

**ACT 194**

A Bill for an Act to Make Available Additional Mortgage Investment Funds to Meet the Capital Needs of the State by Providing for Home Loans for Middle Income Home Buyers on State Lands and for Loans Made by Foreign Lenders and Certain Other Activities of Such Lenders and Making Inapplicable Certain Statutory Provisions.

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

**PART I. Findings and Declaration of Purpose.**

**SECTION 1. Findings and Purpose.** The capital needs of the economy of the State have grown to such an extent that available local capital is insufficient to meet those needs. Among the consequences of the inability of Hawaii to meet its capital requirements out of its own local funds have been a shortage of mortgage funds for home and commercial financing. Moreover, in consequence of the extremely high price of home ownership in Hawaii a buyer has to pay large down and monthly payments which many middle income home buyers find difficult to meet. The purpose of this Act is to help remedy the shortage of mortgage investment funds with which Hawaii is faced; first, by making available loans to provide added capital with which qualified applicants can meet required down payments for home construction and to extend the normal terms of loans over a longer period of time, and second, by attracting out-of-state mortgage funds to Hawaii.

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\* Items reduced, W. Q.

## **PART II. Home Loans for Middle Income Home Buyers on State Lands.**

**SECTION 2. Authorization for loans.** The director of the budget may grant loans as provided for in this Part to persons leasing or purchasing state lands for their personal residential needs. Loans may be granted only to eligible persons as provided for in this Part who occupy state land by virtue of leases or agreements of sale executed after the effective date of this Act.

**SECTION 3. Qualifications for loans.** To qualify for a loan under this Part an applicant must :

(a) Be of legal age and have at least one person who will occupy the premises with him and who is related to him by blood or marriage and solely dependent upon him for support. A husband and wife, who are both employed, shall jointly qualify for a loan ;

(b) Be a resident of the State for not less than one year immediately preceding the application for the loan ;

(c) Have a gross annual income not in excess of \$7,000 including the gross income of his spouse ; and

(d) Have such other qualifications as may be established by the director of the budget.

**SECTION 4. Purpose for and terms of loans.** Loans of state funds made pursuant to this Part may be granted only for construction of residences upon the said premises. Loans shall be secured by a mortgage which may be subordinate only to another mortgage given to a lending institution as security for a loan for the purpose provided above. Loans shall be made to relieve the burden of the required down payment or to extend the period over which monthly payments would be required upon a finding that the applicant's income would not otherwise reasonably support such payments.

Loans shall not exceed 25 per cent of the cost of the improvements and in no case shall any loan exceed \$5,000. The director of the budget shall by appropriate regulation establish the interest rate on the state loan and may authorize repayment upon such terms as he deems appropriate but in no case shall the payments extend beyond 40 years.

**SECTION 5. Contract with lending institution.** The director of the budget may, and as far as practicable shall, contract with lending institutions for the processing of applications for loans of state funds and the servicing of such loans. Such servicing shall be performed only by the lending institution which makes the loan for the principal cost of construction. In furtherance of the purposes of this Part the contract may provide for the loan of state funds to be repaid after the funds of the lending institution are repaid in full and for payment to lending institutions for servicing the state's portion of the total loan and may include other terms deemed appropriate by the director of the budget.

**SECTION 6. Rules and regulations.** The director of the budget may adopt, amend or repeal such rules and regulations governing the granting of loans and other related functions as he deems necessary or suitable. Such rules and regulations and any amendments thereto, when approved by the governor and promulgated and filed in accordance with sections 7-28 through 7-41 of the Revised Laws of Hawaii 1955 shall have the force and effect of law.

**SECTION 7. Bond authorization.** The director of the budget may with the approval of the governor, issue from time to time general obligation

bonds pursuant to part I of Chapter 137 of the Revised Laws of Hawaii 1955 not exceeding [~~\$1,000,000~~] \$500,000 for the granting of loans pursuant to the purposes of this Part. [item reduced, W.Q.]

**PART III. Loans made by Foreign Lenders and Certain Other Activities of Such Lenders.**

**SECTION 8. Definitions as used in this Part:**

(a) "State" means any of the United States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, and Virgin Islands.

(b) "Foreign Lender" means (i) a member bank of the Federal Reserve System, an "insured bank" as defined in the Federal Deposit Insurance Act, an "insured institution", as defined in the Federal Savings and Loan Insurance Corporation Act, or an insurance company, the principal office of which is in another state, whether incorporated or unincorporated and whether acting in its individual capacity or in a fiduciary capacity, (ii) the trustee or trustees from time to time in office of any employee benefit plan, and (iii) any corporation all of the capital stock of which (except directors' qualifying shares) is owned by one or more foreign lenders of the classes specified in clauses (i) and (ii) of this subsection, but the term "foreign lender" does not include any similar organization organized under the laws of the United States or any small loan or industrial loan company of the general character covered by Chapters 194 and 195 respectively of the Revised Laws of Hawaii 1955, as amended.

(c) The term "employee benefit plan" means any plan, fund or program which was heretofore or is hereafter established in and under the laws of a state other than Hawaii by an employer or by an employee organization, or both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or annuity contracts or otherwise, medical, surgical or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement. As used in the preceding sentence, the term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan or other matters incidental to employment relationships or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(d) "Loans" mean obligations secured by liens upon real property, or any interest in real property, situated in this State, which liens may also cover such personal property as is or may from time to time be affixed or attached to or located on or in or about such real property or any improvements thereon or thereto, and include obligations secured by liens upon real property or interests therein situated both within and without this State.

