

CHAPTER 201G

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION

OF HAWAII

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PART I. GENERAL PROVISIONS

§201G-1 Definitions. The following terms, wherever used or referred to in this chapter shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Board" means the board of directors of the housing and community development corporation of Hawaii.

"Bonds" means any bonds, interim certificates, notes, debentures, participation certificates, pass-through certificates, mortgage-backed obligations, or other evidences of indebtedness of the corporation issued pursuant to this chapter.

"Community facilities" includes real and personal property, and buildings, equipment, lands, and grounds for recreational or social assemblies, for educational, health, or welfare purposes and necessary or convenient utilities, when designed primarily for the benefit and use of the corporation or the occupants of the dwelling accommodations.

"Contract" means any agreement of the corporation with an obligee or a trustee for the obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

"Corporation" means the housing and community development corporation of Hawaii.

"Dwelling", "dwelling unit", or "unit" means any structure or room, for sale, lease, or rent, that provides shelter.

"Elder" or "elderly" means a person who is a resident of the State and has attained the age of sixty-two years.

"Elder or elderly households" means households in which at least one member is sixty-two years of age, the spouse or partner has attained the age of majority, and the remaining members have attained the age of fifty-five years at the time of application to the project. A live-in aide shall cease to be a resident therein upon the recovery of, or removal from the project of, the elder.

"Elder or elderly housing" means:

(1) A housing project intended for and occupied by elder or elderly households; or

(2) Housing provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elder or elderly persons, or if the Secretary makes a determination, the project may also be occupied by persons with disabilities who have reached the age of majority.

"Executive director" means the executive director of the housing and community development corporation of Hawaii.

"Federal government" includes the United States and any agency or instrumentality, corporate or otherwise, of the United States.

"Government" includes the State and the United States and any political subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

"Household member" means a person who:

(1) Is a co-applicant; or

(2) Will reside in the dwelling unit purchased from the corporation.

"Housing project" or "project" includes all real and personal property, buildings and improvements, commercial spaces, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project.

The term "housing project" or "project" may also be applied to the planning of the buildings and improvements, the acquisition of property by purchase, lease, or otherwise, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

"Land" or "property" includes vacant land or land with site improvements whether partially or entirely finished in

accordance with governmental subdivision standards, or with complete dwellings.

"Live-in aide" means a person who:

- (1) Is eighteen years of age or older;
- (2) Is living in the unit solely to assist the elder or elderly person in daily living activities including bathing, meal preparation and delivery, medicinal care, transportation, and physical activities;
- (3) Is not legally obligated to support the elder or elderly person; and
- (4) Is verified by the corporation as meeting these requirements.

"Mortgage holder" includes the United States Department of Housing and Urban Development, Federal Housing Administration, the United States Department of Agriculture, or other federal or state agency engaged in housing activity, Administrator of Veterans Affairs, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, private mortgage lender, private mortgage insurer, and their successors, grantees, and assigns.

"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 service or otherwise aids in the financing of mortgages on single-family or multifamily residential property; and
- (3) Is a financial institution whose accounts are federally insured or is an institution that is an approved mortgagee for the Federal Housing Administration, an approved lender for the Department of

Veterans Affairs or the United States Department of Agriculture, or an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

"Nonprofit organization" means a corporation, association, or other duly chartered entity that is registered with the State and has received a written determination from the Internal Revenue Service that it is exempt under either section 501(c)(3), section 501(c)(4), or so much of section 501(c)(2) as applies to title holding corporations that turn over their income to organizations that are exempt under either section 501(c)(3) or 501(c)(4), of the Internal Revenue Code of 1986, as amended.

"Obligee of the corporation" or "obligee" includes any bondholder, trustee or trustees for any bondholders, any lessor demising property to the corporation used in connection with a housing project, or any assignee or assignees of the lessor's interest or any part thereof, and the United States, when it is a party to any contract with the corporation.

"Real property" includes lands, land under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

"Trustee" means a national or state bank or trust company located within or outside the State which enters into a trust indenture.

"Trust indenture" means an agreement by and between the corporation and the trustee, which sets forth the duties of the trustee with respect to the bonds, the security therefor, and other provisions as deemed necessary or convenient by the corporation to secure the bonds. [L 1997, c 350, pt of §2 superseding c 258, §7; am L 1998, c 212, §§5, 6; am L 2002, c 64, §§2, 3]

§201G-2 Housing and community development corporation of Hawaii; establishment, staff. (a) There is established the housing and community development corporation of Hawaii to be placed within the department of human services for administrative purposes only. The corporation shall be a public body and a body corporate and politic.

(b) The corporation shall employ, exempt from chapter 76 and section 26-35(a)(4), an executive director and an executive assistant. Effective July 1, 1998, the salary of the executive director shall be set by the governor within the range from \$72,886 to \$77,966 a year. Effective July 1, 1998, the salary of the executive assistant shall be set by the governor within the range from \$65,597 to \$70,169 a year. The corporation may employ, subject to chapter 76, technical experts and officers, agents, and employees, permanent and temporary, as required. The corporation may also employ officers, agents, and employees; prescribe their duties and qualifications; and fix their salaries, not subject to chapter 76, when in the determination of the corporation, the services to be performed are unique and essential to the execution of the functions of the corporation. The corporation may call upon the attorney general for legal services as it may require. The corporation may delegate to one or more of its agents or employees the powers and duties as it deems proper. [L 1997, c 350, pt of §2; am L 2000, c 253, §150; am L 2003, c 92, §4; am L 2004, c 16, §3]

§201G-3 Board; establishment, functions, duties. (a) There is created a board consisting of nine members, of whom six shall be public members appointed by the governor as provided in section 26-34. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. One public member shall be the chairperson of the rental housing trust fund advisory commission. At least one public member shall be a person who is directly assisted by the corporation under the federal low-rent public housing or federal section 8 tenant-based housing assistance payments program while serving on the board. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows: two members to be appointed for four years; two members to be appointed for three years; and one member to be appointed for two years. The chairperson of the rental housing trust fund advisory commission shall serve a concurrent term on the board. The director of business, economic development, and tourism and the director of human services, or their designated representatives, and a representative of the governor's office, shall be ex officio voting members. The corporation shall be headed by the board.

(b) The board of directors shall select a chairperson and vice-chairperson from among its members. The director of business, economic development, and tourism or the director of human services shall be ineligible to serve as chairperson of the board.

(c) Five members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the corporation. The members shall receive no compensation for services, but shall be entitled to necessary expenses, including travel expenses, incurred in the performance of their duties. [L 1997, c 350, pt of §2; am L 1998, c 212, §7; am L 2001, c 290, §2]

[\$201G-4] General powers. (a) The corporation may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and
- (4) Adopt bylaws and rules in accordance with chapter 91 for its organization, internal management, and to carry into effect its purposes, powers, and programs.

(b) In addition to other powers conferred upon it, the corporation may do all things necessary and convenient to carry out the powers expressly provided in this chapter. [L 1997, c 350, pt of §2]

[\$201G-4.5] Resident advisory boards; establishment. (a) The corporation may establish a resident advisory board or boards, which shall be comprised of federal public housing residents or section 8 tenant-based housing assistance recipients, to assist and make recommendations to the corporation regarding the development of the public housing agency plan and any significant amendments or modifications to it. The members of the resident advisory board or boards shall adequately reflect and represent residents of federal public housing projects and recipients of section 8 tenant-based assistance administered by the corporation.

(b) The members of the resident advisory board shall not be compensated for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred while engaged in business for the resident advisory board.

(c) The corporation may adopt rules in accordance with chapter 91 with respect to the establishment of the resident advisory

board or boards including, but not limited to, rules concerning the composition, eligibility, selection, and term of members. This section shall not apply if it conflicts with any federal law. [L 2001, c 289, pt of §2]

[\$201G-4.6] Resident advisory board nomination of resident board member. In the event of a vacancy for the resident member seat on the corporation board, the resident advisory board shall compile a list of five individuals for the governor's consideration for appointment to the board; provided the nominees to the board shall be:

(1) Participants who are directly assisted by the corporation under the federal public housing or section 8 tenant-based programs and who need not be members of the resident advisory board;

(2) At least eighteen years of age; and

(3) Authorized members of the assisted household. [L 2001, c 289, pt of §2]

[\$201G-5] Fair housing law to apply. Notwithstanding any law to the contrary, the provisions of chapter 515 shall apply in administering this chapter. [L 1997, c 350, pt of §2]

[\$201G-6] Housing advocacy and information system. (a) The corporation, with the assistance of other agencies of the State and counties with related responsibilities, shall develop and maintain a housing advocacy and information system to aid the corporation in meeting the needs and demands of housing consumers.

(b) In establishing and maintaining the housing advocacy and information system, the corporation shall conduct market studies, engage in community outreach, and solicit recommendations from and statistics and research developed by agencies of the United States, the State, the counties, private research organizations, nonprofit community groups, trade associations, including those of the construction and real estate industries, departments, individuals at the University of Hawaii, and housing consumers.

(c) The corporation shall analyze the information received and make recommendations to appropriate agencies and developers.

(d) The corporation, through the housing advocacy and information system, shall act as a clearinghouse for information as to housing conditions, needs, supply, demand, characteristics, developments, trends, federal housing programs, and housing laws, ordinances, rules, and regulations.

(e) The housing advocacy and information system may be used by housing researchers, planners, administrators, and developers, and shall be coordinated with other housing research efforts. The corporation shall maintain a current supply of information, including means to gather new information through surveys, contracted research, and investigations. [L 1997, c 350, pt of §2]

[\$201G-7] Housing research. (a) The corporation may study the plans of any government in relation to the problem of clearing, replanning, or reconstruction of an area in which unsafe or unsanitary dwelling or housing conditions exist.

(b) The corporation may purchase materials for the development of land and the construction of dwelling units in the manner it shall conclude to be most conducive to lower costs, including purchase from other states or from foreign countries for drop shipment in the State or on cost-plus contracts for materials with persons or firms doing business in the State, or otherwise.

(c) The corporation may conduct, or cause to be conducted, research on housing needs, materials, design, or technology, and apply the findings of the investigation to housing projects, including the following:

(1) Sociocultural investigation of housing and community utilization, preferences, or needs of residents within the housing need classification of the housing functional plan;

(2) Development of technology for the application of innovative building systems or materials, to provide energy or resource conservation or cost savings in the construction or operation of a housing project;

(3) Investigation of the applicability of locally-produced building materials and systems to dwelling unit construction;

(4) Investigation of new forms of project construction, maintenance, operation, financing, or ownership, involving tenants, homeowners, financing agencies, and others; or

(5) Other necessary or appropriate research that may lower the long-term costs of housing, conserve resources, or create communities best suited to the needs of residents.

(d) In the development and construction of a housing project, the corporation may provide for an on-the-job training program or other projects as it may deem justifiable including innovative projects to develop a larger qualified work force in the State. [L 1997, c 350, pt of §2]

[\$201G-8] Housing counseling. The corporation may provide the following services for programs administered by the corporation:

(1) Listing and referral services to tenants seeking to rent homes;

(2) Counseling to tenants on matters such as financial management and budgeting, basic housekeeping, communicating effectively and getting along with others, and other matters as may be desirable or necessary;

(3) Counseling to prospective homeowners on the rudiments of owning a home;

(4) Assistance to any person or government agency regarding the nature and availability of federal assistance for housing development and community development or redevelopment;

(5) Counseling and guidance services to aid any person or government agency in securing the financial aid or cooperation of the federal government in undertaking, constructing, maintaining, operating, or financing any housing designated for elders; persons displaced by governmental action;

university and college students and faculty;
and any other persons; and

(6) Assistance to a county agency upon request from the agency in the development of programs to correct or eliminate blight and deterioration, and to effect community development. [L 1997, c 350, pt of §2]

HRS 0201G-0008 ANNOTATIONS

Revision Note

Subsection designation deleted pursuant to §23G-15(1).

[\$201G-9] Acquisition, use, disposition of property. (a) The corporation may acquire any real or personal property or interest therein by purchase, exchange, gift, grant, lease, or other means from any person or government to provide housing. Exchange of real property shall be in accordance with section 171-50.

(b) The corporation may own or hold real property. All real property owned or held by the corporation shall be exempt from mechanics' or materialmen's liens and also from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the corporation be a charge or lien upon its real property; provided that this subsection shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of the corporation or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the corporation on its rents, fees, or revenues. The corporation and its property shall be exempt from all taxes and assessments.

(c) The corporation may lease or rent all or a portion of any housing project and establish and revise the rents or charges therefor. The corporation may sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein to any person or government.

(d) The corporation may insure or provide for the insurance of its property or operations against risks as it deems advisable. [L 1997, c 350, pt of §2]

§201G-10 Cooperative agreements with other governmental agencies. (a) The corporation may:

(1) Obtain the aid and cooperation of governments in the planning, construction, and operation of housing projects and enter into agreements and arrangements as it deems advisable to obtain aid and cooperation;

(2) Arrange or enter into agreements with any government for the acquisition by the government of property, options, or property rights or for the furnishing, installing, opening, or closing of streets, roads, alleys, sidewalks, or other places, or for the furnishing of property, services, parks, sewage, water, and other facilities in connection with housing projects, or for the changing of the map of a political subdivision or the planning, replanning, zoning, or rezoning of any part of a political subdivision;

(3) Procure insurance or guarantees from any government for the payment of any debts or parts thereof incurred by the corporation, including the power to pay premiums on any such insurance; and

(4) Agree to make payments to the state or county government, if the government is authorized to accept payments, as the corporation deems consistent with the maintenance of the character of housing projects or the purposes of this chapter.

(b) For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects located within their respective territorial boundaries, the state or county government, upon those terms, with or without consideration, as it determines, may:

(1) Dedicate, grant, sell, convey, or lease any of its property, or grant easements, licenses, or any other rights or privileges therein to the corporation or to the federal government;

(2) To the extent that it is within the scope of each of their respective functions:

(A) Cause the services customarily provided by each of them to be rendered for the benefit of housing projects and the occupants thereof;

(B) Provide and maintain parks and sewage, water, lights, and other facilities adjacent to or in connection with housing projects;

(C) Open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other related facilities; and

(D) Change the map of a political subdivision or plan, replan, zone, or rezone any part of a political subdivision;

(3) Enter into agreements with the corporation with respect to the exercise of their powers relating to the repair, closing, or demolition of unsafe, unsanitary, or unfit dwellings;

(4) Employ, notwithstanding any other law as to what constitutes legal investments, any available funds belonging to them or within their control, including funds derived from the sale or furnishing of property or facilities to the corporation, in the purchase of the bonds or other obligations of the corporation to the extent provided by section 201G-161; and exercise all the rights of any holder of the bonds or other obligations;

(5) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, and construction of such housing projects; and

(6) Enter into contracts with the corporation or the federal government for any period agreeing to exercise any of the powers conferred hereby or to take any other action in aid of such housing projects.

In connection with the exercise of this power, any political subdivision may incur the entire expense of any such public improvements located within its territorial boundaries without assessment against abutting property owners.

For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects, the department of land and natural resources, the Hawaiian homes commission, and any other agency of the State having power to manage or dispose of its public lands, may, with the approval of the governor and with or without consideration, grant, sell, convey, or lease for any period, any parts of such public lands, without limit as to area, to the corporation or to the federal government.

Any law to the contrary notwithstanding, any gift, grant, sale, conveyance, lease, or agreement provided for in this section may be made by the state or county government without appraisal, public notice, advertisement, or public bidding.

If at any time title to, or possession of, any housing project is held by any government authorized by law to engage in the development or administration of low-rent housing or slum clearance projects, any agreement made under this chapter relating to the project shall inure to the benefit of and may be enforced by that government.

Insofar as this subsection is inconsistent with the provisions of any other law, this subsection shall be controlling.

(c) The government of any county in which a housing project is located or is about to be located may make donations or advances to the corporation in sums as the county in its discretion may determine. The advances or donations shall be made for the purpose of aiding or cooperating in the construction and operation of the housing project. The corporation, when it has money available therefor, shall reimburse the county for all advances made by way of a loan to it. [L 1997, c 350, pt of §2; am L 1998, c 212, §8]

[\$201G-11] Agents, including corporations. The corporation may exercise any or all of the powers conferred upon it, either generally or with respect to any specific housing project through an agent that it may designate, including any corporation that is formed under the laws of this State, and for such purposes the corporation may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation. Any corporate agent, all of the stock of which shall be owned by the corporation or its nominee, may to the extent permitted by law, exercise any of the powers conferred upon the corporation herein. [L 1997, c 350, pt of §2]

[\$201G-12] Development of property. (a) The corporation, in its own behalf or on behalf of any government, may:

(1) Clear, improve, and rehabilitate property;

(2) Plan, develop, construct, and finance housing projects; and

(3) In cooperation with the department of education and department of accounting and general services, plan educational facilities and related infrastructure as a necessary and integral part of its housing projects using all its innovative powers towards achieving that end expeditiously and economically; provided that the educational facilities comply with the department of education's educational specifications, [timelines], and siting requirements.

(b) The corporation may develop public land in an agricultural district subject to the prior approval of the land use commission, when developing lands greater than five acres in size, and public land in a conservation district subject to the prior approval of the board of land and natural resources. The corporation shall not develop state monuments or historical sites, or parks. When the corporation proposes to develop public land, it shall file with the department of land and natural resources a petition setting forth such purpose. The petition shall be conclusive proof that the intended use is a public use superior to that which the land has been appropriated.

(c) The corporation may develop or assist in the development of federal lands with the approval of appropriate federal authorities.

(d) The corporation shall not develop any public land where the development may endanger the receipt of any federal grant, impair the eligibility of any public body for a federal grant, prevent the participation of the federal government in any government program, or impair any covenant between the government and the holder of any bond issued by the government.

(e) The corporation may contract or sponsor with any county, housing authority, or person, subject to the availability of funds, an experimental or demonstration housing project designed to meet the needs of elders, disabled, displaced or homeless persons, low and moderate income persons, employees, teachers, or other government workers, or university and college students and faculty. [L 1997, c 350, pt of §2]

§201G-13 Development of property; additional powers.

Notwithstanding any provision to the contrary, whenever the bids submitted for any development or rehabilitation project authorized pursuant to subparts A, B, G, and H of part II exceed the amount of funds available for that project, the corporation, with the approval of the governor, may disregard the bids and enter into an agreement to carry out the project, or undertake the project or participate in the project under the agreement; provided that the total cost of the agreement and the corporation's participation, if any, shall not exceed the amount of funds available for the project; provided further that if the agreement is with a nonbidder, the scope of the project under agreement shall remain the same as that for which bids were originally requested. [L 1997, c 350, pt of §2; am L 1998, c 212, §9; am L 2004, c 216, §23]

[\$201G-14] Administration of low-income housing credit allowed under section 235-110.8. (a) The corporation is designated as the state housing credit agency to carry out section 42(h) (with respect to limitation on aggregate credit allowable with respect to a project located in a state) of the Internal Revenue Code of 1986, as amended. As the state housing credit agency, the corporation shall determine the eligibility basis for a qualified low-income building, make the allocation of housing credit dollar amounts within the State, and determine the portion of the State's housing credit ceiling set aside for projects involving qualified nonprofit organizations. The corporation shall file any certifications and annual reports

required by section 42 (with respect to low-income housing credit) of the Internal Revenue Code of 1986, as amended.

(b) The state aggregate housing credit dollar amount shall be allocated annually as required by section 42 of the Internal Revenue Code of 1986, as amended by the corporation in an amount equal to \$1.25 multiplied by the state population in the calendar year or such greater or lesser amount as provided by section 42(h) of the Internal Revenue Code of 1986, as amended.

(c) The corporation shall adopt rules under chapter 91 necessary to comply with federal and state requirements for determining the amount of the tax credit allowed under section 42 of the Internal Revenue Code of 1986, as amended and section 235-110.8. The corporation may establish and collect reasonable fees for administrative expenses incurred in providing the services required by this section, including fees for processing developer applications for the credit. All fees collected for administering these provisions, including developer application fees, shall be deposited into the corporation's housing finance revolving fund to be used to cover the administrative expenses of the corporation.

(d) All claims for allocation of the low-income housing credit under section 235-110.8 shall be filed with the corporation. The corporation shall determine the amount of the credit allocation, if necessary, and return the claim to the taxpayer. The taxpayer shall file the credit allocation with the taxpayer's tax return with the department of taxation. [L 1997, c 350, pt of §2]

§201G-15 Administration of federal programs. (a) The corporation may carry out federal programs designated to be carried out by a housing finance entity, housing development entity, public housing agency, or entity designated by the corporation.

(b) The corporation shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the program, to carry out any federal program in subsection (a).

(c) All fees collected for administering the program may be deposited into an appropriate special fund of the corporation, and may be used to cover the administrative expenses of the corporation. [L 1997, c 350, pt of §2; am L 1998, c 212, §10]

[§201G-15.5] Federal funds outside of state treasury.

Notwithstanding chapter 38, the corporation may establish and

manage federal funds outside of the state treasury to be used for federal housing programs. The corporation shall invest such funds in permitted investments in accordance with chapter 36. [L 2003, c 36, §2]

[\$201G-16] Eminent domain, exchange or use of public property.

The corporation may acquire any real property, including fixtures and improvements, or interest therein, through voluntary negotiation; through exchange of land in accordance with section 171-50, provided that the public land to be exchanged need not be of like use to that of the private land; or by the exercise of the power of eminent domain which it deems necessary by the adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and required for public use. The corporation shall exercise the power of eminent domain granted by this section in the same manner and procedure as is provided by chapter 101, and otherwise in accordance with all applicable provisions of the general laws of the State; provided that condemnation of parcels greater than fifteen acres shall be subject to legislative disapproval expressed in a concurrent resolution adopted by majority vote of the senate and the house of representatives in the first regular or special session following the date of condemnation.

The corporation may acquire by the exercise of the power of eminent domain property already devoted to a public use, provided that no property belonging to any government may be acquired without its consent, and that no property belonging to a public utility corporation may be acquired without the approval of the public utilities commission, and subject to legislative disapproval expressed in a concurrent resolution adopted by majority vote of the senate and the house of representatives in the first regular or special session following the date of condemnation. [L 1997, c 350, pt of §2]

[\$201G-17] Contracts with federal government. (a) The corporation may:

(1) Borrow money or accept grants from the federal government for or in aid of any housing project that the corporation is authorized to undertake;

(2) Take over any land acquired by the federal government for the construction or operation of a housing project;

(3) Take over, lease, or manage any housing project constructed or owned by the federal government, and to these ends, enter into contracts, mortgages, leases, or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance, and operation of the housing project;

(4) Procure insurance or guarantees from the federal government of the payment of any debts or parts thereof secured by mortgages made or held by the corporation on any property included in any housing project;

(5) Agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and include in any construction contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor; and

(6) Comply with any conditions required by the federal government in any contract for financial assistance.

