

## ACT 35

H.B. NO. 1760

A Bill for an Act Relating to State Finances.

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

SECTION 1. The legislature finds that the Housing and Economic Recovery Act of 2008 added section 146(i)(6) to the Internal Revenue Code of 1986, as amended, which authorized the “recycling” of multifamily private activity bond volume cap to finance new affordable rental housing projects. Jurisdictions such as New York City and California have established bond volume cap recycling programs in order to use this existing authority under the Internal Revenue Code to preserve and more efficiently use their tax-exempt private activity bond volume by allowing an authorized private activity bond issuer to secure an instrument of indebtedness with a trustee, fiscal agent, or bank that holds the debt for an affordable housing project. The proceeds of that instrument of indebtedness are then deemed to be used to repay a prior tax-exempt private activity bond issue, the loan pursuant to the prior tax-exempt issue is deemed to have been repaid from an alternative source, and the repayment is deemed to have been transferred to the issuer to make a new loan to another borrower. Under the bond volume cap recycling strategy, the jurisdiction’s volume cap is not spent but can instead be recycled once, with certain requirements and limitations, to finance other affordable rental housing projects and leverage other tax incentives like the low-income housing tax credit.

Given the critical need to create more affordable housing opportunities within the State, the legislature further finds that laying the foundation for a bond volume cap recycling program now is prudent so that the Hawaii housing finance and development corporation and counties can use the bond volume cap recycling strategy when conditions are favorable.

The purpose of this Act is to statutorily establish authorization for the Hawaii housing finance and development corporation and counties to implement a bond volume cap recycling program for affordable rental housing.

SECTION 2. Chapter 201H, Hawaii Revised Statutes, is amended by adding a new section to part III, subpart A, to be appropriately designated and to read as follows:

“§201H- **Authorization to secure lines of credit or other instruments of indebtedness.** The corporation, subject to legislative approval, may secure a line of credit or other instrument of indebtedness to be used to meet the require-

ments of federal tax law for the bond volume cap recycling program; provided that the term of the authorized line of credit or other instrument of indebtedness shall correspond to each fiscal biennium budget period.”

SECTION 3. Section 39B-2, Hawaii Revised Statutes, is amended to read as follows:

“§39B-2 Allocation of annual state ceiling. (a) The annual state ceiling shall be allocated for each calendar year in the following proportions:

- (1) An amount equal to fifty per cent of the annual state ceiling to the State;
- (2) An amount equal to 37.55 per cent of the annual state ceiling to the city and county of Honolulu;
- (3) An amount equal to 5.03 per cent of the annual state ceiling to the county of Hawaii;
- (4) An amount equal to 2.41 per cent of the annual state ceiling to the county of Kauai; and
- (5) An amount equal to 5.01 per cent of the annual state ceiling to the county of Maui.

(b) The department, with the approval of the governor, may assign all or any part of the allocation of the State to any issuer or any county for a specific calendar year or years. At the request of the department, any issuer or county to which any part of the State’s allocation has been assigned shall return all or part of the assignment, in which case the department may provide for its reassignment.

(c) The department may request return of all or any part of the allocations of one or more counties made pursuant to subsection (a), and may assign and reassign the allocation to any other county or issuer for a specified calendar year or years.

(d) A county, by resolution of its governing body, or any issuer, by written certificate of the issuer, may request additional allocations of the annual state ceiling from, or assign all or any part of its portion of the allocation of the annual state ceiling to, the State for a specified calendar year or years. Before requesting an additional allocation of the annual state ceiling for a specific calendar year or years under this subsection, a county shall have applied all of its allocation of the annual state ceiling for the specified calendar year or years as evidenced by a certificate of the issuer or the director of finance of a county, as applicable, under section 39B-3. If a county assigns all or any part of its private activity bond allocation for a specific calendar year or years to the State under this subsection, the assigned portion shall be applied to a project or projects located in the assigning county; provided that pursuant to a cooperative agreement with the department and Hawaii housing finance and development corporation under subsection (e), the private activity bond allocation may be awarded to projects located in other counties.

(e) In order to facilitate the construction of new rental housing projects, the department and Hawaii housing finance and development corporation may enter into a cooperative agreement with a county to coordinate the award of private activity bonds and low-income housing tax credits for new rental housing projects in the county. The agreement shall, except as provided under federal law, be exempt from all statutes, ~~[ordinances, charter provisions;]~~ charter provisions, ordinances and rules of any government agency relating to the award of private activity bonds and low-income housing tax credits.

(f) The Hawaii housing finance and development corporation or a county may establish a bond volume cap recycling program pursuant to section 146(i)(6) of the Internal Revenue Code of 1986, as amended. Under the pro-

gram, if the repayment of a loan financed by an issue of which ninety-five per cent or more of the net proceeds are used to provide projects described in section 142(d) of the Internal Revenue Code of 1986, as amended, and the repayment is used to provide a new loan for any project so described, any bond that is issued to refinance the issue shall be treated as a refunding issue to the extent the principal amount of the refunding issue does not exceed the principal amount of the bonds refunded.

(g) The department and Hawaii housing finance and development corporation may enter into a cooperative agreement with a county to facilitate and coordinate the establishment and implementation of a bond volume cap recycling program. The agreement shall be exempt from all statutes, charter provisions, ordinances, and rules of any government agency relating to the award of private activity bonds except federal law, subsection (f), this subsection, and section 39B-5(2).”

