

ACT 224

H.B. NO. 3230-76

A Bill for an Act Relating to Housing for the Elderly.

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

SECTION 1. Chapter 359, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

“PART III. HOUSING FOR ELDERLY PERSONS.

“Sec. 359- Findings and purpose. The legislature of the State of Hawaii finds: (a) that there exists in the State an acute shortage of decent, safe and sanitary dwelling accommodations for elderly persons at rents which they can afford to pay; that, as a result, elderly persons are forced to reside in unsafe, unsanitary, overcrowded and congested dwelling accommodations; that such conditions cause an increase in and spread of disease, both physical and mental, and constitute a menace to health, safety and welfare of elderly persons of the State; that such conditions necessitate excessive and disproportionate expenditures of public funds for public health and safety, fire and accident prevention and other services and facilities; (b) that the shortage of safe and sanitary dwelling accommodations for elderly persons of low income cannot be relieved through the operation of private enterprise alone, and that the construction of housing accommodations for elderly persons by the State would, therefore, not be in competition with private enterprise; and (c) that the acquisition, construction, and reconstruction of housing accommodations to provide safe and sanitary dwelling facilities for elderly persons are public uses and purposes for which public moneys may be spent and private or public property acquired; after

all, the very quality of life is directly affected by the type of housing and living arrangements available to occupants.

There are several prominent factors which appear to affect the housing problems of the elderly. Some of these are unique to Hawaii with its varied cultural heritage, and others are common throughout the nation. Generally, the housing problems of the aged are compounded by several factors including the following: (1) very low income, often at poverty level; (2) ethnic background, which although not a problem in itself in this State, does mean resultant language and cultural barriers. (Since so many immigrants were brought in to work on the plantations, foreign-speaking elderly are not uncommon here. On the contrary, they constitute more than half of the current aged population in need); (3) the lack of family, due to death or relocation; (4) physical handicaps and other medical problems which make it difficult to maintain housing; and (5) isolation and loneliness, especially when living in large, impersonal and consequently unfriendly apartment buildings.

Various estimates exist in relation to the magnitude of the elderly housing problem. A recent survey indicated that an estimated fifteen per cent or 6,300 of the elderly population are in need of better, less expensive housing. For these thousands of elderly, access to suitable housing arrangements remains a critical problem. Presently, there are about 1,400 elderly persons or families on the Hawaii housing authority's waiting lists. Families on these said waiting lists have been known to wait as long as four or five years before finally gaining occupancy. Obviously, the authority's programs, although widely circulated among the elderly, have not reached the universe of the aged population, per se.

Presently, the authority maintains no special allocation for any particular segment of individuals within the group designated as low income. Once eligibility for a program has been established, only a list of priorities determines participation in the program. Consequently, there is no amount of funding within the programs set aside especially for the elderly. This should not be so, for taken in the aggregate, the elderly demonstrate that they have different needs and preferences than that of the client group served by the authority as a whole.

It is therefore the purpose of the Act to authorize the Hawaii housing authority to do any and all things necessary or desirable to acquire, construct, reconstruct, operate and maintain housing projects for the elderly for the welfare of the State and to remedy the conditions mentioned above. The primary thrust of this Act is to provide funds through a newly created elderly housing fund as well as other available funds of the authority, and through the financial assistance from the federal government. Further, this Act will provide an incentive for the counties and non-profit organizations to assume a far more active role in elderly housing development than they have up to now.

Sec. 359- Definitions. The following terms, wherever used or referred to in this part shall have the following respective meanings, unless a different meaning clearly appears from the context:

The terms "housing authority", "authority", "State", "political subdivisions", "government", and "federal government", shall have the same respective meanings as set forth in chapter 356.

The terms "develop" or "development" and "administer" or "administra-

tion” shall have the same respective meanings as set forth for such terms in part I.