(b) In any contract for annual contributions with the federal government, the corporation may obligate itself to convey to the federal government possession of or title to the project to which the contract relates, if a substantial default, as defined by contract, occurs. Notwithstanding any other law to the contrary, this obligation shall be specifically enforceable and shall not constitute a mortgage.

The contract may provide further that if a conveyance occurs, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project in accordance with the terms of the contract; provided that the contract shall require that as soon as practicable after the federal government

is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the corporation the project as then constituted.

(c) It is the purpose and intent of this part to authorize the corporation to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the undertaking, construction, maintenance, and operation of any housing project that the corporation is empowered to undertake. [L 1997, c 350, pt of §2]

[\$201G-18] Public works contracts. The corporation may make, execute, and carry out contracts for, or in connection with, any housing project in the manner provided in chapter 103D and section 103-53; and, with regard to the contracts, the term "officers", as used in chapter 103D, shall mean the corporation or officer authorized by the corporation to act as its contracting officer. Unless made and executed in the name of the State, each contract made and executed as authorized in this section shall state therein that it is so made and executed. [L 1997, c 350, pt of §2]

[\$201G-19] Remedies of an obligee: mandamus; injunction; possessory action; receiver; accounting; etc. An obligee of the corporation shall have the right, in addition to all other rights that may be conferred on the obligee subject only to any contractual restrictions binding upon the obligee, and subject to the prior and superior rights of others:

(1) By mandamus, suit, action, or proceeding in law or equity to compel the corporation, and the members, officers, agents, or employees thereof to perform each and every item, provision, and covenant contained in any contract of the corporation, and to require the carrying out of any or all covenants and agreements of the corporation and the fulfillment of all duties imposed upon the corporation by this chapter;

(2) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of the obligee of the corporation;

(3) By suit, action, or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to possession pursuant to any contract of the corporation;

(4) By suit, action, or proceeding in any court of competent jurisdiction, upon the happening of an event of default (as defined in a contract of the corporation), to obtain the appointment of a receiver of any housing project of the corporation or any part or parts thereof, and if the receiver is appointed, the receiver may enter and take possession of the housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the corporation itself might do and shall keep the moneys in a separate account or accounts and apply the same in accordance with the obligations of the corporation as the court shall direct; and

(5) By suit, action, or proceeding in any court of competent jurisdiction to require the corporation and the members thereof to account as if it and they were the trustees of an express trust. [L 1997, c 350, pt of §2]

[\$201G-20] Subordination of mortgage to agreement with government. The corporation may agree in any mortgage made by it that the mortgage shall be subordinate to a contract for the supervision by a government of the operation and maintenance of the mortgaged property and the construction of improvements thereon. In that event, any purchaser or purchasers at a sale of the property of the corporation pursuant to a foreclosure of the mortgage or any other remedy in connection therewith shall obtain title subject to the contract. [L 1997, c 350, pt of §2]

[\$201G-21] Duty to make reports. Except as otherwise provided by law, the corporation shall be responsible for the following reports:

(1) The corporation shall file at least once a year with the governor a report of its activities for the preceding fiscal year;

(2) The corporation shall report to the state comptroller on moneys deposited in depositories other than the state treasury under section 40-81, and rules adopted thereunder; and

(3) The corporation shall submit an annual report to the legislature on all corporation program areas and funds organized by program area, and by fund within each program area, no later than twenty days prior to the convening of each regular session, which shall provide the following information on the status of its programs and finances:

(A) A description of programs being developed in the current fiscal biennium, including a summary listing of the programs, the status of each program, the methods of project financing or loans, and other information deemed significant;

(B) A description of programs planned for development during the two ensuing fiscal bienniums, including a summary listing of the proposed programs, the methods of project financing or loans, and other information deemed significant;

(C) A status report of actual expenditures made in the prior completed fiscal year from each fund established under this chapter, estimated expenditures anticipated for the current fiscal year, and projected expenditures for the ensuing fiscal years to be described in relation to specific projects developed to implement

the purposes of any program or fund established under this chapter;

(D) A financial audit and report conducted on an annual basis by a certified public accounting firm; and

(E) Recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this part. [L 1997, c 350, pt of §2]

[\$201G-22] Quitclaim deeds. Unless otherwise provided by law, the corporation shall issue quitclaim deeds and leases whenever it conveys, transfers, sells, or assigns any property developed, constructed, or sponsored under this chapter. [L 1997, c 350, pt of §2]

PART II. STATE HOUSING PROGRAMS

A. Federal Low Income Housing

[\$201G-31] Definitions. The following terms, wherever used or referred to in this subpart shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Housing project" or "project" includes any housing project or projects as defined in part I which is acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

- (1) To demolish, clear, remove, alter, or repair unsanitary or unsafe housing;
- (2) To provide safe and sanitary dwelling accommodations; or
- (3) To do both. [L 1997, c 350, pt of §2]

HRS 0201G-0031 ANNOTATIONS

Note

Subpart heading amended by L 1998, c 212, §11.

[\$201G-32] Rentals and tenant selection. (a) In the operation or management of housing projects, the corporation (acting directly or by an agent or agents) shall at all times, observe the following duties with respect to rentals and tenant selections:

- (1) It may establish maximum limits of annual net income for tenant selection in any public housing project, less such exemptions as may be authorized by federal regulations pertaining to public housing. The corporation may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the corporation;
- (2) It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of persons who

lack the amount of income which it determines to be necessary in order to obtain safe, sanitary, and uncongested dwelling accommodations within the area of operation of the corporation and to provide an adequate standard of living; and

(3) It may rent or lease to a tenant a dwelling consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

(b) Nothing in this part shall be construed as limiting the power of the corporation:

(1) To vest in an obligee the right, in the event of a default by the corporation, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this part with respect to rentals, tenant selection, manner of operation, or otherwise; or

(2) To vest in obligees the right, in the event of a default by the corporation, to acquire title to a housing project or the property mortgaged by the corporation, free from all the restrictions imposed by this part, except those imposed by section 201G-168. [L 1997, c 350, pt of §2]

§201G-33 Delinquent accounts. (a) Notwithstanding section 40-82, the corporation, with the approval of the attorney general, may delete from its accounts receivable records delinquent accounts for vacated units within federal low rent public housing projects that have been delinquent for at least ninety days.

(b) The delinquent accounts may be assigned to a collection agency.

(c) *[Repealed July 1, 2007. L 2002, c 227, §13.]* Before the corporation seeks eviction of a tenant due to delinquency in payment of rent, the corporation shall comply with the procedures set forth in section 201G-52(b) before proceeding

with the eviction hearing. [L 1997, c 350, pt of §2; am L 2002, c 227, §3]

[\$201G-34] Investigatory powers. (a) The corporation may:

(1) Investigate living, dwelling, and housing conditions and the means and methods of improving such conditions;

(2) Enter upon any building or property in order to conduct investigations or to make surveys or soundings;

(3) Conduct examinations and investigations and hear testimony and take proof under oath at public or private hearings on any matter material for its information;

(4) Issue subpoenas requiring the attendance of witnesses or the production of books and papers, and order the examination of witnesses who are unable to attend before the corporation, are excused from attendance, or by leave of courts as provided by chapter 624, are out of the State; and

(5) Make available to any government agency charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.

(b) Investigations or examinations may be conducted by the corporation or by a committee appointed by it, consisting of one or more members, or by counsel, or by an officer or employee specially authorized by the corporation to conduct it. Any person designated by the corporation to conduct an investigation or examination shall have power to administer oaths, take affidavits, and issue subpoenas or orders for the taking of depositions. [L 1997, c 350, pt of §2]

[§201G-35] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

B. State Low Income Housing

§201G-41 Definitions. The following terms, wherever used or referred to in this subpart, shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Administer" or "administration" means the management, operation, maintenance, and regulation of any housing project, and includes the leasing of any housing project, in whole or in part, from the federal government, management and operation of any housing project under a contract with or permit from the federal government, fixing of rentals, selection of tenants, rental of living quarters and accommodations, rental or leasing of commercial structures and spaces, and providing of recreational and other facilities. It also includes any and all undertakings necessary therefor.

"Veteran" includes any person who served in the military or naval forces of the United States during World War II and who has been discharged or released therefrom under conditions other than dishonorable. The term "veteran" includes Filipino World War II veterans who served honorably in an active duty status under the command of the United States Armed Forces in the Far East (USAFFE), or within the Philippine Army, the Philippine Scouts, or recognized guerilla units. The Filipino World War II veterans must have: served at any time between September 1, 1939, and December 31, 1946; been born in the Philippines; and resided in the Philippines prior to the military service. [L 1998, c 212, pt of §4]

§201G-42 Housing, tenant selection. Subject to the following limitations and preferences, the corporation shall select tenants upon the basis of those in greatest need for such housing. The corporation may limit the tenants of any housing project to classes of persons when required by federal law or regulation as a term or condition of obtaining assistance from the federal government. Within the priorities established by the corporation recognizing need, veterans with a permanent disability of ten per cent or more as certified by the Veterans

Administration, the dependent parents of the veteran and the deceased veteran's widow shall be given first preference. [L 1998, c 212, pt of §4]

§201G-43 Rentals. (a) Notwithstanding any provision of law to the contrary, the corporation shall fix the rates of the rentals for dwelling accommodations and other facilities in the housing projects provided for by this subpart, at rates that will produce revenues that will be sufficient to pay all expenses of management, operation, and maintenance, including the cost of insurance, a proportionate share of the administrative expenses of the corporation to be fixed by it, and the costs of repairs, equipment, and improvements, to the end that the housing projects shall be and always remain self-supporting. The corporation, in its discretion, may fix the rates in such amounts as will produce additional revenues (in addition to the foregoing) sufficient to amortize the cost of the housing project or projects, including equipment, over a period or periods of time that the corporation may deem advisable.

(b) Notwithstanding any provision of law to the contrary, if any such housing project or projects have been specified in any resolution of issuance adopted pursuant to part III, or if the income or revenues from any such project or projects have been pledged by the corporation to the payment of any bonds issued under part III, or if any of the property of any such housing project or projects is security for any such bonds, the corporation shall fix the rates of the rentals for dwelling accommodations and other facilities in the housing project or projects so specified or encumbered at increased rates that will produce the revenues required by subsection (a) and, in addition, those amounts that may be required by part III, by any resolution of issuance adopted under part III and by any bonds or mortgage or other security issued or given under part III. [L 1998, c 212, pt of §4]

§201G-44 Administration of state low income housing projects and programs. (a) The corporation may construct, develop, and administer property or housing for the purpose of state low income housing projects and programs.

(b) The corporation shall adopt necessary rules in accordance with chapter 91 including the establishment and collection of reasonable fees for administering the projects or programs and to carry out any state program under [subsection] (a). [L 1998, c 212, pt of §4]

§201G-45 [State low income housing revolving fund.] The director of finance shall establish a revolving fund to be known as "the state low income housing revolving fund". Notwithstanding any law to the contrary, moneys received by the corporation under or pursuant to this subpart, including refunds, reimbursements, rentals, fees, and charges received from tenants, shall be deposited in the state low income housing revolving fund. Except as otherwise provided in this chapter, the state low income housing revolving fund may be expended by the corporation for any and all of the purposes of this subpart, including, without prejudice to the generality of the foregoing, the expenses of management, operation, and maintenance of state low income housing, including but not limited to the cost of insurance, a proportionate share of the administrative expenses of the corporation, and the cost of repairs, equipment, and improvement; the acquisition, clearance, and improvement of property; the construction and reconstruction of building sites; the construction, reconstruction, repair, remodeling, extension, equipment, and furnishing of any housing project; the development and administration of any housing project; the payment of rentals; and administration and other expenses. [L 1998, c 212, pt of §4]

§201G-46 Investigatory powers. (a) The corporation may:

- (1) Investigate living, dwelling, and housing conditions and the means and methods of improving those conditions;
- (2) Enter upon any building or property in order to conduct investigations or to make surveys or soundings;
- (3) Conduct examinations and investigations, hear testimony and take proof under oath at public or private hearings on any matter material for its information;
- (4) Issue subpoenas requiring the attendance of witnesses or the production of books and papers, and order the examination of witnesses who are unable to attend before the corporation, are excused from attendance, or by leave of courts as provided by chapter 624, are out of the State; and

(5) Make available to any government agency charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its jurisdictional limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.

(b) Investigations or examinations may be conducted by the corporation or by a committee appointed by it, consisting of one or more members, or by counsel, or by an officer or employee specially authorized by the corporation to conduct it. Any person designated by the corporation to conduct an investigation or examination may administer oaths, take affidavits, and issue subpoenas or orders for the taking of depositions. [L 1998, c 212, pt of §4]

§201G-47 Housing, government aid, political subdivisions. Any political subdivision may appropriate money for the purposes of meeting any local participation in housing costs or expenses required in order to obtain assistance from the federal government in the development and administration of housing projects and programs under this subpart, or of providing funds for use by the corporation in developing and administering housing projects. [L 1998, c 212, pt of §4]

§201G-48 Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities conferred upon it. [L 1998, c 212, pt of §4]

§201G-51 Definitions. As used in this subpart:

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in any court or agency proceeding.

"Public housing project" means a housing project directly controlled, owned, developed, or managed by the corporation pursuant to subparts A, B, and H.

"Tenant" [Repealed July 1, 2007. L 2002, c 227, §13.] means any person occupying a room, dwelling accommodation, living quarters, or space in any public housing project, under or by virtue of any tenancy lease, license, or permit under or from the corporation. [L 1997, c 350, pt of §2; am L 1998, c 212, §13; am L 2002, c 227, §2]

HRS 0201G-0051 ANNOTATIONS

Note

Subpart heading amended by L 1998, c 212, §12.

§201G-52 Termination and eviction. [Repeal and reenactment on July 1, 2007. L 2002, c 227, §13.] (a) Except as otherwise provided, the corporation may terminate any lease, rental agreement, permit, or license covering the use and occupation of any dwelling unit or other premises located within a public housing project and evict from any premises any tenant, licensee, or other occupant for any of the following reasons:

- (1) Failure to pay rent when due;
- (2) Violation of any of the provisions of a lease rental agreement, permit, or license;
- (3) Violation of any of the rules of the corporation;
- (4) Failure to maintain the dwelling unit in a clean, sanitary, and habitable condition;
or
- (5) The existence of any other circumstances giving rise to an immediate right to possession by the corporation.

(b) When any tenant has been delinquent in payment of rent, the corporation, either directly or through its managing agent, shall provide the tenant with a written notice no later than forty-five days from the date of delinquency that shall inform the tenant of the delinquency and schedule a meeting between the tenant and the corporation or its agent. The written notice shall:

(1) Inform the tenant that continued delinquency shall result in the tenant's eviction;

(2) Inform the tenant of the tenant's right to apply for an interim adjustment in rent;

(3) Explain to the tenant the steps of the grievance and eviction processes and how the processes protect the tenant;

(4) Provide the tenant with a sample letter for demanding a grievance hearing;

(5) Set forth the location, date, and time, which shall be no earlier than fourteen days from the date of the written notice, at which the tenant may meet with the corporation or its agent to discuss the delinquency in rent; and

(6) Inform the tenant that the tenant shall either attend the meeting or, if applicable, contact the corporation or the corporation's agent before the meeting time to reschedule the meeting.

(c) At the meeting described in subsection (b), the corporation or its agent shall:

(1) Inquire into the cause of the tenant's delinquency and offer suggestions that the corporation may feel appropriate, if any, to address the causes of delinquency;

(2) Consider whether a reasonable payment plan is appropriate for the tenant's situation and, if appropriate, offer a payment plan to the tenant; and

(3) Inform the tenant of and explain the issues as required under subsection (b)(1), (2), and (3).

(d) The corporation shall develop a checklist outlining all of the requirements listed in subsection (c). The corporation or

its agent and the tenant shall complete, sign, and date the checklist to memorialize the meeting.

(e) If the tenant fails to attend or reschedule the meeting provided for in subsection (c), the corporation shall provide the tenant with a second written notice. The notice shall inform the tenant that:

(1) The corporation shall proceed to terminate the tenant's tenancy because of the tenant's outstanding rent delinquency and the tenant's failure to respond to the corporation's written notice issued pursuant to subsection (b);

(2) The tenant has thirty days from receipt of the second written notice to request a grievance hearing; and

(3) If the tenant fails to request a grievance hearing within thirty days, the corporation has the right to proceed with the eviction hearing pursuant to section 201G-53.

(f) If the tenant meets with the corporation as provided for in subsection (c), the corporation shall decide, based upon the facts discussed at the meeting, what action is appropriate to address the tenant's case. The corporation shall notify the tenant of such decision in writing. If the corporation decides to proceed with an action to terminate the tenancy, the corporation shall further inform the tenant in the same written notice that:

(1) The tenant has thirty days from receipt of this notice to request a grievance hearing; and

(2) If the tenant fails to request a grievance hearing within thirty days, the corporation has the right to proceed with the eviction hearing pursuant to section 201G-53. [L 1997, c 350, pt of §2; am L 1998, c 212, §14; am L 2002, c 227, §4]

§201G-53 Hearings. *[Repeal and reenactment on July 1, 2007. L 2002, c 227, §13.]* (a) Where the corporation proposes to

terminate a lease, rental agreement, permit, or license, and evict a tenant, licensee, or other occupant under section 201G-52, a hearing shall be held to determine whether cause exists for the action. The corporation shall give written notice to the person concerned specifying the reason for which the eviction is proposed and fixing the date and place of hearing. The written notice shall further inform the tenant, licensee, or other occupant of the right to inspect and copy the tenant file at the tenant's expense before the hearing is held. The notice shall be given at least five days before the date set for the hearing. At the hearing, before final action is taken, the person concerned shall be entitled to be heard in person or through counsel, and shall be accorded a full and fair hearing in accordance with the requirements of a contested case hearing provided for under sections 91-9 and 91-10 to 91-13. This full and fair hearing shall be deemed to be a contested case hearing before the agency that is required pursuant to chapter 91.

(b) Hearings shall be conducted by an eviction board appointed by the corporation. The eviction board shall consist of not fewer than three persons, of which one member shall be a tenant. At least one eviction board shall be established in each county of the State. The findings, conclusions, decision, and order of the eviction board shall be final unless an appeal is taken as hereinafter provided.

(c) The eviction board shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the eviction board, or of any subpoena issued by the eviction board, or the refusal of any witness to testify to any matter regarding which the witness may lawfully be questioned, any circuit judge, on application by the eviction board, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein. [L 1997, c 350, pt of §2; am L 2002, c 227, §5]

§201G-54 REPEALED. L 2002, c 227, §8.

HRS 0201G-0054 ANNOTATIONS

Note

Section reenacted on July 1, 2007. L 2002, c 227, §13.

§201G-55 Eviction. *[Repeal and reenactment on July 1, 2007. L 2002, c 227, §13.]* (a) If it is proven to the satisfaction of the eviction board that there is cause to terminate a lease, rental agreement, permit, or license and evict the tenant, licensee, or other occupant, the corporation shall provide the tenant with a written notice of the corporation's decision to terminate the lease. The notice shall inform the tenant that a writ of possession may be issued by the corporation within ten days. The notice shall also inform the tenant of whether the grounds for eviction are considered curable, and if so, what the tenant must do to remedy the grounds, by when it must be done, and what the tenant must do to document for the corporation that the grounds have been remedied.

(b) When the grounds for termination of the lease may be cured by the occupant, licensee, or other occupant, the tenant shall have ten days from receipt of the notice provided for in subsection (a) to cure such grounds. If the grounds are cured within the ten-day period, no writ of possession may be issued. If the condition is not cured within the ten-day period, the corporation may issue a writ of possession forthwith.

(c) The corporation may adopt rules to define curable and noncurable grounds for eviction pursuant to chapter 91. The corporation may consider a tenant's history in determining noncurable grounds for eviction. A tenant's history may include chronic or consistent delinquency, or repeated violations of the terms of the rental agreement.

(d) Enforcement of the order by a writ of possession shall be effected either by an officer appointed by the corporation, who shall have all of the powers of a police officer for all action in connection with the enforcement of the order, or by the sheriff, or any other law enforcement officer of the State or any county, whose duty it shall be to carry out the order. The person enforcing the order shall remove all persons from the premises and put the corporation in full possession thereof.

(e) Upon eviction, the household goods and personal effects of the person against whom the order is entered, and those of any persons using the premises incident to the person's holding, may be removed from the premises and stored by the corporation. If the action is taken, the corporation shall have a lien on the property so taken for the expenses incurred by it in moving and storing the same, and the corporation is authorized to sell or otherwise dispose of the property, if unclaimed after thirty days. [L 1997, c 350, pt of §2; am L 2002, c 227, §6]

Note

Report to legislature (2006); eviction proceedings pending on July 1, 2007; status of rules, etc. L 2002, c 227, §§9 to 11.

§201G-56 Ex parte motion. *[Repeal and reenactment on July 1, 2007. L 2002, c 227, §13.]* If a tenant or licensee cannot be served with an order of eviction or writ of possession, and the facts shall appear by affidavit to the corporation, service to the tenant or licensee may be made according to the special order of the corporation. The order shall require the officer to affix a certified copy of the order of eviction or writ of possession in a conspicuous place upon the premises such as the door or wall of the dwelling unit. [L 1997, c 350, pt of §2; am L 2002, c 227, §7]

§201G-57 Judicial review. (a) Any person aggrieved by a final decision and order by the corporation or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive the appellant of adequate relief is entitled to judicial review thereof under this subpart.

(b) *[Subsection effective until June 30, 2006. For subsection effective July 1, 2006, see below.]* Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the corporation pursuant to the provisions of the Hawaii rules of civil procedure, except where a statute provides for a direct appeal to the supreme court and in such cases the appeal shall be in like manner as an appeal from the circuit court to the supreme court, including payment of the fee prescribed by section 607-5 for filing the notice of appeal. The court in its discretion may permit other interested persons to intervene.

