

CLARIFYING STATUTORY REFERENCES IN STATE HOUSING AGENCY LAWS

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INTRODUCTION

This report is submitted in response to Section 14 of Act 180, Session Laws of Hawaii 2006. Act 180 repealed the Housing and Community Development Corporation of Hawaii (codified as chapter 201G, Hawaii Revised Statutes), and divided its powers and functions between two separate agencies: the Hawaii Housing Finance and Development Corporation (established in chapter 201H, Hawaii Revised Statutes) and the Hawaii Public Housing Authority (codified in chapter 356D, Hawaii Revised Statutes).

Section 14 of Act 180 (a copy of which is attached as Appendix A) directed the Legislative Reference Bureau to prepare legislation to amend specified sections of the Hawaii Revised Statutes that currently reference the repealed chapter 201G, or any of its various sections, and to propose substitutions to the new chapters 201H and 356D, Hawaii Revised Statutes. This report recommends various changes to the Hawaii Revised Statutes as required by Act 180, Section 14, and, further, includes recommendations for additional conforming amendments to the Hawaii Revised Statutes and Session Laws of Hawaii.

This report is divided into four parts as follows:

- (1) Part I explains the references recommended to be substituted in the sections identified in section 14 of Act 180;
- (2) Part II recommends appropriate amendments to current statutory law to implement the provisions of various laws enacted by the Legislature in 2006 that attempted to amend chapter 201G, Hawaii Revised Statutes, which was repealed by Act 180;
- (3) Part III recommends conforming amendments to other statutory sections not identified by section 14 of Act 180; and
- (4) Part IV recommends sections for review by the respective housing agencies to determine the appropriateness of certain amendments.

In conformance with the requirements of section 14 of Act 180, the Bureau has prepared proposed legislation for introduction during the 2007 regular session of the Legislature. The report is organized according to the structure of the bill, and the relevant portion of the bill follows the explanation of the proposed amendments to each statutory section.

Any legislator wishing to introduce the bill may obtain a copy from the Bureau.

**PART I. IMPLEMENTING ACT 180, §14,
SESSION LAWS OF HAWAII 2006**

SECTION 1. Purposes/Background

Comment

SECTION 1. Act 180, Session Laws of Hawaii 2006, repealed chapter 201G, Hawaii Revised Statutes, the Housing and Community Development Corporation of Hawaii, and divided its powers and functions between two separate agencies: the Hawaii Housing Finance and Development Corporation and the Hawaii Public Housing Authority, established in chapters 201H and 356D, Hawaii Revised Statutes, respectively.

Section 14 of Act 180 directed the legislative reference bureau to further implement these changes by amending specified sections of the Hawaii Revised Statutes that reference the repealed chapter 201G, or any of its various sections, and proposing substitutions to the new chapters 201H and 356D, Hawaii Revised Statutes. This part implements these changes.

SECTION 2. §10-13.6, Hawaii Revised Statutes

Comment

Subsection (a) should be amended to change the reference to "sections 201G-1 and 201G-112" to "section 201H-1". The prior §201G-112 (definitions pertaining to Housing Development Program) was amended by L 1998, c 212, §20, by, among other things, deleting the definitions of "housing" and "housing project" from §201G-112; thus only the prior §201G-1 contained those definitions. The enactment of chapter 201H included a definition of "housing project" in §201H-1 that is identical to the old definition of "housing project" previously found in the repealed §201G-1, with the addition of formatting changes. We therefore recommend the substitution of "section 201H-1" for "sections 201G-1 and 201G-112" in §10-13.6.

We also recommend that §10-13.6 be amended by adding a new subsection, designated in this bill as subsection (e), that codifies part of the enacting legislation for this section found in Section 4 of Act 318, Session Laws of Hawaii 1992. It should be noted that the addition of this subsection makes clear that this section applies only to the stated developments. The same provision is proposed for addition to §171-18.5, Hawaii Revised Statutes, as noted in section 11 of the bill.

Further, we recommend that §10-13.6 be reviewed in its entirety by the Hawaii housing finance and development corporation. Part of subsection (a), and subsections (b) and (c) pertain to appraisals to determine land valuation prior to the conveyance of

the designated parcels of land. If the conveyances have been accomplished, these subsections and part of subsection (a) can be repealed. This action, however, is beyond the scope of this report.

SECTION 2. Section 10-13.6, Hawaii Revised Statutes, is amended to read as follows:

"§10-13.6 Public land trust conveyed for the development of housing projects. (a) This section applies to the revenue derived from ~~[any]~~ land of the public land trust as designated in subsection (e), ~~[which]~~ that is conveyed by the department of land and natural resources to the Hawaii housing finance and development corporation for the development of housing projects as defined under ~~[sections 201G-1 and 201G-112.]~~ section 201H-1. The amount due to the office shall be determined by multiplying the fair market value of the land by twenty per cent. For the purpose of this section, "fair market value" means the amount of money ~~[which]~~ that a purchaser willing but not obliged to buy the land would pay to an owner willing but not obliged to sell it, taking into consideration the highest and best use of the land. For the purpose of this section, "highest and best use" means the most profitable, probable, and legal use to which the land can be put.

(b) Fair market value shall be determined on a per acre basis pursuant to appraisals performed in conformance with the uniform standards of professional appraisal practice as adopted by the department of commerce and consumer affairs, not more than ninety days before the conveyance of the land to the Hawaii housing finance and development corporation. The appraisals shall be performed by two disinterested appraisers each of whose services shall be contracted by the department of land and natural resources and the office, respectively. If the land is of the public land trust and sugarcane lands, as defined by ~~[Article]~~ article XII, ~~[Section]~~ section 1 of the ~~[State Constitution,]~~ state constitution, the office and the department of Hawaiian home lands shall contract the services of one appraiser. The parties shall contract the services of the appraisers within thirty working days after the department of land and natural resources gives written notice to the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, of the proposed conveyance of the land to the Hawaii housing finance and development corporation.

