

A Bill for an Act Relating to the Establishment of an Instrumentality for Housing and Community Development.

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

SECTION 1. The Hawaii Revised Statutes is hereby amended by adding a new chapter to be numbered and to read as follows:

“CHAPTER 359A**HAWAII HOUSING AUTHORITY - HOUSING PROJECTS**

Section 359A-1. Purpose. The legislature of the State of Hawaii has determined that there exists in the State of Hawaii a critical shortage of housing units for lower and middle income residents. Various studies have indicated the need for from between 40,000 to 50,000 units at the present time. These studies show that the forces of population increase and obsolescence will combine to create a need for over 250,000 units by 1985. Since 1961, the economy has been producing an average of less than 10,000 units annually.

The legislature has also determined that decent shelter and the responsibility of home ownership contributes to the pride and dignity of man and makes him a greater asset to the community and that the lack of decent shelter and the responsibility of home ownership contributes to harmful frustration in our community. The home is the basic source of shelter and security in society, the center of our society which provides the basis for the development of our future citizens. Frustration in the basic necessity of decent shelter, in the satisfaction of the basic drive in man to provide a decent home for his family, provokes an unrest in our community that is harmful to the overall fiber of our society.

Studies have pointed out that the causes for the high cost of housing are multiple. They include the cost and availability of land, the cost of development, the cost and availability of financing, the cost added by government regulation, the cost and availability of labor and materials, the inflationary state of the economy that makes high cost housing more profitable to produce and more attractive to “risk” capital. In the most elemental way the housing shortage is caused by conflicting priorities in our pluralistic society. Additionally, the legislature is aware that the housing market is a total market and that neglecting the interests of renters or higher income potential homeowners would not be proper.

When conflicting priorities, otherwise wholesome in a great state, combine to frustrate one of the basic needs of that state so as to endanger its general health and welfare, the elected representatives of the people of such state have the obligation to provide to the best of their ability the means whereby these priorities can be resolved.

The legislature of the State of Hawaii has determined that the problem of providing reasonable priced housing in Hawaii is so complex that existing institutions cannot solve it without a comprehensive overview and direction. The legislature has determined that the problem must be solved for the general well-being of the State of Hawaii and that the legislature has the duty to provide the overview and the direction.

Sec. 359A-2. Special assistant for housing. There shall be in the office of the governor a special assistant for housing to be appointed by the governor without regard to chapters 76, 77 and 78 of the Hawaii Revised Statutes. The special assistant shall be “ex officio” the chairman of the Hawaii housing authority with a vote.

Sec. 359A-3. Housing authority - staff. The Hawaii housing authority shall administer this Act. The authority may, with the consent of the governor and not subject to chapters 76, 77 and 78, Hawaii Revised Statutes, appoint a staff consisting of a qualified financial aide, development aide and attorney to assist in carrying out the functions and purposes of this Act.

Sec. 359A-4. Powers and duties, generally. The authority shall: (a) Develop fee simple or leasehold property, construct dwelling units thereon, including condominiums and planned units, and sell, lease or rent or cause to be leased or rented the land and the completed units at the lowest possible price to qualified residents of the State of Hawaii, and the authority shall perform such functions in partnership with a qualified partner or partners as hereinafter defined, or shall act in its own behalf.

A qualified resident means a person who:

- (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 twenty years of age;
- (3) Is a bona fide resident of the State and has a bona fide intent to reside in the dwelling unit purchased or rented under this Act; and
- (4) In the case of purchase of a dwelling unit in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase.

The authority shall develop policies whereby those most deserving of housing shall be given preference. In developing the policies, the authority shall consider the applicant's household income, the number of dependents, and such other factors as it may deem pertinent.

Any person whom the authority finds to be within one of the following classes, shall not be eligible to become a purchaser of a dwelling unit, to wit:

- (A) A person who himself or whose husband or wife or both (when husband and wife are living together) owns or own in fee simple or leasehold lands suitable for dwelling purposes within the county and in or reasonably near the place of residence or place of business of the person; and
- (B) A person who himself or whose husband or wife (when husband and wife are living together) has pending an unrefused application to purchase a dwelling unit under this Act from the authority.