“Housing project” or “project” shall include all real and personal property, buildings and improvements, offices, lands for gardening or farming, and community facilities acquired or constructed or to be acquired or constructed under this part pursuant to a single plan or undertaking to provide safe and sanitary dwelling accommodations for elderly persons. The terms may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structure, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith under this part; and the terms shall include all other real and personal property and all tangible or intangible assets held or used in connection with a housing project developed or administered under this part.

“Elderly housing study” means a study of a designated geographic area conducted by the authority as a prerequisite to the development and construction of any elderly housing project in that area and which shall be made public. The study shall include at a minimum, qualitative and quantitative information and data relating to the shortage of dwelling units exclusively for elderly persons, elderly persons in need and qualified for elderly housing in the geographic area, those public and private facilities which provide services desirable to elderly persons, a list of lands available for possible development of a housing project for the elderly, the accessibility of the lands for possible development of a housing project and the public and private facilities desirable to elderly persons, and other pertinent information the authority may deem necessary.

“Elderly person” means a person who is a bonafide resident of the State and who either:

- (1) Has attained the age of 62; or
- (2) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long, continued, and indefinite duration; or
- (3) Has a physical impairment expected to be of long, continued and indefinite duration which substantially impedes his ability to live independently and which could be improved by more suitable housing and conditions.

“Bonds” means any bonds, interim certificates, notes, debentures or other evidences of indebtedness of the authority issued pursuant to this part.

“Eligible developer” means a person, partnership, cooperative, firm, profit or non-profit corporation, or association determined by the authority:

- (1) To have the experience and financial responsibility to construct housing of the type described in this section and of the magnitude encompassed by the given project;
- (2) To have submitted plans for a project which meets the objectives of this part, maintains the aesthetic values of the area, and meets the requirements of applicable environmental statutes, and rules;
- (3) To meet all other requirements the authority deems just and reasonable, and all requirements provided in this section.

“Public agency” means any office, department, board, commission,

bureau, division, public corporation, agency, or instrumentality of the federal government or State or its political subdivision.

Sec. 359- Powers and duties, generally. (a) The authority shall develop elderly housing projects pursuant to the findings and determinations of the elderly housing study, which shall be conducted by the authority provided that the study first finds and determines that there exists a critical elderly housing shortage in the designated geographic area covered by the study. Such elderly housing projects shall be deemed to have a priority in the State's overall housing development plans.

(b) In the development and construction of elderly housing projects, the authority may enter into cooperative agreements, provide financial assistance and other assistance as prescribed by law with public agencies or eligible developers.

(c) Prior to the development of any housing projects for elderly persons, the site, plans and specification, estimated development cost, including administrative and other costs, operation or management plans for such projects which shall include income receipts and other operating costs shall be submitted by the developer and shall be subject to the prior written approval of the authority.

(d) The authority shall have the right of inspection of any elderly housing project at any time.

(e) The authority is empowered to develop, on behalf of the State or in partnership with others, housing projects which shall be exempt from all statutes, ordinances, charter provisions, and rules and regulations of any governmental agency relating to zoning and construction standards for multi-unit housing projects, development and improvement of land, the construction and rental of dwelling units for elderly persons provided that section 359G-4(g) (1), (g) (2), and (g) (3) shall apply.

Sec. 359- Extension of powers. In the selection, ownership, development, and administration of housing projects under this part, the authority shall have all the rights, powers, privileges, and immunities that the authority has under chapter 356 and any law in amendment thereof or in addition thereto (including, without limitation to the generality of the foregoing, the power of eminent domain, and the power to make and execute contracts, to issue bonds and other obligations, and give security therefor, and to do any and all things necessary, desirable, or convenient to develop and administer housing projects) in the same manner and to the same extent as though all the provisions of law contained in chapter 356, and in any laws in amendment thereof or in addition thereto, were expressly applicable to housing projects developed or administered under this part and to the authority and others in regard thereto; provided, that the authority may make payments, in such amounts as it finds necessary or desirable, for any services, facilities, work, privileges, or improvement furnished for or in connection with the housing projects.

