

ACT 170

S. B. NO. 1919-72

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 356-39, Hawaii Revised Statutes, is redesignated and amended to read:

“Sec. 359G-10.1 Assistance to governmental agencies and persons. The authority may provide assistance and aid to a public agency or a person in developing and constructing new housing and rehabilitating old housing for the elderly of low income, other persons of low income and persons displaced by any governmental action, by making available long-term, low-interest mortgage loans or interim construction loans from the proceeds of tax-exempt general obligation bonds, the payment of the principal and interest of which shall be reimbursed to the general fund from revenue and to be sold on the open market. The authority may charge service fees and premiums upon the issuance of any mortgage or interim construction loan under this section. The interest paid upon such loans, and the service fees and premiums shall be paid into the dwelling unit revolving fund created by section 359G-10.

The authority may obtain from any federal agency any insurance or guarantee for the payment of interest or principal, or both, on any obligations issued pursuant to the provisions of this section.

The director of finance may issue general obligation bonds of the State pursuant to part I of chapter 39 in an amount not to exceed \$15,000,000 to effectuate the purposes of this section subject to prior approval of the governor.”

SECTION 2. Chapter 359G, Hawaii Revised Statutes, is amended in the following particulars:

1. By amending section 359G-5 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.

Except as hereinafter set forth in this paragraph, 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 in 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. The authority shall not, however, possess the power to develop, or develop, any public lands where the possession of such power or such development (1) would endanger the receipt of any federal grant or impair the eligibility of any public body for a federal grant or prevent the participation by the federal government in any governmental program or (2) would impair any covenant between the State or any county or any department or board thereof and the holders of bonds issued by the State or such county, department or board.”

2. By amending section 359G-7 to read:

“Sec. 359G-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 chapter. Pending the receipt of funds from the issuance and sale of general obligation bonds, the amount required for the purposes of this chapter shall be advanced from the general fund of the State. Upon the receipt of the bond funds, the general fund shall be reimbursed. The proceeds of the bonds may be used for any of the purposes set forth in subsection 359G-4(e) including permanent financing. Prior to the issuance and sale of the general obligation bonds interest on any interim money shall be computed at the greater of seven per cent or one per cent more, rounded to the nearest one eighth of one per cent, than that paid by the State on the general obligation bonds most recently issued by it. After the issuance and sale of the general obligation bonds, 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. Interest so computed shall be a cost of the project to be prorated over the units. In the event the rate of interest on an interim loan made pursuant to the third preceding sentence is higher than the rate ultimately determined in accordance with the second preceding sentence, the authority may refund the difference.”

3. By amending section 359G-9 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, and then only 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 subsections (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 subsection (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 of 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.

(f) Anything in subsections (a), (b), (c), (d), and (e) above to the contrary notwithstanding, whenever a mortgage on a dwelling unit has been guaranteed by an agency or instrumentality of the United States, the transfer of the unit by the purchaser thereof shall not be restricted to the authority after ten years have elapsed from the date the unit is purchased from the authority.”

4. By amending section 359G-10 to read:

“**Sec. 359G-10 Revolving fund.** There is created a dwelling unit revolving fund. The funds appropriated for the purpose of this chapter and all moneys received or collected by the authority under the provisions of this chapter shall be deposited in the revolving fund. The proceeds in the fund shall first be used to reimburse the general fund to pay the principal and interest on general obligations bonds issued for the purposes of this chapter, then for the necessary expenses in administering the chapter, and finally for carrying out the purposes of this chapter.”

5. By adding a new section to be numbered and to read:

“**Sec. 359G-12.1 Mortgage guaranty agreements.** (a) In order to induce appropriate officials of any agency or instrumentality of the United States to commit to insure and insure mortgages under the provisions of the National Housing Act, as amended, the authority may enter into guaranty agreements with such officials whenever (1) the purchaser-mortgagor in question is ineligible for mortgage insurance purposes under the National Housing Act because of credit standing, debt obligations or income characteristics, (2) the purchaser-mortgagor in question is a ‘displaced person’ as defined in chapter 111 and the guaranty agreement will enable him to obtain suitable replacement housing in accordance with that chapter and (3) the authority finds that such purchaser-mortgagor would be a satisfactory credit risk with ability to repay the mortgage loan if he were to receive budget, debt, management and relating counseling. Such guaranty agreements may obligate the authority to (1) provide or cause to be provided such counseling and (2) indemnify an agency or instrumentality of the United States for a period not to exceed five years for any loss sustained by such agency or instrumentality by reason of insurance of a mortgage.

(b) The total of (1) guaranties made pursuant to this section and (2) guaranties made pursuant to section 359G-12 shall not exceed \$10,000,000.”

6. By amending section 359G-20 to read:

“**Sec. 359G-20 Issuance of additional bonds.** 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 dwelling unit revolving fund created by section 359G-10, 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 also be deposited into the dwelling unit revolving fund created by section 359G-10.”

7. By amending section 359G-29 to read:

“Sec. 359G-29 Further issuance of additional bonds. 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 the dwelling unit revolving fund created by section 359G-10 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 the dwelling unit revolving fund created by section 359G-10. Income and all moneys received or collected by the authority under this program shall be deposited into said fund.

8. By adding a new section to be numbered and to read:

“Sec. 359G-30 Arbitrage provision. Any other provision of law to the contrary notwithstanding, neither the authority nor the director of finance shall make loans or purchase mortgages from the proceeds of general obligation bonds of the State or from a revolving fund established or maintained from the proceeds of such bonds, at a rate of interest which would cause any general obligation bond of the State to be an ‘arbitrage bond,’ as defined in subsection (d) (2) of section 103 of the Internal Revenue Code of 1954 of the United States of America as now in effect, subject to treatment under subsection (d) (1) of said section 103 as an obligation not described in subsection (a) (1) of said section 103.”

SECTION 10. [sic] All loans, transactions and agreements of any nature whatsoever heretofore entered into under the authority or purported authority of section 356-39, Hawaii Revised Statutes, are hereby validated, ratified, confirmed and approved.

SECTION 11. 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 12. This Act shall take effect upon its approval.

(Approved June 1, 1972.)

*Edited accordingly.