(b) *[Subsection effective July 1, 2006. For subsection effective until June 30, 2006, see above.]* Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the corporation pursuant to the provisions of the rules of court, except where a statute provides for a direct appeal to the intermediate appellate

court. In such cases, the appeal shall be treated in the same manner as an appeal from the circuit court, including payment of the fee prescribed by section 607-5 for filing the notice of appeal. The court in its discretion may permit other interested persons to intervene.

(c) The proceedings for review shall not stay enforcement of the decisions of the corporation; but the corporation or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within twenty days after the determination of the contents of the record on appeal in the manner provided by the rules of court, or within further time as the court may allow, the corporation shall transmit to the reviewing court the record of the proceeding under review. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence and the evidence is material and good cause exists for the failure to present the evidence in the proceeding before the corporation, the court may order the corporation to hear the evidence upon the conditions as the court deems proper. The corporation may modify its findings, decision, and order by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modification of its findings or decision.

(f) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the corporation and not shown in the record, testimony thereon may be taken in court. The court may, upon request by any party, hear oral argument and receive written briefs.

(g) Upon review of the record the court may affirm the decision of the corporation or remand the case with instructions for further proceedings, or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority or jurisdiction of the corporation;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion. [L 1997, c 350, pt of §2; am L 1998, c 212, §15; am L 2002, c 73, §2; am L 2004, c 202, §16]

HRS 0201G-0057 ANNOTATIONS

Note

L 2004, c 202, §82 provides:

"SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice's sole discretion, directs."

Rules of Court

Appeal to circuit court, see HRCF rule 72; appeal to supreme court, see Hawaii Rules of Appellate Procedure.

[§201G-58] Appeals. *[Section effective until June 30, 2006. For section effective July 1, 2006, see below.]* An aggrieved party may secure a review of any final judgment of the circuit court under this subpart by appeal to the supreme court. The appeal shall be taken in the manner provided in the rules of court. [L 1997, c 350, pt of §2]

§201G-58 Appeals. *[Section effective July 1, 2006. For section effective until June 30, 2006, see above.]* An aggrieved party may secure a review of any final judgment of the circuit court under this subpart by appeal to the intermediate appellate court, subject to chapter 602. The appeal shall be taken in the

manner provided in the rules of court. [L 1997, c 350, pt of §2; am L 2004, c 202, §17]

HRS 0201G-0058 ANNOTATIONS

Note

L 2004, c 202, §82 provides:

"SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice's sole discretion, directs."

Rules of Court

Appeal to supreme court, see Hawaii Rules of Appellate Procedure.

[§201G-59] Rules. The corporation may adopt rules pursuant to chapter 91 necessary for the purposes of this subpart. [L 1997, c 350, pt of §2]

D. Public Housing; Liens

§201G-71 Definitions. The following terms wherever used or referred to in this subpart shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Housing project" means and includes any housing project or projects owned, managed, administered, or operated by the corporation under or pursuant to subparts A and B or under or pursuant to any other law.

"Tenant" includes any person occupying a room, dwelling accommodation, living quarters, or space in any housing project, under or by virtue of any tenancy lease, license, or permit under or from the corporation. [L 1997, c 350, pt of §2; am L 1998, c 212, §16]

HRS 0201G-0071 ANNOTATIONS

Note

Subpart heading amended by L 1998, c 212, §12.

[\$201G-72] Lien on personalty for rent, etc. The corporation shall have a statutory lien on all personal property, not exempt from execution, belonging to, or in the lawful possession of, every tenant while the personal property is in or upon any housing project, for the amount of its proper charges against the tenant for rent of a room, dwelling accommodation, living quarters, or space in the housing project, or for utilities, facilities, or services in the housing project. The lien shall commence with the tenancy or occupancy of the tenant and continue for one year after the charge or charges are due and owing to the corporation. Whenever any tenant fails or refuses to pay the charge or charges after the same are so due and owing, the corporation shall have the right and power, acting by its authorized agents or representatives, without process of law and without any liability for the taking, seizure, and retention of the personal property, to take and seize any of the personal property belonging to, or in the lawful possession of, the tenant which is found in or upon the housing project, and to hold and retain the same, as security for the payment of the charge or charges, until the amount of the charge or charges is paid and discharged. If the charge or charges, so due and owing, are not paid and discharged within thirty days after the taking and seizure, the corporation may sell the personal property in the manner provided in section 201G-73. [L 1997, c 350, pt of §2]

§201G-73 Foreclosure of lien, notice, etc. The lien of the corporation upon personal property which has been taken and retained by it as provided in section 201G-72 may be foreclosed by the corporation by selling the same at public auction:

(1) After first mailing by United States mail, postage prepaid, a notice of the foreclosure, addressed to the tenant who owns, or was in possession of, the personal property, at the tenant's last address shown on the records of the corporation, stating that, unless the charge or charges then due and owing from the tenant to the corporation are paid within ten days from the time of mailing the notice, the personal property will be sold at public auction; and

(2) After first giving public notice of the foreclosure and sale at least two times in the county in which the personal property is located. Each notice shall contain a brief

description of the personal property; the name of the tenant, if known; the name of the owner of the personal property, if known; the amount of the charge or charges; and the time and place of the sale. Notices of several foreclosures and sales may be combined in one notice; and whenever so combined and given, the expenses of notice and sale shall be a statutory lien upon the property described in the notice in a ratable proportion according to the amount received for each lot of property so noticed for sale.

If the tenant fails to pay to the corporation within ten days after the mailing of the notice of foreclosure the charge or charges, the corporation may sell the property at public auction at the time and place stated in the notice, or at a time or times or place or places to which the sale may be postponed or adjourned at the time and place stated in the notices, and may apply the proceeds thereof to the payment of the charge or charges and the expenses of notice and sale. The balance, if any remaining, shall be paid over to the tenant who formerly owned, or was in possession of, the property. If the balance is not claimed by the tenant within thirty days after the sale, then the balance shall be paid over to the director of finance and it shall be kept by the director in a special deposit for a period not to exceed six months. If claimed by the tenant during that period it is paid over to the tenant. If no claim shall be made during the period, the sum shall become a government realization and be paid into the general fund. [L 1997, c 350, pt of §2; am L 1998, c 2, §56 and c 212, §3]

[§201G-74] Sheriff or police to assist. The corporation, in taking, seizing, holding, retaining, or selling any personal property pursuant to sections 201G-72 and 201G-73, may require the assistance of the sheriff or any authorized police officer of any county. Any sheriff or officer, when required shall so assist the corporation. [L 1997, c 350, pt of §2]

[§201G-75] Existing contracts not impaired. Sections 201G-72 and 201G-73 shall not be construed as to impair or affect the obligation of any contract existing on or before May 9, 1949. [L 1997, c 350, pt of §2]

§201G-76 Lien on abandoned personalty, sale, etc. Whenever the corporation has in its possession for four months after the

termination of any residence or occupancy herein mentioned any personal property that has been left in or about any housing project by any person who formerly resided in, or occupied a room, dwelling accommodation, living quarters, or space in the housing project, the corporation may sell the same at public auction and apply the proceeds thereof to the payment of its charges for storage of the personal property, and for public notice and sale, and to the payment of other amounts, if any, then due and owing to it from the former resident or occupant for rent or for any utility or service. Before any sale is made, the corporation shall first give public notice of the time and place of sale at least two times in the county in which the personal property is located. The notice shall contain a brief description of the property; the name, if known, of the former resident or occupant who so left the property in or about the housing project; the amount of the charges for storage, if any, and the indebtedness, if any; and the time and place of the sale. The charges for storage, if any, and for notice and sale, and the indebtedness, if any, shall be a lien upon the personal property. Notices of several sales may be combined and given in one notice, and whenever so combined and given the expenses of notice and sale shall be a lien and shall be satisfied in ratable proportion according to the amount received for each lot of property so noticed for sale. [L 1997, c 350, pt of §2; am L 1998, c 2, §57 and c 212, §3]

[\$201G-77] Disposition of surplus proceeds. After the sale the corporation shall apply the proceeds as provided in section 201G-76. The balance, if any remaining, shall be paid over to the former resident or occupant. If the balance is not claimed by the former resident or occupant within thirty days after the sale thereof, then the balance shall be paid over to the director of finance and shall be kept by the director in a special deposit for a period not to exceed six months. If claimed by the former resident or occupant during that period it shall be paid to the former resident or occupant. If no claim is made during the period, the sum shall become a government realization and shall be paid into the general fund. [L 1997, c 350, pt of §2]

[\$201G-78] Lien attaches to personalty in possession. Sections 201G-76 and 201G-77 shall also apply to any personal property which, before May 2, 1949, was left in or about any housing project, and was taken into the possession of the corporation, as herein set forth and provided. [L 1997, c 350, pt of §2]

[\$201G-79] Priority of housing lien. The statutory liens provided for in this subpart shall be preferred and have priority over all other liens or claims and over all attachments or other process. [L 1997, c 350, pt of §2]

[\$201G-80] Rights, powers, supplemental. The rights or powers conferred upon the corporation by this subpart shall be in addition and supplemental to the rights or powers conferred upon the corporation by any other law. [L 1997, c 350, pt of §2]

E. Public Housing; Corporation-County Cooperation

[\$201G-91] Gifts, etc., to counties from corporation. The corporation may make and pay gifts, or donations, of money directly to any county. Any county may receive the gifts or donations as a general fund realization, and expend the same for any purpose authorized by law. [L 1997, c 350, pt of §2]

HRS 0201G-0091 ANNOTATIONS

Note

Subpart heading amended by L 1998, c 212, §12.

§201G-92 Facilities and services by counties to corporation and tenants. Each county within which the corporation may own, operate, or administer any housing project or projects under any law or laws, and to which, or for whose benefit, the corporation has made (by payment to the county) or may hereafter make, gifts or donations, including any payment in lieu of taxes, shall, upon request of the corporation, provide and furnish to the corporation, in regard to every such housing project or projects within the county, and to the tenants and other occupants of the same, free of charge and without condition or other requirement, all the facilities, services, and privileges as it provides or furnishes, with or without charge or other consideration, to any person or persons whomsoever, including, without limitation to the generality of the foregoing, police protection, fire protection, street lighting, or paving maintenance, traffic control, garbage or trash collection and disposal, use of streets or highways, use of county incinerators or garbage dumps, storm drainage, and sewage disposal. In addition, each county, upon request of the corporation and free of charge and without condition or other requirement, shall open or close, but not construct or reconstruct, streets, roads, highways, alleys, or other facilities within any housing project or projects within the county. Nothing in this section shall be construed to

restrict or limit the power of the corporation to agree to pay, or to pay, for any and all of the facilities, services, and privileges, if in its discretion it deems such payment advisable. [L 1997, c 350, pt of §2; am L 1998, c 212, §17]

§201G-93 Construction of additional powers. Sections 201G-91 and 201G-92 shall not be construed as abrogating, limiting, or modifying subparts A, B, and H, including amendments thereto. [L 1997, c 350, pt of §2; am L 1998, c 212, §18]

[§201G-94] Charges for prior services by counties to corporation. Every county (including departments, boards, or instrumentalities thereof) which has, prior to May 14, 1949, provided or furnished any facilities, services, or privileges, including, without limitation to the generality of the foregoing, garbage and trash collection and disposal, use of streets or highways, and use of county incinerators or garbage dumps, to the corporation in regard to any housing project or projects owned, operated, or administered by the corporation under any law or laws, or to the tenants or occupants of any such housing project or projects, for which facilities, services, or privileges the corporation, or the tenants or occupants have not paid, is prohibited from charging, collecting, or receiving any privileges, except such sum or sums as the corporation, in its discretion, may hereafter agree to pay for the same. [L 1997, c 350, pt of §2]

[§201G-95] Garbage, trash disposal. Every county which maintains or operates any garbage or trash collection and disposal service shall, free of charge, collect, and dispose of garbage and trash at and from any housing project or projects, located within a county, which is owned, operated, or administered by the corporation. Upon request of the corporation, each county shall allow the corporation to establish, maintain, or operate its own garbage and trash collection and disposal service for any or all housing project or projects located within the county, and, in regard to such service, shall allow the corporation to use, free of charge, all incinerators, garbage dumps, and other facilities that the county may own, control, or operate.

Nothing in this section shall prohibit or prevent the corporation from paying, and any such county from receiving, any sum or sums which the corporation in its discretion may agree to pay as reasonable compensation for the services or facilities provided by any county pursuant to this section. [L 1997, c 350, pt of §2]

[\$201G-96] Furnishing of free water not required. Sections 201G-92 to 201G-95 shall not be construed to require the furnishing of any free water to the corporation or to the tenants or occupants of any housing projects owned, operated, or administered by the corporation. [L 1997, c 350, pt of §2]

[\$201G-97] Powers, etc., supplemental. The powers conferred upon the corporation by sections 201G-91 to 201G-95 shall be in addition and supplemental to the powers conferred by any other law, and nothing in the sections shall be construed as limiting any other powers, rights, privileges, or immunities of the corporation. [L 1997, c 350, pt of §2]

[\$201G-98] Regulation of traffic within projects in city and county of Honolulu. Any law to the contrary notwithstanding, the city council of the city and county of Honolulu may regulate traffic within the various projects of the corporation in the city and county of Honolulu by ordinance. [L 1997, c 350, pt of §2]

[\$201G-99] Regulation of traffic within projects in other counties. Any law to the contrary notwithstanding, the county councils of the counties of Hawaii, Maui, and Kauai may regulate traffic within the various projects of the corporation within their respective counties by ordinance as provided by law. [L 1997, c 350, pt of §2]

[\$201G-100] Regulations, effective when. No ordinance or laws enacted by the council of any county regulating traffic within the projects of the corporation within the county, shall be valid or effective, unless prior thereto, the corporation has entered into a written contract with the county absolving the county from any and all responsibility or liability for the construction, maintenance, and repair of any streets, lanes, alleys, or highways or street markers, traffic signs, or signal devices within the projects of the corporation. [L 1997, c 350, pt of §2]

[\$201G-101] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

[§201G-111] Criteria. In administering this chapter and other laws of the State applicable to the supplying of housing or the assistance in obtaining housing, the corporation shall give preference to those applicants most in need of assistance in obtaining housing, in light of the amount of moneys available for the various programs. In doing so, the corporation shall take into consideration the applicant's household income and number of dependents; the age of the applicant; the physical disabilities of the applicant or those living with the applicant; whether or not the present housing of the applicant is below standard; whether or not the applicant's need for housing has arisen by reason of displacement of the applicant by governmental actions; and other factors as it may deem pertinent. [L 1997, c 350, pt of §2]

HRS 0201G-0111 ANNOTATIONS

Note

Subpart heading amended by L 1998, c 212, §12.

First offer requirement to owner-builders or nonprofit organizations shall not apply to the housing and community development corporation of Hawaii's current or future development in Kapolei, Oahu (Villages of Kapolei). L 1998, c 274, §1.

§201G-112 Definitions. The following terms, wherever used or referred to in this subpart, shall have the following respective meanings unless a different meaning clearly appears from the context:

"Develop" or "development" means the planning, financing, acquisition of real and personal property, demolition of existing structures, clearance of real property, construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services, or other site improvements, or construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures, or any combination of the foregoing, of any housing project. It also includes any and all undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

"Eligible bidder" means a person, partnership, firm, or corporation determined by the corporation:

- (1) To be qualified by experience and financial responsibility to construct

housing of the type proposed to be contracted; and

(2) To have submitted the lowest acceptable bid.

"Eligible developer" means any person, partnership, cooperative including limited-equity housing cooperatives as defined in chapter 421H, firm, nonprofit or profit corporation, or public agency determined by the corporation:

(1) To be qualified by experience and financial responsibility and support to construct housing of the type described and of the magnitude encompassed by the given project;

(2) To have submitted plans for a project adequately meeting the objectives of this chapter, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and

(3) To meet all other requisites the corporation deems to be just and reasonable, and all requirements stipulated in this chapter.

"Purchaser's equity" means the difference between the original cost of the dwelling unit to the purchaser, and the principal amount of any mortgages, liens, or notes outstanding.

"Qualified resident" means a person who:

(1) Is a citizen of the United States or a resident alien;

(2) Is at least eighteen years of age;

(3) Is domiciled in the State and shall physically reside in the dwelling unit purchased or rented under this chapter;

(4) In the case of the purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the

loan to finance the purchase; or in the case of a rental, demonstrates an ability to pay rent as determined by the corporation and meets any additional criteria established by the corporation for the respective rental housing development for which the applicant is applying; and

(5) Meets the following qualifications:

(A) Is a person who either oneself or together with spouse or household member, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land; and

(B) Is a person whose spouse or household member does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or more than a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71;

provided that for purchasers of market-priced units in an economically integrated housing project, the term "qualified resident" means a person who is a citizen of the United States or a resident alien; is domiciled in the State and shall physically reside in the dwelling unit purchased; is at least eighteen years of age; and meets other qualifications as determined by the developer.

"Short term project notes" means evidences of indebtedness issued by the State for specified housing projects and secured

by the projects the terms of which call for complete repayment by the State of the face amount in not less than two nor more than ten years. [L 1997, c 350, pt of §2 superseding c 258, §7; am L 1998, c 212, §§19, 20]

§201G-113 Powers and duties, generally. (a) The corporation may develop fee simple or leasehold property, construct dwelling units thereon, including condominiums, planned units, and cluster developments, and sell, lease, or rent or cause to be leased or rented, at the lowest possible price to qualified residents, nonprofit organizations, or government agencies, with an eligible developer or in its own behalf, either:

(1) Fully completed dwelling units with the appropriate interest in the land on which the dwelling unit is located;

(2) Units which are substantially complete and habitable with the appropriate interest in the land on which the dwelling unit is located; or

(3) The land with site improvements (other than the dwelling unit) either partially or fully developed.

(b) The corporation shall require all applicants for the purchase of dwelling units to make application therefor under oath, and may require additional testimony or evidence under oath in connection with any application. The determination of any applicant's eligibility under this chapter by the corporation shall be conclusive as to all persons thereafter dealing with the property; but the making of any false statement knowingly by the applicant or other person to the corporation in connection with any application shall constitute perjury and be punishable as such. The corporation shall establish a system to determine preferences by lot in the event that it receives more qualified applications than it has units available.

(c) The corporation shall adopt rules under chapter 91 on health upon direction from the governor and for the period as the governor shall authorize, rules on health, safety, building, planning, zoning, and land use that relate to the development, subdivision, and construction of dwelling units in projects in which the State, through the corporation, shall participate; provided that these rules shall not contravene any safety standards or tariffs approved by the public utilities

commission; provided further that these rules shall follow existing law as closely as is consistent with the production of lower cost housing with standards that meet minimum requirements of good design, pleasant amenities, health, safety, and coordinated development.

Upon the adoption of such rules they shall have the force and effect of law and shall supersede, for all projects in which the State through the corporation shall participate, all other inconsistent laws, ordinances, and rules relating to the use, zoning, planning, and development of land, and the construction of dwelling units thereon; provided that any rules, before becoming effective, shall be presented to the legislative body of each county in which they will be effective and the legislative body of any county may within forty-five days approve or disapprove, for that county, any or all of the rules by a majority vote of its members. On the forty-sixth day after submission any rules not disapproved shall be deemed to have been approved by the county.

(d) The corporation may acquire, by eminent domain, exchange, or negotiation, land or property required within the foreseeable future for the purposes of this chapter. Whenever land with a completed or substantially complete and habitable dwelling or dwellings thereon is acquired by exchange or negotiation, the exchange value or purchase price for each dwelling, including land, shall not exceed its appraised value. Land or property acquired in anticipation of future use may be leased for the interim period by the corporation for such term and rent as it deems appropriate.

(e) Upon authorization by the legislature, the corporation shall cause the State to issue general obligation bonds to finance:

- (1) Land acquisition;
- (2) The development and improvement of land;
- (3) The construction of dwelling units;
- (4) The purchase, lease, or rental of land and dwelling units by qualified residents, nonprofit organizations, or government agencies under this chapter;
- (5) Payment of any services contracted for under this chapter, including profit or

recompense paid to partners, and including community information and advocacy services deemed necessary by the corporation to provide for citizen participation in the development of housing projects, the implementation of this chapter, and the staffing of any citizen advisory committee the corporation may establish;

(6) The cost of repurchase of units under section 201G-127;

(7) Loans for the rehabilitation and renovation of existing housing; and

(8) Any other moneys required to accomplish the purposes of this chapter.

(f) The corporation shall do all other things necessary and convenient to carry out the purposes of this chapter. [L 1997, c 350, pt of §2; am L 1998, c 212, §21]

§201G-114 Additional powers; development. Notwithstanding and without compliance with section 103-7 but with the approval of the governor, the corporation may enter into and carry out agreements and undertake projects or participate in projects authorized by this chapter. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by part I and any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2; am L 2004, c 216, §24]

[§201G-115] Bond financing. The director of finance may issue general obligation bonds and short term project notes of the State in the aggregate amount not to exceed \$105,000,000 for the dwelling unit revolving fund created by section 201G-411. Pending the receipt of funds from the issuance and sale of the bonds and notes, the amount required for the purposes of this chapter shall be advanced from the general fund of the State. Upon the receipt of the bond or note funds, the general fund shall be reimbursed. The director of finance may sequester and separate the proceeds from the sale of the bonds and notes into separate funds and the amounts in either fund may be used for any of the purposes set forth in this chapter. [L 1997, c 350, pt of §2]

§201G-116 Exemption from general excise taxes. (a) In accordance with section 237-29, the corporation may approve and certify for exemption from general excise taxes any qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project:

(1) Developed under this subpart;

(2) Developed under a government assistance program approved by the corporation, including but not limited to, the United States Department of Agriculture 502 program and Federal Housing Administration 235 program; or

(3) Developed under the sponsorship of a private nonprofit corporation providing home rehabilitation or new homes for qualified families in need of decent, low-cost housing.

(b) All claims for exemption under this section shall be filed with and certified by the corporation and forwarded to the department of taxation. Any claim for exemption that is filed and approved, shall not be considered a subsidy for the purpose of this subpart.