Sec. 359- 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 part. The exchange of

land shall be in accordance with section 171-50; provided that the public land to be exchanged need not be of like use to that of the private land; and provided further, that if the use of the private land prior to the exchange is intensive agricultural, the authority shall determine the agricultural productivity of the private land and, whenever and wherever possible, exchange so much state land as shall be sufficient to approximate or equal the productivity of the private land 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 public lands it shall file with the department of land and natural resources a petition setting forth such purpose.

Sec. 359- State assistance to governmental agencies and persons. (a) The authority may provide assistance and aid to public agencies, eligible developers and non-profit corporations in developing and constructing new housing projects and rehabilitating old housing for elderly persons of low income by making available interim construction loans from the proceeds of tax exempt general obligation bonds provided, that the development and construction of new housing projects and rehabilitation of old housing for elderly persons of low income qualify for the housing assistance from the federal government. Federal housing assistance means financial or other aid granted to the State to help defray construction and rental costs associated with such housing project or projects.

(b) State financial assistance granted to public agencies and eligible developers shall be in an amount not in excess of the development cost of the project, including administrative or other cost or expense to be incurred by the authority. In anticipation of final payment of such financial assistance, the authority in accordance with such assistance, may make temporary advances to the public agencies and eligible developers for preliminary planning expense or other development cost of such project or projects.

(c) The authority may charge service fees and premiums upon the issuance of any interim construction loan under this section. The interest paid on such loans, and service fees and premiums shall be paid into the elderly housing fund created by section 359-

(d) The rates of interest on loans secured and made under this part shall be established by the authority, with the approval of the director of finance, after each sale of general obligation bonds of the State, the proceeds of which are to be used for the purposes of this part. In the event that no such sale intervenes in a twelve-month period after the last rate fixing, the authority may review the then existing rates on loans made under this part and retain the existing rate or, with the approval of the director of finance, establish different rates. The director of finance shall approve such rates so as to produce up to but not in excess of the maximum yield to the State permitted under such section 103(d) (2) of the United States Internal Revenue Code of 1954, on the assumption that the general obligation bonds, the proceeds of which are to be used for the purposes of this part, would otherwise be "arbitrage bonds" under that section were such maximum

yield to be exceeded. The establishment of the rates of interest shall be exempt from chapter 91.

(e) Loans made under this part shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest only 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 rental 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.

(f) The authority may require performance bonds be posted to the benefit of the State with surety satisfactory to it guaranteeing completion of housing projects and performance by qualified developers or the State may act as a self-insurer requiring such security, if any, from qualified developers as the authority shall deem necessary.

(g) 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 provision of this section.

Sec. 359- Cooperative agreements with political subdivisions and other governmental agencies. (a) The authority shall have the power to provide assistance to political subdivisions and other governmental agencies in the planning, construction, and operation of housing projects and to enter into such agreements and arrangements as it deems advisable to obtain such aid and cooperation. The authority may receive assistance from political subdivisions and other governmental agencies in the planning, construction, and operation of housing projects and to enter into such agreements and arrangements as it deems advisable to obtain such aid and cooperation.

(b) When a political subdivision deems it necessary that the authority develop and administer an elderly housing project, the legislative body of the political subdivision shall by resolution request the authority to develop a housing project or projects within the political subdivision and shall approve the site or sites thereof. During the time the authority maintains and administers the housing project pursuant to request of a political subdivision:

- (1) The political subdivision shall not levy or impose any special or improvement district assessments upon the housing project or upon the authority;
- (2) That the political subdivision shall furnish, or cause to be furnished, to the authority, without cost or charge to the authority or to the tenants of the housing project, public services and facilities which are, upon the enactment of this part, being furnished without cost or charge to any other dwellings or any other inhabitants of the political subdivision, including but not limited to: fire, police, and health protection and services; nursing, medical, or hospital care for the sick, aged, poor, or indigent; maintenance and repair of highways, streets, roads, alleys, sidewalks, and sewer and water systems within or adjacent to the project; garbage and trash collection and disposal; storm drainage; control

of and protection against flood or flood waters; street lighting on streets or roads within the project and on the boundaries thereof; and adequate sewer services for the projects;

