in section 36-21, except that funds held outside the state treasury may be invested for terms not to exceed thirty-five years. No provisions with respect to the acquisition, operation, or disposition of property by other government agencies shall be applicable to the corporation unless the legislature shall specifically so state. [L 2006, c 180, pt of §4]

" **[\$201H-78] Security for funds deposited by the corporation.** The corporation may by resolution provide that all moneys deposited by it shall be secured by:

- (1) Any securities by which funds deposited by the director of finance may be legally secured as provided in section 38-3; or
- (2) An undertaking with sureties as are approved by the corporation faithfully to keep and pay over upon the order of the corporation any deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for those deposits. [L 2006, c 180, pt of §4]

" **[\$201H-79] Arbitrage provisions, interest rate.** (a) Any other provision of law to the contrary notwithstanding, neither the corporation nor the director of finance shall make loans or purchase mortgages with the proceeds of general obligation bonds of the State or from a revolving fund established or maintained from the proceeds of bonds, at a rate of interest or upon terms and conditions that would cause any general obligation bond of the State or any bond to be an "arbitrage bond" within the meaning of that term as defined in the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto.

(b) The rate of interest on loans made under this chapter from the proceeds of general obligation bonds of the State shall be established by the corporation, with the approval of the director of finance, after each sale of general obligation bonds of the State, the proceeds of which are to be used for the purposes of making loans or purchasing mortgages under this chapter. If no sale of general obligation bonds of the State intervenes in a twelve-month period after the last rate fixing,

the corporation may review the then existing rates on loans or mortgages made under this chapter from the proceeds of general obligation bonds of the State and retain the existing rate or, with the approval of the director of finance, establish different rates.

(c) The director of finance shall approve those rates so as to produce up to, but not in excess of, the maximum yield to the State or the corporation permitted under the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto, on the assumption that the general obligation bonds of the State, the proceeds of which have been or are to be used for the purposes of making loans or purchasing mortgages under this chapter, would otherwise be "arbitrage bonds" under the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto, were the maximum yield to be exceeded. The establishment of the rates of interest shall be exempt from chapter 91. [L 2006, c 180, pt of §4]

" **§201H-80 Housing finance revolving fund; bond revolving funds.** (a) There is created a housing finance revolving fund to be administered by the corporation. Notwithstanding sections 36-21 and 201H-191, the proceeds in the fund shall be used for long-term and other special financings of the corporation and for the necessary expenses in administering this part.

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

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

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

proceedings authorizing the issuance of the bonds. [L 2006, c 180, pt of §4; am L 2015, c 237, §16]

" **§201H-81 REPEALED.** L 2014, c 132, §4]

" **[\$201H-82] Rate of wages for laborers and mechanics.** The corporation shall require an eligible bidder or eligible developer of a housing project developed under this subpart to comply with the requirements of section 104-2 for those laborers and mechanics hired to work on that housing project; provided that this section shall not apply to a housing project developed under this chapter if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit organization. [L 2006, c 180, pt of §4]

" **§201H-85 REPEALED.** L 2015, c 237, §3.

" **[\$201H-86] Low-income housing tax credit loan.** (a) The corporation may provide a no-interest low-income housing tax credit loan to an owner of a qualified low-income building that has been awarded federal tax credits that are subject to the state housing credit ceiling under section 42(h)(3)(C) of the Internal Revenue Code, federal credits that are allocated pursuant to section 42(h)(4) of the Internal Revenue Code, or a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. The loan shall be in an amount equal to seventy per cent of the cash value of the amount of the low-income housing tax credit that would otherwise have been claimable with respect to the qualified low-income building under section 235-110.8 for each taxable year in the ten-year credit period, discounted to present day value and capitalized at the rate of interest on the taxable general obligation bonds used to fund the loan.

(b) An owner who is provided a low-income housing tax credit loan under this section shall not be eligible for the state income tax credit under section 235-110.8.

(c) The corporation shall impose conditions or restrictions on the low-income housing tax credit loan, including:

- (1) A requirement providing for acceleration and repayment on any no-interest loan under this section to assure that the building with respect to which the loan is made remains a qualified low-income building under section 42 of the Internal Revenue Code or section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. Any such repayment shall be payable to the housing finance revolving fund and may

be enforced by means of liens or other methods as the corporation deems appropriate;

- (2) The same limitations on rent, income, and use restrictions as applied under an allocation of a housing credit dollar amount allocated under section 42 of the Internal Revenue Code; and
- (3) The payment of reasonable fees for the corporation to perform or cause to be performed asset management functions to ensure compliance with section 42 of the Internal Revenue Code and the long-term viability of buildings funded by any no-interest loan under this section.

(d) The corporation shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code or section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, to sustain the long-term viability of buildings funded by a no-interest loan under this section.

(e) The corporation may collect reasonable fees from the owner of a qualified low-income building to cover expenses associated with the performance of the corporation's duties under this section and may retain an agent or other private contractor to satisfy the requirements of this section.

(f) If the owner is not in default, the corporation may forgive the amount remaining under the no-interest loan to the owner of the qualified low-income building after thirty years.

(g) For purposes of this section, "qualified low-income building" shall have the same meaning as used in section 42(c)(2) of the Internal Revenue Code. [L 2011, c 158, §2]

Note

Section applies to qualified low-income buildings placed in service from January 1, 2012. L 2011, c 158, §5.

