

ACT 97

S.B. NO. 865

A Bill for an Act Relating to Housing.

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

SECTION 1. In accordance with section 9 of article VII of the Hawaii State Constitution and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in H.B. No. 300, H.D. 1, S.D. 1, C.D. 1,¹ and this Act will cause the state general fund expenditure ceiling for fiscal year 2023-2024 to be exceeded by \$1,065,457,367 or 11.0 per cent. This current declaration takes into account general fund appropriations authorized for fiscal year 2023-2024 in H.B. No. 300, H.D. 1, S.D. 1, C.D. 1,¹ and this Act only. The reasons for exceeding the general fund expenditure ceiling are that:

- (1) The appropriation made in this Act is necessary to serve the public interest; and
- (2) The appropriation made in this Act meets the needs addressed by this Act.

SECTION 2. The legislature finds that the cost and availability of housing in the State are significant challenges facing Hawaii residents. Although Hawaii has the tenth highest median wage nationally, living expenses are two-thirds higher than the rest of the nation, with the cost of housing being a major contributing factor. According to the Honolulu Board of REALTORS, by March 2022, the median price for a single-family home on Oahu had risen to \$1,150,000, while the median price for condominiums on Oahu had risen to \$515,000. With a simple mortgage calculator and using conservative assumptions on interest rates and down payment amounts, a household would need to earn over \$200,000 annually to afford to buy a median-priced home on Oahu in 2022, making homeownership out of reach for many of Hawaii's residents, especially first-time buyers.

Because of the many barriers hindering the production of new housing, including geographic limitations, lack of major infrastructure, construction costs, and government regulation, the State and housing developers have not

been able to produce enough housing for Hawaii residents. According to a 2019 report from the department of business, economic development, and tourism, the projected long-run average estimate of total demand for housing in Hawaii is 72,310 for the 2020 to 2030 period. The legislature has responded through the passage of various legislation. During the regular session of 2020, the legislature passed Act 42, Session Laws of Hawaii 2020, that, among other things, increased the Hula Mae multifamily revenue bond authorization to address Hawaii's affordable rental housing crisis. During the regular session of 2021, the legislature passed Act 227, Session Laws of Hawaii 2021, to establish an affordable homeownership revolving fund to provide loans to nonprofit community development financial institutions and nonprofit housing development organizations for the development of affordable homeownership housing projects. During the regular session of 2022, the legislature passed Act 236, Session Laws of Hawaii 2022, that, in part, provides funds to address Hawaii's affordable rental housing crisis.

Despite these efforts, the amount of new construction of housing, especially for low- to middle-income families, continues to be inadequate as the supply of housing remains constrained while demand for housing increases. This lack of supply leads to higher housing prices and rents for households of all income levels, leaving all tenants with less disposable income, increasing the personal stress on buyers and renters, and exacerbating overcrowding and homelessness. Given these consequences, the lack of affordable housing requires the concentrated attention of state government at the highest level.

The legislature further finds that with Honolulu's construction of an elevated rail transit system, the State has an opportunity to enhance Oahu's urban environment and increase the quality of life for residents by increasing the affordable housing inventory and eliminating the need for personal automobiles, among other public benefits. As the largest landowner of properties along the transit line, with approximately two thousand acres under the jurisdiction of various departments, the State must be proactive in establishing a unified vision and approach toward redevelopment of its properties to maximize the benefits of state lands available for redevelopment.

The purpose of this Act is to:

- (1) Establish the ninety-nine year leasehold program to facilitate the creation of low-cost leasehold residential condominium units for sale to Hawaii residents on non-ceded state-owned land near public transit stations; and
- (2) Authorize the Hawaii community development authority to sell the leasehold interest in residential condominium units located on state lands for lease terms of ninety-nine years.

SECTION 3. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . NINETY-NINE YEAR LEASEHOLD PROGRAM

§ 206E- Definitions. As used in this part, unless the context otherwise requires:

“Mixed-use project” means a project consisting of any combination of a commercial project, redevelopment project, or residential project.

“Owner-occupied residential use” means any use currently permitted in existing residential zones consistent with owner occupancy. “Owner-occupied residential use” does not include renting or subleasing by the owner of a residential condominium unit to any tenant or sublessee of any kind.

“Project” means a specific work or improvement, including real and personal properties, or any interest therein, acquired, owned, constructed, reconstructed, rehabilitated, or improved by the authority, including a commercial project, redevelopment project, residential project, or mixed-use project.