**SECTION 9. Exemptions and Immunities.** A foreign lender which (i) does not maintain a place of business in this State, (ii) conducts its principal activities outside this State, and (iii) complies with the provisions of this Part, does not by engaging in this State in any or all of the activities specified in the following section violate the laws of this State relating to doing business or doing a banking, trust or insurance business, or become subject to the provisions of Chapters 135, 174, 177, 178, 179, 180 or 181, or become subject to any

taxation which would otherwise be imposed for doing business in or doing a banking trust or insurance business in, or having gross income or receipts from sources in, property in, or the conduct of any activity in, this State, or become subject to any taxation under Chapters 117, 121 or 127, and no income or receipts of any such foreign lender arising out of any of the activities specified in the following section shall constitute income from sources in, property in, or activities conducted in this State for the purposes of any tax imposed by this State, provided that nothing in this Part shall be construed to exempt the real property of a foreign lender from taxation to the same extent, according to its value, as other real property is taxed, or to preclude the inclusion of the dividends or other income from foreign lenders in the income of individuals taxable under Chapter 121 to the same extent as is included dividends and other income from domestic lenders, and provided, further, that if any such foreign lender shall acquire any property in this State in enforcement of the rights of the foreign lender in the event of a default by any borrower, as permitted by subsection (d) of Section 10 of this act, then commencing one year after title to such property has vested in the foreign lender, the rents or other receipts received by the foreign lender from, and the proceeds of sale by the foreign lender of, such property shall be subject to taxation under Chapters 117 and 121 in the same manner and to the same extent as if such rents, other receipts or proceeds were received by a resident of this State.

**SECTION 10. Permitted Activities.** The activities referred to in the preceding section are:

- (a) making loans;
- (b) receiving security for loans;
- (c) acquiring by assignment or otherwise partial or entire interests in loans or in security for loans;
- (d) servicing (but servicing only by or through individuals who are residents of, or corporations doing business in, this State), collecting, enforcing or otherwise realizing upon loans or upon security for loans or upon interests therein; and taking, holding and disposing of any property acquired (whether by purchase at any sale pursuant to foreclosure by suit or foreclosure under power of sale, or by foreclosure by entry, or by conveyance in lieu of foreclosure) in enforcement of the rights of the foreign lender in the event of default by any borrower; and
- (e) employing agents and servants or in connection with, and entering into and performing contracts and doing other acts and things necessary or appropriate for or preliminary or incident to, any of the foregoing activities, but not maintaining any office in this State for the conduct of any such activities.

**SECTION 11. Filing and Effect of Statement.** Prior to engaging in this State in any of the activities specified in the preceding section a foreign lender shall execute and file with the treasurer of the State a statement. The statement shall list its name, state of incorporation or organization and principal place of business, shall certify that its principal activities are conducted outside this State, and shall appoint irrevocably the treasurer of the State and his successors its agents upon whom may be served process against it on any proceeding or cause of action arising out of its engaging in this State in any of the activities referred to in the preceding section. Until the statement is filed the immunities provided by this Part do not become operative. Upon the filing of the statement and after a determination by the treasurer that

the foreign lender qualifies for exemption under this Part the immunities provided by this Part shall continue operative until the statement is withdrawn by the foreign lender or cancelled by the treasurer of the State pursuant to Section 12 of this act, but no such withdrawal or cancellation shall retroactively affect or impair any of the immunities provided by this Part.

**SECTION 12. Cancellation of Statement.**

(a) If after notice and hearing as hereinafter provided, the treasurer of the State shall determine that any foreign lender having on file a statement as provided in Section 11 of this act (i) maintains an office in this State, (ii) conducts its principal activities in this State, or (iii) is or was formed or availed of by or for the account or benefit, directly or indirectly, of one or more residents of, corporations organized under the laws of, or employee benefit plans organized or having their principal offices in, this State with a view to avoiding the imposition of any taxes imposed by this State, the treasurer shall by order cancel such foreign lender's statement.

(b) In giving notice of and conducting hearings, and in making and entering orders, pursuant to subsection (a) of this Section 12, the treasurer shall have all of the powers conferred upon the Commission of Insurance by, and shall observe and comply with, and such hearings shall be conducted at the time or times and in the manner specified in, and subject in all respects to, the provisions of sections 181-51 to 181-53, both inclusive, 181-60 (exclusive of subsection 3 of Section 181-60), and 181-62 to 181-67, both inclusive. Appeals from orders made and entered pursuant to subsection (a) of this Section 12 may be taken at the time and in the manner and to the courts provided in, and shall in all respects be subject to the provisions of, Sections 181-68 to 181-71, both inclusive, subsections 1 and 2 of Section 181-72, and Section 181-73.

**SECTION 13. Construction.** Nothing in this Part shall be construed to require any corporation to qualify to do business in this State, or to subject any person, firm, corporation or trust to taxation under any law of this State if, but for the enactment of this act, such person, firm, corporation or trust would not have been required so to qualify or be subject to such taxation.

**PART IV. General Provisions.**

**SECTION 14. Severability.** If any section, clause or phrase of this act or the application thereof to any circumstances is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act or the application of the section, clause or phrase to other circumstances. The Legislature hereby declares that it would have approved this act and each section, clause or phrase thereof irrespective of the fact that any one or more other sections, clauses or phrases or the application thereof to any circumstance be declared unconstitutional or invalid.

**SECTION 15. Effective Date.** This act shall take effect upon its approval.

(Approved July 13, 1961.) **H.B. 4.**