

ACT 37

H.B. NO. 1095

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 46-15.1, Hawaii Revised Statutes, is amended to read as follows:

“§46-15.1 Housing; county powers. (a) Any law to the contrary notwithstanding, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the Hawaii housing finance and development corporation pursuant to chapter [201G] 201H insofar as [~~such~~] those powers may be

reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing low and moderate income housing; provided that no county shall be empowered to cause the State to issue general obligation bonds to finance a project pursuant to this section; provided further that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the Hawaii housing finance and development corporation pursuant to section ~~[201G-116];~~ 201H-36; and provided further that the provisions of section ~~[201G-15]~~ 201H-16 shall not apply to this section unless federal guidelines specifically provide local governments with that authorization and the authorization does not conflict with any state laws. The powers shall include the power, subject to applicable limitations, to:

- (1) Develop and construct dwelling units, alone or in partnership with developers;
- (2) Acquire necessary land by lease, purchase, exchange, or eminent domain;
- (3) Provide assistance and aid to a public agency or other person in developing and constructing new housing and rehabilitating old housing for elders of low and moderate income, other persons of low and moderate income, and persons displaced by any governmental action, by making long-term mortgage or interim construction loans available;
- (4) Contract with any eligible bidders to provide for construction of urgently needed housing for persons of low and moderate income;
- (5) Guarantee the top twenty-five per cent of the principal balance of real property mortgage loans, plus interest thereon, made to qualified borrowers by qualified lenders;
- (6) Enter into mortgage guarantee agreements with appropriate officials of any agency or instrumentality of the United States ~~[in order]~~ to induce those officials to commit to insure or insure mortgages under the provisions of the National Housing Act, as amended;
- (7) Make a direct loan to any qualified buyer for the downpayment required by a private lender to be made by the borrower as a condition of obtaining a loan from the private lender in the purchase of residential property;
- (8) Provide funds for a share, not to exceed fifty per cent of the principal amount of a loan made to a qualified borrower by a private lender who is unable otherwise to lend the borrower sufficient funds at reasonable rates in the purchase of residential property; and
- (9) Sell or lease completed dwelling units.

For purposes of this section, a limitation is applicable to the extent that it may reasonably be construed to apply to a county.

(b) Any law to the contrary notwithstanding, any county may:

- (1) Authorize and issue bonds under chapter 47 and chapter 49 to provide moneys to carry out the purposes of this section or section 46-15.2, including the satisfaction of any guarantees made by the county pursuant to this section;
- (2) Appropriate moneys of the county to carry out the purposes of this section;
- (3) Obtain insurance and guarantees from the State or the United States, or subsidies from either;
- (4) Designate, after holding a public hearing on the matter and with the approval of the respective council, any lands owned by it for the purposes of this section;
- (5) Provide interim construction loans to partnerships of which it is a partner and to developers whose projects qualify for federally assisted

project mortgage insurance, or other similar programs of federal assistance for persons of low and moderate income; and

- (6) Adopt [sueh] rules pursuant to chapter 91 as are necessary to carry out the purposes of this section.

(c) The provisions of this section shall be construed liberally so as to [most fully] effectuate the purpose of this section in facilitating the development, construction, and provision of low- and moderate-income housing by the various counties.

(d) For purposes of this section, “low and moderate income housing” means any housing project that meets the definition of “low- and moderate-income housing project” in section 39A-281.”

SECTION 2. Section 46-15.2, Hawaii Revised Statutes, is amended to read as follows:

“§46-15.2 Housing; additional county powers. In addition and supplemental to the powers granted to counties by section 46-15.1, any county shall have and may exercise any of the following powers:

- (1) To provide assistance and aid to persons of low and moderate income in acquiring housing by providing loans secured by a mortgage, including by acquiring [sueh] the loans from private lenders for which [sueh] the county has made advance commitment to acquire [sueh] the loans, and to make and execute contracts with private lenders or a public agency for the origination and servicing of [sueh] the loans and pay the reasonable value of [sueh] the services;
- (2) In connection with the exercise of any powers granted under this section or section 46-15.1, to establish one or more loan programs and to issue bonds under chapter 47 or 49 to provide moneys to carry out the purposes of this section or section 46-15.1; provided that:
 - (A) If bonds are issued pursuant to chapter 47 to finance one or more loan programs, the county may establish [sueh] qualifications for the program or programs as it deems appropriate;
 - (B) If bonds are issued pursuant to chapter 49 to finance one or more loan programs, [sueh] the loan program or programs shall comply with the provisions of part III.B of chapter [201G:] 201H, to the extent applicable;
 - (C) If bonds are issued pursuant to section 47-4 or chapter 49, any loan program established pursuant to this section or any county-owned dwelling units constructed under section 46-15.1 shall be and constitute an “undertaking” under section 49-1 and the provisions of chapter 49 shall apply to [sueh] the loan program or county-owned dwelling units to the extent applicable;
 - (D) In connection with the establishment of any loan program pursuant to this section, a county may employ financial consultants, attorneys, real estate counselors, appraisers, and [sueh] other consultants as may be required in the judgment of the county and fix and pay their compensation from funds available to the county therefor;
 - (E) Notwithstanding any limitation otherwise established by law, with respect to the rate of interest on any loan made under any loan program established pursuant to this section, [sueh] the loan may bear [sueh] a rate or rates of interest per year as the county shall determine; provided that no loan made from the proceeds of any bonds of the county shall be under terms or conditions [whieh] that would cause the interest on [sueh] the bonds to be