The authority 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 Act by the authority 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 authority in connection with any application shall constitute perjury and be punishable as such. The authority shall establish a system to determine prefer-

ences by lot in the event that it receives more qualified applications than it has units available.

(b) Adopt and promulgate, in accordance with chapter 91, Hawaii Revised Statutes, all rules and regulations necessary to carry out the purpose of this Act, including, upon direction from the governor and for such period as he shall authorize, rules and regulations on health, safety, building, planning, zoning, and land use which relate to the development, subdivision, and construction of dwelling units in projects in which the State, through the authority, shall participate. Upon the promulgation and adoption of such rules and regulations, they shall have the force and effect of law and shall supersede, for all projects in which the State through the authority shall participate, all other inconsistent laws, ordinances, and rules and regulations relating to the use, zoning, planning, and development of land, and the construction of dwelling units thereon; provided, however, that such rules and regulations shall not contravene any safety standards or tariffs approved by the public utilities commission for public utilities. Such rules and regulations shall follow existing law as closely as is consistent with the production of low cost housing with standards which meet minimum requirements of good design, pleasant amenities, health, safety and coordinated development; provided, however, that any rules or regulations promulgated hereunder shall, before becoming effective, be presented to the legislative body of each county in which they will be effective and the legislative body of any county may within 45 days approve or disapprove, for that county, any or all of the rules and regulations by a majority vote of its members. On the forty sixth day after submission any rules and regulations not disapproved shall be deemed to have been approved by the county.

Notwithstanding the foregoing, the authority shall, prior to developing any land designated as conservation or agriculture, obtain the approval of the land use commission. The authority shall not develop, subdivide or construct dwelling units in areas set aside as state monuments or historic sites.

The authority shall also adopt and promulgate rules and regulations relating to determining preference among applicants for housing and determining qualifications for and recompense or profit distribution to any partner or partners as hereinafter defined.

(c) Acquire, by eminent domain, exchange or negotiation, property required for the purposes of this Act.

(d) Make and execute contracts or other instruments necessary or convenient to carry out the purpose of this Act.

(e) Upon authorization by the legislature, cause the State of Hawaii 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 under this Act;

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- (5) Payment of any services contracted for under this Act, including profit or recompense paid to partners;
 - (6) The cost of repurchase of units under section 359A-9; and
 - (7) Any other monies required to accomplish the purposes of this Act.
- (f) Do all things necessary and convenient to carry out the purposes of this Act.

Sec. 359A-5. Eminent domain, exchange or use of public property. The authority may, through exchange, voluntary negotiation or by eminent domain, acquire any private land, in the State for the purpose of this Act. The authority shall exercise the power of eminent domain in the same manner as provided in chapter 101, Hawaii Revised Statutes. The exchange of land shall be in accordance with the provisions of chapter 171, provided that anything contained in section 171-50 to the contrary notwithstanding, when state lands are exchanged for private lands, which private lands are classified for intensive agricultural use, the authority shall determine the agricultural productivity of the private lands and, whenever and wherever possible, exchange so much state lands as shall be sufficient to approximate or equal the productivity of the private lands so acquired by the state. The authority may also develop state lands but not federal lands, state monuments or historical sites or parks and subject to the prior approval of the land use commission in the case of conservation or agricultural land. Whenever it proposes to develop public lands it shall file with the department of land and natural resources a petition setting forth such purpose and such petition shall be conclusive proof that the use to which the property is sought to be put is a superior public use to that to which it has already been appropriated. The fair market value of the public land may be paid by the authority and computed as cost or subsidized by the State subject to reimbursement under Sec. 359A-9.

Sec. 359A-6. Dwelling unit project, construction and sponsorship of. The authority shall, on behalf of the State, or in partnership with qualified developers and contractors, develop real property and construct dwelling units thereon. Qualifications for developers and contractors shall be provided by rules and regulations to be promulgated by the authority in accordance with chapter 91. Any person, if qualified, may act as both the developer and the contractor. In selecting the partners or in contracting any services or materials for the purposes of this Act, the authority shall not be subject to the competitive bidding laws.

