

CHAPTER 206
OAHU LAND DEVELOPMENT

Section

- 206-1 Definitions
- 206-2 Administration of chapter
- 206-3 Interested members, officers or employees
- 206-4 General powers
- 206-5 Declaration of development areas
- 206-6 Acquisition of land within a development area
- 206-7 Property which shall not be acquired for development projects
- 206-8 Development of lands acquired
- 206-9 Disposition of lands
- 206-10 Restrictions on sale and use of residential lots by purchaser
- 206-11 Breach, mortgaging, effect of breach, etc.
- 206-12 Requirement to develop
- 206-13 Power to lease, pledge, or mortgage
- 206-14 Cooperative agreements with other government agencies
- 206-15 Hearings, witnesses, etc.
- 206-16 Investment of reserves
- 206-17 Additional powers
- 206-18 Security for funds deposited by board
- 206-19 Eminent domain
- 206-20 Contracts with federal government
- 206-21 Contracts
- 206-22 Performance bond, procedure
- 206-23 Exemption from taxation and assessments
- 206-24 Exemption of property from execution sale
- 206-25 Duty to make reports
- 206-26 Disclosure by private developer; public records
- 206-27 Bonds
- 206-28 State and political subdivisions not liable on bonds
- 206-29 Form and sale of bonds
- 206-30 Provisions of bonds
- 206-31 Remedies of an obligee; mandamus, injunction, possessory action, receiver, accounting, etc.
- 206-32 Subordination of mortgage to agreement with government
- 206-33 Development project bonds as legal investments
- 206-34 Policy as to sale prices and rentals
- 206-35 Agreement to secure federal contributions; default
- 206-36 Payments to public bodies
- 206-37 Conveyance, lease, or agreement in aid of development projects, purchase of bonds
- 206-38 Governmental advances and donations
- 206-39 Action of political subdivision by resolution

- 206-40 Purpose of chapter
- 206-41 Source of operating funds; disposition of unencumbered funds
- 206-42 Conformity with federal law
- 206-43 Existing obligations, no impairment

" **§206-1 Definitions.** Unless a different meaning clearly appears from the context, as used in this chapter:

"Board" means the board of land and natural resources as provided in chapter 26.

"Bonds" means any bonds, notes, interim certificates, debentures, or other obligations.

"Development area" means an area so designated pursuant to section 206-5.

"Development project" means a specific unit for development within a designated area for which a program of acquisition and development is established.

"Federal government" shall have the same meaning as set forth in section 201H-1.

"Government" shall have the respective meaning set forth in section 201H-1.

"Governor" means the governor of the State of Hawaii.

"Lands" means either undeveloped lands or land together with improvements and appurtenances and includes real property as defined in section 201H-1. All lands owned by the State, any political subdivision, or the federal government are "government lands". All other lands are "private lands".

"Lieutenant governor" means the lieutenant governor of the State of Hawaii.

"Obligee" means any bondholder, agents or trustees for any bondholders, or lessor demising to the board property used in conjunction with a development project, or any assignee of the lessor's interest or any part thereof, and the federal government when it is a party to any contract with the board.

"Political subdivision" means a county.

"Residence lot" means a lot not exceeding one-half acre in size, obtained by subdivision of lands acquired pursuant to this chapter and used for one or two family residential use only, except as may otherwise be provided herein.

"Residential use" or "residential purpose" means the devotion of a residence lot to use for one or two family dwelling purposes only.

"State" means the State of Hawaii. [L 1961, c 6, §2; Supp, §98J-2; HRS §206-1; am L 1997, c 350, §9; am L 1998, c 11, §15; am L 2007, c 249, §16]

" **§206-2 Administration of chapter.** The board of land and natural resources is charged with the administration of this chapter. [L 1961, c 6, §3; Supp, §98J-3; HRS §206-2]

" **§206-3 Interested members, officers or employees.** No member of the board of land and natural resources or officer or employee administering this chapter shall acquire any interest,

direct or indirect, in any development project or in any property included or planned to be included in any development project other than by gift, devise, or inheritance; nor shall the member, officer, or employee have or acquire any interest, direct or indirect, in the financing of any development project or in any contract or proposed contract for materials or services to be furnished or used in connection with or relating to any development project. If any member, officer, or employee has or acquires an interest, by gift, devise, or inheritance, direct or indirect, in any development project or in any property included or planned to be included in any development project, the member, officer, or employee shall immediately disclose the same in writing to the board and the disclosure shall be entered upon the minutes of the board; and the member, officer, or employee shall dispose of the interest within six months of the acquisition or initiation of the project, whichever shall last occur. The member, officer, or employee shall not participate in any action by the board relating to the property, project, or contract in which the member, officer, or employee has or acquires any interest. Violation of this section shall constitute, in case of the member or officer, misconduct in office or, in case of an employee, cause for dismissal. [L 1961, c 6, §4; Supp, §98J-4; HRS §206-3; gen ch 1985]

" **§206-4 General powers.** The board of land and natural resources shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, without limitation, the following powers in addition to others herein granted:

- (1) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the board;
- (2) To make, amend, or repeal any rule or regulation, having the force and effect of law, in accordance with chapter 91;
- (3) To prepare, carry out, and operate development projects in any development area; and to provide for the construction, reconstruction, improvement, alteration, or repair of any development project or any part thereof;
- (4) To provide for the regulation of development projects financed by private funds and instituted under the terms of this chapter;
- (5) To sell, to lease, or to lease with option to purchase lands; and

- (6) In addition to all of the other powers conferred upon it, to do all things necessary and convenient to carry out the powers expressly given by this chapter. [L 1961, c 6, §5; am L 1965, c 96, §81; Supp, §98J-5; HRS §206-4]

" **§206-5 Declaration of development areas.** Whenever the board of land and natural resources, after due notice and public hearing, the time and place of which have been duly given by public notice in the city and county of Honolulu on at least three different days, the last notice being not less than five days before the date of hearing, finds that in any locality on the island of Oahu an acute shortage of residential fee simple property exists and that the shortage of residential fee simple holdings cannot practicably be alleviated within the reasonably near future by means other than those provided under this chapter, the board may declare a suitable area, not less than ten contiguous acres in extent, as a development area. The development area shall be reasonably accessible to persons in the locality and shall consist of lands suitable for a development project. Any finding of fact, if supported by a preponderance of evidence, shall be conclusive in any suit, action, or proceeding.