" **[\$201H-90] Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred. [L 2006, c 180, pt of §4]

"B. Housing Loan and Mortgage Program

§201H-91 Definitions. The following words or terms as used in this subpart shall have the following meanings unless a different meaning clearly appears from the context:

"Eligible borrower" means a person or family, without regard to race, creed, national origin, or sex, who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is a bona fide resident of the State;
- (3) Is at least eighteen years of age;
- (4) Does not personally, or whose spouse does not if the person is married, own any interest in a principal residence within or without the State and who has not owned a principal residence within the three years immediately prior to the application for an eligible loan under this subpart, except this requirement shall not apply to any eligible loan for a targeted area residence as defined in the Mortgage Subsidy Bond Tax Act of 1980, Public Law 96-499;
- (5) Is financing a property that will be the eligible borrower's principal residence; and
- (6) Meets other qualifications as established by rules adopted by the corporation.

"Eligible improvement" means alterations, repairs, or improvements to an existing dwelling unit that substantially protect or improve the basic livability of the unit.

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

"Eligible loan" means a loan under this subpart, including mortgage-backed securities backed by such a loan, to an eligible borrower for the permanent financing of a dwelling unit, including a condominium unit, including eligible improvement loans, loans to finance homebuyer assistance, and loans that provide the security or interest in a mortgage-backed security; provided that the property financed is located in the State, will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the corporation.

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

"Homebuyer assistance" means assistance provided to eligible borrowers in conjunction with an eligible loan to provide downpayment assistance or fund closing costs; provided that such assistance is repaid through consideration to the corporation, including borrower repayments.

"Housing loan programs" includes all or any part of the advance commitments program, and the loan funding programs authorized under this subpart.

"Mortgage-backed security" means any investment security, not including bonds of the corporation, that represents an interest in, or is secured by, one or more pools of mortgage loans, including any such security representing a direct obligation or guarantee of a federally-sponsored or private entity such as the Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation.

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

- (1) To be qualified by experience, financial responsibility, and support to construct a housing project of the type and magnitude described;
- (2) To have submitted plans for a housing project adequately meeting the objectives of this chapter, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and
- (3) To meet other qualifications as established by rules adopted by the corporation pursuant to chapter 91. [L 2006, c 180, pt of §4; am L 2013, c 135, §2]

" **[§201H-92] Owner-occupancy requirement.** (a) An eligible borrower shall use the dwelling unit purchased under this subpart as the eligible borrower's permanent and primary residence.

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

(c) For eligible borrowers in the process of selling or transferring title to their property, the corporation may grant a waiver of subsection (a) for a period not to exceed three years and for reasons set forth in section 201H-49 on a case-by-case basis. [L 2006, c 180, pt of §4]

" **[§201H-93] Eligible borrowers.** (a) The corporation shall establish the qualifications of the eligible borrower, and may consider the following:

- (1) The proportion of income spent for shelter;
- (2) Size of the family;
- (3) Cost and condition of housing available to the total housing market; and
- (4) Ability of the person to compete successfully in the normal housing market and to pay the amounts on which private enterprise is providing loans for safe, decent, and sanitary housing in the State.

(b) The family income of an eligible borrower shall not exceed the income requirements of section 143(f) of the Internal Revenue Code of 1986, as amended.

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

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

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

- (1) The dwelling unit being replaced and the property on which the dwelling unit is situated shall not be included in the calculation of the eligible borrower's assets; and
- (2) The mortgage secured by the dwelling unit and the property shall not be included in the calculation of the eligible borrower's liabilities. [L 2006, c 180, pt of §4]

" **§201H-94 Eligible loans.** (a) The corporation shall establish requirements for property financed by an eligible loan, and may consider the location, age, condition, and other characteristics of the property.

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

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

(d) Notwithstanding any other provision of law, the corporation may provide homebuyer assistance in conjunction with

eligible loans through loans or other means; provided that the homebuyer assistance:

- (1) Is repaid through consideration to the corporation, including borrower repayments; and
- (2) Meets restrictions and requirements as established in rules adopted by the corporation. [L 2006, c 180, pt of §4; am L 2013, c 135, §3]

" **[§201H-95] Eligible project loans.** (a) The corporation shall establish requirements for rental housing projects to be financed by an eligible project loan, and may consider the location, age, condition, and other characteristics of the project.

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

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

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

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

(f) All eligible project loans shall comply with applicable state and federal laws. [L 2006, c 180, pt of §4]

" **[§201H-96] Eligible improvement loans.** (a) The corporation shall establish requirements for property financed by an eligible improvement loan, and may consider the location, age, condition, value, and other characteristics of the property.

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

(c) All eligible improvement loans made shall comply with applicable state and federal laws. [L 2006, c 180, pt of §4]

" **§201H-97 Housing loan programs; procedures and requirements.** (a) The corporation shall establish procedures for:

- (1) The making of advance commitments to purchase and the purchasing of eligible loans, eligible improvement loans, or eligible project loans to be made by mortgage lenders by auction, invitation of lenders, or negotiation; and
- (2) Loan applications made through mortgage lenders to eligible borrowers or qualified sponsors.

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

- (1) The allocation of loans to mortgage lenders;
- (2) The allocation of funds to purchase existing loans from mortgage lenders;
- (3) The making of advance commitments and allocation of funds to purchase eligible loans, eligible improvement loans, or eligible project loans from mortgage lenders; and
- (4) The participation by mortgage lenders as originators and processors of eligible loans, eligible improvement loans, or eligible project loans on behalf of the corporation.