“Public transit station” means a planned or existing station connected to a locally preferred alternative for a mass transit project.

“Urban redevelopment site” means non-ceded state-owned lands within a one-mile radius of a public transit station in a county having a population greater than five hundred thousand.

§206E- Ninety-nine year leasehold program. (a) There is established the ninety-nine year leasehold program for the purpose of providing low-cost, leasehold residential condominium units for sale to Hawaii residents on state-owned lands within an urban redevelopment site.

(b) The program shall be limited to one project on non-ceded lands within an urban redevelopment site, which shall be selected by the authority.

§206E- Rules; guidelines. (a) Residential condominium units within urban redevelopment sites shall not be advertised for rent, rented, or used for any purpose other than owner-occupied residential use. The authority, by rule, shall establish penalties for violations of this subsection up to and including forced sale of a residential condominium unit within an urban redevelopment site.

(b) The design and development contracts for residential condominium units within an urban redevelopment site shall be subject to chapter 103D.

(c) Development should be revenue-neutral to the greatest extent possible.

(d) Urban redevelopment sites shall maximize walkability.

§206E- Sale of the leasehold interest of residential condominium units; rules; guidelines. (a) The authority shall adopt rules pursuant to chapter 91 for the sale of the leasehold interest of residential condominium units under its control within urban redevelopment sites; provided that each lease shall be for a term of ninety-nine years. The rules shall include the following requirements for an eligible buyer or owner of a residential condominium unit within an urban redevelopment site:

(1) The person shall be a qualified resident of the State, as defined in section 201H-32;

(2) The person shall not use a residential condominium unit within an urban redevelopment site for any purpose other than owner-occupied residential use; and

(3) The person, the person’s spouse, or any other person intending to live with the eligible buyer or owner, shall not own any other real property, including any residential and non-residential property, beneficial ownership of trusts, and co-ownership or fractional ownership, while owning a residential condominium unit within an urban redevelopment site; provided that an eligible buyer may own real property up to six months after closing on the purchase of a residential condominium unit within an urban redevelopment site; provided further that an owner of a residential condominium unit within an urban redevelopment site in the process of selling the residential condominium unit may own other real property up to six months prior to closing on the sale of the residential condominium unit to an eligible buyer;

provided that the rules adopted pursuant to this subsection may require at least fifty per cent of the residential condominium units be sold to an individual or household with an income of up to one hundred forty per cent of the area median income. The rules shall include strict enforcement of owner-occupancy, including a prohibition on renting or subleasing a residential condominium unit within an urban redevelopment site to any tenant or sublessee. The authority may also establish rules for a minimum number of days residents shall be physically present on the premises and a maximum number of days non-residents may have access to the premises.

(b) The median price of residential condominium units within an urban redevelopment site shall be priced at the minimum levels necessary to ensure that the development is revenue-neutral for the State.

(c) Residential condominium units within an urban redevelopment site shall be sold only to other eligible buyers.

(d) An owner of a residential condominium unit within an urban redevelopment site may sell the owner's residential condominium unit; provided that the authority shall have the right of first refusal to purchase the residential condominium unit for certain period of time and for a buyback price to be determined by the authority. If the authority does not exercise its right to purchase the residential condominium unit, the residential condominium unit may be sold by the owner to an eligible buyer. Upon the death of the owner of a residential condominium unit within an urban redevelopment site, the residential condominium unit may be transferred to the deceased's heir by devise or as any other real property under existing law; provided that the deceased's heir shall meet the requirements listed in subsection (a); provided further that if the deceased's heir does not meet requirements to accept transfer of the residential condominium unit, the deceased's heir shall sell the residential condominium unit to an eligible buyer.

(e) The authority may adopt rules pursuant to chapter 91 that authorize the executive director to waive the requirements set forth in subsection (a), where the inability of an owner to reside in the residential condominium unit is due to unforeseen circumstances, military transfer, serious illness, or other hardship circumstances as determined by the executive director.

§206E- Use of public lands; acquisition of state lands (a) If state lands under the control and management of other public agencies are required by the authority for the purposes of this part, the agency having the control and management of those required lands, upon request by the authority and with the approval of the governor, may convey or lease those lands to the authority upon terms and conditions as may be agreed to by the parties.

(b) Notwithstanding the foregoing, no public lands shall be conveyed or leased to the authority pursuant to this section if the conveyance or lease 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 that county, department, or board.