All development areas shall be compatible with any general plan for the long-range development of land in the political subdivision concerned under the terms of chapter 201, part II, and shall conform to and with all subdivision and zoning ordinances and requirements of the political subdivision. [L 1961, c 6, §6; am L 1965, c 157, §1; Supp, §98J-6; HRS §206-5; am L 1998, c 2, §63]

Note

Chapter 201, part II referred to in text is repealed. For similar provisions, see chapter 225M.

" **§206-6 Acquisition of land within a development area.** After the declaration of a development area, the board of land and natural resources may acquire a parcel or parcels of land which it shall thereafter designate for the appropriate development project or projects within the area. If necessary lands cannot reasonably be acquired by voluntary transaction, the board may institute eminent domain proceedings to acquire the land and improvements; provided that negotiations for the acquisition by voluntary transaction shall not be required before the institution of eminent domain proceedings. The board shall, within twelve months next following its designation,

acquire or institute eminent domain proceedings to acquire the lands so designated. If the lands are not acquired or eminent domain proceedings instituted within the twelve month period, it shall reimburse the owner of the lands so designated for out-of-pocket expenses of appraisal, survey, and attorney fees as the owner may have incurred as a result of the designation.

Subject to the restrictions in the following section, the board may acquire for development projects any lands suitable for residential use or suitable for such use or uses upon subdivision and development. The board may also acquire, in connection with the development projects, lands necessary for roads, sidewalks, parks, schools, utilities, and playground and recreational facilities, and rights to water and access. The board may also acquire, in connection with the development projects, lands for business use where the use is reasonably necessary to provide services to the prospective occupants of the projects. Plans and specifications for projects shall include provisions for roads, sidewalks, parks, schools, utilities, playground and recreational facilities, and other appropriate improvements, so that they will be suitable for disposition as hereinafter provided. [L 1961, c 6, §7; Supp, §98J-7; HRS §206-6]

" **§206-7 Property which shall not be acquired for development projects.** In declaring development areas, and acquiring land therein, the board of land and natural resources shall avoid disturbing existing uses which are in accord with the highest use permitted under any existing zoning ordinance in the political subdivision concerned.

The board shall not acquire for development projects:

- (1) Lands already developed and improved as business or industrial areas where use of the lands for residential purposes or as a part of a development project would be economically unsound or where an undue hardship would be suffered by the community through loss of service because of the acquisition;
- (2) Lands already in use for residential purposes by the owner thereof or by a lessee holding a lease with an original term of twenty years or more, except where the acquisition of parts of the lands is reasonably necessary for the proper development of a project, but in no case shall any part of the lands be taken where the taking will reduce the parcel to less than three acres in extent;
- (3) Lands in the process of subdivision and development where the owner or the owner's agent has provided that at least fifty per cent of the lots to be sold shall

be sold in fee simple, prepared subdivision and construction plans, arranged for financing, and applied to government agencies and otherwise taken such steps as may be appropriate for the construction of the proposed development in good faith and filed an affidavit with the board to that effect;

- (4) Lands used or to be used as sites for churches, private or parochial schools, clubs, meeting houses, other private uses of a community, civic, social, or religious nature;

provided that portions of the lands mentioned under (1), (2), (3), and (4) of this section, or interests therein, may be taken to provide access and utility easements where no other reasonable means of access or utility easements are available.

In acquiring agricultural land for a development project, where the land though used for agricultural purposes is not being used in accord with the highest use permitted under any existing zoning ordinance, the board shall exercise all reasonable care not to jeopardize the agricultural enterprise concerned. If, however, the board finds that the land is necessary for a development project, it may provide assistance, monetary or otherwise, in relocating the enterprise elsewhere or pay such damages to the owner or operator of such enterprise as will reasonably compensate the owner or operator for the owner's or operator's loss, if the owner or operator has not already been so compensated under a lease agreement, or both. [L 1961, c 6, §8; am L 1965, c 157, §2; Supp, §98J-8; HRS §206-7; gen ch 1985]

" **§206-8 Development of lands acquired.** Where lands are acquired by the board of land and natural resources with its own funds, it shall subdivide and develop the lands into residence lots, or dwellings and lots in a manner best designed to carry out the purposes of this chapter.

