

A Bill for an Act Relating to the Housing Finance and Development Corporation.  
*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I.**

SECTION 1. Section 201E-221, Hawaii Revised Statutes, is amended to read as follows:

**“§201E-221 Real property; restrictions on transfer; waiver of restrictions.** (a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

- (1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum of:
  - (A) The original cost to the purchaser, as defined in rules adopted by the corporation;
  - (B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and
  - (C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one per cent a year.
- (2) The corporation may purchase the real property either:

- [(i)] (A) By conveyance free and clear of all mortgages and liens; or
- [(ii)] (B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in [clause (i),] subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in [clause (ii),] subparagraph (B), the corporation shall [assume the seller's obligation on] acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The corporation's interest created by [the provisions of] this subsection shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for [(1) any]:

- (i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller[, (2) any];
- (ii) Any mortgage insured or held by a federal housing agency[,]; and [(3) any]
- (iii) Any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing. The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by [the provisions stated in subsection (a)(1)(A)] paragraph (1)(A) to (C), and the total of the outstanding

principal balances of the mortgages and liens assumed by the corporation.

[(2)] (3) A purchaser may refinance real property developed and sold under this chapter provided that the purchaser shall not refinance the real property, within ten years from the date of purchase, for an amount in excess of the purchase price as determined by [the provisions of subsection (a)(1)(A)] paragraph (1)(A) to (C).

[(3)] (4) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:

(A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;

(B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount expended by the corporation not counted as cost under section 201E-220 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;

(C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of the agreement of sale, of the real property; and provided further that if any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the real property at a price which shall not exceed the sum as computed under [paragraph] paragraphs (1); and (2); and

(D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91 when applicable.

[(4)] (5) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in [subsection (a)(3)(B)] paragraph (4)(B) and any interest accrued pursuant to [subsection (a)(3)(C)] paragraph (4)(C) may be paid, in part or in full, at any time.

(b) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, and if the corporation does not exercise the option to purchase the real property as provided in subsection (a), then the corporation shall require the purchaser to sell the real property to a "qualified resident" as defined in section 201E-2, and upon the terms that preserve the intent of sections 201E-221, 201E-222, and 201E-223, and in accordance with rules adopted by the corporation.

[(b)] (c) The corporation may waive the restrictions prescribed in subsection (a) or (b) if:

(1) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation; or

- (2) The sale or transfer of the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the real property; provided that, in this case, the purchaser shall sell the unit or lot and sell or assign the property to a person who is a "qualified resident" as defined in section 201E-2; and provided further that the purchaser shall pay to the corporation its share of appreciation in the unit as determined in rules adopted pursuant to chapter 91 when applicable.

[(c)] (d) The corporation may release the restrictions prescribed in subsection (a) or (b) if the real property is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner.

[(d)] (e) The restrictions prescribed in sections 201E-221 to 201E-224 shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the real property pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering real property or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation in writing of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and (2) any intention of the mortgagee to foreclose the mortgage under chapter 667; provided that the mortgagee's failure to provide [such] written notice to the corporation shall not affect such holder's rights under the mortgage. The corporation shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).

[(e)] (f) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of real property for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection [(a)(3)(B),] (a)(4)(B), a description of the cost items [which] that constitute the subsidy or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation.

[(f)] (g) Subsections (a), (b), (c), (d), (e), and (f) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

[(g)] (h) The corporation is authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants."

SECTION 2. Section 201E-222, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) From time to time the corporation may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the corporation, at

its option, to purchase the unit as provided in section 201E-221(a)(1), (2), or [(3),] (4), as applicable.”

## PART II.

SECTION 3. Chapter 201E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§201E-     Issuance of bonds for the development of infrastructure.** The corporation, pursuant to and in accordance with part II, subpart A, is hereby authorized to issue bonds for the purpose of financing the development of infrastructure on land owned by the corporation.”

SECTION 4. Section 201E-50, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The corporation may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable:

- (1) Exclusively from the income and revenues of the housing project financed with the proceeds of the bonds, or with the proceeds together with a grant from the federal government in aid of the project;
- (2) Exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of the bonds; [or]
- (3) From its revenues generally[.]; or
- (4) With respect only to bonds issued pursuant to section 201E-     , exclusively from the income and revenues derived from the sale of land or from both land and improvements thereon, serviced by infrastructure financed from the proceeds of the bonds.”

SECTION 5. Revenue bonds are hereby authorized to be issued by the housing finance and development corporation pursuant to part III, chapter 39, Hawaii Revised Statutes, and subpart B of part II of chapter 201E, Hawaii Revised Statutes, in an aggregate principal amount not to exceed \$125,000,000, at such times and in such amounts as it deems advisable for the purpose of financing the development of infrastructure as provided under section 201E-     , Hawaii Revised Statutes.

SECTION 6. In the event bonds are issued pursuant to section 201E-     and this Act for the purposes of financing housing or housing projects consisting of the development of infrastructure on land owned by the housing finance and development corporation which includes land proposed for large lot subdivision as a five hundred acre parcel and designated as Lot 10077 in Land Court Application No. 1069, the housing finance and development corporation shall provide in the proceedings authorizing such bonds that at such time as all of such bonds shall have been paid or irrevocable provision for the payment thereof has been made, the corporation shall deposit or cause to be deposited an amount equal to the allocated share of any income or revenues derived from the sale of the aforesaid five hundred acre parcel or from both the aforesaid five hundred acre parcel and improvements thereon in excess of the amount required to pay or provide for the payment of bonds attributable to the aforesaid five hundred acre parcel into the state treasury for credit to the University of Hawaii-West Oahu special fund created and established by H.B. No. 1716,<sup>1</sup> in its final form, for use as are all other moneys in such special fund. All other

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income or revenue derived from the sale of the aforesaid land or from both the aforesaid land and improvements shall be applied as provided by law.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

### **Notes**

1. Act 294.
2. Edited pursuant to HRS §23G-16.5.