(c) For the purposes of this section, "moderate rehabilitation" means rehabilitation to upgrade a unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure. "Substantial rehabilitation" means the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements and may include, but is not limited to, the gutting and extensive reconstruction of a unit or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance. "Substantial rehabilitation" also includes renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use (e.g., conversion of a hotel to housing for elders). [L 1997, c 350, pt of §2 superseding c 258, §10; am L 1998, c 212, §22]

[§201G-117] Exemption from tax on income and obligations. Income earned and obligations issued by a nonprofit entity determined to constitute a "public housing agency" pursuant to section 3(6) of the United States Housing Act of 1937, as amended, and which

income and obligations are declared by the United States Department of Housing and Urban Development to be exempt from all taxation imposed by the United States pursuant to section 11(b) of the Act shall be exempt from all taxation now or hereafter imposed by the State. [L 1997, c 350, pt of §2]

§201G-118 Housing development; exemption from statutes, ordinances, charter provisions, rules. (a) The corporation may develop, on behalf of the State or with an eligible developer, or may assist under a government assistance program in the development of, housing projects which shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of units thereon; provided that:

(1) The corporation finds the project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;

(2) The development of the proposed project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or the various boards of water supply authorized under chapter 54; and

(3) The legislative body of the county in which the project is to be situated shall have approved the project.

(A) The legislative body shall approve or disapprove the project by resolution within forty-five days after the corporation has submitted the preliminary plans and specifications for the project to the legislative body. If on the forty-sixth day a project is not disapproved, it shall be deemed approved by the legislative body;

(B) No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken by them

in reviewing, approving, or disapproving the plans and specifications; and

(C) The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the zoning, building, construction, and subdivision standards for that project. For purposes of sections 501-85 and 502-17, the executive director of the corporation, or the responsible county official may certify maps and plans of lands connected with the project as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and the maps and plans shall be accepted for registration or recordation by the land court and registrar; and

(4) The land use commission shall approve or disapprove a boundary change within forty-five days after the corporation has submitted a petition to the commission as provided in section 205-4. If on the forty-sixth day the petition is not disapproved, it shall be deemed approved by the commission.

(b) For the purposes of this section, "government assistance program" means a housing program qualified by the corporation and administered or operated by the corporation or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise. [L 1997, c 350, pt of §2; am L 1998, c 212, §23]

[\$201G-119] Starter homes; design standards; applicant eligibility; authority to incorporate starter homes into housing projects of the corporation.

(a) The corporation shall adopt rules in accordance with chapter 91 to establish design and construction standards for starter homes configured to expand incrementally over time. For the purposes of this section, "starter home" means a dwelling unit that is designed to meet the basic living capacity requirements of homebuyers with families of limited size by eliminating needless design and space amenities, but which nonetheless enables future expansion, modification, and improvement by the owner to accommodate increased occupancy over time as may be necessary. The rules shall include building, setback, minimum lot size, infrastructure, and architectural standards for the construction and development of starter homes.

(b) In addition to the requirements of subsection (a), the corporation shall adopt rules in accordance with chapter 91 to establish the basic requirements for families eligible to purchase starter homes under this section. The rules shall include guidelines and restrictions on occupancy standards initially permitted in a starter home, as well as the income ranges of families eligible to qualify for purchases under this section.

(c) The corporation may incorporate starter homes into any affordable housing project developed by the corporation under this chapter. The corporation shall determine on a project-by-project basis the number of starter home units to be included in each particular project.

(d) The corporation shall include in its annual report to the legislature a report on the number of starter homes constructed and developed by the corporation in accordance with the authorization provided in this section. [L 1997, c 350, pt of §2]

[\$201G-120] Dwelling unit project, construction and sponsorship of.

(a) The corporation, on behalf of the State or with eligible developers and contractors, shall develop real property and construct dwelling units thereon; provided that, not less than ten per cent of the total number of units in single-family projects consisting of fifty units or more sponsored by the corporation shall be first offered to owner-builders or to nonprofit organizations assisting owner-builders in the construction of units thereon. Qualifications for developers and contractors shall be provided by rules to be adopted by the

corporation in accordance with chapter 91. Any person, if qualified, may act as both the developer and the contractor.

(b) In selecting the eligible developers or in contracting any services or materials for the purposes of this chapter, the corporation shall not be subject to the competitive bidding laws.

(c) If working in partnership with an eligible developer, the corporation shall have sole control of the partnership, shall keep all books of the partnership, and shall ascertain all costs of the partnership including the cost of services performed by any other partners and it shall audit the same. The other partners shall perform services for the partnership under the direction of the corporation and shall be reimbursed for all costs relating to the project as certified by the corporation, including administrative and overhead costs. Additionally, the other partners, upon transfer of title by the corporation to the purchaser, shall be entitled to a guaranteed gross share if the actual cost of the project does not exceed the original project cost. The gross share shall not exceed fifteen per cent of the original project cost prorated to the dwelling units, less any amount subsidized by the State. Subsidies shall include unrecovered development and land costs and any other subsidized items as defined in rules to be adopted by the corporation pursuant to chapter 91. The percentage of the share shall be determined by the corporation by contract with the partner based upon the nature of the services rendered by them. For purposes of this subsection, "original project cost" means the original budget of a project as approved by the corporation without modification at a later date.

(d) The corporation may require that performance bonds be posted to the benefit of the State with surety satisfactory to it guaranteeing performance by the other partners, or the State may act as a self-insurer requiring security, if any, from the other partners, as the corporation shall deem necessary. [L 1997, c 350, pt of §2]

HRS 0201G-0120 ANNOTATIONS

Note

First offer requirement to owner-builders or nonprofit organizations shall not apply to the housing and community development corporation of Hawaii's current or future development in Kapolei, Oahu (Villages of Kapolei). L 1998, c 274, §1.

[§201G-121] Independent development of projects. (a) In any county, the corporation may develop or may enter into agreements for housing projects with an eligible developer if in the corporation's reasonable judgment a project is primarily designed for lower income housing. The agreement may provide for the housing to be placed under the control of the corporation, or to be sold by the corporation, or to be sold to the corporation as soon as the units are completed and shall contain terms, conditions, and covenants as the corporation, by rules, deems appropriate. Every agreement shall provide for the developer to furnish a performance bond, in favor of the corporation, assuring the timely and complete performance of the housing project. Sureties on the bond must be satisfactory to the corporation.

(b) The plans and specifications for the project shall:

(1) Provide for economically integrated housing by stipulation and design;

(2) Provide for the sale of all units in fee simple or in leasehold either to the corporation or to the purchaser and in all cases subject to all of the provisions of sections 201G-127, 201G-129, and 201G-130 excepting units sold at market price; and

(3) Encompass the use of lands adequately suited to the size, design, and types of occupancies designated in subsection (a), properly located for occupancy by the groups for which the project was primarily designed under this section, properly districted for the use intended prior to this application, and appropriately zoned within an urban land use district, or appropriate in its situation and surroundings for more intensive or denser zoning.

(c) The corporation may accept and approve projects independently initiated by private developers which fully comply with subsections (a) and (b). The corporation may review the plans, specifications, districting, and zoning of the project for the purpose of exempting the project from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to zoning and construction standards for subdivisions, development, and improvement of land and the

construction, improvement, and sale of homes thereon; provided that the procedures in section 201G-118(a)(1), (2), and (3) have been satisfied. [L 1997, c 350, pt of §2]

§201G-122 Private development of projects. (a) The corporation may enter into contracts with any eligible bidder to provide for the construction of a housing project or projects. Each contract shall provide that the housing project or projects shall be placed under the control of the corporation, as soon as the unit is available for occupancy. Each contract also shall provide that the capital stock of the mortgagor (where the mortgagor is a corporation) be transferred to the corporation, when the housing project or projects have been completed. Each contract shall contain terms and conditions that the corporation may determine to be necessary to protect the interests of the State. Each contract shall provide for the furnishing by the contractor of a performance bond and a payment bond with sureties satisfactory to the corporation, and the furnishings of bonds shall be deemed a sufficient compliance with the provisions of law and no additional bonds shall be required under law. Before the corporation shall enter into any contract as authorized by this section for the construction of a housing project or projects, it shall invite the submission of competitive bids after giving public notice in the manner prescribed by law.

(b) Notwithstanding any other provision of law, the corporation is authorized to acquire the capital stock of mortgagors holding property covered by a mortgage guaranty under this chapter and established by this section, and to exercise the rights as holder of the capital stock during the life of the mortgage and, upon the termination of the mortgage, to dissolve the corporation; to guarantee the payment of notes or other legal instruments of such mortgagors; and to make payments thereon. All housing projects placed under the control of the corporation pursuant to this section shall be deemed to be housing projects under the jurisdiction of the State.

(c) On request by the corporation, the attorney general shall furnish to the corporation, an opinion as to the sufficiency of title to any property on which it is proposed to construct housing projects, or on which housing projects have been constructed, under this section. If the opinion of the attorney general is that the title to the property is good and sufficient, the corporation is authorized to guarantee, or enter into a commitment to guarantee, the mortgagee, against any losses that may thereafter arise from the adverse claims to title. None of the proceeds of any mortgage loan hereafter

insured shall be used for title search and title insurance costs; provided that if the corporation determines in the case of any housing project, that the financing of the construction of the project is impossible unless title insurance is provided, the corporation may provide for the payment of the reasonable costs necessary for obtaining title search and title insurance. Any determination by the corporation under the foregoing proviso shall be set forth in writing, together with the reasons thereto.

(d) The State shall be authorized to guarantee the repayment of one hundred per cent of the principal and interest of loans from commercial lenders for the purposes of this section pursuant to rules adopted by the corporation which shall conform as closely as is possible to the practices of the Federal Housing Administration in insuring loans under sections 203 and 207 of the National Housing Act, as amended; provided that at no time shall the State's liability, contingent or otherwise, on the guarantees exceed \$10,000,000. [L 1997, c 350, pt of §2; am L 1998, c 2, §58 and c 212, §3]

[\$201G-123] Interim financing of projects. (a) The corporation may provide interim construction loans to eligible developers. In addition to the rate of interest charged on interim loans, the corporation may charge loan commitment fees, to be determined by rules adopted by the corporation.

(b) The interim loans shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest in the land upon which the dwelling units are constructed, or the corporation may require other security interests and instruments as it deems necessary to secure the indebtedness and such other conditions consistent with the production and marketing of dwelling units at the lowest possible prices. The corporation may also set the conditions of a loan in a building and loan agreement between the borrower and the corporation in order to secure the loan and the performance of the borrower to complete the project. [L 1997, c 350, pt of §2]

[\$201G-124] Commercial, industrial, and other uses. (a) In connection with the development of any residential units under this chapter the corporation may also develop commercial, industrial, and other properties if it determines that the uses can be an integral part of the development and can help to preserve the lifestyles of the purchasers of residences in the development. The corporation may designate any portions of the developments as for commercial, industrial, or other use and

shall have all the powers granted under this chapter with respect thereto including the power to bypass statutes, ordinances, charter provisions and rules of any governmental agency pursuant to section 201G-118. For this purpose the corporation may use any of the funds authorized under this chapter.

(b) The corporation shall establish rules which shall provide the manner of designation of the uses and shall provide that any commercial, industrial, or other properties so developed shall be sold or leased at cost or at economic rents or sales prices. Sale or lease shall be made at cost to owners of commercial, industrial, or other facilities displaced by the corporation. All other leases or sales shall be at economic rents or sales prices determined by the corporation, after appraisal, to be consistent with rents or sales prices in similar locations or terms. The net proceeds of all such sales or leases, less costs to the corporation, shall be deposited in the dwelling unit revolving fund. The rules may also provide that during the first twenty years after its purchase, any commercial, industrial, or other property so developed and sold or leased may be resold or assigned only to the corporation at the original purchase price plus the cost of any improvements made by the purchaser together with simple interest on all of the purchaser's equity in the property at the rate of seven per cent a year. Rules may also provide that ownership of the commercial, industrial, or other property cannot be separated from ownership of the residential property in connection with which it was sold or leased. [L 1997, c 350, pt of §2]

[\$201G-125] Sale, mortgages, agreement of sale, other

instruments. (a) The corporation shall sell completed dwelling units or dwelling units that are substantially completed and habitable, developed and constructed hereunder, to qualified residents in fee simple, or shall cause them to be leased or rented to qualified residents, at a price or rental based on costs as determined by the corporation. The gross share to the other partners or contract payments and any amounts subsidized by the State, including but not limited to the land, need not be counted as cost so as to increase the price. Such may be borne by the State, under rules subject to reimbursement upon sale as provided for in section 201G-127.

(b) If a qualified purchaser is unable to obtain sufficient funds at reasonable rates from private lenders, the corporation, by way of mortgage, agreement of sale, or other instrument to secure the indebtedness, may loan to the purchaser up to one

hundred per cent of the purchase price. The purchaser in that event shall execute with the corporation an agreement of sale or mortgage or other instrument under the terms of which the unpaid principal and the interest thereon shall be paid in monthly installments over a period of not more than forty years.

(c) Every mortgage, agreement of sale, other instrument to secure the indebtedness, or instrument of indebtedness executed by the corporation may contain other provisions as are usually found in such instruments and shall provide that the purchaser may repay the whole or any part of the unpaid balance of the purchase price plus accrued interest at any time without prepayment penalty.

(d) If the purchaser defaults on the payment of any loan, the corporation shall take all necessary action to collect the delinquent principal and interest on the loan and may take all actions allowed to holders of obligations, including the power to repossess, lease, rent, repair, renovate, modernize, and sell the property foreclosed, subject to the restrictions hereinafter described.

(e) The mortgages, agreements of sale, and other instruments of indebtedness, at the direction of the corporation, may be assigned to and serviced by commercial banks and other lending institutions doing business in the State at a fee of not more than one-half of one per cent of the amount loaned to the purchaser.

(f) Subsections (a) to (e) 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. [L 1997, c 350, pt of §2]

[\$201G-126] Co-mortgagor. For purposes of qualifying for a mortgage loan to finance the purchase of a dwelling unit under this subpart, a "qualified resident" as defined in section 201G-112 may be assisted by a co-mortgagor who is a family member as defined by the corporation, who may own other lands in fee simple or leasehold suitable for dwelling purposes, whose interest in the dwelling unit to be purchased is limited to no more than one per cent, and who certifies that the co-mortgagor does not intend to reside in the dwelling unit. The income and assets of the co-mortgagor shall not be counted in determining the eligibility of the "qualified resident" under this chapter. [L 1997, c 350, pt of §2]

§201G-127 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:

(A) By conveyance free and clear of all mortgages and liens; or

(B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in 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 subparagraph (B), the corporation shall 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 this subsection shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien except for:

(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;

(ii) Any mortgage insured or held by a federal housing agency; and

(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 paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation.

(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 paragraph (1)(A) to (C).

(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 201G-125 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 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; and

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

(b) For a period of three 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 201G-112, and upon the terms that preserve the intent of this section and sections 201G-129 and 201G-130, and in accordance with rules adopted by the corporation.

(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 201G-112; 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.

(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.

(e) The restrictions prescribed in this section and sections 201G-129 to 201G-131 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 written notice to the corporation shall not affect the 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).

(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)(4)(B), a description of the cost items 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.

(g) This section 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.

(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.

(i) REPEALED. [L 1997, c 350, pt of §2 and am c 299, §2; am L 1998, c 272, §§1, 3, 5; am L 2001, c 99, §§2, 5; am L 2002, c 154, §§2, 5]

HRS 0201G-0127 ANNOTATIONS

Note

Subsection (a) is repealed and reenacted on December 31, 2004. L 2001, c 99, §5.

§201G-128 Exception of current owners in corporation projects.

The corporation may allow a person who is a current owner of a multifamily dwelling unit in a project sponsored by the corporation to apply for the purchase of a larger dwelling unit in a project sponsored by the corporation if the applicant's current family size exceeds the permissible family size for the applicant's current dwelling unit, as determined by prevailing county building or housing codes. The applicant shall be required to sell the applicant's current dwelling unit back to the corporation. Notwithstanding any law to the contrary, any applicant, as it pertains to for-sale housing, shall be a "qualified resident" who:

(1) Is a citizen of the United States or a resident alien;

(2) Is at least eighteen years of age;

(3) Is domiciled in the State and shall physically reside in the dwelling unit purchased under this chapter;

(4) In the case of purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and

(5) Except for the applicant's current residence, meets the following qualifications:

(A) Is a person who either oneself or together with the person's spouse or a household member, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land; and

(B) Is a person whose spouse or a household member does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71. [L 1997, c 350, pt of §2; am L 1998, c 212, §24; am L 2000, c 214, §2]

§201G-129 Real property; restrictions on use. (a) Real property purchased under this chapter shall be occupied by the purchaser at all times during the ten-year restriction period set forth in section 201G-127, except in hardship circumstances where the inability to reside on the property arises out of unforeseeable job or military transfer, a temporary educational sabbatical, serious illness of the person, or in other hardship circumstances as determined by the corporation on a case-by-case basis.

The corporation may waive the owner-occupancy requirement for a total of not more than ten years after the purchase of the dwelling, during which time the dwelling unit may be rented or leased. Waivers may be granted only to qualified residents who have paid resident state income taxes during all years in which they occupied the dwelling, who continue to pay resident state income taxes during the waiver period, and whose inability to reside on the property does not stem from a natural disaster. The ten-year owner-occupancy requirement shall be extended by one month for every month or fraction thereof that the owner-occupancy requirement is waived.

The corporation shall adopt rules under chapter 91 to implement the letter and spirit of this subsection and to prescribe necessary terms and conditions. The rules shall include:

- (1) Application and approval procedures for the waivers;
- (2) Exceptions authorized by this subsection;
- (3) The amounts of rents that may be charged by persons allowed to rent or lease a dwelling unit; and
- (4) Schedules of fees needed to cover administrative expenses and attorneys' fees.

No qualified resident who fails to reoccupy a dwelling unit after any waiver period shall receive more than the maximum to which the person would be entitled under section 201G-127. Any person who disagrees with the corporation's determination under this section shall be entitled to a contested case proceeding under chapter 91.

(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] 201G-127(a)(1), (2), or (4), as applicable.

(c) Any deed, lease, agreement of sale, or other instrument of conveyance issued by the corporation shall expressly contain the restrictions on use prescribed in this section.

(d) The restrictions prescribed in subsection (a) shall terminate and shall not attach in subsequent transfers of title if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(e) Subsections (a) to (c) 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.

(f) The corporation shall be 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.

(g) REPEALED. [L 1997, c 350, pt of §2; am L 1998, c 272, §§2, 5; am L 2001, c 99, §§3, 5; am L 2002, c 154, §§3, 5]

HRS 0201G-0129 ANNOTATIONS

Note

Subsection (a) is repealed and reenacted on December 31, 2004. L 2001, c 99, §5.

Revision Note

"June 7, 2002" substituted for "the effective date of this subsection".

§201G-130 Restrictions on use, sale, and transfer of real property; effect of amendment or repeal. (a) Restrictions on the

use, sale, and transfer of real property shall be made as uniform as possible in application to purchasers of all real property, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent legislative act, ordinance, rule, or regulation. Purchasers shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer.

(b) The corporation, any department of the State, or any county housing agency maintaining restrictions, through contract, deed, other instrument, or by rule, shall notify purchasers of any substantial change in restrictions made by law, ordinance, rule, or regulation not more than one hundred eighty days after a change in restrictions, and the notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of real property constructed and sold prior to the effective date an opportunity to modify the existing contract or other instrument to incorporate the most recent provisions. The public notice shall be given at least three times in the State for state agencies and at least three times in a county for county agencies.

(c) For all purchasers of real property prior to June 25, 1990, where the restrictions on use and transfer of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase.

(d) No purchaser shall be entitled to modify the restrictions on use, transfer, or sale of the real property, without the written permission of the holder of a duly-recorded first mortgage on the dwelling unit and the owner of the fee simple or leasehold interest in the land underlying the unit, unless the holder of the first mortgage or the owner is an agency of the State or its political subdivisions.

(e) This section shall apply to all real property developed, constructed, and sold pursuant to this chapter and similar programs in the State or its political subdivisions and which are sold on the condition that the purchaser accepts restrictions on the use, sale, or transfer of interest in the real property purchased.

(f) The provisions of this section shall be incorporated in any deed, lease, instrument, rule, or regulation relating to

restrictions on use, sale, or transfer of dwelling units, entered into after June 20, 1977.

(g) The restrictions of this section shall terminate as to a particular real property and shall not attach in subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program. [L 1997, c 350, pt of §2; am L 1998, c 2, §59 and c 212, §3]

[\$201G-131] Corporation's right to repurchase or rent real property; authority to seek recovery. (a) Notwithstanding any provisions to the contrary, during the period in which the restrictions in section 201G-127 are in effect, the following provisions shall apply when dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect, or when vacant lands developed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial soil defect:

(1) The corporation shall have the right, but not the obligation, to repurchase a dwelling unit or land which has a defect, regardless of whether or not the owner wishes to sell; provided that such repurchases shall be in accordance with the following provisions:

(A) The corporation may repurchase a dwelling unit or land if:

(i) The dwelling unit or land is deemed unsafe by the county building department;

(ii) The defects are irreparable; or

(iii) In the opinion of the corporation, the defect is of such magnitude that it will take longer than a year to repair;

(B) The corporation's purchase price shall be based on the formula set forth in section 201G-127(a)(1);

(C) After repairs to the unit or land are completed, the former owner shall have the first right of refusal to repurchase the real property;

(D) The corporation shall give preference in all other projects of the corporation to all owners whose real property is repurchased by the corporation under this subsection, and the corporation may waive certain eligibility requirements for these owners; and

(E) If the corporation exercises its right to purchase defective real property against an owner's wishes pursuant to this paragraph, the corporation shall provide relocation assistance to that owner as provided in chapter 111;

(2) If the corporation does not opt to purchase defective real property, the corporation shall also have the right, but not the obligation, to enter into a contract to repair a dwelling unit which has a construction defect or land which has a soil defect. During the period that the real property is being repaired, the corporation shall rent that real property from the owner for an amount not to exceed the owner's present mortgage payments; and

(3) If the corporation does not execute either a contract to repurchase the real property or an agreement to repair and rent the real property within ninety days after written notice is given to the corporation of a construction defect, the owner may pursue any other available legal remedies.

For the purposes of this subsection, "substantial construction defect" includes but is not necessarily limited to: structural defects such as shifting foundations and bearing walls; structural deficiencies due to the use of defective or undersized materials; and defects affecting the health and safety of occupants; and "substantial soil defect" means shifting, sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.

(b) If moneys are expended by the corporation pursuant to subsection (a)(1) and (2), the corporation shall have the authority to take necessary legal action against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657.