The board may contract with any private developer to provide for the financing of the acquisition of lands, the subdivision and development of acquired lands, and the disposition of residence lots, or the construction of dwellings on the lots and the disposition of both. The contracts may be entered into after published advertisement for sealed tenders, setting forth the terms of the proposed contract, including necessary plans, specifications, and time schedules. The contract shall provide for the establishment of such sale prices of the residence lots, or dwellings and lots as will repay to the developer the amount of the actual cost or expense incurred in the acquisition and development of the land together with a reasonable developer's profit computed thereon as determined by

the board. The contract shall also provide for the sale of residence lots, or dwellings and lots only to persons entitled to purchase from the board, upon the terms and conditions provided in sections 206-9 to 206-12 with respect to sales by the board. Every contract shall be made with the responsible bidder whose proposal complies with the requirements of the call for tenders and states the lowest rate of developer's profits; provided that the board may reject all tenders if it deems that the lowest rate of developer's profit is unreasonable. Publication of the call for tenders shall be made by publishing a call for tenders not less than three times in a newspaper of general circulation printed and published within the State. No more than one of these publications shall be made on any one day or on two consecutive days. The time for opening of the tenders shall be not less than thirty days after the last publication. [L 1961, c 6, §9; am L 1965, c 157, §3; Supp, §98J-9; HRS §206-8; am L Sp 1993, c 8, §18]

" **§206-9 Disposition of lands.** (a) Generally. It shall be the policy of the board of land and natural resources to encourage insofar as possible the widespread fee simple ownership of residential lots of modest size and price. Where necessary or desirable, the board may issue residential leases or leases with an option to purchase the fee in any development area upon such reasonable terms and conditions as may be determined by the board. Disposition of lands shall be by such public method as shall most likely carry out the purposes of this chapter.

(b) Land disposed of by private developers. Land disposed of through private developers shall be sold in accord with the terms prescribed by the board. A reasonable developer's profit shall be allowed, but the board shall reserve the right to inspect books, records, and construction, take necessary precautions against speculation by the private developer in lands acquired under this chapter and renegotiate any contract to prevent unconscionable profit by the private developer.

An unconscionable profit means any profit or return in excess of what the board considers as reasonable. The board may survey the prevailing rates of profit for developers in determining a reasonable rate.

(c) Land disposed of by the board. To be eligible to purchase or lease a residence lot from the board, the buyer shall furnish satisfactory evidence to the board, under oath, and otherwise as required by the board, that the buyer:

- (1) Is a citizen of the United States or a declarant alien who has resided in the State for a period of five years or more;

- (2) Is at least eighteen years of age;
- (3) Is a bona fide resident of the State and has a bona fide intent to reside in the development area concerned, if successful in purchasing or leasing a lot in the area under this chapter; and
- (4) Has a gross income sufficient to meet the cost of the land being disposed of by the board. The board shall develop policies whereby those most deserving of housing shall be given preference. In developing the policies, the board shall consider the applicant's household income, the number of dependents, and other factors that the board may deem pertinent.

Any person whom the board finds to be within one of the following classes, shall not be eligible to become an original purchaser or lessee of a resident lot, to wit:

- (A) A person who oneself or whose husband or wife or both (when husband and wife are living together) owns or own in fee simple lands suitable for residential purposes within the political subdivision and in or reasonably near the place of residence or place of business of the person; and
- (B) A person who oneself or whose husband or wife (when husband and wife are living together) has pending an unrefused application to purchase a lot in a development area under this chapter from the board.

Any person, firm, association, or corporation may purchase business lots within a development project for business necessary to service the project. The lots shall be sold at public auction to the highest bidder for cash.

The board shall require all applicants for the purchase or lease of residence lots 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 board shall be conclusive as to all persons thereafter dealing with the property; but the making of any false statement knowingly by the applicant or other person to the board in connection with any application shall constitute perjury and be punishable as perjury.

When a development project or projects has or have been sufficiently completed to be suitable for disposition to individual purchasers or lessees, the board shall sell or lease the lots therein to eligible purchasers or lessees and shall give public notice of the disposition on the island of Oahu. The notice shall state in general terms the size, location, and

prices or rental of lots to be sold or leased, the terms of sale or lease, and the last date on which application will be received by the board, which date shall not be less than thirty days after the first notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested persons. Not more than one lot shall be sold or leased to each applicant.

The purchaser at the purchaser's option may pay the purchase price in full on delivery of a deed or pay not less than ten per cent of the purchase price and execute with the board an agreement of sale under the terms of which the unpaid balance is to be paid in monthly installments and over a period that the board determines, with interest on unpaid balances at a rate not to exceed six and one-half per cent, payable monthly, deed to be delivered on final payment; provided that not less than one-half of one per cent on account of principal shall be required by the agreement to be paid each month. Taxes shall be prorated as of the date of delivery of deed in the case of a cash sale and as of the date of execution of the agreement of sale in the case of a sale in other cases. Each agreement of sale shall provide that the whole or any part of the unpaid balance of the purchase price plus accrued interests may be paid at any time. [L 1961, c 6, pt of §10; am L 1965, c 157, pt of §4; Supp, pt of §98J-10; HRS §206-9; am L 1972, c 2, §4; gen ch 1985; am L 1998, c 2, §64]

" **§206-10 Restrictions on sale and use of residential lots by purchaser.** (a) For a period of five years after the date of purchase of any lot under this chapter (which date shall be deemed to be the date of the agreement of sale or deed under which the lot was originally purchased or agreed to be purchased) the lot shall not be sold by the original purchaser thereof unless the same, together with the improvements thereon has first been offered in writing to the board of land and natural resources under the option reserved by this chapter and the board has either refused or failed within the time required by this section to exercise the option.

(b) Any original purchaser intending to sell such lot and improvements within the five-year period shall first notify the board in writing of the original purchaser's intention. The notice shall specify the original purchaser's address and shall expressly offer to sell such property to the board at a price which shall not exceed the sum of (1) the original cost of the land, and (2) the replacement value, less depreciation at the rates used for real property tax purposes, of all buildings and improvements thereon, to be determined by three appraisers; one appointed by the board, one appointed by the owner, and the

third by the two appraisers so appointed, the cost to be borne equally by the parties. Within thirty days after the receipt of the notice, the board shall in writing notify the original purchaser at the address so specified whether it elects to exercise the option. If the board refuses, or fails within the thirty-day period, to reply to the offer, the original purchaser may sell the property to any other person free from any price restrictions, provided that if the board elects to purchase, the board shall thereupon use its best efforts to redispense of it as soon as practicable subject to the lien of any mortgage, to a qualified and responsible person who will assume the obligation of mortgage and debt secured thereby.