SECTION 4. Section 39B-5, Hawaii Revised Statutes, is amended to read as follows:

**“[§39B-5] Semi-annual report status or use of allocation.** In addition to the report required by section 39B-4, within thirty days of the end of each fiscal and calendar year, each county or any issuer shall submit a report to the department and [the] Hawaii housing finance and development corporation on [the]:

- (1) The status or use of its portion of the allocation of the annual state ceiling, including any carryforward allocation, that has not been applied to an issuance of a qualified private bond[; and
- (2) The status or use of its portion of the allocation of the annual state ceiling previously applied to an issuance of a qualified private bond and used to provide a new loan under the bond volume cap recycling program pursuant to section 39B-2(f) and section 146(i)(6) of the Internal Revenue Code of 1986, as amended,

as evidenced by a certificate of the issuer or [the] director of finance of a county, as applicable.”

SECTION 5. Section 201H-202, Hawaii Revised Statutes, is amended to read as follows:

**“§201H-202 Rental housing revolving fund.** (a) There is established the rental housing revolving fund to be administered by the corporation.

(b) An amount from the fund, to be set by the corporation and authorized by the legislature, may be used for administrative expenses incurred by the corporation in administering the corporation’s housing finance programs; provided that fund moneys shall not be used to finance day-to-day administrative expenses of projects allotted fund moneys.

(c) The following may be deposited into the fund: appropriations made by the legislature, conveyance taxes pursuant to section 247-7, private contributions, repayment of loans, interest, other returns, and moneys from other sources.

(d) The fund shall be used to provide loans or grants for the development, pre-development, construction, acquisition, preservation, and substantial rehabilitation of rental housing units. Permitted uses of the fund may include but are not limited to planning, design, land acquisition, costs of options, agreements of sale, downpayments, equity financing, capacity building of nonprofit housing developers, or other housing development services or activities as provided in rules adopted by the corporation pursuant to chapter 91. The rules may provide for a means of recapturing loans or grants made from the fund if

a rental housing project financed under the fund is refinanced or sold at a later date. The rules may also provide that moneys from the fund shall be leveraged with other financial resources to the extent possible.

(e) Moneys available in the fund shall be used for the purpose of providing, in whole or in part, loans or grants for rental housing projects in the following order of priority:

- (1) Projects or units in projects that are allocated low-income housing credits pursuant to the state housing credit ceiling under section 42(h) of the Internal Revenue Code of 1986, as amended, or projects or units in projects that are funded by programs of the United States Department of Housing and Urban Development and United States Department of Agriculture Rural Development wherein:
  - (A) At least fifty per cent of the available units are for persons and families with incomes at or below eighty per cent of the median family income of which at least five per cent of the available units are for persons and families with incomes at or below thirty per cent of the median family income; and
  - (B) The remaining units are for persons and families with incomes at or below one hundred per cent of the median family income; provided that the corporation may establish rules to ensure full occupancy of fund projects; and
- (2) Mixed-income rental projects or units in a mixed-income rental project wherein all of the available units are for persons and families with incomes at or below one hundred forty per cent of the median family income.

(f) There is established within the fund a bond volume cap recycling program subaccount. The bond volume cap recycling program subaccount shall be maintained as a reserve for the bond volume cap recycling program established pursuant to section 39B-2(f).

~~[(f)]~~ (g) The corporation shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session describing the projects funded and, with respect to rental housing projects targeted for persons and families with incomes at or below thirty per cent of the median family income, its efforts to develop those rental housing projects, a description of proposals submitted for this target group and action taken on the proposals, and any barriers to developing housing units for this target group.

~~[(g)]~~ (h) For the purposes of this subpart, the applicable median family income shall be the median family income for the county or standard metropolitan statistical area in which the project is located as determined by the United States Department of Housing and Urban Development, as adjusted from time to time.

~~[(h)]~~ (i) The corporation may provide loans and grants under this section; provided that the corporation shall establish loan-to-value ratios to protect the fund from inordinate risk and that under no circumstances shall the rules permit the loan-to-value ratio to exceed one hundred per cent; ~~[and]~~ provided further that the underwriting guidelines include a debt-coverage ratio of ~~[not]~~ no less than 1.0 to 1.

~~[(i)]~~ (j) For the period commencing July 1, 2005, through June 30, 2009, the fund may be used to provide grants for rental units set aside for persons and families with incomes at or below thirty per cent of the median family income in any project financed in whole or in part by the fund in proportion of those units to the total number of units in the project. At the conclusion of the period described in this subsection, the corporation shall report to the legislature

on the number and use of grants provided and whether the grants were an effective use of the funds for purposes of developing rental housing for families at or below thirty per cent of the median family income.”

SECTION 6. Pursuant to section 201H- , Hawaii Revised Statutes, the Hawaii housing finance and development corporation may secure a line of credit or other instrument of indebtedness, in an amount not to exceed \$150,000,000 during the fiscal biennium beginning July 1, 2023, and ending June 30, 2025, to meet the requirements of federal tax law for the bond volume cap recycling program.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect on July 1, 2024.  
(Approved May 28, 2024.)

**Note**

1. Edited pursuant to HRS §23G-16.5.