(c) If real property developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, is found to have a substantial construction or soil defect, the corporation shall have the right, but not the obligation, to file or cause to be filed a legal action on behalf of or by, the owner or lessee of the real property for the recovery of damages or for injunctive relief against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657. Additionally, notwithstanding any provision of rule 23 of the Hawaii rules of civil procedure, the corporation may file or cause to be filed a legal action brought under this subsection as a class action on behalf of or by at least two owners or lessees of real property that have similar substantial construction or soil defects.

(d) Nothing in this chapter shall be construed so as to diminish the rights or remedies of the corporation otherwise provided under common law, by statute or by contract.

(e) The corporation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.

(f) This section shall not apply to a particular real property and shall not apply after subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(g) If any subsection, sentence, clause, or phrase of this section, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining subsections, sentences, clauses, and phrases of this section, or the application of this section to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this section and each subsection, clause, or phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, or phrases of this section, or its application to any person or transaction or other circumstance, be declared unconstitutional or invalid. [L 1997, c 350, pt of §2]

[\$201G-132] Nonprofit organizations; government agencies. (a) The corporation may retain dwelling units in a project to the extent it determines necessary and appropriate, for sale, lease, or rental to nonprofit organizations and government agencies. The dwelling units shall be used by the nonprofit organizations and government agencies to provide housing opportunities and related support services to special needs individuals or families. These purposes include but are not limited to the use of dwelling units for group homes and congregate living facilities and for government employees in special situations. The corporation, in consultation with other appropriate government agencies, shall adopt rules pursuant to chapter 91 necessary to implement this subsection, including but not limited to rules relating to the eligibility and qualifications of nonprofit organizations and government agencies, rules relating to the eligibility and qualifications of clients of nonprofit organizations and government agencies to whom housing opportunities may be made available, and rules restricting the use, sale, or transfer of, and authorizing repurchase of, dwelling units sold, leased, or rented pursuant to this subsection. The corporation, to the extent appropriate, shall have the same powers with respect to nonprofit organizations and government agencies purchasing, leasing, or renting dwelling units as the corporation has with respect to qualified residents purchasing, leasing, or renting dwelling units.

(b) In connection with the development of any residential units under this chapter, the corporation may also make provisions for the development of appropriate community facilities. The corporation may:

- (1) Sell, lease, or rent vacant land or land with site improvements to nonprofit

organizations or government agencies to develop community facilities; or

(2) Develop, on behalf of the State or with an eligible developer, the community facilities and then sell, lease, rent, or otherwise transfer or make available these facilities to nonprofit organizations or government agencies.

The corporation shall adopt rules pursuant to chapter 91 necessary to implement this subsection. [L 1997, c 350, pt of §2]

§201G-133 Rate of wages for laborers and mechanics. The corporation shall require an eligible bidder or eligible developer of a housing project developed under this subpart to comply with the requirements of section 104-2 for those laborers and mechanics hired to work on that housing project; provided that this section shall not apply to a housing project developed under this chapter if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation. [L 1997, c 350, pt of §2; am L 1998, c 212, §25]

[§201G-134] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

G. Teachers Housing

[§201G-141] Purpose. The purpose of this subpart is to create a special fund for the accounting and control of receipts and disbursements in connection with the corporation's functions of planning, construction, repair, maintenance, and operation of housing for teachers employed and assigned by the department of education. Teacher housing shall be provided only if the community does not have adequate housing for teachers at reasonable cost. [L 1997, c 350, pt of §2]

HRS 0201G-0141 ANNOTATIONS

Note

Subpart heading amended by L 1998, c 212, §12.

[\$201G-142] Establishment of revolving fund. The director of finance shall set up out of any moneys heretofore or hereafter appropriated for the purposes of teacher housing, a revolving fund to be known as the teachers' housing revolving fund. All unexpended balances of appropriations, allocations, allotments, special revolving funds or other funds heretofore created and made available for the purposes of developing or administering teachers' housing projects shall be transferred to the teachers' housing revolving fund. Notwithstanding any law to the contrary, all moneys, including refunds, reimbursements, and rentals for housing from teacher tenants shall be deposited in the revolving fund.

The revolving fund may be used by the corporation for any and all of the purposes of teachers' housing including, without prejudice to the generality of the foregoing, the planning, construction, maintenance, and operation of teachers' housing, as well as for the salaries of the necessary personnel in charge thereof.

Whenever the governor determines that the amount in the teachers' housing revolving fund is in excess of the requirements of the teacher housing program, the corporation shall transfer such excess to the state general fund. [L 1997, c 350, pt of §2]

§201G-143 Annual statements. The corporation shall annually forward to the director of human services and the director of finance a full, detailed description and financial statement of the planning, construction, repair, maintenance, and operation of teacher housing. [L 1997, c 350, pt of §2; am L 1998, c 212, §26; am L 2003, c 92, §5]

[\$201G-144] Rules. The corporation may adopt rules pursuant to chapter 91 necessary or desirable for the purpose of this part. [L 1997, c 350, pt of §2]

[\$201G-145] Annual review; disposal of units. The corporation, in consultation with the department of education, shall annually review the status of and necessity for subsidized teacher housing throughout the State and upon determination that any particular housing unit is no longer necessary shall have all necessary power and shall proceed to dispose of such unit by sale, demolition, or otherwise. Any net proceeds from the disposal of each such unit shall be paid to the governmental

entity vested with fee title to the unit at the time of disposition and any deficit incurred in the disposal shall be paid by the State. [L 1997, c 350, pt of §2]

[§201G-146] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

H. Housing for Elders

§201G-151 REPEALED. L 2002, c 64, §5.

HRS 0201G-0151 ANNOTATIONS

Note

Subpart heading amended by L 1998, c 212, §12.

§201G-152 Resident selection: dwelling accommodations; rentals. In the administration of elder or elderly housing, the corporation shall observe the following with regard to resident selection, dwelling accommodations, and rentals:

(1) Except as hereinafter provided, it shall accept elder or elderly households as residents in the housing projects;

(2) It may accept as residents in any housing unit one or more persons, related or unrelated by marriage. It may also accept as a resident in any dwelling accommodation or in any project, in the case of illness or other disability of an elder who is a resident in the dwelling accommodation or in the project, a person designated by the elder as the elder's live-in aide whose qualifications as a live-in aide are verified by the corporation, although the person is not an elder; provided that the person shall cease to be a resident therein upon the recovery of, or removal from the project of, the elder;

(3) It may rent or lease to an elder a dwelling accommodation consisting of any number of rooms as the corporation deems necessary or advisable to provide safe and sanitary accommodations to the proposed resident or residents without overcrowding; and

(4) Notwithstanding that the elder has no written rental agreement or that it has expired, so long as the elder continues to tender the usual rent to the corporation or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the elder, nor shall the corporation otherwise cause the elder to quit the dwelling unit involuntarily, demand an increase in rent from the elder, or decrease the services to which the elder has been entitled during hospitalization of the elder due to illness or other disability. [L 1997, c 350, pt of §2; am L 1998, c 212, §28; am L 2002, c 64, §4; am L 2003, c 3, §5]

[\$201G-153] Housing for elders revolving fund. There is created a housing for elders revolving fund to be administered by the corporation. Notwithstanding any law to the contrary, moneys received or collected by the corporation pursuant to this subpart shall be deposited into the revolving fund. Revenues from the fund may be used to pay the expenses of management, operation, and maintenance of housing, including but not limited to the cost of insurance, a proportionate share of the administrative expenses of the corporation, and the costs of repairs, equipment, and improvements. [L 1997, c 350, pt of §2]

[\$201G-154] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

PART III. FINANCING PROGRAMS

A. General Provisions

§201G-161 Bonds; authorization. (a) The corporation, with the approval of the governor, may issue from time to time bonds (including refunding bonds to pay, retire, or provide for the retirement of bonds previously issued by the corporation) in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for any of its corporate purposes; provided however, that bonds may be issued in connection with any program whose primary purpose is to provide housing for active or retired United States military personnel, their families, and other persons authorized by any branch of the United States military to reside in such housing; provided further that the aggregate principal amount of all outstanding bonds issued by the corporation for such military housing projects shall total no more than \$2,000,000,000.

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

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

(d) The corporation may issue such types of bonds as it may determine, including, without limitation, bonds payable from and secured, in whole or in part, by:

(1) Income and revenues derived from the housing project or projects financed from the proceeds of bonds;

(2) Receipts derived from any grant from the federal government made in aid of a housing project or projects financed from the proceeds of bonds;

(3) Income and revenues derived from a particular designated housing project or projects whether or not financed, in whole or in part, from the proceeds of bonds;

(4) Receipts derived from any payment for "eligible loans", "eligible improvement

loans", or "eligible project loans", as such terms are defined in subpart B, or any other agreement or agreements entered into for a "housing loan program", as such term is defined in subpart B or E, or any other loan program administered by the corporation and financed from the proceeds of bonds;

(5) Receipts derived from loans to mortgage lenders or from the payment on account of principal of or interest on loans purchased from mortgage lenders, as such terms are defined in subpart B which loans to mortgage lenders or loans purchased are financed from the proceeds of bonds;

(6) Moneys in any funds or accounts established in connection with the issuance of bonds, and any earnings thereon;

(7) Proceeds derived from any insurance;

(8) Income and revenues of the corporation generally; or

(9) Any combination of the above.

The terms "income and revenues" shall be deemed to include income and revenues derived from the sale of land or from both land and improvements thereon serviced from infrastructure financed from the proceeds of bonds as permitted by this subpart. The provisions of this subsection are in addition and supplemental to part III of chapter 39.

(e) Any of the bonds may be additionally secured by a pledge of any revenues or a mortgage of any housing project, other property of the corporation, the pledge or assignment of any loans or other agreements, or any note or other undertaking, obligation, or property held by or on behalf of the corporation to secure loans made from the proceeds of bonds for any housing loan program, as such term is defined in subpart B or E of part III, or any other loan program administered by the corporation and financed from the proceeds of bonds.

(f) Any pledge made by the corporation shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the corporation 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 the filing, the revenues, moneys, or property so pledged and thereafter received by the corporation shall immediately 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 by any kind in tort, contract, or otherwise against the corporation, irrespective of whether such parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this part.

(g) Any housing project or projects authorized by, and undertaken pursuant to, this chapter shall constitute an "undertaking" within the meaning of that term as defined and used in part III, chapter 39; any loan program authorized by, and undertaken pursuant to, this chapter, including without limitation housing loan programs defined in and authorized by subparts B and E of this part, shall constitute a "loan program" within the meaning of that term as defined and used in part III, chapter 39; and the corporation shall constitute a "department" and the board shall constitute a "governing body" within the meaning of those terms as defined and used in part III, chapter 39.

(h) Neither the members of the corporation nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. [L 1997, c 350, pt of §2 superseding c 210, §1; am L 1998, c 212, §29; am L 2004, c 235, §1]

[§201G-162] Issuance of bonds for the development of infrastructure. Without limiting section 201G-161, the corporation, pursuant to and in accordance with this subpart, is hereby authorized to issue bonds for the purpose of financing the development of infrastructure on land owned by the corporation. [L 1997, c 350, pt of §2]

[§201G-163] Issuance of bonds for the preservation of low-income housing projects. The corporation, pursuant to and in accordance with this subpart, may issue bonds to purchase low-income housing projects financed by the United States Department of Housing and Urban Development in order to preserve these projects. Upon the payment of all interest and principal stemming from the issuance of these bonds, the corporation may

transfer title to these projects to qualified nonprofit organizations. Nothing in this section shall be construed to:

(1) Prohibit qualified nonprofit organizations from operating these projects on behalf of the corporation, or providing for the repair and maintenance of these projects, before the payment of all interest and principal stemming from the issuance of these bonds; or

(2) Prohibit the corporation from transferring title to these projects to qualified nonprofit organizations if these bonds can be secured to the satisfaction of the bondholders.

As used in this section, "qualified nonprofit organization" includes community-based nonprofit organizations and resident councils. [L 1997, c 350, pt of §2]

§201G-164 Bonds; interest rate, price, and sale. (a) The bonds shall bear interest at rates payable at times that the corporation, with the approval of the governor, may determine except for deeply discounted bonds that are subject to redemption or retirement at their accreted value; provided that the discounted value of the bonds shall not exceed ten per cent of any issue; and provided further that no bonds may be issued without the approval of the director of finance and the governor. Notwithstanding any other law to the contrary, the corporation may, subject to the approval of the director of finance and the governor, issue bonds pursuant to section 201G-162, in which the discounted value of the bonds exceeds ten per cent of the issue.

(b) The corporation may include the costs of undertaking and maintaining any housing project or projects or loan program for which the bonds are issued in determining the principal amount of bonds to be issued. In determining the cost of undertaking and maintaining the housing projects, the corporation may include the cost of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and other services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period determined by the corporation, or the estimated expenditure of borrowed funds for any loan program for which the bonds are

issued. [L 1997, c 350, pt of §2 and am c 210, §2; am L 1998, c 212, §30]

§201G-165 Trustee; designation, duties. (a) The corporation may designate a trustee for each issue of 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 corporation to receive and receipt for, hold, and administer the proceeds of the bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the corporation to hold and administer any housing project bond special funds established pursuant to section 201G-170, and to receive and receipt for, hold, and administer the revenues derived by the corporation from any housing project or projects or loan program for which the bonds are issued or the projects or loan programs pledged to the payment of the bonds, and to apply the revenues to the payment of the cost of administering, operating, and maintaining the housing project or projects or loan program, to pay the principal of and the interest on the bonds, to the establishment of reserves, and to other purposes as may be authorized in the proceedings providing for the issuance of the bonds.

(d) Notwithstanding section 39-68, 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 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 bonds and coupons, if any, that have been paid and the supervision of their destruction in accordance with 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, 39-13, and 39-68(a), to appoint the trustee or others as fiscal agents, paying agents, and registrars for the bonds or to

authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections. [L 1997, c 350, pt of §2; am L 1998, c 212, §31]

[\$201G-166] 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 corporation for the purposes of this part.

(b) A trust indenture may allow the corporation to pledge and assign to the trustee agreements related to the housing project or projects or loan program and the rights of the corporation thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any 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 bonds required by section 39-56 may be facsimiles of their signatures.

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

(1) The investment of the proceeds of the bonds, the investment of any reserve for the bonds, the investment of the revenues of the housing project or system of housing projects, and the use and application of the earnings from investments; and

(2) The terms and conditions upon which the holders of the bonds or any portion of them or any trustee thereof may institute proceedings for the enforcement of any 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 therefrom.

(e) A trust indenture may also contain provisions deemed necessary or desirable by the corporation to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the housing projects or in the financing of the costs of administering, operating, or maintaining the housing projects. [L 1997, c 350, pt of §2]

§201G-167 Investment of reserves, etc. The corporation may invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, including the proceeds of bonds, in property or securities in which the director of finance may legally invest, as provided in section 36-21, except that funds held outside the state treasury may be invested for terms not to exceed thirty-five years. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to the corporation unless the legislature shall specifically so state. [L 1997, c 350, pt of §2; am L 1998, c 212, §32]

[§201G-168] Security for funds deposited by the corporation. The corporation may by resolution provide that all moneys deposited by it shall be secured:

(1) By any securities by which funds deposited by the director of finance may be legally secured as provided in section 38-3; or

(2) By an undertaking with sureties as are approved by the corporation faithfully to keep and pay over upon the order of the corporation any deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits. [L 1997, c 350, pt of §2]

[§201G-169] Arbitrage provisions; interest rate. (a) Any other provision of law to the contrary notwithstanding, neither the corporation nor the director of finance shall make loans or purchase mortgages with the proceeds of general obligation bonds of the State or from a revolving fund established or maintained from the proceeds of bonds, at a rate of interest or upon terms and conditions which would cause any general obligation bond of the State or any bond to be an "arbitrage bond" within the meaning of that term as defined in the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto.

(b) The rate of interest on loans made under this chapter from the proceeds of general obligation bonds of the State shall be established by the corporation, with the approval of the director of finance, after each sale of general obligation bonds of the State, the proceeds of which are to be used for the purposes of making loans or purchasing mortgages under this

chapter. If no sale of general obligation bonds of the State intervenes in a twelve-month period after the last rate fixing, the corporation may review the then existing rates on loans or mortgages made under this chapter from the proceeds of general obligation bonds of the State and retain the existing rate or, with the approval of the director of finance, establish different rates.

(c) The director of finance shall approve those rates so as to produce up to, but not in excess of, the maximum yield to the State or the corporation permitted under the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto, on the assumption that the general obligation bonds of the State, the proceeds of which have been or are to be used for the purposes of making loans or purchasing mortgages under this chapter, would otherwise be "arbitrage bonds" under the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto, were the maximum yield to be exceeded. The establishment of the rates of interest shall be exempt from chapter 91. [L 1997, c 350, pt of §2]

§201G-170 Housing finance revolving fund; housing project bond special funds. (a) There is created a housing finance revolving fund to be administered by the corporation. Notwithstanding sections 36-21 and 201G-411, the proceeds in the fund shall be used for long-term and other special financings of the corporation and for the necessary expenses in administering this part.

(b) All moneys received and collected by the corporation, not otherwise pledged or obligated nor required by law to be placed in any other special fund, shall be deposited in the housing finance revolving fund.

(c) A separate special fund shall be established for each housing project or projects or loan program financed from the proceeds of bonds secured under the trust indenture. Each fund shall be designated "housing project bond special fund" or "housing loan program revenue bond special fund", as appropriate, and shall bear additional designation as the corporation deems appropriate to properly identify the fund.

(d) Notwithstanding any other law to the contrary, all revenues, income, and receipts derived from a housing project or projects or loan program financed from the proceeds of bonds or pledged to the payment of principal of and interest and premium on

bonds, shall be paid into the housing project bond special fund established for the housing project or projects or loan program and applied as provided in the proceedings authorizing the issuance of the bonds. [L 1997, c 350, pt of §2; am L 1998, c 212, §33]

[\$201G-170.5] Kikala-Keokea housing revolving fund; established.

(a) There is established in the state treasury the Kikala-Keokea housing revolving fund to provide low interest loans for home construction for Kikala-Keokea leaseholders who have been denied loans from traditional financial institutions. The revolving fund shall be administered by the housing and community development corporation of Hawaii.

(b) The rate of interest on loans executed pursuant to this section shall not exceed three per cent per year and interest earnings on loans made pursuant to this section may be used for administrative and other expenses necessary for administering the loan program. Guidelines shall be established by the housing and community development corporation of Hawaii with respect to loan terms and loan qualification criteria. Moneys appropriated for the purposes of this section shall be deposited into the Kikala-Keokea housing revolving fund; provided that upon fulfillment of the purposes of this section, all unencumbered moneys shall lapse into the state general fund.

(c) The housing and community development corporation of Hawaii shall adopt rules in accordance with chapter 91 to effectuate the purposes of this section. [L 2001, c 144, §3]

HRS 0201G-0170_0005 ANNOTATIONS

Cross References

Infrastructure development fund, see §171-19.5.

§201G-171 Rate of wages for laborers and mechanics. The corporation shall require an eligible bidder or eligible developer of a housing project developed under this subpart to comply with the requirements of section 104-2 for those laborers and mechanics hired to work on that housing project; provided that this section shall not apply to a housing project developed under this chapter if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation. [L 1997, c 350, pt of §2; am L 1998, c 212, §34]

[§201G-172] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

B. Housing Loan and Mortgage Programs

§201G-181 Definitions. The following words or terms as used in this subpart shall have the following meanings unless a different meaning clearly appears from the context:

"Eligible borrower" means a person or family, irrespective of race, creed, national origin, or sex, who:

(1) Is a citizen of the United States or a resident alien;

(2) Is a bona fide resident of the State;

(3) Is at least of legal age;

(4) Does not personally, or whose spouse does not if the person is married, own any interest in a principal residence within or without the State and who has not owned a principal residence within the three years immediately prior to the application for an eligible loan under this part, except this requirement shall not apply to any eligible loan for a targeted area residence as defined in the Mortgage Subsidy Bond Tax Act of 1980, Public Law 96-499, which residence is to replace a housing unit which has been declared structurally unsalvageable by a governmental board or agency having the power to make the declaration; and provided further that this requirement shall not apply to up to ten per cent of eligible loans of a bond issue made to single parent household borrowers. No loans, however, shall be made if they adversely affect the tax-exempt status of the bonds issued. For the purpose of this section, "single parent household" means a household headed by a

single person who has legal custody of one or more dependent children;

(5) Has never before obtained a loan under this part; and

(6) Meets other qualifications as established by rules adopted by the corporation.

"Eligible improvement" means alterations, repairs, or improvements to an existing housing unit which substantially protect or improve the basic livability of the unit.

"Eligible improvement loan" means a loan to finance an eligible improvement to the owner of the housing unit, which may be a condominium unit, where the eligible improvement is to be made; provided that the owner meets the requirements of an eligible borrower, except that the requirements of paragraph (4) set forth in the definition of "eligible borrower" need not apply, the unit to be financed is located in the State, the unit will be occupied as the principal place of residence of the borrower, and meets other requirements as established by rules adopted by the corporation.

"Eligible loan" means a loan to an eligible borrower for the permanent financing of a dwelling unit, including a condominium unit; provided that the property financed is located in the State, will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the corporation.

"Eligible project loan" means an interim or permanent loan, which may be federally insured or guaranteed, made to a qualified sponsor for the financing of a rental housing project, and which meets other requirements as established by rules adopted by the corporation.

"Housing 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 loan funding programs authorized under this part.

"Qualified sponsor" means any person or entity determined by the corporation:

(1) To be qualified by experience, financial responsibility, and support to construct a housing project of the type and magnitude described;

(2) To have submitted plans for a project adequately meeting the objectives of this chapter, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and

(3) To meet other qualifications as established by rules adopted by the corporation pursuant to chapter 91. [L 1997, c 350, pt of §2 superseding c 258, §8; am L 1998, c 212, §35]

[\$201G-182] Owner-occupancy requirement. (a) An eligible borrower shall utilize the dwelling unit purchased under this part as the eligible borrower's permanent and primary residence.

(b) From time to time, the corporation may submit a verification of owner-occupancy form to the eligible borrower. Failure to respond to this verification in a timely manner may result in an immediate escalation of the interest rate or acceleration of the eligible loan.

