

ACT 270

H.B. NO. 314

A Bill for an Act Relating to the Hawaii Housing Authority.

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

SECTION 1. Chapter 516, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

“PART V. FEE TITLE ACQUISITION LOAN PROGRAM

§516-91 Definitions. The following words or terms as used in this part shall have the following meanings unless a different meaning clearly appears from the context:

“Eligible borrower” means any lessee, irrespective of race, creed, national origin, or sex, who:

- (1) Qualifies to purchase the leased fee interest in the lessee’s property under this chapter;
- (2) Has never before obtained a loan under this part; and
- (3) Meets other qualifications as established by rules adopted by the authority.

“Eligible loan” means a loan to an eligible borrower for the purchase of the leased fee interest in the eligible borrower’s house lot; provided that the property financed is and will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the authority.

“Fee title acquisition loan programs” or “acquisition loan programs” includes all or any part of the loan to lenders program, the purchase of existing loans program, the advance commitments program, and the eligible loan funding program authorized under this part.

“Mortgage lender” means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, which:

- (1) Is authorized to do business in the State;
- (2) Customarily provides services or otherwise aids in the financing of mortgages on single family or multi-family residential property; and
- (3) Is a financial institution whose accounts are federally insured or is an institution which is an approved mortgagee for the Federal Housing Administration or is an approved lender for the Veterans Administration or the Farmers Home Administration or is an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

“Revenue bond” means bonds, notes, or other evidence of indebtedness of the authority issued to finance any of the acquisition loan programs under this part.

“Trustee” means a national or state bank or trust company within or without the State which enters into a trust indenture.

“Trust indenture” means an agreement by and between the authority and the trustee, which sets forth the duties of the trustee with respect to the revenue bonds, the security therefor, and other provisions as deemed necessary or convenient by the authority to secure the revenue bonds.

§516-95 Rules; eligible loans. (a) The authority shall establish requirements for property financed by an eligible loan, and may consider, but not be limited to the location, age, condition, and other characteristics of the property.

(b) The authority shall establish restrictions on the terms, maturities, interest rates, collateral, and other requirements for eligible loans.

(c) All eligible loans made shall comply with applicable state and federal laws.

§516-101 Revenue bonds; authorization. (a) The authority, with the approval of the governor, may issue from time to time revenue bonds in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for the purpose of undertaking and maintaining any of the acquisition loan programs.

(b) All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) The revenue bonds shall be issued in the name of the authority, and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding forty years from the date of issuance.

§516-102 Revenue bonds; payment and security. (a) The revenue bonds shall be payable from and secured by the revenues derived from the benefits of the acquisition loan programs for which the revenue bonds are issued, including:

- (1) Any payment made for eligible loans or other agreements entered into for the acquisition loan programs;
- (2) Revenues derived from insurance proceeds;
- (3) Reserve accounts and earnings thereon; and
- (4) Revenues resulting from loans to mortgage lenders or from the payment on account of principal of and interest on loans purchased from mortgage lenders.

(b) The authority may pledge any revenue derived from the acquisition loan programs financed from the proceeds of the revenue bonds to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds additionally may be secured by the pledge or assignment of the loans and other agreements or any note or other undertaking, obligation, or property held by the authority or any mortgage lender or its agent to secure the loans.

(d) Any pledge made by the authority shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the authority from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon such filing, the revenues, moneys, or property so pledged and thereafter received by the authority immediately shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be prior to the lien of all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof.

§516-103 Revenue bonds; interest rate, price, and sale. (a) The revenue bonds shall bear interest at a rate or rates payable monthly, quarterly, or semiannually.

(b) The authority shall include the costs of undertaking and maintaining the acquisition loan programs for which the revenue bonds are issued in determining the principal amount of revenue bonds to be issued. In determining the cost of undertaking and maintaining the acquisition loan programs, the authority may

include the cost of purchasing or funding loans or other agreements entered into for the acquisition loan programs; the costs of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and marketing services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period not to exceed one year from the date of issuance.

(c) The revenue bonds may be sold at public or private sale, and for a price as may be determined by the authority to be in the best interest of the State.

(d) Section 39-61 shall not apply to revenue bonds issued for the purpose of undertaking and maintaining any of the acquisition loan programs as permitted by this part. The legislature consents to the taxation by the United States of America of interest on revenue bonds issued for the purpose of undertaking and maintaining any of the acquisition loan programs as permitted by this part.

§516-104 Revenue bonds; investment of proceeds, and redemption.

Subject to any agreement with the holders of its revenue bonds, the authority may:

- (1) Invest its moneys not required for immediate use, including proceeds from the sale of any revenue bonds, in accordance with section 356-31;
- (2) Purchase its revenue bonds out of any fund or money of the authority available therefor, and hold, cancel, or resell the revenue bonds.