The authority and the partners selected, if any, shall be partners. The authority 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 it shall audit the same. The other partners shall perform services for the partnership under the direction of the authority and shall be reimbursed for all costs relating to the project as certified by the authority including administrative and overhead costs. Additionally the other partners shall, upon occupancy of the dwelling unit by the purchaser be entitled to a guaranteed gross share of not more than fifteen per cent

of the actual cost of the project pro rated to such dwelling unit less any amount subsidized by the State. Subsidies shall include tax relief granted under section 359A-15, unrecovered development and/or land costs and any other subsidized items as defined in rules and regulations to be promulgated by the authority pursuant to chapter 91. The percentage of such share shall be determined by the authority by contract with the partner or partners based upon the nature of the services rendered by them. The authority may require the performance bonds be posted to the benefit of the State with surety satisfactory to it guaranteeing performance by the other partners, or the State may act as a self insurer requiring such security, if any, from the other partners, as the authority shall deem necessary. The authority may also contract, subject to rules and regulations adopted pursuant to chapter 91 but without reference to competitive bidding laws, with any developer, contractor, engineer, architect or any other person or firm whose services would aid in accomplishing the purposes of this Act.

Sec. 359A-7. Financing. The director of finance is hereby authorized to issue general obligation bonds of the State in the amount of \$60,000,000, for the purposes of this Act. Pending the receipt of funds from the issuance and sale of general obligation bonds, the amount required for the purposes of this Act shall be advanced from the general fund of the State. Upon the receipt of the bond funds, the general fund shall be reimbursed. The proceeds of the bonds may be used for any of the purposes set forth in Sec. 359A-4(e) including permanent financing. Interest on any interim money shall be computed at one per cent more, rounded to the nearest one eighth of one per cent, than that paid by the State for the general obligation bonds issued for the project. Interest so computed shall be a cost of the project to be prorated over the units.

Sec. 359A-8. Sale, mortgages, agreement of sale, other instruments. (a) The authority shall sell completed dwelling units 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 cost as determined by the authority. 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. Such may be borne by the State, under rules and regulations adopted pursuant to chapter 91, Hawaii Revised Statutes, subject to reimbursement upon sale as is provided for in section 359A-9.

(b) If a qualified purchaser is unable to obtain sufficient funds at reasonable rates from private lenders, the authority may, by way of mortgage, agreement of sale, or other instrument to secure the indebtedness, loan to the purchaser up to one hundred per cent of the purchase price. The purchaser shall in such event execute with the authority an agreement of sale or 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. The interest on the loan shall be one per cent more, rounded to the nearest one-eighth of one per cent, than that paid by the State for the general obligation bonds issued for the project. Every mortgage, agreement of sale,

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other instrument to secure the indebtedness, or instrument of indebtedness may contain such 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.

If the purchaser defaults on the payment of any loan, the authority 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 hereinafter described.

The mortgages, agreements of sale, and other instruments of indebtedness may, at the direction of the authority, 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.

Sec. 359A-9. Restrictions on transfer and use of dwelling units. (a) For a period of ten years after a dwelling unit is purchased from the authority or an agreement of sale is executed, whether on fee simple or leasehold property the following restrictions shall apply to the use and transfer of the unit and the property:

- (1) Any dwelling unit sold by the authority shall be owner occupied. Violation of this provision is sufficient cause for the authority to repurchase the dwelling unit as provided for in paragraph (2);
 - (2) Title to the dwelling unit and the property or the lease may not be transferred except to the authority, at a price which shall not exceed the greater of the amount of the original cost to the purchaser or the fair market value of the premises less any amounts subsidized by the State, as determined by the authority, and less also interest thereon at the same rate as that paid by the purchaser on his mortgage or other security agreement, provided, however, that title to a dwelling unit and the property or lease may pass to a family member by devise or through the laws of descent, who would otherwise qualify under the rules and regulations established by the authority.
 - (3) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the authority or by any fee owner in the case of a lease shall expressly contain the restriction on transfer and use of the dwelling unit as prescribed in this section.
- (b) Any time after ten years have elapsed from the date a dwelling unit is purchased from the authority, the purchaser may sell the unit and sell or assign the property to any person free from any price restrictions, provided that the purchaser shall be required to pay to the authority:
- (1) The balance of the mortgage note, agreement of sale or amount owing under similar instrument.
 - (2) To the extent that any profit is realized, any subsidy made by the authority or the State nor counted as cost under Sec. 359A-8 but

charged to the dwelling unit by good accounting practice as determined by the authority whose books shall be prima facie evidence of the correctness of the cost.