(c) For eligible borrowers in the process of selling or transferring title to their property, the corporation may grant a waiver of subsection (a) for a period not to exceed three years and for reasons set forth in section [201G-129] on a case-by-case basis. [L 1997, c 350, pt of §2 and am c 299, §1; am L 1998, c 272, §3]

[\$201G-183] Rules; eligible borrower. (a) The corporation shall establish the qualifications of the eligible borrower, and may consider the following:

(1) The proportion of income spent for shelter;

(2) Size of the family;

(3) Cost and condition of housing available to the total housing market; and

(4) Ability of the person to compete successfully in the normal housing market and to pay the amounts on which private enterprise is providing loans for safe, decent, and sanitary housing in the State.

(b) The family income of an eligible borrower shall not exceed the income requirements of section 143(f) of the Internal Revenue Code of 1986, as amended.

(c) For the purpose of determining the qualification of an eligible borrower for an eligible improvement loan:

(1) The housing unit for which the eligible improvement loan is to be made and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower's assets; and

(2) The mortgage secured by the housing unit and property shall not be included in the calculation of the eligible borrower's liabilities.

(d) For the purpose of determining the qualification of an eligible borrower for an eligible loan for a targeted area residence:

(1) The housing unit being replaced and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower's assets; and

(2) The mortgage secured by the housing unit and the property shall not be included in the calculation of the eligible borrower's liabilities. [L 1997, c 350, pt of §2]

[\$201G-184] Rules; eligible loans. (a) The corporation shall establish requirements for property financed by an eligible loan, and may consider the location, age, condition, and other characteristics of the property.

(b) The corporation 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. [L 1997, c 350, pt of §2]

[\$201G-185] Rules; eligible project loans. (a) The corporation shall establish requirements for projects to be financed by an eligible project loan, and may consider the location, age, condition, and other characteristics of the project.

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

(c) The corporation shall establish restrictions on the prepayment of eligible project loans and on the transfer of ownership of the projects securing eligible project loans.

(d) The corporation shall require that any sums deferred on land leased at nominal rates by the corporation to the owner of an eligible project shall be recovered by the corporation at the time an eligible project loan is prepaid, whether as a result of refinancing of the eligible project loan or otherwise, to the extent that funds are available from the refinancing or other method by which the eligible project loan is paid in full prior to its due date.

(e) The corporation shall enter into an agreement with the owner of an eligible project to be financed with an eligible project loan which shall provide that in the event that the eligible project loan is at any time prepaid for the purpose of converting the rental units of such project to ownership units, all tenants at the time of the proposed conversion shall have the first option to purchase their units.

(f) All eligible project loans shall comply with applicable state and federal laws. [L 1997, c 350, pt of §2]

[\$201G-186] Rules; eligible improvement loans. (a) The corporation shall establish requirements for property financed by an eligible improvement loan, and may consider the location, age, condition, value, and other characteristics of the property.

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

(c) All eligible improvement loans made shall comply with applicable state and federal laws. [L 1997, c 350, pt of §2]

[\$201G-187] Housing loan programs; procedures and requirements.

(a) The corporation 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, eligible improvement loans, or eligible project 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 or qualified sponsors.

(b) The corporation 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, eligible improvement loans, or eligible project loans from mortgage lenders; and

(4) The participation by mortgage lenders as originators and processors of eligible loans, eligible improvement loans, or

eligible project loans on behalf of the corporation.

(c) The standards and requirements for the allocation of funds to mortgage lenders adopted by the corporation shall be designed to include the maximum number of qualified mortgage lenders as participants in the housing loan programs. [L 1997, c 350, pt of §2]

[\$201G-188] Housing loan programs; general powers. (a) The corporation 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 housing loan programs.

(b) The corporation may require representations and warranties as it determines necessary to secure its loans. [L 1997, c 350, pt of §2]

[\$201G-189] Housing loan programs; self-supporting. The interest rate, fees, charges, premiums, and other terms of the loans made under the housing loan programs shall be at least sufficient to pay the cost of administering and maintaining the portion of the specific housing loan programs for which the bonds have been issued, and to assure payment of the principal of and interest on the bonds as they become due. [L 1997, c 350, pt of §2]

[\$201G-190] Housing loan programs; fees. The corporation may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, for its housing loan programs. The fees, premiums, and charges shall be deposited into the housing loan program revenue bond special fund established for the particular housing loan program or part thereof from which the fees, premiums, and charges are derived as determined by the corporation. [L 1997, c 350, pt of §2]

[\$201G-191] Housing loan programs; evidence of eligible loan, eligible improvement loan, or eligible project loan. (a) Each mortgage lender who participates in any housing loan program shall submit evidence, as deemed satisfactory by the corporation, that eligible loans, eligible improvement loans, or eligible project loans have been made from the proceeds of the bonds.

(b) The corporation may inspect the books and records of the mortgage lenders as may be necessary for this section. [L 1997, c 350, pt of §2]

[\$201G-192] Loans to lenders program. (a) The corporation may make loans to mortgage lenders under terms and conditions requiring that the loan proceeds be used within a time period prescribed by the corporation to make eligible loans, eligible improvement loans, and eligible project 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 corporation 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 bonds, the corporation 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 corporation is a party. [L 1997, c 350, pt of §2]

[\$201G-193] Loan to lenders program; collateral security. (a) Loans made to mortgage lenders shall be additionally secured by a pledge of a lien upon collateral security in an amount as the corporation deems necessary to assure the payment of principal of and interest on the loans as they become due.

(b) The corporation 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 corporation'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 corporation. The mortgage

lender shall be deemed the trustee of an express trust for the benefit of the corporation in all matters relating to the pledged collateral.

(d) Subject to any agreement with the holders of its bonds, the corporation may collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders. The corporation 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. [L 1997, c 350, pt of §2]

§201G-194 Purchase of existing loans program. (a) The corporation may contract with a mortgage lender to purchase, in whole or in part, existing loans, whether or not eligible loans, eligible improvement loans, or eligible project loans. The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its 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 corporation;

(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 corporation.

(b) The corporation 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, eligible improvement loans, or eligible project loans in an aggregate principal amount substantially equal to the amount of the proceeds from the purchase by the corporation of loans therefrom. [L 1997, c 350, pt of §2]

§201G-195 Advance commitments program. (a) The corporation may contract with a mortgage lender for the advance commitment to purchase eligible loans, eligible improvement loans, or eligible project loans.

(b) The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its bonds. Notwithstanding any other law to the contrary, project loans may be made available for housing projects on Hawaiian home lands pursuant to the Hawaiian Homes Commission Act, 1920, as amended. [L 1997, c 350, pt of §2; am L 2000, c 77, §1]

[\$201G-196] Loan funding programs. (a) The corporation may contract with mortgage lenders to fund eligible loans and eligible improvement loans and may directly make or contract with mortgage lenders to fund eligible project loans.

(b) Any such contract with a mortgage lender may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its revenue bonds. [L 1997, c 350, pt of §2]

[\$201G-197] Loans; service and custody. The corporation 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. [L 1997, c 350, pt of §2]

[\$201G-198] Loans; sale, pledge, or assignment. (a) Subject to any agreements with the holders of its revenue bonds, the corporation may sell its loans at public or private sale at a price and upon terms and conditions as it determines.

(b) Subject to any agreements with holders of its revenue bonds, the corporation may pledge or assign its loans, other agreements, notes, or property to secure the loans or agreements. [L 1997, c 350, pt of §2]

[\$201G-199] Loans; insurance and guarantees. The corporation may procure insurance or guarantees against any default of its loans, in amounts and from insurers or guarantors, as it deems necessary or desirable. [L 1997, c 350, pt of §2]

[\$201G-200] Loans; default. The corporation may renegotiate, refinance, or foreclose any loan in default.

The corporation may waive any default or consent to the modification of the terms of any loan or security agreement.

The corporation may commence any action to protect or enforce any right conferred upon it by any law, mortgage, insurance policy, contract, or other agreement.

The corporation may 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.

The corporation may operate, manage, lease, dispose of, or otherwise deal with the property secured by the loan. [L 1997, c 350, pt of §2]

[\$201G-201] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

C. Rental Assistance Program

[\$201G-221] Purpose; findings and determinations. The legislature finds and declares that the health and general welfare of the people of the State require that the people of this State have safe and sanitary rental housing accommodations available at affordable rents; that a grave shortage in the number of such accommodations affordable by families and individuals of low and moderate income in the State exists; that it is essential that owners of rental housing accommodations be provided with appropriate additional means to assist in reducing the cost of rental housing accommodations to the people of the State.

Additionally, the legislature finds that the high cost of infrastructure development and the obtaining of interim construction financing are two of the greatest impediments to the production of affordable rental housing in this State. It is especially difficult for private nonprofit and profit entities to participate in the development of affordable housing due to the difficulty in amassing the capital necessary to plan and carry a project to completion.

It is the purpose of this subpart to:

- (1) Assist owners in maintaining the rentals at levels affordable by families and individuals of low and moderate income by

providing owners with rental assistance payments which, with rentals received by tenants of low and moderate income, will provide owners with limited but acceptable rates of return on their investments in rental housing accommodations; and that assisting owners by entering into contracts with them which provide for rental assistance payments is a valid public purpose and in the public interest; and

(2) Provide a funding source for interim construction financing for the development of affordable rental housing by private nonprofit and profit entities, as well as the corporation; provided that in allotting this financing, the corporation shall give preference to qualified sponsors who are private nonprofit and profit entities. [L 1997, c 350, pt of §2]

[\$201G-222] Definitions. The following words or terms as used in this subpart shall have the following meanings unless a different meaning clearly appears from the context:

"Eligible project" means a rental housing project which:

(1) Is financed by the corporation pursuant to subpart B or E, or the corporation determines will require rental assistance to make it financially feasible;

(2) Is subject to a regulatory agreement with the corporation;

(3) Maintains at least twenty per cent of its units for eligible tenants; and

(4) Meets other qualifications as established by rules adopted by the corporation.

Notwithstanding any provisions to the contrary, "eligible project" may also include a rental housing project which is financed by the corporation pursuant to part III.A.

"Eligible tenant" means a family or an individual whose income does not exceed eighty per cent of the area median income as determined by the United States Department of Housing and Urban Development.

"Owner" means the owner of an eligible project.

"Regulatory agreement" means an agreement between the corporation and the owner relating to an eligible project which includes provisions relating to rents, charges, profits, return on owner's equity, development costs, and methods of operation.

"Rental assistance contract" means an agreement between an owner and the corporation providing for periodic rental assistance payment for units in an eligible project. [L 1997, c 350, pt of §2]

[\$201G-223] Rental assistance revolving fund. (a) There is created a rental assistance revolving fund to be administered by the corporation.

(b) The aggregate principal sum in the rental assistance revolving fund which may without limitation include sums made available from any government program or grant, from private grants or contributions, from the proceeds of any bond issue, or by appropriation, shall be invested by the corporation in a manner which will maximize the rate of return on investment of the fund; provided that any investment shall be consistent with section 201G-167 but need not comply with section 36-21.

(c) The corporation may use, as needed, the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund to make payments under the rental assistance contracts or to subsidize tenants' rents in projects developed under this part; provided that the corporation shall use up to \$25,000,000 plus any bond proceeds to provide interim construction financing to:

(1) Qualified sponsors who are private nonprofit or profit entities; or

(2) The corporation, for the development of affordable rental housing; provided further that the corporation, in allotting interim construction financing moneys pursuant to this part, shall give preference to rental housing projects developed by qualified

sponsors who are private nonprofit or profit entities. [L 1997, c 350, pt of §2]

[§201G-224] Rental assistance contracts. (a) The corporation may enter into a rental assistance contract and a regulatory agreement with the owner of an eligible project, when the owner of an eligible project is other than the corporation.

(b) Prior to the execution of a rental assistance contract, the corporation may execute an agreement to enter into a rental assistance contract with an owner, which agreement shall provide for the execution of a rental assistance contract upon satisfaction of the terms set forth in such agreement and otherwise established by the corporation. Each rental assistance contract heretofore entered into by the corporation which provided that rental assistance payments shall be made solely from the earnings on the investment of the rental assistance revolving fund shall hereafter, without modification of such contracts, be payable from the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund.

(c) A rental assistance contract and any subsidy of tenants' rents in projects developed under this part shall be for a term not in excess of thirty-five years and shall be approved by the board of directors of the corporation. Upon such approval by the corporation, the director of finance shall be authorized to guarantee the obligation of the corporation for the term of the rental assistance contract or the subsidy of tenants' rents in an amount equal to the aggregate obligation of the corporation to make assistance payments; provided that the aggregate of all such outstanding guarantees shall not exceed \$100,000,000. Pursuant to such guarantee, the corporation shall make annual rental payments to the owner in accordance with the approved rental assistance contract or to the tenants in accordance with the approved subsidy.

(d) Each rental assistance contract shall set forth a maximum annual rental assistance payment amount. The corporation shall establish procedures for determining the maximum annual rental assistance payment amount and may consider the following:

(1) The cost of constructing the eligible project;

(2) The estimated annual operating cost of the eligible project;

(3) The estimated maximum rentals which may be charged for units in the eligible project;

(4) The amount of funds available for the funding of rental assistance contracts;

(5) The number of eligible projects requiring assistance under this part; and

(6) A restricted rate of return on equity to the owner, which rate shall be established by the corporation by rule. [L 1997, c 350, pt of §2]

[\$201G-225] Rules, rental assistance program. (a) Prior to the execution of a rental assistance contract and annually thereafter, the owner shall submit a proposed rental schedule to the corporation for approval, which schedule shall list every rental unit in the project and shall designate which units are to be maintained for eligible tenants.

(b) The corporation shall establish procedures for evaluating the rental schedules submitted pursuant to this section, and may consider the following:

(1) The size of and number of bedrooms in the units comprising the eligible project;

(2) The location of the project and its type (whether high-rise, mid-rise, or low-rise);

(3) The percentage of units being maintained for eligible tenants; and

(4) The rentals prevalent in the open market for comparable units.

(c) Annually, following the approval of the rental schedule submitted pursuant to the preceding section, the corporation shall determine the amount of rental assistance payments payable to the owner for the forthcoming year, which amount shall under no circumstances exceed the maximum annual rental assistance payment amount determined in accordance with section 201G-224. The amount determined pursuant to this subsection shall take into account the estimated amount to be derived by the owner from rentals to be charged for the forthcoming year and the

limited rate of return on equity permitted in accordance with section 201G-224(d)(6).

(d) The corporation shall establish standards and requirements for:

(1) The awarding of rental assistance contracts and the allocation of annual rental assistance payments;

(2) The form of lease to be utilized by the owner in renting units in an eligible project;

(3) The marketing and tenant selection and admission processes to be employed by the owner with respect to an eligible project; and

(4) The maintenance and operation of eligible projects.

(e) The corporation shall establish procedures for:

(1) The annual review of rental schedules for eligible projects;

(2) The periodic review of the income of tenants renting units in eligible projects; and

(3) The periodic inspection of eligible projects to monitor the owners' compliance with the terms and conditions of their rental assistance contracts.

(f) When an eligible project is not owned by the corporation, the corporation shall be entitled to share in the appreciation in value of units maintained for eligible tenants within an eligible project realized at the time of refinancing or prepayment of the eligible project loan. The corporation's share shall be calculated by multiplying the appreciation in value of units maintained for eligible tenants realized upon refinancing or prepayment by the ratio of the owner's equity to the discounted value of the aggregate rental assistance payments. The discount rate shall be established by rules adopted by the corporation.

The corporation shall exempt projects owned by a county from the shared appreciation requirement set forth in this section if all of the following requirements are met:

(1) The funds derived by the county as a result of appreciation in value of the units are used for housing projects wherein:

(A) At least sixty per cent of the project is affordable to families earning one hundred per cent or below of the applicable area median income; and

(B) At least half of the foregoing sixty per cent is affordable to families earning eighty per cent or below of the applicable area median income; and

(2) The project from which the appreciation in value is derived remains as affordable as it was prior to the refinancing or prepayment of the eligible project loan. [L 1997, c 350, pt of §2]

[\$201G-226] Benefits of program not exclusive. Nothing in this subpart contained shall be construed to prohibit, with respect to an eligible project, the operation of the rental assistance program in conjunction with other state or federal programs including the state rent supplements provided for in subpart D. [L 1997, c 350, pt of §2]

[\$201G-227] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

D. State Rent Supplement Program

[\$201G-231] Rent supplements. The corporation is authorized to make, and contract to make, annual payments to a "housing owner" on behalf of a "qualified tenant", as those terms are defined in this subpart, in such amounts and under such circumstances as are prescribed in or pursuant to this subpart. No payment on

behalf of a qualified tenant shall exceed a segregated amount of \$160 a month. [L 1997, c 350, pt of §2]

§201G-232 Housing owner defined. As used in this subpart, the term "housing owner" means:

(1) A private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, that is a mortgagor under section 202, 207, 213, 221(d)(3), 221(d)(5), or 231 of the National Housing Act, as amended, or that conforms to the standards of those sections but that is not a mortgagor under those sections or any other private mortgagor under the National Housing Act, as amended, for very low income, low-income, or moderate-income family housing, regulated or supervised under federal or state laws or by political subdivisions of the State, or agencies thereof, as to rents, charges, capital structure, rate of return, and methods of operation, from the time of issuance of the building permit for the project; and

(2) Any other owner of a standard housing unit or units deemed qualified by the corporation. [L 1997, c 350, pt of §2; am L 2000, c 214, §3]

§201G-233 Qualified tenant defined. As used in this subpart, the term "qualified tenant" means any single person or family, pursuant to criteria and procedures established by the corporation, that has been determined to have an income not exceeding the very low income limit as determined by the corporation pursuant to rules adopted by the corporation; provided that the qualified tenant's primary place of residence shall be in the State of Hawaii or that the qualified tenant intends to make the State of Hawaii the qualified tenant's primary place of residence. The terms "qualified tenant" and "tenant" include a member of a cooperative who satisfies the foregoing requirements and who, upon resale of the member's membership to the cooperative, will not be reimbursed for more than fifty per cent of any equity increment accumulated through payments under this subpart. With respect to members of a

cooperative, the terms "rental" and "rental charges" mean the charges under the occupancy agreements between the members and the cooperative. The term "qualified tenant" shall not include any person receiving money payments for public assistance from the department of human services; provided that the term "public assistance" shall exclude aid provided through the federal Supplemental Security Income Program. [L 1997, c 350, pt of §2; am L 2000, c 214, §4]

§201G-234 Relationship of annual payment to rental and income.

The amount of the annual payment with respect to any dwelling unit shall not exceed the amount by which the fair market rental for that unit exceeds thirty per cent of the tenant's income as determined by the corporation pursuant to procedures and regulations established by it. [L 1997, c 350, pt of §2; am L 2000, c 214, §5]

§201G-235 Determination of eligibility of occupants and rental charges.

(a) For purposes of carrying out this subpart, the corporation shall establish criteria and procedures for determining the eligibility of occupants and rental charges, including criteria and procedures with respect to periodic review of tenant incomes and periodic adjustment of rental charges. The corporation shall issue, upon the request of a housing owner, certificates as to the income of the single persons and families applying for admission to, or residing in, dwellings of that owner.

(b) Procedures adopted by the corporation hereunder shall provide for recertification of the incomes of occupants, except elders, at intervals of two years, or at shorter intervals, for the purpose of adjusting rental charges and annual payments on the basis of occupants' incomes, but in no event shall rental charges adjusted under this subpart for any dwelling exceed the fair market rental of the dwelling.

(c) No payments under this subpart may be made with respect to any property for which the costs of operation, including wages and salaries, are determined by the corporation to be greater than similar costs of operation of similar housing in the community where the property is situated. [L 1997, c 350, pt of §2; am L 2000, c 214, §6]

[§201G-236] Rules. The corporation may adopt all rules necessary to carry out the purpose of this subpart, including rules relating to determining preference among applicants for state rent supplements. [L 1997, c 350, pt of §2]

[§201G-237] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

E. Taxable Mortgage Securities Programs

§201G-241 Definitions. Whenever used in this subpart, unless the context otherwise requires:

"Eligible borrower" means:

(1) Any person or family, irrespective of race, creed, national origin, or sex, who:

(A) Is a citizen of the United States or a declarant alien;

(B) Is a bona fide resident of the State;

(C) Is at least of legal age;

(D) Does not personally, or whose spouse if the person is married, own a majority interest in any residential property in the State; and

(E) Meets other qualifications as established by rules adopted by the corporation; or

(2) A qualified sponsor of an affordable housing project who meets the qualification requirements as established by rules adopted by the corporation.

"Eligible loan" or "loan" means:

(1) A loan to an eligible borrower for the purchase of a housing unit, including a condominium unit; provided that the property financed is located in the State, will be occupied as the principal place of residence

by the eligible borrower, and meets other requirements as established by rules adopted by the corporation; or

(2) An interim or permanent loan, which may be federally insured or guaranteed, made to a qualified sponsor for the financing of an affordable housing project, and which meets other requirements as established by rules adopted by the corporation.

"Housing loan programs" include all or any part of the loan programs authorized in section 201G-242. [L 1997, c 350, pt of §2 and am c 258, §9; am L 1998, c 212, §§36, 37]

[\$201G-242] Housing loan programs; authorization. (a) The corporation may establish under this subpart one or more eligible loan programs.

(b) The corporation may invest in, make, purchase, take assignments of, or otherwise acquire or make commitments to invest in, make, purchase, take assignments of, or otherwise acquire any eligible loans or any partial interest or participation therein held by or on behalf of the corporation.

(c) The corporation may sell, assign, or otherwise dispose of or enter into commitments to sell, assign, or otherwise dispose of any eligible loans or any partial interest or participation therein held by or on behalf of the corporation.

(d) The corporation may acquire any obligation under conditions which require the seller of such obligation to use the proceeds of the sale for the purpose of financing eligible loans. [L 1997, c 350, pt of §2]

[\$201G-243] Housing loan programs; procedures and requirements.

(a) The corporation may establish procedures and requirements for:

(1) The purchase of loans from mortgage lenders by auction, invitation of tender, advance commitment, or other negotiation;

(2) The making of loans through mortgage lenders to eligible borrowers or qualified sponsors;

(3) The allocation to mortgage lenders of money made available under this subpart; and

(4) The participation by mortgage lenders as originators and processors of loans on behalf of the corporation under this subpart.

(b) The corporation may adopt rules necessary or convenient for the operation of the housing loan programs established under this subpart. [L 1997, c 350, pt of §2]

§201G-244 Housing loan programs; general powers. (a) The corporation may make, enter into, and enforce all contracts or agreements which are necessary, convenient, or desirable for the purpose of the performance of its powers under this subpart.