(c) The standards and requirements for the allocation of funds to mortgage lenders shall be adopted by the corporation and shall be designed to include the maximum number of qualified mortgage lenders as participants in the housing loan programs. [L 2006, c 180, pt of §4; am L 2013, c 135, §4]

" **[\$201H-98] Housing loan programs; general powers.** (a) The corporation may make, enter into, and enforce all contracts or agreements that are necessary, convenient, or desirable in the performance of its duties in executing the housing loan programs.

(b) The corporation may require representations and warranties as it determines necessary to secure its loans. [L 2006, c 180, pt of §4]

" **[\$201H-99] Housing loan programs; self-supporting.** The interest rate, fees, charges, premiums, and other terms of the loans made under the housing loan programs shall be at least sufficient to pay the cost of administering and maintaining the portion of the specific housing loan programs for which the bonds have been issued, and to assure payment of the principal of and interest on the bonds as they become due. [L 2006, c 180, pt of §4]

" **§201H-100 Housing loan programs; fees.** The corporation may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, for its housing loan programs. The fees, premiums, and charges shall be deposited into the housing loan program revenue bond revolving fund established for the particular housing loan program or part thereof from which the fees, premiums, and charges are derived as determined by the corporation. [L 2006, c 180, pt of §4; am L 2015, c 237, §17]

" **[\$201H-101] Housing loan programs; evidence of eligible loan, eligible improvement loan, or eligible project loan.** (a) Each mortgage lender who participates in any housing loan program shall submit evidence, as deemed satisfactory by the corporation, that eligible loans, eligible improvement loans, or eligible project loans have been made from the proceeds of the bonds.

(b) The corporation may inspect the books and records of the mortgage lenders as may be necessary for the purposes of this section. [L 2006, c 180, pt of §4]

" **§201H-102 REPEALED.** L 2013, c 135, §5.

" **§201H-103 REPEALED.** L 2013, c 135, §6.

" **§201H-104 REPEALED.** L 2013, c 135, §7.

" **[\$201H-105] Advance commitments program.** (a) The corporation may contract with a mortgage lender for the advance commitment to purchase eligible loans, eligible improvement loans, or eligible project loans.

(b) The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its bonds. Notwithstanding any other law to the contrary, project loans may be made available for housing projects on Hawaiian home lands pursuant to the Hawaiian Homes Commission Act, 1920, as amended. [L 2006, c 180, pt of §4]

" **[\$201H-106] Loan funding programs.** (a) The corporation may contract with mortgage lenders to fund eligible loans and eligible improvement loans and may directly make or contract with mortgage lenders to fund eligible project loans.

(b) Any contract in subsection (a) with a mortgage lender may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its revenue bonds. [L 2006, c 180, pt of §4]

" **[\$201H-107] Loans; service and custody.** The corporation may contract for the service and custody of its loans. The contract may provide for the payment of fees or charges for the services rendered; provided that the fees or charges shall not exceed the usual, customary, and reasonable charges for the services rendered. [L 2006, c 180, pt of §4]

" **[\$201H-108] Loans; sale, pledge, or assignment.** (a) Subject to any agreements with the holders of its revenue bonds, the corporation may sell its loans at public or private sale at a price and upon terms and conditions as it determines.

(b) Subject to any agreements with [the] holders of its revenue bonds, the corporation may pledge or assign its loans, other agreements, notes, or property to secure the loans or agreements. [L 2006, c 180, pt of §4]

" **[\$201H-109] Loans; insurance and guarantees.** The corporation may procure insurance or guarantees against any default of its loans, in amounts and from insurers or guarantors, as it deems necessary or desirable. [L 2006, c 180, pt of §4]

" **[\$201H-110] Loans; default.** The corporation may renegotiate, refinance, or foreclose any loan in default.

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

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

The corporation may bid for and purchase the property secured by the loan at any foreclosure or other sale, or acquire or take possession of the property secured by the loan.

The corporation may operate, manage, lease, dispose of, or otherwise deal with the property secured by the loan. [L 2006, c 180, pt of §4]

" **[\$201H-120] Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred. [L 2006, c 180, pt of §4]

"C. Rental Assistance Program

[§201H-121] Purpose; findings and determinations. The legislature finds and declares that the health and general welfare of the people of this State require that the people of this State have safe and sanitary rental housing accommodations available at affordable rents; that a grave shortage in the number of such accommodations affordable by families and individuals of low- and moderate-income in the State exists; and that it is essential that owners of rental housing accommodations be provided with appropriate additional means to assist in reducing the cost of rental housing accommodations to the people of this State.

The legislature further finds that the high cost of infrastructure development and the obtaining of interim construction financing are two of the greatest impediments to the production of affordable rental housing in this State. It is especially difficult for private nonprofit and for-profit entities to participate in the development of affordable housing due to the difficulty in amassing the capital necessary to plan and carry out a project to completion.