- (3) To the extent that any profit is realized, interest on the amount determined under paragraph (2) above computed from the date of occupancy, at the same rate as that paid by the purchaser on his mortgage or other security agreement.
- (4) If any proposed sale or transfer would not generate sufficient profit to enable the repayment of all sums under paragraphs (1), (2) and (3) above the authority shall have the right of first refusal to repurchase the unit. These provisions of subsection (b) shall be incorporated in any deed, lease, agreement of sale, mortgage or other instrument of conveyance issued by the authority.

(c) Notwithstanding the provisions of subsection (a) and (b) above the authority may at any time consent to the sale or transfer of a unit for such a price and on such terms as the authority may determine, in accordance with adopted rules or regulations, to preserve the intent of these provisions without the necessity for the State to repurchase the unit.

Sec. 359A-10. Revolving fund. There is created a dwelling unit revolving fund. The funds appropriated for the purpose of this Act and all moneys received or collected by the authority under the provisions of this Act shall be deposited in the revolving fund except as is provided in sections 359A-12(k), 359A-20 and 359A-29. The proceeds in the fund shall first be used to reimburse the general fund to pay the principal and interest on general obligation bonds issued for the purposes of this Act, then for the necessary expenses in administering the Act, and finally for carrying out the purposes of this Act.

Sec. 359A-11. Private financing of projects. (a) The authority is authorized to enter into contracts with any eligible bidder to provide for the construction of urgently needed housing for persons of low and/or moderate income, elderly persons or students or faculty of institutions of higher education on lands owned or leased by the State and situated on suitable sites for the purpose of providing suitable living accommodations for persons of low and/or moderate income, elderly persons, or students or faculty of institutions of higher education on lands owned or leased by the State and situated on suitable sites. Any such contract shall provide that the housing or housing project shall be placed under the control of the authority, as soon as the unit is available for occupancy. Any such contract shall also provide that the capital stock of the mortgagor (where the mortgagor is a corporation) be transferred to the authority, when the housing has been completed. Any such contract shall contain such terms and conditions as the authority may determine to be necessary to protect the interests of the State. Any such contract shall provide for the furnishing by the contractor of a performance bond and a payment bond with a surety or sureties satisfactory to the authority, and the furnishing of such bonds shall be deemed a sufficient compliance with the provisions of law and no additional bonds shall be required under law. Before the authority shall enter into

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any contract as authorized by this section for the construction of housing, it shall invite the submission of competitive bids after advertising in the manner prescribed by law.

(b) For the purposes of this section, the term 'eligible bidder' means a person, partnership, firm, or corporation determined by the authority:

- (1) To be qualified by experience and financial responsibility to construct housing of the type described in subsection (a) of this section;
- (2) To have submitted the lowest acceptable bid; and
- (3) To form a corporation to comply with chapter 416 of the Hawaii Revised Statutes to receive a lease of lands.

(c) Notwithstanding any other provision of law, the authority is authorized to acquire the capital stock of mortgagors holding property covered by a mortgage guaranty under this Act and established by this section, and to exercise the rights as holder of such capital stock during the life of such mortgage and, upon the termination of the mortgage, to dissolve the corporation; to guarantee the payment of notes or other legal instruments of such mortgagors; and to make payments thereon. All housing facilities placed under the control of the authority pursuant to the provisions of this section shall be deemed to be housing facilities under the jurisdiction of the State of Hawaii.

(d) On request by the authority, the attorney general shall furnish to the authority, an opinion as to the sufficiency of title to any property on which it is proposed to construct housing, or on which housing has been constructed, under this section. If the opinion of the attorney general is that the title to such property is good and sufficient, the authority is authorized to guarantee, or enter into a commitment to guarantee, the mortgagee, against any losses that may thereafter arise from adverse claims to 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 authority determines in the case of any housing project, that the financing of the construction of such project is impossible unless title insurance is provided, the authority may provide for the payment of the reasonable costs necessary for obtaining title search and title insurance. Any determination by the authority under the foregoing proviso shall be set forth in writing, together with the reasons therefor.