(b) The corporation may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient in connection with its housing loan programs established under this subpart. The fees, premiums, and charges shall be deposited into such funds as are determined by the corporation.

(c) The corporation may contract for the servicing and custody of any loans or other obligations acquired under this subpart.

(d) The corporation may procure insurance against any default of its loans from insurers in amounts deemed necessary or desirable.

(e) Subject to any agreements with the holders of its bonds, the corporation may renegotiate, refinance, or foreclose any loan in default; and may commence any action to protect or enforce any right conferred upon it by any law, or as provided in any mortgage, insurance policy, contract, or other agreement; and may 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 may operate, manage, lease, dispose of, or otherwise deal with the property securing the loan. [L 1997, c 350, pt of §2; am L 1998, c 212, §38]

[§201G-245] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers,

rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

F. Reserved

[§§201G-261 to 290] Reserved.

G. State Mortgage Guarantee Program

§201G-311 State mortgage guarantee. (a) The corporation may guarantee:

(1) Up to the top twenty-five per cent of the principal balance of real property mortgage loans for the purchase of qualified single-family or multifamily housing units;

(2) A maximum of one hundred per cent of the principal balance of real property mortgage loans of qualified single-family housing under section 213 of the Hawaiian Homes Commission Act; or

(3) Up to one hundred per cent of the principal balance of real property mortgage loans of single-family or multifamily housing developed under self-help or shell housing programs;

plus the interest due thereon, made to qualified borrowers by qualified private lenders; provided that at no time shall the corporation's liability, contingent or otherwise, on these guarantees exceed \$10,000,000. For the purposes of this section, the term "self-help housing program" means development or conservation of housing in which prospective homeowners have contributed labor, materials, or real property; provided that at least two-thirds of the participating homeowners are qualified by income for assistance under this subpart and that the program is carried out under the sponsorship of a nonprofit community organization. For the purposes of this section, the term "shell housing program" means development of housing which is habitable but unfinished and can be completed or expanded; provided that at least one hundred per cent of the participating homeowners are qualified by income for assistance under this chapter and that the program is carried out under the sponsorship of a public nonprofit or private organization.

(b) The loans shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest of the borrower in the single-family or multifamily dwelling owned and occupied by the borrower and the borrower's permitted assigns. Private lenders shall include all banks, savings and loan associations, mortgage companies, and other qualified companies and trust funds whose business includes the making of loans in the State.

(c) Loans guaranteed under this section shall be in accordance with rules adopted by the corporation.

(d) To be eligible for loans under this section, a qualified borrower shall be:

(1) A citizen of the United States or a resident alien;

(2) Qualified under the rules adopted by the corporation; and

(3) Willing to comply with the rules as may be adopted by the corporation.

The corporation may secure the services of a private lender to process all applications and determine who is a qualified borrower under this chapter.

(e) When the application for an insured loan has been approved by the corporation, the corporation shall issue to the lender a guarantee for that percentage of the loan on which it guarantees payment of principal and interest. The private lender shall collect all payments from the borrower and otherwise service the loan.

(f) In return for the corporation's guarantee, the private lender shall remit out of monthly payments collected an insurance fee as established by the corporation. The funds remitted shall be deposited to the credit of the state general fund.

(g) When any installment of principal and interest has been due for sixty days and has not been paid by the borrower, the private lender may file a claim for the guaranteed portion of the overdue payments with the corporation which may then authorize vouchers for these payments, thereby acquiring a division of interest in the collateral pledged by the borrower in proportion to the amount of the payment. The corporation

shall be reimbursed for any amounts so paid plus the applicable interest rate when payment is collected from the borrower.

(h) If there is any default in any payment to be made by the borrower, the lender shall notify the corporation within fifteen days. Should the lender deem that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall so notify the corporation. Within thirty days of either notification, the corporation may elect to request an assignment of the loan on payment in full to the lender of the principal balance and interest due. Foreclosure proceedings shall be held in abeyance in the interim.

(i) Every qualified borrower who is granted a loan under this section shall comply with the following conditions:

(1) Extend no portion of the qualified borrower's loan for purposes other than those sanctioned by the corporation;

(2) Not sell or otherwise dispose of the mortgaged property except upon the prior written consent of the corporation and except upon any conditions that may be prescribed in writing by the private lender;

(3) Undertake to pay when due all taxes, liens, judgments, or assessments which may be lawfully assessed against the property mortgaged, together with cost and expense of any foreclosure of the mortgage;

(4) Keep insured to the satisfaction of the private lender all improvements and other insurable property covered by the mortgage. Insurance shall be made payable to the mortgagee as its interest may appear at the time of the loss. At the option of the private lender, subject to the rules and standards of the corporation, sums so received may be used to pay for reconstruction of the improvements destroyed, or for decreasing the amount of the indebtedness;

(5) Keep the improvements in good repair;
and

(6) The private lender may impose any other conditions in its mortgage; provided the form of the mortgage has received the prior approval of the corporation.

All of the above conditions shall be held and construed to be provisions of any mortgage executed by virtue of this section regardless of whether or not they are expressly incorporated in the mortgage document.

(j) Loans guaranteed and made under this subpart shall be repaid in accordance with a payment schedule specified by the private lender with payments applied first to interest and then to principal. Additional payments in any sums and the payment of the entire principal, may be made at any time within the period of the loan. The private lender for satisfactory cause and at its discretion, may extend the time within which the installments of principal may be made for a period not to exceed two years.

(k) All interest and fees collected under this subpart by the corporation shall be deposited into the general fund. All moneys necessary to guarantee payment of loans made under this subpart and to carry on the operations of the corporation in administering and granting loans under this subpart shall be appropriated by the legislature out of the proceeds of the general fund. The corporation shall include in its legislative budgetary request for the upcoming fiscal period, the amounts necessary to effectuate the purposes of this section. [L 1997, c 350, pt of §2; am L 1998, c 212, §39]

[\$201G-312] Mortgage guaranty agreements. (a) To induce appropriate officials of any agency or instrumentality of the United States to commit to insure and insure mortgages under the provisions of the National Housing Act, as amended, the corporation may enter into guaranty agreements with such officials whenever:

(1) The purchaser-mortgagor in question is ineligible for mortgage insurance purposes under the National Housing Act because of credit standing, debt obligation or income characteristics;

(2) The purchaser-mortgagor in question is a "displaced person" as defined in chapter 111 and the guaranty agreement will enable the

purchaser-mortgagor to obtain suitable replacement housing in accordance with that chapter; and

(3) The corporation finds that the purchaser-mortgagor would be a satisfactory credit risk with ability to repay the mortgage loan if the purchaser-mortgagor were to receive budget, debt, management and related counseling.

(b) Such guaranty agreements may obligate the corporation to:

(1) Provide or cause to be provided such counseling; and

(2) Indemnify an agency or instrumentality of the United States for a period not to exceed five years for any loss sustained by such agency or instrumentality by reason of insurance of a mortgage.

(c) The total of guaranties made pursuant to this section and guaranties made pursuant to section 201G-311 shall not exceed \$10,000,000. [L 1997, c 350, pt of §2]

[\$201G-313] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

H. Downpayment Loan Program

[\$201G-321] Downpayment loans. (a) The corporation may make direct downpayment loans to eligible borrowers. The downpayment loan to any borrower shall not exceed thirty per cent of the purchase price of the residential property or \$15,000, whichever is less. The interest rate on the loans may range from zero per cent to eight per cent, depending on the buyer's incomes.

(b) The repayment of every downpayment loan shall be secured by a duly recorded second mortgage executed by the borrower to the State on the residential property purchased with the downpayment loan.

(c) The principal of the downpayment loan, together with accrued interest, shall be due and payable upon the sale, transfer, or refinancing of the home, or shall be repaid by the borrower in such installments as determined by the corporation; provided that the corporation may provide a period in which the payment could be waived. The period over which the principal and interest shall be paid need not coincide with the period over which the loan from the mortgage lender for the balance of the purchase price must be repaid. The borrower may repay the whole or any part of the unpaid balance of the downpayment loan, plus accrued interest at any time without penalty.

(d) The corporation may secure the services of the mortgage lender who loans to the borrower the balance of the purchase price of the residential property or the services of any other mortgage lender doing business in the State to collect, on behalf of the State, the principal and interest of the downpayment loan and otherwise to service the downpayment loan, for a servicing fee not in excess of the prevailing loan servicing fees.

(e) The corporation shall adopt rules pursuant to chapter 91 to carry out the purposes of this subpart. [L 1997, c 350, pt of §2]

[\$201G-322] Qualifications for downpayment loan. (a) No person shall be qualified for a downpayment loan unless the person:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is a bona fide resident of the State;
- (4) Will physically reside in the residential property to be purchased for the term of the loan;
- (5) Is accepted by a mortgage lender as a person to whom it is willing to lend money for the purchase of the residential property provided the required downpayment is made; and

(6) Provides a portion of the downpayment which shall be equal to at least three per cent of the sales price.

(b) No person who owns in fee simple or in leasehold any other residential property within the State shall be eligible to become a borrower under this section. A person shall be deemed to own a residential property if the person, the person's spouse, or both (unless separated and living apart under a decree of a court of competent jurisdiction) own a majority interest in a residential property. [L 1997, c 350, pt of §2]

[\$201G-323] Restrictions on borrower. Every loan made under this subpart shall be subject to the following conditions:

(1) The borrower shall expend no portion of the borrower's downpayment loan for purposes other than to make a downpayment for the purchase of a residential property;

(2) The residential property purchased with the downpayment loan and mortgaged to the State to secure the repayment of the loan shall not be sold or assigned without the prior approval in writing of the corporation and the first mortgage lender;

(3) The borrower shall pay when due all taxes, liens, judgments, or assessments which may be lawfully levied against the residential property and all costs and expenses of any foreclosure of the mortgage made to the State;

(4) The borrower shall maintain fire and casualty insurance in amounts equal to the replacement value of all improvements and insurable portions of the residential property with an insurance company authorized to do business in the State. All proceeds of that insurance shall be made payable to the first mortgage lender and the corporation as their respective interests may appear at the time of any loss or damage. Subject to the rules of the corporation, in the event of any loss or damage to the improvements or property

covered by the insurance, the proceeds receivable by the State shall be applied toward the reconstruction of the improvements or property destroyed or damaged, unless otherwise determined by the corporation on behalf of the State; and

(5) The borrower shall maintain the improvements in good repair.

All of the above conditions shall be a part of any downpayment mortgage executed under this part, regardless of whether or not they are expressly incorporated in the mortgage document. [L 1997, c 350, pt of §2]

[\$201G-324] Default. If the borrower defaults in the payment of any installment of principal or interest of the downpayment loan, the corporation or mortgage lender shall take all necessary action to collect the delinquent amounts and may take all actions generally allowed holders of mortgages, including the power to foreclose. Upon any foreclosure of the second mortgage, the corporation or mortgage lender on behalf of the corporation, may purchase the interest of the borrower in and to the residential property, take possession thereof and assume all of the obligations of the borrower under the first mortgage held by the private lender and any other liens having priority over the second mortgage that may then exist. On the acquisition of the borrower's interest, the corporation, at its option, may pay in full the unpaid balance of the borrower's obligation secured by the first mortgage and other prior liens, repair, renovate, modernize, or improve the residential property, and, with or without clearing the property of all prior mortgages and liens, sell, lease, or rent the property or use or dispose of the same in any manner that the corporation is authorized by law. [L 1997, c 350, pt of §2]

§201G-325 REPEALED. L 2002, c 178, §8.

[\$201G-326] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

I. Housing Alteration Revolving Loan Fund--Repealed

§201G-341 REPEALED. L 2003, c 178, pt of §60.

HRS 0201G-0341 ANNOTATIONS

Note

Subpart heading repealed by L 2003, c 178, pt of §60.

§201G-342 REPEALED. L 2002, c 178, §9.

§§201G-343 to 345 REPEALED. L 2003, c 178, §§61 to 63.

J. Homebuyers' Club

[\$201G-351] Homebuyers' club program. (a) The corporation may establish a homebuyers' club program for participants who are desirous of purchasing a home and who have adequate incomes but who lack sufficient funds for the downpayment and closing costs. The primary focus of this program is to facilitate the purchase of homes by providing participants with strategies to save money, to resolve credit problems, and to educate participants on how to shop for and purchase a home.

(b) In establishing such a program, the corporation shall adopt rules pursuant to chapter 91 relating to establishing a savings program for participants based upon individual analyses of income and family expenses. The rules may also provide for integration of the homebuyers' club program with other governmental programs including but not limited to individual housing accounts under section 235-5.5, the state mortgage guarantee program under part III.G, the downpayment loan program established under part III.H, and the rent-to-own program established under part [III.K].

(c) The corporation may secure the services of another public or private entity to carry out the purposes of this section. [L 1997, c 350, pt of §2]

[\$201G-352] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

K. Rent-to-Own Program

[\$201G-361] Rent-to-own program. (a) The corporation may establish a rent-to-own program under which housing units that are for sale may be rented to program participants. Under this program, the corporation shall credit a portion of the rent received toward the purchase of the unit.

(b) The sales price shall be established at the beginning of the rental term and shall remain fixed for the first five years after the rental agreement is executed. During this period, the participant shall have the option of purchasing the unit at the designated sales price. If the participant does not elect to purchase the unit within the five-year period, the renter shall forfeit the right to continue living in the unit and the unit shall be made available to another purchaser or renter.

(c) The corporation shall have the right to re-establish the sales price upon expiration of the option period or upon resale of the unit. [L 1997, c 350, pt of §2]

[\$201G-362] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

L. Reserved

[\$201G-371 to 379] Reserved.

M. State Sales Housing Program

§201G-391 State sales housing. Notwithstanding any law to the contrary, but subject to any resolution of issuance under subpart A, the corporation may permit any member of a tenant family of a housing project administered under subpart A, B, or H of part II, or any individual meeting the income standards under section 221(d)(3) of the National Housing Act to enter into a contract for the acquisition of a dwelling unit and lot or the acquisition of a dwelling unit and the lease of its lot, the lease to conform to chapter 171 with the exception that the lease shall not require bid, auction, or negotiation, in any project under subparts A, B, and H of part II which is suitable for sale and for occupancy by such purchaser or a member or members of the purchaser's family, upon the following terms:

(1) The purchaser shall pay at least:

(A) A pro rata share cost of any services furnished the purchaser by the corporation, including but not limited to administration, maintenance, repairs, utilities, insurance, provision of reserves, and other expenses;

(B) Taxes on the purchaser's dwelling unit; and

(C) Monthly payments of interest and principal sufficient to amortize a sales price, equal to the greater of the unamortized debt or the appraised value (at the time such purchase contract is entered into) of the dwelling unit, in not more than forty years;

(2) The interest rate shall be fixed at not less than the average interest cost of loans outstanding on the project, except that in the case of a project on which bonds are not outstanding the interest rate shall be fixed at not less than the going rate applicable to that project;

(3) The principal payments shall be not less than one-half of one per cent a year of the sales price during the first five years after purchase, one per cent a year during the next five years, one and one-half per cent a year during the third five years, and thereafter not less than the principal payments resulting from a level debt service of interest and principal over the balance of the payment period; and

(4) If at any time:

(A) A purchaser fails to carry out the purchaser's contract with the corporation and if no member of the purchaser's family who resides

in the dwelling assumes such contract; or

(B) The purchaser or a member of the purchaser's family who assumes the contract does not reside in the dwelling, the corporation shall have an option to acquire the purchaser's interest under the contract upon payment to the purchaser or the purchaser's estate of an amount equal to the purchaser's aggregate principal payments plus the value to the corporation of any improvements made by the purchaser, less an amount equal to two and one-half per cent of the sales price. [L 1997, c 350, pt of §2; am L 1998, c 212, §40]

[§201G-392] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

N. Homes Revolving Fund--Repealed

§§201G-401 to 403 REPEALED. L 2003, c 178, §4.

O. Dwelling Unit Revolving Fund

§201G-411 Dwelling unit revolving fund. There is created a dwelling unit revolving fund. The funds appropriated for the purpose of the dwelling unit revolving fund and all moneys received or collected by the corporation for the purpose of the revolving fund shall be deposited in the revolving fund. The proceeds in the revolving fund shall be used to reimburse the general fund to pay the interest on general obligation bonds issued for the purposes of the revolving fund, for the necessary expenses in administering subpart F, part II, and for carrying out the purposes of subpart F, part II, including but not limited to the expansion of community facilities constructed in conjunction with housing projects, and supplementing building costs, federal guarantees required for operational losses, and

all things required by any federal agency in the construction and receipt of federal funds for housing projects. [L 1997, c 350, pt of §2; am L 1998, c 212, §41]

[\$201G-412] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

P. Hawaii Development Revolving Fund

§201G-421 REPEALED. L 2002, c 178, §10.

§201G-422 REPEALED. L 2003, c 178, §64.

Q. Rental Housing Trust Fund

[\$201G-431] Additional definitions. As used in this subpart, unless a different meaning is clearly required by the context:

"Advisory commission" means the rental housing trust fund advisory commission established by this subpart.

"Develop" or "development" means the planning, financing, or acquisition of real and personal property; demolition of existing structures; clearance of real property; construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services, or other site improvements; construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures; or any combination of the foregoing, of any housing project. It also includes any undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

"Fund" means the rental housing trust fund established in this subpart. [L 1997, c 350, pt of §2]

§201G-432 Rental housing trust fund. (a) There is hereby established a rental housing trust fund to be placed within 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 fund;

however, fund moneys may 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, 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 in the fund shall be used for the purpose of providing in whole or in part loans or grants for housing projects wherein:

(1) At least fifty per cent of the available units are for persons and families with incomes at or below sixty per cent of the median family income;

(2) At least ten per cent of the available units are for persons and families with incomes at or below thirty per cent of the median income; and

(3) 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.

(f) Commencing with fiscal year 1999-2000, at the close of each biennium, at least one-third of the funds allocated to construction projects for the period shall have been committed to projects that guarantee affordable units to persons or

families with incomes at or below thirty per cent of the median income pursuant to [subsection] (e)(2). Commencing with the regular session of 2000, the corporation shall submit an annual report to the legislature documenting existing projects in compliance with this subsection no later than twenty days prior to the convening of each regular session.

(g) 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) Providing 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 ninety-five per cent; and provided further that the underwriting guidelines include a debt-coverage ratio of not less than 1.05 to 1. [L 1997, c 350, pt of §2; am L 1998, c 216, §2]

§201G-433 Rental housing trust fund advisory commission. (a) There is established within the corporation the rental housing trust fund advisory commission consisting of seven members, five of whom shall be public members and appointed pursuant to section 26-34. The public members of the advisory commission shall serve four-year staggered terms; provided that the initial appointments shall be as follows: two members to be appointed for four years; two members to be appointed for three years; and one member to be appointed for two years. As part of this appointment process, an appropriate organization from each of the categories of organizations enumerated below shall submit a list of three public member nominees to the governor. The governor shall select and appoint one public member from each list.

The public members shall be representative of the following categories of organizations:

- (1) Real estate brokers and rental property managers;
- (2) Tenants and renters advocacy organizations;
- (3) Nonprofit housing developers and low income service providers;

(4) Mortgage lenders; and

(5) Architects and planners.

A county government official who shall be appointed for a two-year term on a rotating basis among counties and the governor's designated representative shall be ex officio voting members of the advisory commission.

(b) The chairperson shall be a public member elected by the members of the advisory commission and shall serve not more than two one-year terms as chair.

(c) The vice-chair shall be a public member elected by the members of the advisory commission.

(d) Four members shall constitute a quorum. Four affirmative votes shall be necessary for all actions by the advisory commission.

(e) The members shall receive no compensation for services, but shall be entitled to necessary expenses, including traveling expenses, incurred in the performance of their duties.

(f) The advisory commission shall advise and serve as the liaison between the board of the corporation and the general public. [L 1997, c 350, pt of §2; am L 1998, c 212, §42]

[\$201G-434] Duties of the advisory commission. (a) In addition to any other duties granted by this subpart, the advisory commission shall advise and assist the board of the corporation, evaluate the fund program each year, and report its evaluation with suggested changes to the legislature not fewer than twenty days before the convening of each regular session starting with the regular session of 1998.

(b) In addition to any other powers and duties granted under subsection (a), the commission shall:

(1) Define the guidelines, procedures, conditions, and details of loans and grants under this section; including, but not limited to the establishment of loan-to-value and debt-coverage ratios; and

(2) Have the authority to obtain the services of technical and support staff from

other government agencies to carry out the purposes of this chapter. [L 1997, c 350, pt of §2]

[\$201G-435] Eligible applicants for funds. Eligible applicants for funds shall include nonprofit and for-profit developers, including government agencies, who are qualified in accordance with rules adopted by the corporation pursuant to chapter 91. [L 1997, c 350, pt of §2]

[\$201G-436] Eligible projects. (a) Activities eligible for assistance from the fund shall include but not be limited to:

(1) New construction, rehabilitation, or preservation of low-income rental housing units that meet the criteria for eligibility described in subsection (c);

(2) The leveraging of moneys with the use of fund assets;

(3) Pre-development activity grants or loans to nonprofit organizations; and

(4) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing.

(b) Preference shall be given to projects producing units in at least one of the following categories:

(1) Multifamily units;

(2) Attached single-family units;

(3) Apartments;

(4) Townhouses;

(5) Housing units above commercial or industrial space;

(6) Single room occupancy units;

(7) Accessory apartment units;

(8) Employee housing; and

(9) Other types of units meeting the criteria for eligibility set forth in subsection (c).

(c) The corporation shall establish an application process for fund allocation that gives preference to projects meeting the criteria set forth below that are listed in descending order of priority:

- (1) Serve the original target group;
- (2) Provide maximum number of units for the least amount of subsidy;
- (3) Are committed to serving the target population over a longer period of time;
- (4) Increase the integration of income levels of the immediate community area;
- (5) Meet the geographic needs of the target population, such as proximity to employment centers and services; and
- (6) Have favorable past performance with fund moneys.

The corporation may include other criteria in the above process as it deems necessary to carry out the purposes of this part.