§516-107 Trustee; designation, duties. (a) The authority shall designate a trustee for each issue of revenue bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the authority to receive and receipt for, hold, and administer the proceeds of the revenue bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee also shall be authorized by the authority to hold and administer the acquisition loan program revenue bond special fund established pursuant to section 516-111, and to receive and receipt for, hold, and administer the revenues derived by the authority from the benefits of the acquisition loan programs for which the revenue bonds are issued and to apply these revenues to the payment of the cost of administering, operating, and maintaining the acquisition loan programs, to pay the principal of and interest of these bonds, to the establishment of reserves, and to other purposes as may be authorized in the proceedings providing for the issuance of the revenue bonds.

(d) Notwithstanding section 39-65, the director of finance may appoint the trustee to serve as fiscal agent for:

- (1) The payment of the principal of and interest on the revenue bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with the law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the director of finance in sections 36-3 and 39-12, and the third sentence of section 39-65, to appoint the trustee or others as fiscal agents, paying agents, and

registrars for the revenue bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections.

§516-108 Trust indenture. (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as deemed necessary or convenient by the authority for the purposes of this part.

(b) A trust indenture may allow the authority to pledge and assign to the trustee loans and other agreements related to the acquisition loan programs, and the rights of the authority thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any revenue bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the revenue bonds required by section 36-64 may be facsimiles of their signatures.

(d) A trust indenture also shall contain provisions as to:

- (1) The investment of the proceeds of the revenue bonds, the investment of any reserve for the bonds, the investment of the revenues of the acquisition loan programs, and the use and application of the earnings from investments; and
- (2) The terms and conditions upon which the holders of the revenue bonds or any portion of them or any trustee thereof may institute proceedings for the foreclosure of any loan or other agreement or any note or other undertaking, obligation, or property securing the payment of the bonds and the use and application of the moneys derived from the foreclosure.

(e) A trust indenture also may contain provisions deemed necessary or desirable by the authority to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the acquisition loan programs or in the financing of the costs of administering, operating, or maintaining the acquisition loan programs.

§516-111 Revenue bonds; special funds. (a) A separate special fund shall be established for each acquisition loan program or part thereof financed from the proceeds of the revenue bonds secured under the same trust indenture. Each fund shall be designated "fee title acquisition loan program revenue bond special fund" and shall bear additional designation as the authority deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, including particularly section 516-44, all revenues, income, and receipts derived from the benefits of the acquisition loan program for which the revenue bonds are issued shall be paid into the fee title acquisition loan program revenue bond special fund established for that program and applied as provided in the proceedings authorizing the issuance of the revenue bonds.

§516-121 Acquisition loan programs; procedures and requirements. (a) The authority shall establish procedures for:

- (1) The submission of requests or the invitation of proposals for loans to mortgage lenders;

- (2) The purchase of existing loans by auction, invitation of tenders, or negotiation;
 - (3) The making of advance commitments to purchase and the purchasing of eligible loans to be made by mortgage lenders by auction, invitation of tenders, or negotiation; and
 - (4) Loan applications made through mortgage lenders to eligible borrowers.
- (b) The authority shall establish standards and requirements for:
- (1) The allocation of loans to mortgage lenders;
 - (2) The allocation of funds to purchase existing loans from mortgage lenders;
 - (3) The making of advance commitments and allocation of funds to purchase eligible loans from mortgage lenders; and
 - (4) The participation by mortgage lenders as originators and processors of eligible loans on behalf of the authority.
- (c) The standards and requirements for the allocation of funds to mortgage lenders adopted by the authority shall be designed to include the maximum number of qualified mortgage lenders as participants in the acquisition loan programs.
- (d) The authority may adopt rules under chapter 91 necessary or convenient for the operation of the acquisition loan programs under this part.

§516-122 Acquisition loan programs; general powers. (a) The authority may make, enter into, and enforce all contracts or agreements which are necessary, convenient, or desirable for the purposes of the performance of its duties in executing the acquisition loan programs.

(b) The authority may require representations and warranties as it determines necessary to secure its loans.

§516-123 Acquisition loan programs; self supporting. The interest rate, fees, charges, premiums, and other terms of the loans made under the acquisition loan programs shall be at least sufficient to pay the cost of administering and maintaining the portion of the specific acquisition loan programs for which the revenue bonds have been issued, and to assure payment of the principal of and interest on the revenue bonds as they become due.

§516-124 Acquisition loan programs; fees. The authority may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, for its acquisition loan programs.

The fees, premiums, and charges shall be deposited into the fee title acquisition loan program revenue bond special fund established for the particular acquisition loan program or part thereof from which the fees, premiums, and charges are derived as determined by the authority.