(e) The State shall be authorized to guarantee the repayment of 100 per cent of the principal and interest of loans from commercial lenders for the purposes of this section pursuant to rules and regulations adopted and promulgated by the authority which shall conform as closely as is possible to the practices of the federal housing administration in insuring loans under the Capehart Housing Act (Title 42, USC).

(f) The authority shall promulgate rules and regulations pursuant to chapter 91 of the Hawaii Revised Statutes to carry out the provisions of this section.

Sec. 359A-12. State mortgage guarantee. (a) At the request of the authority the director of finance may guarantee the top twenty five per cent of the principal balance of real property mortgage loans of qualified single-family or

multi-family housing, plus the interest due thereon, made to qualified borrowers by qualified private lenders; provided, however, that at no time shall the State's liability, contingent or otherwise, on such guarantees exceed \$10,000,000.

(b) Loans secured and made under this section shall bear simple interest on the unpaid principal balance charged on the actual amount disbursed to the borrower and the rate of interest shall not exceed the rate to be established from time to time by the director of finance. 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 multi-family dwelling owned and occupied by the borrower and his 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 secured and made under this section shall be limited to qualified single-family and multi-family housing in accordance with the standards and regulations as may be promulgated and administered by the authority.

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

- (1) A citizen of the United States who has resided in the State for at least three years, or any alien who has resided in the State for at least five years;
- (2) A sound credit risk with ability to repay the money borrowed;
- (3) Meet the standards and regulations as may be promulgated by the authority; and
- (4) Willing to comply with the regulations as may be promulgated by the director of finance.

The authority shall process all applications and determine who is a qualified borrower under this chapter.

(e) When the application for an insured loan has been approved by the authority, the director of finance 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 director of finance's guarantee, the private lender shall remit out of interest collected an insurance fee as may be established by the director of finance, provided that this fee shall not be added to any amount which the borrower is obligated to pay.

(g) When any installment of principal and interest has been due for sixty days and has not been paid by the borrower, the director of finance shall issue, on request of the private lender, a check for the percentage of the overdue payment guaranteed, thereby acquiring a division of interest in the collateral pledged by the borrower in proportion to the amount of the payment. The director of finance shall be reimbursed for any amounts so paid plus the applicable interest rate, where payment is collected from the borrower.

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(h) If there is any default in any payment to be made by the borrower, the lender shall notify the director of finance within fifteen days. Should the lender deem that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall so notify the director of finance. Within thirty days of either notification, the director of finance 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) Extend no portion of his loan for purposes other than those sanctioned by the authority;
- (2) Not sell or otherwise dispose of the mortgaged property except upon the prior written consent of the director of finance, and except upon such conditions as may be prescribed in writing by the private lender;
- (3) Undertake to pay when due all taxes, liens, judgments, or assessments which may be lawfully assessed against the property mortgaged, together with cost and expense of any foreclosure of such 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 regulations and standards of the authority, 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;
- (6) All of the above conditions shall be held and construed to be a provision of any mortgage executed by virtue of this section whether appearing as a provision of the mortgage or not; and
- (7) The private lender may impose such other conditions in its mortgage, provided the form of such mortgage has the prior approval of the authority.

(j) Loans guaranteed and made under this section 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, the payment of the entire principal, may be made at any time within the time period of the loan. The private lender may for satisfactory cause and at its discretion extend the time within which the installments of principal may be made for a period not to exceed two years.

(k) There is created a special fund to be known as 'State mortgage guarantee fund'. All interest and fees collected under this section by the director of finance and the Hawaii housing authority shall be deposited into this fund. The purpose of the fund is to guarantee payment of loans made under this section and to carry on the operations of the director of finance and the authority in administering and granting loans under this section. All disbursements from

the State mortgage guarantee fund shall be paid out on warrants signed by the director of finance.