(c) The board may resell any lot and improvements so purchased at a price not to exceed the actual cost thereof to the board, with the addition of a reasonable amount to cover overhead and estimated and actual expenses.

(d) Any original deed or original agreement of sale from the board to any original purchaser of a residence lot shall contain a covenant running with the land (and shall, whether or not the condition is contained in the instrument, be subject to the requirement) that the original purchaser shall erect on the lot, within two years following the date of purchase, a suitable residence building to conform to the terms set forth in the instrument, with a proviso that the board may, on application of the original purchaser, extend the period from time to time for good cause shown. Other reasonable restrictions designed to prevent the lots from becoming slum areas may be established by the board for any development project and included in the agreement of sale or deeds as covenants running with the land for a term of twenty-one years.

(e) No residence lot shall be used for any purpose other than residence purposes for a period of twenty-one years following the date of the first sale of such lot by the board; provided that in the event the lot is zoned or rezoned by governmental authority for nonresidence purposes, the restriction shall be relaxed to the extent permitted by the zoning laws or regulations.

(f) Subsections (a) and (b) of this section shall not be applicable to a sale under foreclosure by a mortgagee of any lot, or to the transfer of title by a mortgagee after foreclosure or otherwise to any agency of the United States government pursuant to the terms of any insurance or guarantee of mortgage loan by such agency, or to any subsequent purchaser. [L 1961, c 6, pt of §10; am L 1965, c 157, pt of §4; Supp, pt of §98J-10; HRS §206-10; gen ch 1985]

" **§206-11 Breach, mortgaging, effect of breach, etc.** (a) Effect of breach of restriction. Except as otherwise provided in this chapter any sale or attempted sale, contract, or conveyance contrary to section 206-10 shall be void. Any use contrary to section 206-10 may be enjoined by the State, the board of land and natural resources or an owner or owners of the residence lots within the same development project. Except as otherwise provided in this chapter, if a sale, contract, or conveyance contrary to section 206-10 is attempted, or a use contrary to section 206-10 is not voluntarily remedied or is not or cannot be remedied by injunction, or a building is not erected in accordance with section 206-10(d), the lot affected shall be forfeited and the title revested in the State upon suit by the State establishing any of the foregoing. Upon the forfeiture, the board shall sell the lot at public auction, or at private sale, for the current market value, to a purchaser eligible to purchase from the board in the first instance, and the original purchaser shall be reimbursed insofar as possible, after deduction of costs of resale. Provided that in the event title to any lot passes to any obligee, or to any agency of the United States government, pursuant to the terms of any insurance or guarantee of mortgage loss by such agency, no forfeiture or revesting in the board shall be enforced.

(b) Mortgage of residence lots. Nothing herein shall prevent the conveyance of a residence lot by way of mortgage to any person or corporation.

(c) Nothing in this chapter shall be construed as limiting the power of the board: (1) to vest in an obligee the right, in the event of a default by the board or by the purchaser, to take possession of a development project or lot or cause the appointment of a receiver thereof, free from all the restrictions imposed by this chapter; or (2) to vest in the obligee the right, in the event of a default by the purchaser, to acquire title to a lot or the property mortgaged by the purchaser free from all the restrictions imposed by this chapter. [L 1961, c 6, pt of §10; Supp, pt of §98J-10; HRS §206-11]

" **§206-12 Requirement to develop.** Any land acquired by the board of land and natural resources, which is not subdivided and developed either by the board or a private developer, or is not in the process of subdivision and development for residential use, within two years from the date of its acquisition, shall be offered for sale by the board, free of any liens or encumbrances created by the board, to the owner or owners from whom the fee simple ownership of the same was acquired by the board, or their respective successors in interest, at the price at which the

land was purchased. Land shall be considered to be in the process of subdivision and development when the board or the private developer has prepared subdivision and construction plans, arranged for financing, and applied to government agencies, and otherwise taken such steps as may be appropriate for the construction of the proposed development and is diligently prosecuting the development in good faith. [L 1961, c 6, pt of §10; Supp, pt of §98J-10; HRS §206-12]

Cross References

State loans for home buyers, see chapter 207, pt I.

" **§206-13 Power to lease, pledge, or mortgage.** The board of land and natural resources also may lease or rent any of the dwellings or other accommodations or any of the lands, buildings, structures, or facilities embraced in any development project until such time as it is practicable to sell the same in accordance with this chapter and establish and revise the rents or charges therefor; mortgage or pledge any property, real or personal, or any interest therein to any person, firm, corporation, or government; enter upon any building or property in order to conduct investigations or to make surveys or soundings; purchase, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise, any property, real or personal, or any interest therein, from any person, firm, corporation, or government; own, hold, clear, and improve property; insure or provide for the insurance of the property or operations of the board against such risks as the board may deem advisable; procure insurance or guarantees from the federal government of the payment of any debts or parts thereof secured by mortgages made or held by the board on any property included in any development project. [L 1961, c 6, §11; Supp, §98J-11; HRS §206-13]

" **§206-14 Cooperative agreements with other government agencies.** The board of land and natural resources may obtain the aid and cooperation of governments in the planning, construction, and operation of development projects and enter into such agreements and arrangements as it deems advisable to obtain such aid and cooperation; arrange or enter into agreements with any government for the acquisition by the government of property, options, or property rights, or for the furnishing, installing, opening, or closing of streets, roads, alleys, sidewalks, or other places, or for the furnishing of property services, parks, sewage, water, and other facilities in connection with development projects, or for the changing of the

map of a political subdivision, or for the planning, replanning, zoning, or rezoning of any part of the land included in a development project. [L 1961, c 6, §12; Supp, §98J-12; HRS §206-14]

