

ACT 111

S. B. NO. 833

A Bill for an Act Relating to Housing.

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

SECTION 1. Subsection (b) of Section 359G-4, Hawaii Revised Statutes, is amended to read:

“(b) Adopt and promulgate, in accordance with chapter 91:

- (1) All rules and regulations necessary to carry out the purpose of this chapter, including rules and regulations relating to determining preference among applicants for housing and determining qualification for and recompense or profit distribution to any partner or partners as hereinafter defined.
- (2) 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, 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 co-ordinated development; provided, 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 forty-five 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.

SECTION 2. Section 359G-4(e), Hawaii Revised Statutes, is amended to read:

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

- (1) Land acquisition;
- (2) The development and improvement of land;
- (3) The construction of dwelling units;
- (4) The purchase, lease or rental of land and dwelling units by qualified residents under this chapter;
- (5) Payment of any services contracted for under this chapter, including profit or recompense paid to partners, and including community information and advocacy services deemed necessary by the authority to provide for citizen participation in the development of housing projects, the implementation of this chapter, and the staffing of any citizen advisory committee the authority may establish;”

SECTION 3. Section 359G-5, Hawaii Revised Statutes, is amended to read:

“**Sec. 359G-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 chapter. The authority shall exercise the power of eminent domain in the same manner as provided in chapter 101. 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 agricultural land and the prior approval of the board of land and natural resources in the case of conservation 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 section 359G-9.”

SECTION 4. Section 359G-9, Hawaii Revised Statutes, is amended to read:

“**Sec. 359G-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 not counted as cost under section 359G-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 those provisions without the necessity for the State to repurchase the unit.

(d) Notwithstanding the provisions of subsections (a) and (b) above, the authority may at any time waive the restrictions of subsections (a) (2), (a) (3),

and (b), if the State makes no subsidy in the form of unrecovered land costs or unrecovered development costs, except such tax relief granted under section 359G-15, and except such costs, if any, (1) allocable to the staff of the authority in the administration of the partnership, (2) for training of labor under section 359G-13, and (3) for the development of innovative techniques and research under section 359G-14.

(e) If the restrictions of subsections (a) (2), (a) (3), and (b) are waived by the Authority pursuant to subsection (d) above, then in such case, 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 subsection (e) (2);
- (2) Title to the dwelling unit and the land or the leasehold interest 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 at the time of transfer to the Authority; provided that, in the event the Department of Housing and Urban Development, through its Federal Housing Administration, shall at any time become the owner of said dwelling unit and the land or leasehold interest pursuant to a contract or mortgage insurance, this right to repurchase by the Authority shall be suspended and be of no force and effect during the period of such ownership, the said right to repurchase being automatically reinstated and fully effective and applicable from and after any period of such ownership; and provided further that title to a dwelling unit and the land or leasehold interest 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 pursuant to this subsection shall expressly contain the restriction on transfer and use of the dwelling unit as prescribed in this subsection."

SECTION 5. Chapter 359G, Hawaii Revised Statutes, is amended by adding thereto a new section to read:

"Sec. 359G-11.1 State financing of projects. The authority may provide interim construction loans to developers whose projects for the development and construction of dwelling units qualify for federally assisted project mortgage insurance, federally assisted home mortgage insurance, or other similar programs of federal assistance, for persons of low-and moderate-income housing.

Loans secured and made under this section shall bear interest computed at one percent more, rounded to the nearest one-eighth of one percent, than that paid by the State for general obligation bonds issued for the project.

The loans shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest in the land upon which the dwelling units are constructed. The authority may require such other security interests and instruments as it deems necessary to secure the indebtedness and such other conditions consistent with the production and marketing of dwelling units at the lowest possible prices. The authority may also set the conditions of the loan in a building and loan agreement between the borrower and the authority in order to secure the loan and the performance of the borrower to complete the project.”

SECTION 6. Section 359G-15, Hawaii Revised Statutes, is amended to read:

“**Sec. 359G-15 Exemption from general excise tax.** Notwithstanding any other law to the contrary, all rents and proceeds received from housing or housing projects, including all gross proceeds received by contractors for the construction of such housing or housing projects, developed pursuant to section 359G-6 and section 359G-11 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.”

SECTION 7. Subsection (c) of section 359G-4, Hawaii Revised Statutes, is amended to read as follows:

(c) Acquire, by eminent domain, exchange, or negotiation, land or property required for the purposes of this chapter. Land or property includes vacant land or land with site improvements whether partially or entirely finished in accordance with governmental subdivision standards, or with completed dwellings. Whenever land with a completed dwelling or dwellings thereon is acquired by exchange or negotiation, the exchange value or purchase price for each such dwelling, including land, shall not exceed its appraised value but in no event shall such value or price exceed the limits established from time to time under the new Section 235 Program, Home Ownership for Lower Income Families, as administered by the Federal Housing Administration, U.S. Department of Housing and Urban Development.”

SECTION 8. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 9. This Act shall take effect upon its approval.

(Approved May 25, 1971.)

* Edited accordingly.