Sec. 359A-13. Labor, training of. In the development and construction of dwelling units, the authority may provide for an on-the-job training program or such other projects as it may deem justifiable including innovative projects for the purpose of developing a larger qualified work force in the State. For this purpose, the authority may expend such sums as it deems appropriate but not to exceed \$100,000 a year.

Sec. 359A-14. Materials and research. The authority may purchase materials for the development of land and the construction of dwelling units in the manner it shall conclude 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 such materials with persons or firms doing business in the State, or otherwise. The authority may expend not more than \$100,000 a year for the development of innovative techniques and research.

Sec. 359A-15. Exemption from general excise tax. Notwithstanding any other law to the contrary, all rents and proceeds received from housing or housing projects developed pursuant to this chapter shall be exempt from general excise or receipts taxes. A claim for such exemption shall be filed with the director of taxation pursuant to rules and regulations promulgated by the director of taxation.

Sec. 359A-16. Downpayment loans. The authority may make direct loans to a qualified borrower for the downpayment required by a private lender to be made by the borrower as a condition of obtaining a loan from the private lender in the purchase of a residential property. The downpayment loan to any borrower shall not exceed thirty per cent of the purchase price of the residential property or \$15,000, whichever is lower. No more than one downpayment loan shall be made for a single residential property and to a single borrower. 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. The downpayment loans shall bear simple interest of not less than one per cent more, rounded to the nearest one-eighth of one per cent, than that required to be paid by the State on the general obligation bonds issued for the downpayment loan fund.

The principal of the downpayment loan, together with accrued interest, shall be repaid by the borrower in such installments as determined by the authority over a period not exceeding forty years. The period over which the principal and interest shall be paid need not coincide with the period over which the loan from the private 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.

The authority may secure the services of the private lender who loans to the borrower the balance of the purchase price of the residential property or the services of any other private lender doing business in the State to collect, in behalf of the State, the principal and interest of the downpayment loan and

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otherwise to service the downpayment loan, for a servicing fee of not more than one-half of one per cent of the amount of the downpayment loan. For this purpose, the authority may assign the second mortgage held by it to secure the repayment of the downpayment loan to such private lender.

Sec. 359A-17. Qualifications for downpayment loan. (a) No person shall be qualified for a downpayment loan, unless he:

- (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 twenty years of age;
- (3) Is a bona fide resident of the State of one year or more;
- (4) Has a bona fide intent to reside in the residential property to be purchased;
- (5) Is accepted by a private 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) Has the financial capacity to repay the downpayment loan.

(b) No person who owns in fee simple or in leasehold any other residential property within the State, or who has a loan made under this part shall be eligible to become a borrower under this part. A person shall be deemed to own a residential property if he, his spouse or both he and his spouse (unless separated and living apart under a decree of a court of competent jurisdiction) owns such residential property.

Sec. 359A-18. Restrictions on borrower. Every loan made under this part shall be subject to the following conditions:

- (a) The borrower shall expend no portion of his downpayment loan for purposes other than to make a downpayment for the purchase of a residential property.
- (b) 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 authority and the private lender.
- (c) The borrower shall pay when due all taxes, liens, judgments, or assessments which may be lawfully levied against the residential property and all costs and expenses of any foreclosure of the mortgage made to the State.
- (d) The borrower shall maintain fire and casualty insurance in such amounts equal to the replacement value of all improvements and insurable portions of the residential property with such insurance company authorized to do business in the State. All proceeds of such insurance shall be made payable to the private lender and the authority as their respective interests may appear at the time of any loss or dam-

age. Subject to the rules and regulations of the authority, in the event of any loss or damage to the improvements or property covered by such 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 authority.

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

All of the above conditions shall be deemed to be a part of any downpayment mortgage executed under this part, regardless of whether or not they are expressly incorporated in the mortgage document.

Sec. 359A-19. Default. If the borrower defaults in the payment of any installment of principal or interest of the downpayment loan, the authority shall take all necessary action to collect the delinquent amounts and may, on behalf of the State, take all actions generally allowed holders of mortgages, including the power to foreclose. Upon any foreclosure of the second mortgage, the authority may, on behalf of the State, 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 such other liens having priority over the second mortgage as may then exist. On such acquisition of the borrower's interest, the authority may, at its option, 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 lien, sell, lease, or rent the property or use or dispose of the same in any manner that the authority is authorized to do so by law.