" **§206-15 Hearings, witnesses, etc.** The board of land and natural resources may hold hearings for the purpose of receiving evidence and, in addition, may exercise all the powers set forth in section 92-16. All these hearings shall be public. The board may require such agencies, boards, or commissions as are charged with the duty of making investigations and studies of land and land uses to investigate and study such areas as it may designate and, if investigations and studies have been made, to present findings and recommendations with regard to such areas which the board may consider as possible development areas. Any of the investigations or examinations provided for in this chapter may be conducted by the board or by a committee appointed by it, or by counsel, or by an officer or employee specially authorized by the board to conduct the investigation or examination. Any committee counsel for the board, or any person designated by it to conduct an investigation or examination may administer oaths, take affidavits, and issue subpoenas or commissions. [L 1961, c 6, §13; Supp, §98J-13; HRS §206-15]

Revision Note

Section "92-16" substituted for "92-12".

Cross References

Hearings, see chapter 91.

" **§206-16 Investment of reserves.** The board of land and natural resources may invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to the board under this chapter unless otherwise specifically provided by law. [L 1961, c 6, §14; Supp, §98J-14; HRS §206-16]

" **§206-17 Additional powers.** The board of land and natural resources, in addition to its powers and notwithstanding

anything to the contrary contained in this chapter or in any other provision of law, may:

- (1) Agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and include in any construction contract, let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may attach to its financial aid of the projects;
- (2) Procure or agree to the procurement of insurance or guarantees from a government for the payment of any debts, or parts thereof, incurred by the board, including the payment of premiums on any insurance;
- (3) Purchase its bonds at a price not more than the principal amount thereof and accrued interest, and all bonds so purchased shall be canceled. [L 1961, c 6, §15; Supp, §98J-15; HRS §206-17]

" **§206-18 Security for funds deposited by board.** The board of land and natural resources may, by resolution, provide that any moneys deposited by it shall be secured:

- (1) By any securities by which funds deposited by the state director of finance may be legally secured as provided in section 38-3, or
- (2) By an undertaking with such sureties as are approved by the board faithfully to keep and pay over upon the order of the board any deposits and agreed interest thereon, and all banks and trust companies may give any security for the deposits. [L 1961, c 6, §16; am L 1963, c 114, §1; Supp, §98J-16; HRS §206-18; am L 1979, c 105, §19]

" **§206-19 Eminent domain.** The board of land and natural resources may acquire, by the exercise of the power of eminent domain, the real property or interest in real property authorized to be acquired by section 206-6, after the adoption of a resolution declaring that the acquisition of the property described in the resolution is in the public interest and necessary for a development project within a development area. The board may exercise the power of eminent domain in the same manner and procedures provided in chapter 101, and otherwise in

accordance with all applicable provisions of the general laws of the State. [L 1961, c 6, §17; Supp, §98J-17; HRS §206-19]

" **§206-20 Contracts with federal government.** In addition to the powers conferred upon the board of land and natural resources by other provisions of this chapter, the board may borrow money or accept grants from the federal government for or in aid of any project which the board is authorized to undertake, take over any land acquired by the federal government for the construction or operation of a development project, take over or lease or manage any development project constructed or owned by the federal government, and to these ends, enter into such contracts, mortgages, leases, or other agreements as the federal government may require, including agreements authorizing the federal government to supervise and approve the construction, maintenance, and operation of the project. It is the purpose and intent of this chapter to authorize the board 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 project which the board is empowered to undertake. [L 1961, c 6, §18; Supp, §98J-18; HRS §206-20]

" **§206-21 Contracts.** The board of land and natural resources, in addition to its other powers, may make, execute, and carry out contracts for, or in connection with, any project in the name of the State, in the manner provided in chapter 103D and section 103-53; and, with regard to such contracts, the term "officers", as used in chapter 103D, means the board or such officer as is authorized by the board to act as its contracting officer. Each contract authorized in this section shall state that it is made and executed in the name of the State. [L 1961, c 6, §19; Supp, §98J-19; HRS §206-21; am L Sp 1993, c 8, §56]

" **§206-22 Performance bond, procedure.** Whenever the board of land and natural resources makes or enters into any contract as provided in section 206-21, it shall require a performance and payment bond conditioned, executed, and delivered as provided in chapter 103D. [L 1961, c 6, §20; Supp, §98J-20; HRS §206-22; am L Sp 1993, c 8, §54]

" **§206-23 Exemption from taxation and assessments.** The board of land and natural resources and its property, until resold or leased, shall be exempt from any and all taxes and assessments. Bonds, notes, debentures, and other evidences of indebtedness of the board are declared to be issued for a public purpose and to be public instrumentalities and, together with

interest thereon, shall be exempt from taxes. [L 1961, c 6, §21; Supp, §98J-21; HRS §206-23]

" **§206-24 Exemption of property from execution sale.** All real property of the board of land and natural resources shall be exempt from mechanic's or materialmen's liens; provided that recovery for such claims may be had from any bond supplied as required by section 206-22. The real property shall also be exempt 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 board be a charge or lien upon its real property; provided that this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of the board or to pursue any remedies for the enforcement of any pledge or liens given by or with the consent of the board. [L 1961, c 6, §22; Supp, §98J-22; HRS §206-24]

" **§206-25 Duty to make reports.** The board of land and natural resources shall, at least once a year, file with the governor and with the legislature, within ten days after the convening of a regular session, general and budget, a report of its activities for the preceding year, and shall recommend such additional legislation or other action that may be necessary, to carry out the purposes of this chapter. [L 1961, c 6, §23; Supp, §98J-23; HRS §206-25]

" **§206-26 Disclosure by private developer; public records.** A private developer or assign, as the term is used in this chapter, shall file with the board of land and natural resources an enumeration list of all persons directly or indirectly connected with the private developer or assign as a condition precedent to the private developer's or assign's acceptance as the private developer or assign by the board. A private developer or assign who fails to comply with this requirement shall automatically forfeit all rights to any profit under this chapter.