- deemed subject to income taxation by the United States of America;
- (F) Notwithstanding any limitation otherwise established by law, with respect to the amount of compensation permitted to be paid for the servicing of loans made under any loan program established pursuant to this section, a county may fix [such] any reasonable compensation as the county may determine;
- (G) Notwithstanding the requirement of any other law, a county may establish [such] separate funds and accounts with respect to bonds issued pursuant to chapter 47 or 49 to provide moneys to carry out the purposes of this section or section 46-15.1 as [such] the county may deem appropriate;
- (H) Notwithstanding any provision of chapter 47 or 49 or of any other law, but subject to the limitations of the [~~State Constitution,~~] state constitution, bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 may be sold at public or private sale at [such] a price, may bear interest at [such] a rate or rates per year, may be payable at [such] the time or times, may mature at [such] the time or times, may be made redeemable before maturity at the option of the county, the holder, or both, at [such] the price or prices and upon [such] terms and conditions, and may be issued in coupon or registered form, or both, all as the county may determine;
- (I) If deemed necessary or advisable, the county may designate a national or state bank or trust company within or without the State to serve as trustee for the holders of bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 and enter into a trust indenture, trust agreement, or indenture of mortgage with [such] the trustee whereby [such] the trustee may be authorized to receive and receipt for, hold, and administer the proceeds of [such] the bonds and to apply the proceeds to the purposes for which [such] the bonds are issued, or to receive and receipt for, hold, and administer the revenues and other receipts derived by the county from the application of the proceeds of [such] the bonds and to apply [such] the revenues and receipts to the payment of the principal of, or interest on [such] the bonds, or both. Any [such] trust indenture, trust agreement, or indenture of mortgage entered into with the trustee may contain any covenants and provisions as may be deemed necessary, convenient, or desirable by the county [~~in order~~] to secure [such] the bonds. The county may pledge and assign to the trustee any agreements related to the application of the proceeds of [such] the bonds and the rights of the county thereunder, including the rights to revenues and receipts derived thereunder. Upon appointment of the trustee, the director of finance may elect not to serve as fiscal agent for the payment of the principal and interest[;] and for the purchase, registration, transfer, exchange, and redemption, of [such] the bonds, or may elect to limit the functions the director of finance performs as [such] the fiscal agent, and may appoint the trustee to serve as the fiscal agent, and may authorize and empower the trustee to perform [such] the functions with respect to [such] the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance deems necessary, advisable, or expedient, including[;] without limitation[;] the

holding of [such] the bonds and coupons [which] that have been paid and the supervision and conduction or the destruction thereof in accordance with law;

- (J) If a trustee is not appointed to collect, hold, and administer the proceeds of bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1, or the revenues and receipts derived by the county from the application of the proceeds of [such] the bonds, all as provided in subparagraph (I), the director of finance of [such] the county may hold [such] the proceeds or revenues and receipts, as the case may be, in a separate account in the treasury of the county, to be applied solely to the carrying out of the ordinance, trust indenture, trust agreement, or indenture of mortgage, if any, authorizing or securing [such] the bonds; and
- (K) Any law to the contrary notwithstanding the investment of funds held in reserves and sinking funds related to bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 shall comply with the provisions of section [201G-167; 201H-77]; provided that any investment [which] that requires approval by the county council pursuant to section 46-48 or 46-50 [must] shall first be approved by the county council.
- (3) To acquire [such] policies of insurance and enter into [such] banking arrangements as [such] the county may deem necessary [in order] to better secure bonds issued to provide money to carry out the purposes of this section or section 46-15.1, including[;] without limitation[;] contracting for a support facility or facilities as may be necessary with respect to bonds issued with a right of the holders to put [such] the bonds and contracting for interest rate swaps; and
- (4) To do any and all other things necessary or appropriate to carry out the purposes and exercise the powers granted in section 46-15.1 and this section.”

SECTION 3. Section 49-1, Hawaii Revised Statutes, is amended by amending the definitions of “loan program” and “undertaking” to read as follows:

““Loan program” means the activities and policies undertaken by any county to provide [assistanece];

- (1) Assistance to members of the general public who are residents of the county by making loans or causing loans to be made available to them for [such] purposes as may be authorized by law[-]; or
- (2) Loans to private nonprofit organizations or public instrumentalities, or to wholly owned affiliates thereof, for the development of low and moderate income housing pursuant to section 46-15.1(a).

“Undertaking” means any public works and properties, improvement, or system owned or operated by the county, and from which the county may derive revenue, or with respect to which the county may derive user taxes, including[-] but not limited to one or a combination of two or more of the following: water, sewerage, gas or electric, heat, light or power works, solid waste processing and disposal, public off-street parking facilities, plants, [and] systems, and low and moderate income housing projects provided pursuant to section 46-15.1, together with all parts thereof and appurtenances thereto.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 24, 2007.)

Note

1. So in original.