- (3) That the political subdivision shall, without cost or charge to the authority, vacate such streets, roads and alleys within the area of the housing project as the authority may find necessary in the development or administration thereof and shall convey without charge to the authority such interest that the political subdivision may have in the vacated areas;
- (4) The political subdivision insofar as it may lawfully do so, shall make changes in the zoning of the site of the housing project as are reasonable and necessary for the development and protection thereof;
- (5) The political subdivision shall, without cost or charge to the authority or to the tenants of the housing project, provide, improve, pave, construct, and maintain all interior streets, roads, alleys, sidewalks, and storm and sanitary sewer mains and laterals within the area of the project (and shall accept necessary dedications of land therefor), and shall, in like manner, provide, improve, pave, construct, and maintain all streets, roads, and alleys bounding the project or necessary to provide adequate access thereto, and also all water mains and storm and sanitary sewer mains leading to the project or serving the bounding streets thereof;
- (6) The political subdivision shall, when requested by the authority, without cost or charge to the authority, remove from the project any sick or disabled elderly person, who is a tenant therein, and shall thereupon furnish the elderly person, without cost or charge to the authority, suitable medical, nursing, and hospital treatment and care;
- (7) The political subdivision shall observe and perform such other terms and conditions as the authority may deem necessary or desirable in connection with the development or administration of the project.

Sec. 359- Aid from federal government. The authority may borrow money or accept financial or other assistance from the federal government to assist in its developing and administering housing projects. The authority may do any and all things necessary or desirable to secure such assistance (including obligating itself in any contract with the federal government for loans or contributions to convey to the federal government the project to which the contract relates upon the occurrence of a substantial default thereunder), in the same manner and to the same extent as it may do to secure such aid in connection with slum clearance and housing under chapter 356.

Sec. 359- Approval of applications for federal assistance. (a) Any application for federal assistance and involving financial assistance from the state for a housing project for the elderly by a public agency or qualified developer shall be first submitted to and approved by the authority. Upon the approval of such application, such application shall be sent by the authority to the appropriate agency of the federal government for federal approval.

(b) If the authority disapproves the application, it shall notify the public

agency or eligible developer within fifteen days, stating the reasons for disapproval.

Sec. 359- Government aid; political subdivisions. Any political subdivision may appropriate money for the purposes of meeting any local participation in housing projects' costs or expenses or of providing funds, property, services, or facilities for the Hawaii housing authority in developing or administering housing projects.

Sec. 359- Government aid; extension of powers. The State, its political subdivisions and agencies, shall have the same rights and powers to cooperate with and aid the Hawaii housing authority with respect to the development and administration of housing projects that the State, its political subdivisions and agencies respectively have under and pursuant to chapter 358 for the purposes of aiding and cooperating in the planning, construction, and operation of slum clearance and housing under chapter 356.

Sec. 359- Tenant selection; dwelling accommodations; rentals. In the administration of housing projects the Hawaii housing authority shall at all times observe the following duties in regard to tenant selections, dwelling accommodations, and rentals:

- (1) Except as hereinafter provided, it shall accept only elderly persons as tenants in the housing projects.
- (2) It may accept as tenants in a single dwelling accommodation in any such housing project a husband and wife, or two or more members of the same family; provided, each such person is an elderly person. It may also accept as a tenant in any such dwelling accommodation or in any such project, in case of the illness or other disability of an elderly person who is a tenant in the dwelling accommodation or in the project, such person as shall be designated by the elderly person as his or her companion and who is approved by the authority, although the person is not an elderly person; provided, any such person shall cease to be a tenant therein upon the recovery of, or removal from, the project of the elderly person.
- (3) It may rent or lease to an elderly person a dwelling accommodation consisting of such number of rooms as it deems necessary or advisable to provide safe and sanitary accommodations to the proposed occupant or occupants thereof without overcrowding.
- (4) Notwithstanding that the elderly person has no written rental agreement or that it has expired, so long as the elderly person continues to tender the usual rent to the authority or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the elderly person, nor shall the authority otherwise cause the elderly person to quit the dwelling unit involuntarily, nor demand an increase in rent from the elderly person; nor decrease the services to which the elderly person has been entitled during hospitalization of the elderly person due to illness or other disability.