It is the purpose of this subpart to:

- (1) Assist owners in maintaining rentals at levels affordable to low- and moderate-income families and individuals by providing owners with rental assistance payments which, together with rental payments received from low- and moderate-income tenants, will provide owners with limited but acceptable rates of return on their investments in rental housing accommodations. Assisting owners by entering into contracts with them to provide for rental assistance payments is a valid public purpose and in the public interest; and
- (2) Provide a funding source for interim construction financing for the development of affordable rental housing by private nonprofit and for-profit entities, as well as the corporation; provided that in allotting this financing, the corporation shall give preference to qualified sponsors who are private nonprofit and for-profit entities. [L 2006, c 180, pt of §4]

" **[§201H-122] Definitions.** The following terms as used in this subpart shall have the following meanings unless a different meaning clearly appears from the context:

"Eligible project" means a rental housing project that:

- (1) Is financed by the corporation pursuant to subpart B or D, or that the corporation determines will require rental assistance to make it financially feasible;
- (2) Is subject to a regulatory agreement with the corporation;

- (3) Maintains at least twenty per cent of its units for eligible tenants; and
- (4) Meets other qualifications as established by rules adopted by the corporation.

Notwithstanding any provision to the contrary, "eligible project" may also include a rental housing project that is financed by the corporation pursuant to subpart A.

"Eligible tenant" means a family or an individual whose income does not exceed eighty per cent of the area median income as determined by the United States Department of Housing and Urban Development.

"Owner" means the owner of an eligible project.

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

"Rental assistance contract" means an agreement between an owner and the corporation providing for periodic rental assistance payment for units in an eligible project. [L 2006, c 180, pt of §4]

" **[§201H-123] Rental assistance revolving fund.** (a) There is created a rental assistance revolving fund to be administered by the corporation.

(b) The rental assistance revolving fund may include sums made available from any government program or grant, from private grants or contributions, from the proceeds of any bond issue, or from appropriations to the fund. The aggregate principal in the fund shall be invested by the corporation in a manner that will maximize the rate of return on investment of the fund; provided that any investment made shall be consistent with section 201H-77 but need not comply with section 36-21.

(c) The corporation may use, as needed, the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund to make payments under rental assistance contracts or to subsidize tenants' rents in eligible projects developed under this part; provided that the corporation shall use up to \$25,000,000 plus any bond proceeds to provide interim construction financing to:

- (1) Qualified sponsors who are private nonprofit or for-profit entities; or
- (2) The corporation, for the development of affordable rental housing;

provided further that the corporation, in allotting interim construction financing moneys pursuant to this subpart, shall give preference to rental housing projects developed by

qualified sponsors who are private nonprofit or for-profit entities. [L 2006, c 180, pt of §4]

" **[\$201H-124] Rental assistance contracts.** (a) The corporation may enter into a rental assistance contract and a regulatory agreement with the owner of an eligible project, when the owner of an eligible project is other than the corporation.

(b) Prior to the execution of a rental assistance contract, the corporation may execute an agreement to enter into a rental assistance contract with an owner. The agreement shall provide for the execution of a rental assistance contract upon satisfaction of the terms set forth in the agreement and otherwise established by the corporation. Each rental assistance contract heretofore entered into by the corporation that provided that rental assistance payments shall be made solely from the earnings on the investment of the rental assistance revolving fund shall hereafter, without modification of the contracts, be payable from the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund.

(c) A rental assistance contract and any subsidy of tenants' rents in projects developed under this subpart shall be for a term not in excess of thirty-five years and shall be approved by the board of directors of the corporation. Upon that approval by the corporation, the director of finance shall be authorized to guarantee the obligation of the corporation for the term of the rental assistance contract or the subsidy of tenants' rents in an amount equal to the aggregate obligation of the corporation to make assistance payments; provided that the aggregate of all of the outstanding guarantees shall not exceed \$100,000,000. Pursuant to that guarantee, the corporation shall make annual rental payments to the owner in accordance with the approved rental assistance contract or to the tenants in accordance with the approved subsidy.

(d) Each rental assistance contract shall set forth a maximum annual rental assistance payment amount. The corporation shall establish procedures for determining the maximum annual rental assistance payment amount and may consider the following:

- (1) The cost of constructing the eligible project;
- (2) The estimated annual operating cost of the eligible project;
- (3) The estimated maximum rentals that may be charged for dwelling units in the eligible project;
- (4) The amount of funds available for the funding of rental assistance contracts;

- (5) The number of eligible projects requiring assistance under this subpart; and
- (6) A restricted rate of return on equity to the owner, which rate shall be established by the corporation by rule. [L 2006, c 180, pt of §4]

" **[\$201H-125] Rental assistance program.** (a) Prior to the execution of a rental assistance contract and annually thereafter, the owner shall submit a proposed rental schedule to the corporation for approval. The schedule shall list every rental unit in the project and shall designate which units are to be maintained for eligible tenants.

(b) The corporation shall establish procedures for evaluating the rental schedules submitted pursuant to this section, and may consider the following:

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

(c) Annually, following the approval of the rental schedule submitted pursuant to subsection (a), the corporation shall determine the amount of rental assistance payments payable to the owner for the forthcoming year; provided that the amount shall not exceed the maximum annual rental assistance payment amount determined in accordance with section 201H-124. The amount determined pursuant to this subsection shall take into account the estimated amount to be derived by the owner from rentals to be charged for the forthcoming year and the limited rate of return on equity permitted in accordance with section 201H-124(d)(6).

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

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

- (2) The periodic review of the income of tenants renting units in eligible projects; and
- (3) The periodic inspection of eligible projects to monitor the owners' compliance with the terms and conditions of their rental assistance contracts.