Sec. 359A-20. Downpayment fund. A downpayment fund is hereby created. When requested by the authority, the director of finance shall issue from time to time general obligation bonds not exceeding \$20,000,000, the proceeds of which shall be deposited into the downpayment fund and which shall be used for the purpose of making downpayment loans as provided herein.

All moneys received or collected by the authority to repay downpayment loans shall be deposited into the downpayment fund. The proceeds of the fund shall first be used to pay the principal and interest on the bonds issued for the purposes of this program, then for the necessary expenses in administering this program, and finally for making downpayment loans.

Sec. 359A-21. Participation in loans. The authority may provide funds for a share, not to exceed fifty percent, of the principal amount of a loan made to a qualified borrower by a private lender who is unable otherwise to lend the borrower sufficient funds at reasonable rates in the purchase of a residential property; provided, that at no time shall the State's total outstanding share exceed the sum of \$10,000,000.

Sec. 359A-22. Loans qualifying for participation loans. Except as otherwise provided, the requirements for a loan to qualify under this part shall be the same as those prescribed for loans qualifying for mortgage loan guarantee under sec. 359A-12. The State's share of any loan shall bear interest at the rate

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of not less than one percent more, rounded to the nearest one-eighth of one percent, than that required to be paid by the State on the general obligation bonds issued for the participation loan fund. The private lender's share of the loan shall bear interest at a rate not more than one and one-half percent higher than the interest on the State's share. The first mortgage document shall be held by the private lender. Division of interest in the collateral shall be in proportion to the participation of the State and the private lender.

Sec. 359A-23. Qualification of borrowers. (a) The authority shall not participate in any loan, unless the borrower to whom the private lender is willing to make the loan:

- (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 twenty years of age;
- (3) Is a bona fide resident of the State of one year or more;
- (4) Has a bona fide intent to reside in the residential property to be purchased;
- (5) Has the ability to repay the loan; and
- (6) Has a gross income of not more than \$20,000 per annum (the gross income of the borrower's spouse, if the borrower is married, shall be counted, except where the borrower is living separate and apart from his spouse under a decree of a court of competent jurisdiction) or is 55 years of age or more, or is a person displaced by government action other than eviction due to his fault.

(b) No person who owns in fee simple or in leasehold any other residential property within the State, or who has a loan made under this program shall be eligible to become a qualified borrower. A person shall be deemed to own a residential property if he, his spouse or both he and his spouse (unless separated and living apart under a decree of a court of competent jurisdiction) owns such residential property.

Sec. 359A-24. Application and review of application. (a) All applications for participation loans shall be made on such form prescribed by the authority. It shall be signed both by the borrower and the lender. The application shall contain a description of the residential property to be purchased, the purchase price, and the amount of the downpayment to be made by the borrower. It shall contain a statement of the private lender indicating the portion of the total loan it is able to meet. The application shall be processed by the private lender and forwarded to the authority.

(b) The authority shall review all applications and determine the State's share of the loan, provided that it shall approve for State participation only those loans to be made to persons who qualify under the provisions of sec. 359A-23 and the rules and regulations of the authority promulgated pursuant to chapter 91. The authority may insure the private lender's share of the loan as provided in section 359A-12 of this Act.

(c) When an application for a mortgage insurance loan has been approved by the authority, the State's share shall be paid to the private lender for disbursement to the borrower. The private lender shall collect all payments from the borrower and otherwise service the loan.

Sec. 359A-25. Service fee. Out of interest collected for the State, the private lender may deduct a service fee of one-half of one percent of the unpaid principal balance of the State's portion of the loan as fee for servicing the State's portion of the loan; provided, that this fee shall not be added to any amount which the borrower is obligated to pay.

Sec. 359A-26. Private lender take-over. The private lender may, with the approval of the authority, take over a larger percentage or the full principal balance of the loan at any time that it has determined, to the satisfaction of the authority, that the borrower is able to pay any increased interest charges resulting.