Sec. 359- Applications for elderly housing; restrictions. No applicant shall be entitled to elderly housing under this chapter who has sufficient income or other resources to provide a subsistence compatible to decency and health. In determining the needs of an applicant for elderly housing, the authority shall consider current available resources; provided that all assets transferred or assigned by the applicant to another person within the three-year period prior to the submittal of an application shall be included; and provided further that the valuation of the assets, including real property, shall be based on their fair market value as of the date of transfer.

Sec. 359- Housing projects for the elderly. (a) Notwithstanding any statute or ordinance to the contrary, multi-story housing projects for the elderly shall be developed only on land which is either zoned or designated for apartment or business use on the general plans and/or detailed land use plan of the respective county wherein the land to be utilized for such projects are located and shall be exempt from all county zoning ordinances and zoning codes and restrictions therein, including, but not limited to, building height restrictions, floor area ratio formulas, open space, living space, loading space, recreational space, and land use intensity requirements. The director shall before approving such a project hold a public hearing pursuant to chapter 91.

(b) Housing projects for the elderly shall be developed to afford maximum accessibility to public and private facilities which provide service desirable to elderly persons and in accordance to the regional elderly housing study.

(c) Notwithstanding any other law to the contrary, all housing projects shall either provide the necessary space within the housing project or dedicate an area adjacent to or within the general vicinity for the development and construction of dining room, health, and community facilities. Community facilities shall include real and personal property, and buildings, equipment, lands, and grounds for recreational or social assemblies, for educational, health, or welfare purposes and necessary or convenient utilities, designed primarily for the benefit and use of the authority or the occupants of the dwelling accommodations.

Sec. 359- Elderly housing fund. There is created an elderly housing fund. Notwithstanding any law to the contrary, funds appropriated for the purposes of this part and all moneys received or collected by the authority under provisions of this part shall be deposited into the elderly housing fund created under this section. Funds may further be deposited into the elderly housing fund from the dwelling unit revolving fund as prescribed under section 359G-10 and from the housing revolving funds as prescribed under section 359-13 provided, that when funds are used for the purposes of this part from the housing revolving fund created by section 359-13, such moneys are deemed necessary by the authority to carry out the purposes of this part, including the making of investigations, findings, and determinations and the development and administration of housing projects.

The proceeds in the elderly housing fund shall first be used for the necessary expenses in administering this part and to carry out the purposes of this part.

Sec. 359- Disposition of housing. If the authority shall at any time determine that any housing project is no longer needed for dwelling accommodations

for elderly persons, the project shall become subject to and be administered by the authority under either chapter 356 or part I hereof, as the authority may deem advisable.

Sec. 359- Powers in addition to other powers. The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law, and nothing herein shall be construed as limiting any other powers of the Hawaii Housing authority.

Sec. 359- Rules. The director shall adopt rules pursuant to chapter 91 necessary for the purposes of this part.

Sec. 359- Funding for elderly housing project. The director of finance is authorized to issue general obligation bonds of the State. The proceeds from the sale of such bonds shall be deposited into the elderly housing fund created by section 359- and which shall be used for the purposes of this part. Pending the receipt of funds from the issuance and sale of such bonds, the amount required for the purposes of this part shall be advanced from the general fund of the State.”

SECTION 2. Part III of Chapter 359, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 356-20.1, Hawaii Revised Statutes, is repealed.

SECTION 4. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with his reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does 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 6. Statutory material to be repealed is bracketed. In printing this Act, the revisor of statutes need not include the brackets or the bracketed material.*

SECTION 7. This Act shall take effect upon its approval.

(Approved June 9, 1976.)

*Edited accordingly.