(f) When an eligible project is not owned by the corporation, the corporation shall be entitled to share in the appreciation in value of units maintained for eligible tenants within an eligible project realized at the time of refinancing or prepayment of the eligible project loan. The corporation's share shall be calculated by multiplying the appreciation in value of units maintained for eligible tenants realized upon refinancing or prepayment by the ratio of the owner's equity to the discounted value of the aggregate rental assistance payments. The discount rate shall be established by rules adopted by the corporation.

The corporation shall exempt projects owned by a county from the shared appreciation requirement set forth in this subsection if all of the following requirements are met:

- (1) The funds derived by the county as a result of appreciation in value of the units are used for housing projects wherein:
 - (A) At least sixty per cent of the project is affordable to families earning one hundred per cent or below of the applicable area median income; and
 - (B) At least half of the foregoing sixty per cent is affordable to families earning eighty per cent or below of the applicable area median income; and
- (2) The project from which the appreciation in value is derived remains as affordable as it was prior to the refinancing or prepayment of the eligible project loan. [L 2006, c 180, pt of §4]

" **[\$201H-126] Benefits of program not exclusive.** Nothing in this subpart shall be construed to prohibit, with respect to an eligible project, the operation of the rental assistance program in conjunction with other state or federal programs including the state rent supplements provided for in part VIII of chapter 356D. [L 2006, c 180, pt of §4]

" **[\$201H-140] Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred. [L 2006, c 180, pt of §4]

"D. Taxable Mortgage Securities Programs

[\$201H-141] Definitions. Whenever used in this subpart, unless the context otherwise requires:

"Eligible borrower" means:

- (1) Any person or family, without regard to race, creed, national origin, or sex, who:
 - (A) Is a citizen of the United States or a resident alien;
 - (B) Is a bona fide resident of the State;
 - (C) Is at least eighteen years of age;
 - (D) Does not personally, or whose spouse does not if the person is married, own a majority interest in any residential property in the State; and
 - (E) Meets other qualifications as established by rules adopted by the corporation; or
- (2) A qualified sponsor of an affordable housing project who meets the qualification requirements as established by rules adopted by the corporation.

"Eligible loan" or "loan" means:

- (1) A loan to an eligible borrower for the purchase of a dwelling unit, including a condominium unit; provided that the property financed is located in the State, will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the corporation; or
- (2) An interim or permanent loan, which may be federally insured or guaranteed, made to a qualified sponsor for the financing of an affordable housing project, and which meets other requirements as established by rules adopted by the corporation.

"Housing loan programs" include all or any part of the loan programs authorized in section 201H-142. [L 2006, c 180, pt of §4]

" **[\$201H-142] Housing loan programs; authorization.** (a) The corporation may establish under this subpart one or more eligible loan programs.

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

(c) The corporation may sell, assign, or otherwise dispose of or enter into commitments to sell, assign, or otherwise

dispose of any eligible loans or any partial interest or participation therein held by or on behalf of the corporation.

(d) The corporation may acquire any obligation under conditions which require the seller of the obligation to use the proceeds of the sale for the purpose of financing eligible loans. [L 2006, c 180, pt of §4]

" **[§201H-143] Housing loan programs; procedures and requirements.** (a) The corporation may establish procedures and requirements for:

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

(b) The corporation may adopt rules under chapter 91 necessary or convenient for the operation of the housing loan programs established under this subpart. [L 2006, c 180, pt of §4]

" **[§201H-144] Housing loan programs; general powers.** (a) The corporation may make, enter into, and enforce all contracts or agreements which are necessary, convenient, or desirable for the purpose of the performance of its powers under this subpart.

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

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

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

(e) Subject to any agreements with the holders of its bonds, the corporation may:

- (1) Renegotiate, refinance, or foreclose any loan in default;
- (2) Commence any action to protect or enforce any right conferred upon it by any law, or as provided in any

mortgage, insurance policy, contract, or other agreement; and

- (3) Bid for and purchase the property secured by the loan at any foreclosure or other sale; or acquire, or take possession of the property secured by the loan and may operate, manage, lease, dispose of, or otherwise deal with the property securing the loan. [L 2006, c 180, pt of §4]

" **[\$201H-150] Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred. [L 2006, c 180, pt of §4]

"E. State Mortgage Guarantee Program

[\$201H-151] State mortgage guarantee. (a) The corporation may guarantee:

- (1) Up to the top twenty-five per cent of the principal balance of real property mortgage loans for the purchase of qualified single-family or multifamily dwelling units;
- (2) Up to one hundred per cent of the principal balance of real property mortgage loans of qualified single-family housing under section 213 of the Hawaiian Homes Commission Act, 1920, as amended; or
- (3) Up to one hundred per cent of the principal balance of real property mortgage loans of single-family or multifamily housing developed under self-help or shell housing programs;

plus the interest due thereon, made to qualified borrowers by qualified private lenders; provided that at no time shall the corporation's liability, contingent or otherwise, on these guarantees exceed \$10,000,000.

For purposes of this section:

"Self-help housing program" means development or preservation of housing in which prospective homeowners have contributed labor, materials, or real property; provided that at least two-thirds of the participating homeowners are qualified by income for assistance under this subpart and that the program is carried out under the sponsorship of a nonprofit community development organization.

"Shell housing program" means development of housing which is habitable but unfinished and can be completed or expanded; provided that one hundred per cent of the participating

homeowners are qualified by income for assistance under this subpart and that the program is carried out under the sponsorship of a public, nonprofit, or private organization.