§516-125 Acquisition loan programs; evidence of eligible loan. (a) Each mortgage lender who participates in any acquisition loan program shall submit evidence, as deemed satisfactory by the authority, that eligible loans have been made from the proceeds of the revenue bonds.

(b) The authority may inspect the books and records of the mortgage lenders as may be necessary for this section.

§516-131 Loans to lenders program. (a) The authority may make loans to mortgage lenders under terms and conditions requiring that the loan proceeds be used within a time period prescribed by the authority to make eligible loans in an aggregate principal amount substantially equal to the amount of the loan.

(b) The loan made to a mortgage lender shall be a general obligation of the respective mortgage lender.

(c) The loan as determined by the authority shall:

- (1) Bear a date or dates;
- (2) Mature at a time or times;
- (3) Be evidenced by a note, bond, or other certificate of indebtedness;
- (4) Be subject to prepayment; and
- (5) Contain other provisions consistent with this part.

(d) Subject to any agreement with the holders of its revenue bonds, the authority may consent to any modification to the rate of interest, time, and payment of any installment of principal or interest, security or any other term of any loan to a mortgage lender or any bond, note, contract, or agreement of any kind to which the authority is a party.

§516-132 Loan to lenders program; collateral security. (a) Loans made to mortgage lenders additionally may be secured by a pledge of a lien upon collateral security in an amount as the authority deems necessary to assure the payment of principal of and interest on the loans as they become due.

(b) The authority shall determine the nature and type of collateral security required.

(c) A statement designating the collateral security pledged, the mortgage lender pledging the collateral, and the authority's interest in the pledged collateral may be filed with the bureau of conveyances. Where a statement has been filed, no possession, further filing, or other action under any state law shall be required to perfect any security interest which may be deemed to have been created in favor of the authority. The mortgage lender shall be deemed the trustee of an express trust for the benefit of the authority in all matters relating to the pledged collateral.

(d) Subject to any agreement with the holders of its revenue bonds, the authority may collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders. The authority may acquire, take possession of, sell at public or private sale with or without bidding, or otherwise deal with the collateral to protect its interests.

§516-141 Purchase of existing loans program. (a) The authority may contract with a mortgage lender to purchase, in whole or in part, existing loans, whether or not eligible loans. The contract may contain provisions as determined by the authority to be necessary or appropriate to provide security for its revenue bonds, including but not limited to provisions requiring the:

- (1) Repurchase of the loans, in whole or in part, by mortgage lenders at the option of the authority;
- (2) Payments of premiums, fees, charges, or other amounts by mortgage lenders to provide a reserve or escrow fund for the purposes of protecting against loan defaults; and

(3) Guarantee by, or for recourse against, mortgage lenders, with respect to defaults on these loans of the authority.

(b) The authority shall require as a condition of each purchase of existing loans from a mortgage lender that the mortgage lender proceed to make and disburse eligible loans in an aggregate principal amount substantially equal to the amount of the proceeds from the purchase by the authority of loans therefrom.

§516-151 Advance commitments program. (a) The authority may contract with a mortgage lender for the advance commitment to purchase eligible loans.

(b) The contract may contain provisions as determined by the authority to be necessary or appropriate to provide security for its revenue bonds.

§516-161 Eligible loan funding program. (a) The authority may make or contract directly with mortgage lenders to fund eligible loans.

(b) The contract may contain provisions as determined by the authority to be necessary or appropriate to provide security for its revenue bonds.

§516-171 Loans; service and custody. The authority may contract for the service and custody of its loans. The contract may provide for the payment of fees or charges for the services rendered; provided that the fees or charges shall not exceed the usual, customary, and reasonable charges for the services rendered.

§516-172 Loans; sale, pledge, or assignment. (a) Subject to any agreement with the holders of its revenue bonds, the authority may sell its loans at public or private sale at a price and upon terms and conditions as it determines.

(b) Subject to any agreement with the holders of its revenue bonds, the authority may pledge or assign its loans, other agreements, notes, or property to secure the loans or agreements.

§516-173 Loans; insurance and guarantees. The authority may procure insurance or guarantees against any default of its loans, in amounts and from insurers or guarantors, as it deems necessary or desirable.

§516-174 Loans; default. The authority may:

- (1) Renegotiate, refinance, or foreclose any loan in default;
- (2) Waive any default or consent to the modification of the terms of any loan or security agreement;
- (3) Commence any action to protect or enforce any right conferred upon it by any law, mortgage, insurance policy, contract, or other agreement;
- (4) Bid for and purchase the property secured by the loan at any foreclosure or other sale, or acquire or take possession of the property secured by the loan; and
- (5) Operate, manage, lease, dispose of, or otherwise deal with the property secured by the loan.