§206E- Acquisition of real property from a county. Notwithstanding the provision of any law or charter, any county, by resolution of its county council, without public auction, sealed bids, or public notice, may sell, lease, grant, or convey to the authority any real property owned by it that the authority certifies to be necessary for the purposes of this part. The sale, lease, grant, or conveyance shall be made with or without consideration and upon terms and conditions as may be agreed upon by the county and the authority. Certification shall be evidenced by a formal request from the authority. Before the sale, lease, grant, or conveyance may be made to the authority, a public hearing shall be

held by the county council to consider the same. Notice of the hearing shall be published at least six days before the date set for the hearing in the publication and in the manner as may be designated by the county council.

§206E- Condemnation of real property. The authority, upon making a finding that it is necessary to acquire any real property for its immediate or future use for the purposes of this part, may acquire the property, including property already devoted to a public use, by condemnation pursuant to chapter 101. The property shall not thereafter be taken for any other public use without the consent of the authority. No award of compensation shall be increased by reason of any increase in the value of real property caused by the designation of the urban redevelopment site or plan adopted pursuant to a designation, or the actual or proposed acquisition, use, or disposition of any other real property by the authority.

§206E- Construction contracts. Construction contracts for residential condominium units within an urban redevelopment site shall be subject to chapter 103D.

§206E- Lease of projects. Notwithstanding any law to the contrary, the authority, without recourse to chapter 103D, may lease for a term not exceeding sixty-five years all or any portion of the real or personal property constituting a commercial project to any person, upon terms and conditions as may be approved by the authority; provided that all revenues generated from the lease shall be used to support the purpose of the program.

§206E- Assistance by state and county agencies. Any state or county agency, upon request of the authority, may render services for the purposes of this part.

§206E- Lands no longer needed. Lands acquired by the authority from another government agency that are no longer needed by the authority for the program shall be returned to the previous owner of those lands. Lands acquired by the authority from a private party that are owned by the authority and designated for the program but are subsequently no longer needed for the program shall be retained by the authority.

§206E- Rules. The authority may adopt rules pursuant to chapter 91 that are necessary for the purposes of this part.

§206E- Leasehold condominiums on state lands. (a) The authority may sell leasehold units in condominiums organized pursuant to chapter 514B and developed under this part on state land to a qualified resident as defined in section 201H-32.

(b) The term of the lease may be for ninety-nine years, and the authority may extend or modify the fixed rental period of the lease or extend the term of the lease.

(c) The powers conferred upon the authority by this section shall be in addition and supplemental to the powers conferred by any other law, and nothing in this section shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

§206E- Annual reports. The authority shall submit a report to the legislature on the progress of the program projects no later than twenty days

prior to the convening of each regular session. The annual report shall include the feasibility of expanding the program, the demand of leasehold projects developed under this part, and an appropriate leasehold duration.”

SECTION 4. Section 302A-1603, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following shall be exempt from this section:

- (1) Any form of housing permanently excluding school-aged children, with the necessary covenants or declarations of restrictions recorded on the property;
- (2) Any form of housing that is or will be paying the transient accommodations tax under chapter 237D;
- (3) All nonresidential development;
- (4) Any development with an executed education contribution agreement or other like document with the authority or the department for the contribution of school sites or payment of fees for school land or school construction; ~~and~~
- (5) Any form of housing developed by the department of Hawaiian home lands for use by beneficiaries of the Hawaiian Homes Commission Act, 1920, as amended[-]; and
- (6) Any form of development by the Hawaii community development authority pursuant to part of chapter 206E.”

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2023-2024 for the Hawaii community development authority to:

- (1) Adopt rules;
- (2) Engage the community; and
- (3) Conduct site and predevelopment planning;

for the ninety-nine year leasehold program established in section 3 of this Act.

The sum appropriated shall be expended by the Hawaii community development authority for the purposes of this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$190,000 or so much thereof as may be necessary for fiscal year 2023-2024 and the same sum or so much thereof as may be necessary for fiscal year 2024-2025 for the establishment of two full-time equivalent (2.0 FTE) positions within the Hawaii community development authority.

The sums appropriated shall be expended by the Hawaii community development authority for the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2023; provided that the amendments made to section 302A-1603(b), Hawaii Revised Statutes, by section 4 of this Act shall not be repealed when that section is reenacted pursuant to Act 197, Session Laws of Hawaii 2021.

(Approved June 21, 2023.)

Note

1. Act 164.