(b) The loans shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest of the borrower in the single-family or multifamily dwelling owned and occupied by the borrower and the borrower's permitted assigns. Private lenders shall include all banks, savings and loan associations, mortgage companies, and other qualified companies and trust funds whose business includes the making of loans in the State.

(c) Loans guaranteed under this section shall be in accordance with rules adopted by the corporation.

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

- (1) A citizen of the United States or a resident alien;
- (2) Qualified under the rules adopted by the corporation; and
- (3) Willing to comply with the rules as may be adopted by the corporation.

The corporation may secure the services of a private lender to process all applications and determine the qualification of borrowers under this subpart.

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

(f) In return for the corporation's guarantee, the private lender shall remit out of monthly payments collected an insurance fee as established by the corporation. The funds remitted shall be deposited to the credit of the state general fund.

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

(h) If there is any default in any payment to be made by the borrower, the lender shall notify the corporation within fifteen days. Should the lender deem that foreclosure proceedings are necessary to collect moneys due from the

borrower, it shall notify the corporation. Within thirty days of either notification, the corporation may elect to request an assignment of the loan on payment in full to the lender of the principal balance and interest due. Foreclosure proceedings shall be held in abeyance in the interim.

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

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

All of the conditions in paragraphs (1) through (6) shall be held and construed to be provisions of any mortgage executed by virtue of this section regardless of whether or not the conditions are expressly incorporated in the mortgage document.

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

(k) All interest and fees collected under this subpart by the corporation shall be deposited into the general fund. All moneys necessary to guarantee payment of loans made under this

subpart and to carry on the operations of the corporation in administering and granting loans under this subpart shall be appropriated by the legislature out of the proceeds of the general fund. The corporation shall include in its legislative budgetary request for the upcoming fiscal period, the amounts necessary to effectuate the purposes of this section. [L 2006, c 180, pt of §4]

" **[\$201H-152] Mortgage guarantee agreements.** (a) To induce appropriate officials of any agency or instrumentality of the United States to commit to insure and to insure mortgages under the provisions of the United States Housing Act of 1937, as amended, the corporation may enter into guarantee agreements with those officials whenever:

- (1) The purchaser-mortgagor in question is ineligible for mortgage insurance purposes under the United States Housing Act of 1937, as amended, because of credit standing, debt obligation, or income characteristics;
- (2) The purchaser-mortgagor in question is a "displaced person" as defined in chapter 111 and the guarantee agreement will enable the purchaser-mortgagor to obtain suitable replacement housing in accordance with chapter 111; or
- (3) The corporation finds that the purchaser-mortgagor would be a satisfactory credit risk with ability to repay the mortgage loan if the purchaser-mortgagor were to receive budget, debt management, and related counseling.

(b) Guarantee agreements under subsection (a) may obligate the corporation to:

- (1) Provide or cause to be provided counseling under subsection (a)(3); and
- (2) Indemnify an agency or instrumentality of the United States for a period not to exceed five years for any loss sustained by the agency or instrumentality by reason of insurance of a mortgage.

(c) The total of guarantees made pursuant to this section and guarantees made pursuant to section 201H-151 shall not exceed \$10,000,000. [L 2006, c 180, pt of §4]

" **[\$201H-160] Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred. [L 2006, c 180, pt of §4]

"F. Downpayment Loan Program

[\$201H-161] Downpayment loans. (a) The corporation may make direct downpayment loans to eligible borrowers who qualify for loans under section 201H-162. The downpayment loan to any one borrower shall not exceed thirty per cent of the purchase price of the residential property or \$15,000, whichever is less. The interest rate on the loans may range from zero per cent to eight per cent, depending on the buyer's income.

(b) The repayment of every downpayment loan shall be secured by a duly recorded second mortgage executed by the borrower to the State on the residential property purchased with the downpayment loan.

(c) The principal of the downpayment loan, together with accrued interest, shall be due and payable upon the sale, transfer, or refinancing of the property, or shall be repaid by the borrower in installments as determined by the corporation; provided that the corporation may provide a period in which payments may be waived. The period over which the principal and interest shall be paid need not coincide with the period over which the loan from the mortgage lender for the balance of the purchase price must be repaid. The borrower may repay the whole or any part of the unpaid balance of the downpayment loan, plus accrued interest, at any time without penalty.

(d) The corporation may secure the services of the mortgage lender who loans to the borrower the balance of the purchase price of the residential property or the services of any other mortgage lender doing business in the State to collect, on behalf of the State, the principal and interest of the downpayment loan and otherwise to service the downpayment loan, for a servicing fee not in excess of the prevailing loan servicing fees.

(e) The corporation shall adopt rules pursuant to chapter 91 to carry out the purposes of this subpart. [L 2006, c 180, pt of §4]

" **[\$201H-162] Qualifications for downpayment loans.** (a) No person shall be qualified for a downpayment loan unless the person:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is a bona fide resident of the State;
- (4) Will physically reside in the residential property to be purchased for the term of the loan;
- (5) Is accepted by a mortgage lender as a person to whom it is willing to lend money for the purchase of the

residential property provided the required downpayment is made; and

(6) Provides a portion of the downpayment which shall be equal to at least three per cent of the sales price.