All bids and any or all records of a private developer or assign, relating to any and all transactions with the State, shall be public records, as defined in chapter 92, and subject to such use as permitted by chapter 92. [L 1961, c 6, §24; Supp, §98J-24; HRS §206-26; gen ch 1985]

" **§206-27 Bonds.** The board of land and natural resources may issue revenue bonds, and also refunding bonds for the purpose of paying or retiring bonds previously issued, from time to time, in such amounts as it may deem advisable for the

purpose of this chapter. The board may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable:

- (1) Exclusively from the income and revenues of the development project financed with the proceeds of the bonds or with the proceeds together with a grant from the federal government in aid of the project; or
- (2) Exclusively from the income and revenues of certain designated development projects, whether or not they were financed in whole or in part with the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any revenues of any project or projects.

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 1961, c 6, §25; Supp, §98J-25; HRS §206-27]

" **§206-28 State and political subdivisions not liable on bonds.** The bonds and other obligations of the board of land and natural resources under this chapter (and the bonds and obligations shall so state on their face) shall not be a debt of the State or of any political subdivision; neither the State nor political subdivisions shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the board under this chapter. The bonds shall not be considered public indebtedness within the meaning of section 12, article VII of the Constitution of the State, nor shall the bonds constitute an indebtedness within the meaning of any other debt limitation or restriction. Bonds may be issued under this chapter notwithstanding any debt or other limitation prescribed by any statute. [L 1961, c 6, §26; Supp, §98J-26; HRS §206-28]

" **§206-29 Form and sale of bonds.** The bonds of the board of land and natural resources shall be authorized by resolution and may be issued in one or more series and shall bear a date or dates, mature at a time or times, not exceeding sixty years from the date thereof, bear interest at a rate or rates, not exceeding six per cent a year, be in a denomination or denominations, be in a form either coupon or registered, carry conversion or registration privileges, have a rank or priority, be executed in a manner, be payable in a medium of payment, at a place or places, and be subject to terms or redemption (with or without premium) that the resolution, its trust indenture, or mortgage may provide.

The bonds shall be sold at not less than par at public sale held after public notice given at least five days prior to the

sale statewide; provided that the bonds may be sold at not less than par to the federal government at private sale without any public notice.

If any member or officer of the board whose signature appears on any bond or coupon ceases to be a member or official before the delivery of a bond, the member's or officer's signature, nevertheless, shall be valid and sufficient for all purposes, the same as if the member or officer had remained in office until its delivery. Any provision of any law to the contrary notwithstanding, all bonds issued pursuant to this chapter shall be fully negotiable.

In any suit, action, or proceedings, involving the validity or enforcement of any bond of the board or the security therefor, any bond, reciting in substance that it has been issued by the board to aid in financing a development project, shall be conclusively deemed to have been issued for a development project, and the project shall be conclusively deemed to have been planned, located, and constructed in accordance with the purposes and provisions of this chapter. [L 1961, c 6, §27; Supp, §98J-27; HRS §206-29; gen ch 1985; am L 1998, c 2, §65]

" **§206-30 Provisions of bonds.** In connection with the issuance of bonds or the incurring of any obligation and to secure the payment of the bonds or obligations, the board of land and natural resources in addition to its other powers may:

- (1) Pledge all or any part of its revenues under this chapter to which its right then exists or may thereafter come into existence;
- (2) Covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, in connection with development projects or against permitting or suffering any lien thereon;
- (3) Covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any project or any part thereof;
- (4) Covenant against pledging all or any part of its revenues from any development project to which its right then exists or may thereafter come into existence, or against permitting or suffering any lien thereon;
- (5) Covenant as to the bonds to be issued and as to the issuance of the bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof;
- (6) Covenant as to what other, or additional debts may be incurred by it in the exercise of its authority under this chapter;

- (7) Provide for the replacement of lost, destroyed, or mutilated bonds;
- (8) Covenant that the board warrants title;
- (9) Covenant as to the amount to be raised each year or other period of time by revenues under this chapter and as to the use and disposition to be made thereof;
- (10) Covenant as to the use of any or all of its property, real or personal, acquired or held for use in connection with development projects under this chapter;
- (11) Create or authorize the creation of special funds segregating the proceeds of any loans or grants, the revenue of any project or projects, reserves for principal and interest on its bonds and for operating contingencies and other reserves; and covenant as to the use and disposal of the moneys held in the funds;
- (12) Redeem the bonds and covenant for their redemption and provide the terms and conditions thereof;
- (13) Covenant against extending the time for the payment of its bonds or interest thereon;
- (14) Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which the consent may be given;
- (15) Covenant as to the maintenance of its property acquired or held for use in connection with development projects under this chapter, and replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;
- (16) Vest in an obligee, in the event of a default by the board, the right to cure any such default and to advance any moneys necessary for the purpose and covenant that the moneys so advanced be an additional obligation of the board with such interest, security, and priority as may be provided in any lease or contract;
- (17) Covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;
- (18) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