§516-181 Interest acquired. (a) Upon acquisition of the leased fee interest in a residential houselot from the proceeds of an eligible loan, the property interest acquired shall be all of the right, title, and interest of the fee owner and all legal and equitable owners, if any, in and to the residential houselot acquired, subject to all covenants, conditions, easements, reservations, and restrictions of record running with the land or contained in the agreement of sale, deed, or other conveyance held by the fee owner and legal and equitable owners. The acquisition of a leased fee

interest in a residential house lot from the proceeds of an eligible loan shall terminate all the right, title, and interest of the fee owner and all legal and equitable owners, whether the interest be a remainder, vested or contingent, a reversion, or other beneficial interest in the property, present or prospective.

(b) If the leasehold on property acquired from the proceeds of an eligible loan is subject to any mortgage, lien, or encumbrance suffered or permitted by the eligible borrower, including, but not limited to, rights arising through divorce, marriage, or assignment, the purchase of the leased fee interest in such residential house lot in no manner shall affect or impair the mortgage, lien, or encumbrance or the security afforded thereby to the holder thereof, and the leasehold shall continue, notwithstanding the purchase of the leased fee interest in such residential house lot by the eligible borrower, for the purposes and to the extent necessary to avoid any impairment of leasehold security, unless the holder of the mortgage, lien, or encumbrance on such leasehold and the authority in writing shall consent to the transfer thereof to the fee. Upon the written consent by the holder thereof and the authority, each such mortgage, lien, or encumbrance to which the leasehold is subject and to which such consent refers shall be transferred to and shall bind the fee acquired by the eligible borrower, and thereafter shall continue in full force and effect as a mortgage, lien, or encumbrance of the fee acquired by the eligible borrower, in the same order and priority among such mortgages, liens, and encumbrances so transferred to the fee as the same applied to and bound the eligible borrower's immediate, previous leased fee interest.

§516-182 Restrictions on sale and use of residential lots acquired from proceeds of eligible loan. No interest in property acquired from the proceeds of an eligible loan made under this part, so long as any part of such eligible loan is outstanding, shall be transferred unless contemporaneously with such transfer all interest in onsite improvements situated on such property are transferred to the same transferee.

§516-186 Construction. The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. The fee title acquisition loan programs authorized under this part may be undertaken, and revenue bonds may be issued under this part, notwithstanding that any other law may provide for a loan program similar to that authorized under this part, and may be undertaken for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations, or other provisions contained in any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall be controlling."

SECTION 2. Issuance of revenue bond; amount authorized. Revenue bonds may be issued by the authority pursuant to part III of chapter 39, Hawaii Revised Statutes, and part V of chapter 516, Hawaii Revised Statutes, in an aggregate principal amount not to exceed \$50,000,000 at such times and in such amounts as the Hawaii Housing Authority deems advisable for the purpose of undertaking and maintaining any of the acquisition loan programs in part V of chapter 516, Hawaii Revised Statutes, relating to the funding or purchasing of eligible loans.

SECTION 3. Section 516-33.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§516-33.5]] Deposits by lessees. (a) The authority may require the submission of a deposit by any lessee applying to the authority for the purchase of a residential lot under this chapter. The amount of the deposit[, not to exceed \$500] shall be established by rule.

(b) [No deposit shall be required to be made more than one hundred eighty days prior to the date estimated by the authority for condemnation of the development tract.]

The deposit may be applied by the authority[, after the acquisition of all or part of the development tract or the institution of eminent domain proceedings,] to payment of appraisal, survey, [and] attorney fees, and any other cost the authority has incurred as a result of the designation, with the remainder of the deposit to be applied toward the purchase of the owner's fee interest. The authority shall incur no liability for such deposits under this section.”

SECTION 4. Section 516-44, Hawaii Revised Statutes, is amended to read as follows:

“§516-44 Fee simple residential revolving fund. A fee simple residential revolving fund is hereby created. The funds appropriated for the purposes of this chapter and all moneys received or collected by the Hawaii housing authority under this chapter shall be deposited in the revolving fund. The proceeds in the funds shall first be used to pay the principal and interest on bonds or other indebtedness issued by the authority, or by the State, and then for necessary expenses of the authority in administering this part. All interest earned on moneys deposited by lessees into this revolving fund shall accrue to the lessees.

Moneys in the fund shall be used to pay all costs of this chapter including administration.”

SECTION 5. **Severability.** If any provision of this Act, or any provision of the part to be added pursuant hereto to chapter 516, Hawaii Revised Statutes, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect any other provision of this Act or such part or the application thereof to other persons or circumstances which can be given effect without the invalid provision or application, and to this end the provisions of this Act and such part are severable.

SECTION 6. Statutory material to be repealed is bracketed. New material is underscored.

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

(Approved June 13, 1983.)