(b) No person who owns in fee simple or in leasehold any other residential property within the State shall be eligible to become a borrower under this section. A person shall be deemed to own a residential property if the person, the person's spouse, or both (unless separated and living apart under a decree of a court of competent jurisdiction) own a majority interest in a residential property. [L 2006, c 180, pt of §4]

" **[\$201H-163] Restrictions on borrower.** Every loan made under this subpart shall be subject to the following conditions:

(1) The borrower shall expend no portion of the borrower's downpayment loan for purposes other than to make a downpayment for the purchase of a residential property;

(2) The residential property purchased with the downpayment loan and mortgaged to the State to secure the repayment of the loan shall not be sold or assigned without the prior approval in writing of the corporation and the first mortgage lender;

(3) The borrower shall pay when due all taxes, liens, judgments, or assessments that may be lawfully levied against the residential property and all costs and expenses of any foreclosure of the mortgage made to the State;

(4) The borrower shall maintain fire and casualty insurance in amounts equal to the replacement value of all improvements and insurable portions of the residential property with an insurance company authorized to do business in the State. All proceeds of that insurance shall be made payable to the first mortgage lender and the corporation as their respective interests may appear at the time of any loss or damage. Subject to the rules of the corporation, in the event of any loss or damage to the improvements or property covered by the insurance, the proceeds receivable by the State shall be applied toward the reconstruction of the improvements or property destroyed or damaged, unless otherwise determined by the corporation on behalf of the State; and

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

All of the conditions in paragraphs (1) through (5) shall be a part of any downpayment mortgage executed under this subpart, regardless of whether or not they are expressly incorporated in the mortgage document. [L 2006, c 180, pt of §4]

" **[\$201H-164] Default.** If the borrower defaults in the payment of any installment of principal or interest of the downpayment loan, the corporation or mortgage lender shall take all necessary action to collect the delinquent amounts and may take all actions generally allowed holders of mortgages, including the power to foreclose. Upon any foreclosure of the second mortgage, the corporation or mortgage lender on behalf of the corporation, may purchase the interest of the borrower in and to the residential property, take possession thereof and assume all of the obligations of the borrower under the first mortgage held by the private lender and any other liens having priority over the second mortgage that may then exist. On the acquisition of the borrower's interest, the corporation, at its option, may pay in full the unpaid balance of the borrower's obligation secured by the first mortgage and other prior liens; repair, renovate, modernize, or improve the residential property; and, with or without clearing the property of all prior mortgages and liens, sell, lease, or rent the property or use or dispose of the same in any manner authorized by law. [L 2006, c 180, pt of §4]

" **[\$201H-170] Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred. [L 2006, c 180, pt of §4]

"G. Homebuyers' Club Program

[\$201H-171] Homebuyers' club program. (a) The corporation may establish a homebuyers' club program for participants who are desirous of purchasing a home and who have adequate incomes but who lack sufficient funds for the downpayment and closing costs. The primary focus of this program is to facilitate the purchase of homes by providing participants with strategies to save money, to resolve credit problems, and to educate participants on how to shop for and purchase a home.

(b) In establishing such a program, the corporation shall adopt rules pursuant to chapter 91 relating to establishing a savings program for participants based upon individual analyses

of income and family expenses. The rules may also provide for integration of the homebuyers' club program with other governmental programs including but not limited to individual housing accounts under section 235-5.5, the state mortgage guarantee program under subpart E, the downpayment loan program established under subpart F, and the rent-to-own program established under subpart H.

(c) The corporation may secure the services of another public or private entity to carry out the purposes of this section. [L 2006, c 180, pt of §4]

" **[\$201H-180] Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred. [L 2006, c 180, pt of §4]

"H. Rent-to-Own Program

[\$201H-181] Rent-to-own program. (a) The corporation may establish a rent-to-own program under which dwelling units that are for sale may be rented to program participants. Under this program, the corporation shall credit a portion of the rent received toward the purchase of the unit.

(b) The sales price shall be established at the beginning of the rental term and shall remain fixed for the first five years after the rental agreement is executed. During this period, the participant shall have the option of purchasing the unit at the designated sales price. If the participant does not elect to purchase the unit within the five-year period, the renter shall forfeit the right to continue living in the unit and the unit shall be made available to another purchaser or renter.

(c) The corporation shall have the right to reestablish the sales price upon expiration of the option period or upon resale of the unit. [L 2006, c 180, pt of §4]

" **[\$201H-190] Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred. [L 2006, c 180, pt of §4]

"I. Dwelling Unit Revolving Fund

§201H-191 Dwelling unit revolving fund. (a) 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 housing development programs and regional state infrastructure programs, and for carrying out the purposes of housing development programs and regional state infrastructure programs, including but not limited to the expansion of community facilities and regional state infrastructure constructed in conjunction with housing and mixed-use transit-oriented development 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.

(b) Subject to the requirements of subsection (a), proceeds in the revolving fund may be used to establish and operate regional state infrastructure subaccounts pursuant to section 201H-191.5. [L 2006, c 180, pt of §4; am L 2016, c 132, §3]

" **[§201H-191.5] Regional state infrastructure subaccounts.**

(a) The corporation, upon request by a county, may establish and operate a regional state infrastructure subaccount within the dwelling unit revolving fund established pursuant to section 201H-191 for the benefit of the housing and mixed-use transit-oriented development projects within the county.