Sec. 359A-27. Default. When the private lender or the authority deems that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall notify the other and the proceeding shall be promptly initiated by the private lender, unless the authority elects to request an assignment of the loan. Within thirty days of the notification by either the private lender or the authority to the other, the authority may request an assignment of the loan on payment in full of the private lender's share of the principal balance due. Foreclosure proceedings shall be held in abeyance in the interim.

Sec. 359A-28. Restrictions on borrower. Every loan made under this part shall be subject to the following conditions:

- (a) The borrower shall expend no portion of the loan for purposes other than to purchase a residential property.
- (b) The residential property purchased with the loan and mortgaged to the private lender to secure the repayment of the loan shall not be sold or assigned without the prior written approval of the authority and the private lender.
- (c) The borrower shall pay when due all taxes, liens, judgments, or assessments which may be lawfully levied against the residential property and all costs and expenses of any foreclosure of the mortgage brought by the private lender.
- (d) The borrower shall maintain fire and casualty insurance in such amounts equal to the replacement value[of]all improvements and insurable portions of the residential property with such insurance company authorized to do business in the State. All proceeds of such insurance shall be made payable to the authority and the private lender as their respective interests may appear at the time of any loss or damage. Subject to the rules and regulations of the authority, in the event of any loss or damage to the improvement or property covered by such insurance, the proceeds received by the authority and the private

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lender shall be applied toward the reconstruction of the improvement or property destroyed or damaged.

- (e) The borrower shall maintain the improvements on the residential property in good repair.

All of the above conditions shall be deemed to be a part of any mortgage executed by the borrower to the private lender, regardless of whether or not they are expressly incorporated in the mortgage document. The private lender may impose other conditions in its mortgage, provided that the form of the mortgage has the prior approval of the authority.

Sec. 359A-29. Participation loan fund. A participation loan fund is hereby created. When requested by the authority, the director of finance shall issue general obligation bonds not exceeding \$10,000,000, the proceeds of which shall be deposited into this fund for the purposes of this part.

All income received by the State on the investment of State funds under this program shall be dedicated to this fund. Such income and all moneys received or collected by the authority under this program shall be deposited into the fund. The proceeds in the fund shall first be used to pay the principal and interest of the bonds issued and thereafter for the purposes of this program.”

SECTION 2. Chapter 356, Hawaii Revised Statutes, as amended, is further amended as follows:

(1) By adding a new section to be appropriately designated and to read as follows:

“**Sec. 356-** . Notwithstanding the interest rate limitation contained in section 356-29, Hawaii Revised Statutes, and during the twelve months following the date of approval of this Act, bonds issued by the Hawaii housing authority under chapter 356 of said statutes, may bear interest, payable annually or semi-annually, at a rate not exceeding eight percent a year.”

(2) By amending the last sentence of the first paragraph of section 356-5 to read as follows:

“The special assistant for housing appointed pursuant to chapter 359-A shall be an additional ex officio voting member of the housing authority and ex officio chairman thereof.”

(3) By amending the last paragraph of section 356-5 to delete the first sentence thereof and to add a new sentence to the end thereof to read as follows:

“The staff provided under chapter 359-A shall be in addition to any staff provided for in this chapter.”

SECTION 3. Chapter 359, Hawaii Revised Statutes, as amended, is further amended by adding a new section to be appropriately designated and to read as follows:

“**Sec. 359-** . Notwithstanding the interest rate limitation contained in section 359-79, Hawaii Revised Statutes, and during the twelve months following the date of approval of this Act, bonds issued by the Hawaii housing au-

thority under chapter 359 of said statutes, may bear interest, payable annually or semi-annually, at a rate not exceeding eight percent a year.”

SECTION 4. Section 26-4(10), Hawaii Revised Statutes, is amended to read as follows:

“(10) Department of social services and housing (Section 26-14).”

SECTION 5. The Hawaii Revised Statutes, as amended, are hereby further amended by amending the words “department of social services” to read “department of social services and housing” wherever the same appear therein.

SECTION 6. Appropriation. The sum of \$300,000, or so much thereof as may be necessary, is appropriated for the purposes of this Act.

SECTION 7. Severability. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are severable.

SECTION 8. Effective Date. This Act shall take effect upon its approval.
(Approved June 19, 1970.)