- (19) Covenant to surrender possession of a project or projects or parts thereof upon the happening of an event of default; and vest in any obligee the right, upon a default and without judicial proceedings, to take possession and use, operate, manage, and control the projects or any parts thereof and to collect and receive revenues arising therefrom in the same manner as the board itself might do and to dispose of the moneys collected in accordance with the agreement of the obligee with the board;
- (20) Vest in a trustee the right to enforce any covenant to secure, or pay the bonds, or otherwise relating to the bonds; provide for the powers and duties of the trustee, limit the liabilities thereof, and provide the terms and conditions upon which the trustee or the holders of bonds, or any proportion of them may enforce any such covenant;
- (21) Make covenants other than, and in addition to, the covenants herein expressly authorized, of like or different character; and execute all instruments necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as the government or any purchaser of the bonds of the board may require;
- (22) Make such covenants and do any and all such acts and things as may be necessary, convenient, or desirable to secure its bonds, or, in the absolute discretion of the board, tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein. [L 1961, c 6, §28; Supp, §98J-28; HRS §206-30]

" **§206-31 Remedies of an obligee; mandamus, injunction, possessory action, receiver, accounting, etc.** An obligee of the board of land and natural resources may, in addition to all other rights which may be conferred on the obligee, subject only to any contractual restrictions binding upon the obligee, and subject to the prior and superior right of others:

- (1) By mandamus, suit, action, or proceeding in law, compel the board, and the members, officers, agents, or employees thereof, to perform each and every term, provision, and covenant contained in any contract of the board, and require the carrying out of any or all covenants and agreements of the board and the

fulfillment of all duties imposed upon the board by this chapter;

- (2) By suit, action, or proceeding in equity, enjoin any act or thing which may be unlawful, or the violation of any of the rights of the obligee of the board;
- (3) By suit, action, or proceeding in any court of competent jurisdiction, cause possession of any project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the board;
- (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 board), obtain the appointment of a receiver of any development project of the board or any part or parts thereof and, if the receiver be appointed, the receiver may enter and take possession of the project or any part or parts thereof and operate and maintain same, and collect and receive all revenues or other charges thereafter arising therefrom in the same manner as the board itself might do, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the board as the court shall direct;
- (5) By suit, action, or proceeding in any court of competent jurisdiction, require the board and the members thereof to account as if it and they were the trustees of an express trust. [L 1961, c 6, §29; Supp, §98J-29; HRS §206-31; gen ch 1985]

Rules of Court

One form of action, see HRCF rules 1, 2, 81(i).

" **§206-32 Subordination of mortgage to agreement with government.** The board of land and natural resources may agree in any mortgage made by it that the mortgage shall be subordinate to a contract for the supervision by a government of the operation and maintenance of the mortgaged property and the construction of improvements thereon. In that event, any purchaser or purchasers at a sale of the property of the board pursuant to a foreclosure of the mortgage or any other remedy in connection therewith, shall obtain title to the contract. [L 1961, c 6, §30; Supp, §98J-30; HRS §206-32]

" **§206-33 Development project bonds as legal investments.** The State and all of its public officers, municipal

corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations, and other persons carrying on an insurance business in the State, and all personal representatives, guardians, trustees, and other fiduciaries in the State may legally invest moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the board of land and natural resources, and the bonds and other obligations of the board or agency shall be authorized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by article 8 of chapter 412 and section 554-6. [L 1961, c 6, §31; Supp, §98J-31; HRS §206-33; am L 1976, c 200, pt of §1; am L 1993, c 350, §7]

" **§206-34 Policy as to sale prices and rentals.** It shall be the policy of the State that the board of land and natural resources (acting directly or by an agent or agents) shall manage and operate its development projects in an efficient manner so as to enable it to fix the rentals or prices for lands at the lowest possible rates or sales prices consistent with the purpose of this chapter; and that the board shall not construct or operate any project for profit, or as a source of revenue to the State. To this end, the board shall fix the sales prices for residential lots or rentals for lots or buildings in its projects at no higher rates or prices than it shall find to be necessary to produce revenues which (together with all other available moneys, revenues, income, and receipts of the board from whatever sources derived under the administration of this chapter) will be sufficient:

- (1) To pay, as the same become due, the principal and interest on the bonds of the board;
- (2) To meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any

insurance) and the administrative expenses of the board; and

- (3) To create a reserve sufficient to meet the largest principal and interest payments which will be due on the bonds in any one year thereafter, and to maintain such reserve; provided that the rates or prices shall be at least fifteen per cent below the going market prices of comparable properties determined in accordance with generally accepted appraisal principles. [L 1961, c 6, §32; Supp, §98J-32; HRS §206-34]

" **§206-35 Agreement to secure federal contributions; default.** In addition to the powers conferred upon the board of land and natural resources by other provisions of this chapter, the board, in any contract for annual contributions with the federal government, may obligate itself (which obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other laws) to convey to the federal government possession of or title to the project to which the contract relates, upon the occurrence of a substantial default (as defined in the contract) with respect to the covenants or conditions to which the board is subject. The contract may provide further that in case of such conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project in accordance with the terms of the contract; provided that the contract shall require that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the board the project as then constituted. [L 1961, c 6, §33; Supp, §98J-33; HRS §206-35]

" **§206-36 Payments to public bodies.** The board of land and natural resources may agree to make such payments to the State, or any political subdivision thereof (which payments such bodies may accept), as the board finds consistent with the achievement of the purposes of this chapter. [L 1961, c 6, §34; Supp, §98J-34; HRS §206-36]

" **§206-37 Conveyance, lease, or agreement in aid of development projects, purchase of bonds.** For the purpose of aiding and cooperating in the planning, construction, and operation of development projects located within their respective territorial boundaries, the political subdivisions of the State or other departments and agencies of the State may,

upon such terms, with or without consideration, as it may determine:

- (1) Dedicate, grant, sell, convey, lease any of its property, or grant easements, licenses, or any other rights or privileges therein to the board of land and natural resources or to the United States or any agency thereof;
- (2) To the extent that it is within the scope of each of their respective functions:
 - (A) Cause the services customarily provided by each of them to be rendered for the benefit of development projects and the occupants thereof;
 - (B) Provide and maintain parks and sewage, water, lights, and other facilities adjacent to or in connection with the projects;
 - (C) Open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other 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 board with respect to the exercise of their powers relating to the preparation of designated development areas for such projects;
- (4) Employ (notwithstanding the provisions of any other laws 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 board, in the purchase of the bonds or other obligations of the board to the extent provided by section 206-33, and exercise all the rights of any holder of such bonds or other obligations;
- (5) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, and construction of the development projects;
- (6) Enter into contracts with the board or the United States for any period, agreeing to exercise any of the powers conferred hereby or to take any other action in aid of the development 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 development projects, the board,

in its powers of management of the public lands, may use public lands for the purposes of this chapter, and the Hawaiian homes commission and any other officers of the State having power to manage or dispose of its public lands, may, with the approval of the governor and with or without consideration, grant, sell, convey, or lease for any period, any parts of such public lands (without limit as to area) to the board for the purposes of this chapter or to the United States or any agency thereof.

Any law or statute to the contrary notwithstanding, any gift, grant, sale, conveyance, lease, or agreement provided for in this section may be made by any other department or agency of the State or political subdivisions of the State, without appraisal, public notice, advertisement, or public bidding.

If at any time title to, or possession of, any development project is held by any public body or governmental agency authorized by law to engage in development projects or administration of development projects, including any agency or instrumentality of the United States, the provisions of any agreement made under this chapter relating to such project shall inure to the benefit of, and may be enforced by, such public body or governmental agency.

Insofar as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall be controlling. [L 1961, c 6, §35; Supp, §98J-35; HRS §206-37]

" **§206-38 Governmental advances and donations.** The board of land and natural resources shall submit to the legislature at each regular session estimates of the amount of the administrative expenses and overhead of the board for the succeeding annual period for the purpose of this chapter so that the legislature may make an appropriation therefor if it deems the action advisable.

Any political subdivision within the territorial boundaries of which a development project or projects are located or about to be located, may, from time to time, make donations or advances to the board of such sums as the political subdivision 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 development project or projects. The board, when it has money available therefor, shall reimburse political subdivisions for all advances made by way of a loan to it. [L 1961, c 6, §36; Supp, §98J-36; HRS §206-38]

" **§206-39 Action of political subdivision by resolution.** All action authorized to be taken under this chapter by any

political subdivision may be by resolution adopted by a majority of all the members of its governing body. The resolution may be adopted at the meeting of the governing body at which the resolution is introduced and shall take effect immediately upon the adoption, and no resolution need be published or posted. [L 1961, c 6, §37; Supp, §98J-37; HRS §206-39]

" **§206-40 Purpose of chapter.** It is the purpose and intent of the legislature that other departments and agencies of the State and the political subdivisions of the State shall do any and all things necessary to aid and cooperate in the planning, construction, sale, lease, and operation of development projects by the board or the United States. [L 1961, c 6, §38; Supp, §98J-38; HRS §206-40]

" **§206-41 Source of operating funds; disposition of unencumbered funds.** (a) All moneys to carry out the purposes of this chapter shall be allocated by the legislature in accordance with subsection (c) out of appropriations from the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this chapter.

(b) All unexpended balances of appropriations, allocations, allotments, special revolving funds, or other funds heretofore created and made available for the purposes of developing or administering any project subject to this chapter shall be transferred to the state general fund; provided that any unexpended balances in any special revolving fund or other funds created and made available, in whole or in part, with federal funds, or with assistance from the federal government, or for housing undertaken pursuant to a contract between the federal government and the State or the board of land and natural resources shall be segregated from other funds and shall be deposited and maintained as required by the federal government.

(c) There is appropriated from the general revenues of the State sufficient moneys as may be necessary, from time to time, with the approval of the governor, for the purposes specified in this chapter, provided that not more than \$1,000,000 may be expended, with the approval of the governor, in land development for any one project; and provided further that such sums as may be utilized from time to time and which are reimbursed from land sales shall be deposited into the general fund.

All moneys received by the board under or pursuant to this chapter, including refunds, reimbursements, and revenues, shall be deposited in the state general fund, to the extent permitted by federal law or regulation. Except as otherwise provided by

this chapter, the funds appropriated by the legislature may be expended by the board for any and all of the purposes of this chapter, including, without prejudice to the generality of the foregoing, the acquisition, clearance, and improvement of property; the construction and reconstruction of building sites; and the development and administration of development projects and administration expenses. The provisions of this section shall be subject to applicable federal law and regulation, to any contract between the federal government and the State or the board relating to development projects subject to this chapter, and to the terms and conditions of contributions or other assistance from the federal government. [L 1961, c 6, §39; am L 1963, c 114, §1; am L 1965, c 157, §5; Supp, §98J-39; HRS §206-41; am L 1993, c 280, §48]

" **§206-42 Conformity with federal law.** In carrying out this chapter the State and the board of land and natural resources shall cooperate, to the fullest extent consistent with the provisions of this chapter, with the federal government, and shall respectively take such action through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this State all advantages available under any federal law or regulation. [L 1961, c 6, §40; Supp, §98J-40; HRS §206-42]

" **§206-43 Existing obligations, no impairment.** Nothing contained in this chapter shall impair or affect any outstanding notes, contracts, or obligations of the State or of the board of land and natural resources. [L 1961, c 6, §41; Supp, §98J-41; HRS §206-43]