(b) Each regional state infrastructure subaccount shall consist of the following sources of revenue:

- (1) Moneys received by the corporation from counties for the repayment of the loan principal and the payment of simple interest from various assessments or fees from special improvement districts, improvement districts, tax increment financing districts, community facilities districts, and other areas where property value increases are captured over periods of time for the purposes of infrastructure financing;
- (2) Appropriations from the legislature;
- (3) Federal grants and subsidies to the State or counties;
- (4) Private investments; and
- (5) Voluntary contributions.

(c) The corporation shall expend revenues in the subaccounts to make grants and loans to state agencies, and loans to counties or private developers, for the costs, in whole or in part, of infrastructure improvements that would increase the capacity of the infrastructure facilities, including regional sewer systems, water systems, drainage systems, roads, and telecommunications and broadband.

Grants and loans shall be made only for capital improvement projects approved by the respective county council and mayor, or state agency, as applicable, with a view towards planned growth rather than upkeep and maintenance.

(d) Eligible costs shall include those for planning, design, feasibility studies, construction, and materials. No grant or loan shall be made:

- (1) For maintenance or repair costs unless the construction would simultaneously increase the carrying capacity of the infrastructure facility; or
- (2) Solely for mass transit or electrical utilities.

The corporation may also expend revenues in the subaccounts to repay private investors for their investment plus any interest accrued on their investments made into the subaccounts to finance, in whole or in part, infrastructure improvements that would increase the capacity of the infrastructure facilities, including regional sewer systems, water systems, drainage systems, roads, and telecommunications and broadband.

(e) The corporation may accept improved land from the counties or private developers in repayment of their loans.

(f) The corporation shall adopt rules in accordance with chapter 91 for the purposes of this section. [L 2016, c 132, §2]

" **[§201H-200] Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred. [L 2006, c 180, pt of §4]

"J. Rental Housing Revolving Fund

Note

Subpart heading amended by L 2015, c 237, §23.

§201H-201 Definitions. As used in this subpart, unless a different meaning is clearly required by the context:

"Develop" or "development" means the planning, financing, or acquisition of real and personal property; demolition of existing structures; clearance of real property; construction,

reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services, or other site improvements; construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures; or any combination of the foregoing, of any housing project. It also includes any undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

"Fund" means the rental housing revolving fund established pursuant to section 201H-202. [L 2006, c 180, pt of §4; am L 2015, c 237, §24]

" **§201H-202 Rental housing revolving fund.** (a) There is established the rental housing revolving fund to be administered by 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; provided that 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 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:

- (A) At least fifty per cent of the available units are for persons and families with incomes at or below eighty per cent of the median family income of which at least 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
- (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) The corporation shall submit an annual report to the legislature 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) 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 one hundred per cent; and provided further that the underwriting guidelines include a debt-coverage ratio of not less than 1.0 to 1.

(i) For the period commencing July 1, 2005, through June 30, 2009, 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 the median family income. [L 2006, c 180, pt of §4; am L 2007, c 249, §33; am L 2015, c 237, §25]

" **[§201H-203] Eligible applicants for funds.** Eligible applicants for funds shall include nonprofit and for-profit organizations, limited liability companies, partnerships, and government agencies, who are qualified in accordance with rules adopted by the corporation pursuant to chapter 91. [L 2006, c 180, pt of §4]

" **[§201H-204] Eligible projects.** (a) Activities eligible for assistance from the fund shall include but not be limited to:

- (1) New construction, rehabilitation, or preservation of low-income rental housing units that meet the criteria for eligibility described in subsection (c);
- (2) The leveraging of moneys with the use of fund assets;
- (3) Pre-development activity grants or loans to nonprofit organizations; and
- (4) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing.

(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;
- (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 following criteria 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;
- (3) Provide the maximum number of units for persons or families with incomes at or below eighty per cent of the median family income;
- (4) Are committed to serving the target group over a longer period of time;
- (5) Increase the integration of income levels of the immediate community area;
- (6) Meet the geographic needs of the target group of the proposed rental housing project, such as proximity to employment centers and services; and
- (7) Have favorable past performance in developing, owning, managing, or maintaining affordable rental housing.

The corporation may include other criteria as it deems necessary to carry out the purposes of this subpart.

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. [L 2006, c 180, pt of §4]

" **[§201H-210] Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities conferred. [L 2006, c 180, pt of §4]

**"[PART IV.] EXPENDITURES OF REVOLVING FUNDS UNDER
THE CORPORATION EXEMPT FROM APPROPRIATION AND ALLOTMENT**

§201H-211 Expenditures of revolving funds under the corporation exempt from appropriation and allotment. Except as to administrative expenditures, and except as otherwise provided by law, expenditures from the revolving funds administered by the corporation under subparts I and J of part III, relating to financing programs, or section 201H-80 or 201H-123 may be made by the corporation without appropriation or allotment by the legislature; provided that no expenditure shall be made from and no obligation shall be incurred against any revolving fund in excess of the amount standing to the credit of the fund or for any purpose for which the fund may not lawfully be expended. Nothing in sections 37-31 to 37-41 shall require the proceeds of the revolving funds identified in subparts I and J of part III, or section 201H-80 or 201H-123 to be reappropriated annually. [L

2006, c 180, pt of §5; am L 2014, c 132, §2; am L 2015, c 237, §36]

" **[\$201H-220] Additional powers.** The powers conferred upon the corporation by this [part] shall be in addition and supplemental to the powers conferred by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities so conferred. [L 2006, c 180, pt of §5]