If the corporation, after applying the process described in this subsection, finds a nonprofit project equally ranked with a for-profit or government project, the corporation shall give preference to the nonprofit project in allotting fund moneys. [L 1997, c 350, pt of §2]

[\$201G-437] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities conferred upon the corporation. [L 1997, c 350, pt of §2]

R. Expenditures of Revolving Funds Under the Corporation

Exempt from Appropriation and Allotment

§201G-441 Expenditures of revolving funds under the corporation exempt from appropriation and allotment. Except as to administrative expenditures, and except as otherwise provided by law, expenditures from these revolving funds administered by the corporation under subpart I, N, O, P, or Q or section 201G-170, 201G-223, 201G-401, 201G-411, 201G-421, or 516-44 may be made by the corporation without appropriation or allotment of the legislature; provided that no expenditure shall be made from and no obligation shall be incurred against any revolving fund in excess of the amount standing to the credit of the fund or for any purpose for which the fund may not lawfully be expended. Nothing in sections 37-31 to 37-41 shall require the proceeds of the revolving funds identified in subpart I, N, O, P, or Q or section 201G-170, 201G-223, 201G-401, 201G-411, 201G-421, or 516-44 to be reappropriated annually. [L 1997, c 350, pt of §2; am L 1998, c 212, §43]

[§201G-442] Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it. [L 1997, c 350, pt of §2]

PART IV. HOMELESS ASSISTANCE

A. General Provisions

§201G-451 Additional definitions. As used in this part:

"Donor" means any individual, partnership, corporation, joint-stock company, unincorporated organization, foundation, estate, trust, or any other person or firm that donates money, real property, goods, or services to a homeless facility, or any other program for the homeless authorized by this part, including board members, trustees, officers, partners, principals, stockholders, members, managers, employees, contractors, agents of these entities, or any person who was involved with the donation.

"Emergency shelter" means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for up to six weeks.

"Homeless" means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family who has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations;

(B) An institution that provides temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for or ordinarily used as sleeping accommodations for human beings.

This term does not include any individual imprisoned or otherwise detained under an act of Congress or a state law.

"Homeless facility" means a development designed to provide shelter for homeless families or individuals pursuant to this part, or to facilitate any other homeless program authorized by this part, and may include emergency or transitional shelters.

"Homeless shelter stipend" means a payment to a provider agency or to the corporation on behalf of a homeless family or individual to assist with the costs of operating a homeless facility and providing appropriate services.

"Provider agency" means an organization, including its board and officers and any employees, contractors, or agents, contracted by the corporation to provide labor and services to any homeless facility, or any other program for the homeless authorized by this part, that is:

(1) A profit organization incorporated under the laws of the State or a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax; or

(2) A nonprofit organization, with a governing board whose members have no material conflict of interest and serve without compensation with bylaws or policies that describe the manner in which business is conducted and policies that relate to nepotism and management of potential conflict of interest situations.

In addition, the organization shall be qualified by the corporation to operate and manage a homeless facility, or any other program for the homeless authorized by this part, pursuant to standards and criteria established by duly adopted rules for eligibility.

"Transitional shelter" means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for up to twenty-four months, pursuant to rule. [L 1997, c 350, pt of §2; am L 1998, c 212, §44]

HRS 0201G-0451 ANNOTATIONS

Note

Subpart designation added by L 1998, c 167, §2(1).

[\$201G-452] Duties. (a) In addition to any other power or duty prescribed by law, the corporation shall administer and operate homeless facilities and any other program for the homeless authorized by this part; establish programs for the homeless; and take any other actions necessary to effectuate the purposes of this part.

(b) The corporation shall adopt rules pursuant to chapter 91 for the purposes of this part; provided that these rules or any rules relating directly to homelessness authorized by any statute, shall be exempt from the requirements of chapter 91, and shall take effect immediately upon filing with the office of the lieutenant governor. [L 1997, c 350, pt of §2]

[\$201G-453] Exception to liability for donors. (a) Any donor who gives money to a provider agency, to a homeless facility, to or through the corporation, or for any other program for the homeless authorized by this part, shall not be liable for any civil damages resulting from the donation.

(b) Any donor who gives land and improvements, or who leases land and improvements at a nominal consideration, to a provider agency, to a homeless facility, to or through the corporation, or for any other program for the homeless authorized by this part, shall not be liable for any civil damages resulting from the donation except as may result from the donor's gross negligence or wanton acts or omissions; provided that, if the donor at the time of donation gave the corporation a full accounting of all the dangers concerning the land and improvements known to the donor, then the donor shall not be liable for any civil damages resulting from the donation.

(c) Any donor who in good faith and without remuneration or expectation of remuneration provides services or materials used to build and construct a facility for the homeless, or who renovates, repairs, or maintains an existing or acquired facility for the homeless, or who provides shelter to homeless persons, shall not be liable for any civil damages resulting from the donor's acts or omissions, except for damages resulting from the donor's gross negligence relating to the donation.

(d) The corporation shall be responsible for inspecting, reviewing, analyzing, qualifying, and determining that the land, structures, materials, or services donated to the corporation

for use by the corporation in facilities for the homeless are reasonably safe for public use. [L 1997, c 350, pt of §2]

[\$201G-454] Contract or conveyance to the corporation.

Notwithstanding any other law to the contrary, the board of land and natural resources or other state agency holding such lands and improvements, for purposes of this part, may contract or otherwise convey at a nominal consideration, by direct negotiation and without recourse to public auction, the land and improvements, or the management, operation, and administrative responsibility over the land and improvements, to the corporation or its designee. The land and improvements shall be used by the corporation or its designee for homeless facilities, or for any other program for the homeless authorized by this part. [L 1997, c 350, pt of §2]

§201G-455 Program administration. To the extent that appropriations are made available, the corporation may contract with a provider agency to administer homeless facilities, or any other program for the homeless created by this part. The selection of provider agencies to administer homeless facilities, or any other program for the homeless authorized by this part, shall not be subject to chapters 42F, 102, 103, and 103F. The selection of provider agencies shall be subject to qualifying standards and criteria established by rule. [L 1997, c 350, pt of §2 and am c 190, §6; am L 2004, c 216, §25]

[\$201G-456] Time limits. To the extent that appropriations are made available, a provider agency shall provide shelter or any other program assistance authorized by this part to eligible homeless families and homeless individuals not later than two days, or such time as is set by rule which shall not be later than seven days, after they apply and qualify for the shelter or other program assistance, pursuant to rule. Such time limits may be waived at the discretion of the corporation for a maximum period of fourteen days for the purpose of implementing repairs to the subject shelter, which repairs the corporation deems major or extensive. [L 1997, c 350, pt of §2 superseding c 90, §1]

[\$201G-457] Determination of eligibility and need. (a) The provider agency operating and managing a homeless facility, or any other program for the homeless authorized by this part, or the corporation operating and managing its own homeless facility, shall be responsible for determining if an applicant is eligible for shelter or other services at the homeless

facility or through any other program for the homeless, pursuant to standards and criteria established by rule.

(b) The provider agency or the corporation operating and managing its own homeless facility shall determine the degree of need for each homeless family or individual and in its determination shall consider the resources available and the number of potential eligible applicants in the area served by the homeless facility or other program for the homeless authorized by this part.

(c) The corporation may establish by rule standards and criteria for eligibility, need, and priority for each program; provided that the corporation may establish by rule exceptions to these eligibility requirements based on special circumstances. [L 1997, c 350, pt of §2]

[\$201G-458] Abuse of assistance. (a) The provider agency operating and managing a homeless facility, or any other program for the homeless authorized by this part, or the corporation operating and managing its own homeless facility, shall be responsible for determining if a participant is no longer eligible for shelter or other services at the homeless facility or through any other program for the homeless, pursuant to standards and criteria established by rule.

(b) Pursuant to rule and the right of due process, the corporation or its designee, or provider agencies together with the corporation, may act to bar homeless families or individuals from participating further in any homeless facility, may issue a writ of possession, and take such other actions as provided by rule.

The enforcement of a writ of possession shall be effected either by an officer appointed by the corporation, who shall have all of the powers of a police officer for all action in connection with the enforcement of the writ, or any other law enforcement officer of the State or any county, whose duty it shall be to enforce the writ. The person enforcing the writ shall remove all persons from the premises and put the corporation or its designee, or the provider agency designated by the corporation, in full possession thereof.

Upon eviction, the household goods and personal effects of the person against whom the writ is entered, and those of any persons using the premises incident to the person's holding, may be removed from the premises immediately and sold or otherwise

disposed of by the corporation or its designee, or the provider agency. If the action is taken, the corporation or its designee, or the provider agency, shall have a lien on the property so removed for the expenses incurred by it in moving the property.

(c) Any person who enters or remains unlawfully in or upon the premises or living quarters of any homeless facility, or any other program for the homeless authorized by this part, after reasonable warning or request to leave by that provider agency's authorities, the corporation or its designee, or a police officer, shall be guilty of a misdemeanor; provided that the offense in this subsection shall be in addition to any other applicable offense in the Hawaii Penal Code. A warning or request shall only be issued if the person has engaged in unlawful conduct or has violated house rules and regulations; provided that the warning or request for violation of house rules and regulations shall be issued only if that provider agency, or the corporation or its designee, has filed a copy of its current house rules and regulations governing tenancy or participation at the shelter, facility, or program, and any changes thereto, with the director of commerce and consumer affairs. The house rules and regulations shall be reasonable and a copy shall be provided to each tenant or participant. The warning or request shall supersede any invitation by a tenant or participant at the shelter, facility, or program to that person to visit the premises or living quarters. [L 1997, c 350, pt of §2]

[\$201G-459] Exemptions. (a) Any compensation received by a provider agency for services rendered to homeless families or individuals, or in operating or managing a homeless facility authorized by this part, is exempt from taxes under chapter 237.

(b) Any county mayor may exempt by executive order, donors and homeless provider agencies from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate the exemptions granted by this subsection.

(c) Any provider agency operating or managing a homeless facility, or any other program for the homeless authorized by this part, is exempt, for purposes of those facilities or programs, from any requirements contained in part VIII of chapter 346 and chapters 467 and 521. [L 1997, c 350, pt of §2]

[\$201G-460] Emergency/transitional shelter volunteers exempted.

(a) For the purposes of this section, "emergency/transitional shelter volunteer" means an individual who:

(1) Is a tenant at an emergency or transitional shelter administered pursuant to this part;

(2) Is not an employee of the provider agency operating or managing the shelter;

(3) Is under the direction of the provider agency operating or managing the shelter and not the corporation or State; and

(4) Provides up to eighty hours of volunteer labor or services per month to the provider agency operating or managing the shelter, notwithstanding payment of stipends or credits for such labor and services.

(b) Provider agencies may accept labor and services from emergency/transitional shelter volunteers.

(c) In addition to any exemptions granted to nonpaid labor, emergency/transitional shelter volunteers who acknowledge in writing that they are emergency/transitional shelter volunteers, shall not be construed to be in the employ of the provider agency operating or managing the shelter. The volunteers' labor and services provided to the provider agency operating or managing the shelter shall not be construed to constitute employment, and the volunteers shall not be construed to be employees of the provider agency operating or managing the shelter, under any labor law. [L 1997, c 350, pt of §2]

§201G-461 Annual performance audits. (a) The corporation shall require any provider agency that dispensed shelter or assistance for any homeless facility or any other program for the homeless authorized by this part to submit to the corporation a financial audit and report on an annual basis conducted by a certified public accounting firm. This audit and report shall contain information specific to the funds received under state homeless programs contracts. The audit shall include recommendations to address any problems found.

(b) Continuing contracts with provider agencies to participate in any program for the homeless authorized by this part shall

require that the provider agency address the recommendations made by the auditing agency, subject to exceptions as set by the corporation.

(c) Failure to carry out the recommendations made by the auditing agency may be grounds for the corporation to bar a provider agency from further contracts for programs authorized by this part until the barred provider has addressed all deficiencies. [L 1997, c 350, pt of §2; am L 2001, c 98, §2]

[\$201G-462] Provider agency and donor cooperation are not in restraint of trade. No provider agency or any other agency, or donor or donors, or method or act thereof that complies with this part, shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily, or the creation of a combination or pool, or to accomplish any improper or illegal purpose. Any cooperation or agreement established pursuant to rule shall not be considered as illegal, in restraint of trade, or as part of a conspiracy or combination to accomplish an illegal purpose or act. [L 1997, c 350, pt of §2]

[\$201G-463] Construction of part. If there is any conflict between this part and any other law, this part shall control. [L 1997, c 350, pt of §2]

[\$201G-464] Homeless shelter stipends. (a) Effective July 1, 1998, the stipend limits per shelter unit of zero bedrooms shall be adjusted by the corporation on July 1, 1998, and each first day of July thereafter pursuant to standards established by rule which may consider changes in the cost of operating homeless facilities, the fair market rents, the consumer price index, or other relevant factors. A "shelter unit of zero bedrooms" means a living unit which is a studio unit or a single-room occupancy unit. The homeless shelter stipend at transitional shelters for larger shelter unit sizes shall be related to the difference in unit size, pursuant to standards established by rule.

(b) The corporation may make or may contract to make homeless shelter stipend payments on behalf of one or more homeless families or individuals to a provider agency operating or managing an emergency or transitional shelter or, in the case that the corporation itself operates and manages a homeless facility, to the corporation in such amounts and under such circumstances as provided by rule. The contract may specify a minimum total amount of homeless shelter stipends to be received by a provider agency for making its shelter and services

available to eligible homeless families or individuals, pursuant to rule.

(c) In making homeless shelter stipend payments to a provider agency the corporation may establish minimal services to be provided by the provider agency to homeless families or individuals at the agency's shelter. The corporation may also direct provider agencies to establish and manage a savings account program as described in subsection [(d)]. Additionally, the corporation may direct provider agencies to subcontract for outreach services from other private agencies specializing in programs for the unsheltered homeless.

(d) Provider agencies and the corporation may establish and collect shelter and services payments from homeless families [or] individuals in addition to the amount received in homeless shelter stipend payments pursuant to rule. Provider agencies and the corporation may also set aside a portion of the payments in a savings account to be made available to homeless families or individuals when these families and individuals vacate the shelter. [L 1997, c 350, pt of §2]

[\$201G-465] Additional powers. The powers conferred upon the corporation by this part shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities conferred upon the corporation. [L 1997, c 350, pt of §2]

B. Hale Kokua Program

[\$201G-471] Findings and purpose. The legislature finds that the issue of homelessness should be regarded as one of the State's most significant social problems. The severity of the problem is visible in every area of the State, and evidence that the problem is escalating is becoming more and more apparent. The problem of homelessness impacts everyone, and the burden of rectifying this problem should be approached comprehensively and as a collective responsibility.

The purpose of this subpart is to establish a homeless assistance program known as the "Hale Kokua" program which would authorize the payment of a state grant and a monthly rent supplement to any interested property owner who sets aside any existing rental space or undertakes the improvement or construction of any adjoining or separate dwelling unit for the purpose of renting the unit to any family or individual

classified as employed but homeless under the program for a period of five years.

The program will place a priority on assisting homeless families in the greatest need. To ensure that no particular district or community of the State is unduly burdened by the sudden influx of homeless families holding rental contracts with qualified homeowners under the program, the number of homeowners authorized to take part in the Hale Kokua program will be limited to ten per census tract.

The Hale Kokua program will assist homeless families and individuals who are willing to engage in self-improvement programs and regular employment with an alternative to living in homeless shelters where homeless families as well as the special needs homeless are indiscriminately grouped together. Developing the employment skills of participating tenants is an integral component of the program.

Accordingly, the program will allow other available programs to focus more intently on the special needs of the homeless. The program also calls for the establishment of a cooperative effort between the State, the counties, and the federal government to provide the community and the Hale Kokua program with the resources and the incentives to eliminate the condition of homelessness. Since the Hale Kokua program involves the public and private sectors, the cost of implementing this program should be far less than the cost of building new homeless shelter facilities.

The program has the potential to drastically reduce the actual number of homeless families and individuals living in public areas, to ultimately provide full and free access to Hawaii's malls, streets, parks, and campgrounds. As a result, Hawaii's overall quality of life will be enriched and Hawaii's reputation as one of the most beautiful visitor destinations will be enhanced. [L 1998, c 167, pt of §2(2)]

[§201G-472] Definitions. As used in this subpart, unless the context clearly requires otherwise:

"Administrator" means the state homeless section administrator.

"Employed but homeless" means any person that is homeless as defined in subpart A who is employed at a minimum of nineteen hours a week or participates in an employment training program

and does volunteer work for a total of nineteen hours per week until employment can be found. [L 1998, c 167, pt of §2(2)]

[\$201G-473] Hale Kokua program; established. There is established, within the housing and community development corporation of Hawaii, a homeless assistance program known as the "Hale Kokua" program, to provide incentives and assistance to private homeowners throughout the State who set aside existing dwelling units, or construct or renovate dwelling units, for rental for a period of five years by families or individuals classified as employed but homeless. The program shall be headed by the state homeless section administrator. The executive director of the housing and community development corporation of Hawaii shall administer the Hale Kokua program and adopt the standards and framework necessary to implement the program statewide after the initial phase of the program. [L 1998, c 167, pt of §2(2)]

§201G-474 Powers and duties. (a) The executive director of the corporation shall appoint a state homeless section administrator to carry out the purposes of this subpart and coordinate all programs and responses of state agencies relating to the problem of homelessness. The administrator, with approval of the executive director, may contract with private services to carry out the duties and responsibilities of the program.

Notwithstanding any other law to the contrary, any contracts entered into by the administrator with a private sector entity pursuant to this subsection shall not be subject to chapters 76 and 89. This subsection shall apply to contracts entered into by the state homeless programs coordinator with private sector entities pursuant to Act 279, Session Laws of Hawaii 1992, section 3, before July 14, 1998.

(b) Under the supervision of the executive director, the duties of the administrator or contracted agency shall include:

(1) Carrying out the requirements of the Hale Kokua program under this subpart;

(2) Developing and adopting the requirements, eligibility qualifications, registration, background check, initial screening procedures, and procedures for follow-up after placement to determine the ability to make rental payments and the need for social services and referrals for

homeless families and individuals to qualify them as tenants under this program;

(3) Developing and adopting the requirements, qualifications, and the registration procedures for property owners who provide rental housing to qualified homeless tenants; provided that priority shall be given to those not requesting construction grants;

(4) Developing appropriate procedures to address potential liabilities of the State; and adopting the procedures to place qualified homeless tenants with property owners participating in the program. Participating property owners shall interview and make final tenant selection from lists of prospective tenants compiled by the administrator or the contracted agency;

(5) Establishing the procedures and requirements for the disbursement of building improvement grants and rental subsidies and the amounts thereof to property owners participating in the program;

(6) Working with the counties to develop and propose uniform incentives to encourage and facilitate the participation of property owners, including real property tax waivers or reductions, and exemptions in zoning or building code requirements which shall be conditioned on participation in the program and which shall lapse when program participation ends;

(7) Monitoring the financial status and progress of homeless tenants and cooperating with other agencies in establishing and coordinating job training, and other programs to help tenants to progress toward self-sufficiency;

(8) Promoting and assisting in the development of employer- employee relationships between homeless tenants and participating property owners, including but not limited to tenant caretaker, housekeeper, or groundskeeper employment situations;

(9) Working towards securing financial, in-kind, and administrative assistance from law enforcement and other state and county agencies and the private sector to implement the program;

(10) Working towards securing funding assistance from federal agencies and programs involved in housing development, job-training, or homeless assistance;

(11) Monitoring the progress of the Hale Koa program, and collecting annual statistics showing the numbers of homeless people, homeless families, and homeless children, using appropriate measurement systems; and

(12) Preparing recommendations to improve and expand the program, including but not limited to incentives for participating property owners to sign up for additional terms. [L 1998, c 167, pt of §2(2); am L 2002, c 148, §21]

HRS 0201G-0474 ANNOTATIONS

Note

Effective July 1, 2002, chapter 77 referred to in subsection (a) is repealed.

Revision Note

"July 14, 1998" substituted for "the effective date of this section".

[\$201G-475] Homeowner participation; limitation; payments and assistance. (a) The administrator shall limit the participation

of not more than ten property owners within each census tract at any given period in time, without regard to the existence or operation of shelters and other facilities to aid the homeless in the tract. The administrator or contracted agency shall notify prospective participants registered on the waiting list in each census tract of the opportunity to participate in the program as these opportunities may arise in each tract.

(b) Assistance to any qualified property owner providing rental housing to any homeless tenant under this subpart for a period of five years shall include, but not be limited to, at least one of the following:

(1) The payment of a state grant to offset the cost of renovating, building any adjoining addition, or constructing any separate structure upon the premises of the owner's property in preparation for its use as a homeless assistance unit under the program;

(2) The payment of a monthly state rent subsidy to supplement the monthly rental payments made by the homeless tenant;

(3) Real property tax rate waivers or reductions proposed by the administrator and approved by the council of the county in which the property is located;

(4) Zoning and building code exemptions applicable to the construction of adjoining or separate dwelling units on the owner's property, provided that the county, by ordinance, may establish minimum development and construction standards for these units and procedures for approval thereto; and

(5) Other incentives consistent with the purposes of this [subpart] to assist in the participation of property owners under the program that are adopted by the state homeless programs administrator. [L 1998, c 167, pt of §2(2)]

[\$201G-476] Early withdrawal from program; recovery of grant.

(a) Any property owner who withdraws without just cause from the

Hale Kokua program prior to five years shall return the state grant for construction improvements within ninety days of the date of withdrawal. The administrator shall effect the recovery of the grant, including but not limited to the filing of liens against the real property of withdrawing property owners. The administrator shall be awarded reasonable attorneys' fees and costs as determined by the court in any action brought to enforce this subpart.

(b) The respective county government whose jurisdiction includes the site shall determine the disposition of the additional unit constructed with the grant. [L 1998, c 167, pt of §2(2)]

[§201G-477] Availability of funding. All rental subsidies, grants, and payments allocated by the Hale Kokua program under this subpart shall be subject to the availability of funds. [L 1998, c 167, pt of §2(2)]

HRS 0201G- ANNOTATIONS

Note

For waiver of affordable housing ratio imposed by Act 15, Session Laws of Hawaii 1988, on undeveloped parcels, see L 2001, c 100.

Hula Mae bond authorization. L 2004, c 185.

Streamlining of permitting process. L 1992, c 227; L 1994, c 261.

Transfer of Waiahole-Waikane parcels. L 1993, c 330.

Attorney General Opinions

Counties must accept certifications approved by housing finance and development corporation (HFDC) pursuant to Act 15, L 1988, which sunsetted in 1993, as legal and binding, but the law did not require counties to certify, record, or accept into their records the certifications of HFDC. Counties may only require applications for matters subsequent to Act 15 certifications. Att. Gen. Op. 98-3.