If any party fails or refuses to contract the services of an appraiser, then the other party may petition ~~[the presiding judge of]~~ the circuit court ~~[of the State]~~ in the county where the land is located to appoint the other of the two appraisers. If the two appraisers are unable to agree on a fair market

value, then within thirty days thereafter, the department of land and natural resources and the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, shall contract for the services of a mutually ~~selected~~ agreed upon third appraiser and the decision of the majority of the appraisers shall be final with respect to determination of the fair market value~~[-]~~ of the land. If the department of land and natural resources and the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, are unable to agree on the selection of the third appraiser, any party may petition the ~~presiding judge of the~~ circuit court ~~[of the State]~~ in the county where the land is located to appoint the third appraiser.

(c) The amount due to the office shall be due and payable by the State on the date of conveyance of the land to the Hawaii housing finance and development corporation. Payment to the office may be in the form of public lands or moneys. If payment is to be in the form of public lands, the lands shall be mutually agreed upon by the department of land and natural resources and the office, and shall be of value comparable to the amount due to the office. Any monetary payment shall be an obligation of the Hawaii housing finance and development corporation. Any portion of that amount that is not paid on the date of conveyance shall be subject to simple interest annually, established pursuant to the fifteen year treasury rate at the time of the conveyance and payable annually by the State to the office.

(d) Twenty per cent of the revenue received by the Hawaii housing finance and development corporation from commercial, industrial, or other ~~[non-residential]~~ nonresidential use of the land shall be paid annually to the office, provided that:

- (1) The office shall not receive payment under this subsection until the Hawaii housing finance and development corporation recovers all moneys previously paid to the office for that portion of land used for commercial, industrial, or other ~~[non-residential]~~ nonresidential purposes;
- (2) If borrowed moneys are used to finance the development of land for commercial, industrial, or other ~~[non-residential]~~ nonresidential purposes, annual payments due to the office under this subsection shall be made pursuant to the following order of priority:
 - (A) The Hawaii housing finance and development corporation satisfies as a first priority the amount computed annually on the pro rata portion (not the total debt service over the life of the

debt) of its total debt service on the borrowed moneys;

- (B) The Hawaii housing finance and development corporation satisfies as a second priority its operating expense obligations (directly incurred from the development and ~~[operating]~~ operation of land used for commercial, industrial, or other ~~[non-residential]~~ nonresidential purposes) in an amount not exceeding one per cent of the revenues for the project; and
- (C) After the first and second priorities are satisfied, the Hawaii housing finance and development corporation shall make annual payments due to the office under this subsection from any remaining revenues; and
- (3) In the event of a sale of land used for commercial, industrial, or other ~~[non-residential]~~ nonresidential purposes, the office shall receive twenty per cent of the revenue received by the Hawaii housing finance and development corporation.

(e) This section shall apply only to the Hawaii housing finance and development corporation's developments known as Kealakehe and Lahaina."

SECTION 3. §26-14.6, Hawaii Revised Statutes

Comment

Subsection (f) should be amended to replace the references to sections "201G-55" (eviction from public housing) and "201G-74" (public housing liens) with references to sections "356D-54" and "356D-94". The previous chapter 201G sections included the powers of a "sheriff" to assist (the prior) housing and community development corporation in seizing property and enforcing writs of possession; that language has been retained in the new sections relating to evictions (§356D-94) and liens (§356D-54). We therefore recommend that sections "201G-55, 201G-74" be changed to sections "356D-54, 356D-94".

Section 3 of Act 229, SLH 2006 amended subsection (f) by changing the reference to "485-6" to "485A-202", effective on July 1, 2008. In order to emphasize that the changes proposed in the bill shall survive beyond the July 1, 2008 date, the effective date section of the bill should include a savings clause for the amendments made to this subsection.

It should be noted that section 26-14.6(j) transfers the functions and authority of the director and department of human services "relating to contractual security guard services" to the department of public safety. As the Hawaii public housing authority

(chapter 356D) is under the department of human services, it is unclear to what extent the "security guard services" mentioned in §26-14.6(j) apply to public housing liens and eviction procedures, and thus, whether or not the references to chapter 356D in subsection (f) is needed at all. We therefore recommend that the Hawaii public housing authority be directed to clarify this matter.

Further, it should be noted that section 26-14.6(f) amended by the bill contains other erroneous references:

Section 88-51 listed in this subsection refers to the employees' retirement system membership service as a "sheriff" or "deputy sheriff" in paragraph (10). As that paragraph does not implicate the powers and duties of a "sheriff" being transferred to the department of public safety by section 26-14.6(f), the reference can be deleted.

Section 26-14.6(f) also lists "sheriff" in §134-11; however, that section was amended by L 1999, c 202, §1 by substituting the reference to sheriffs with reference to state and county law enforcement officers. As "sheriff" is no longer mentioned in §134-11, that reference can be deleted.

Finally, section 325-80, referred to in section 26-14.6(f) has been repealed, and the reference should be deleted.

SECTION 3. Section 26-14.6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Effective July 1, 1990, the functions, authority, and obligations, together with the limitations imposed thereon and the privileges and immunities conferred thereby, exercised by a "sheriff", "sheriffs", a "sheriff's deputy", "sheriff's deputies", a "deputy sheriff", "deputy sheriffs", or a "deputy", under sections 21-8, 47-18, [~~88-51,~~] 105-4, [~~134-11,~~] 134-51, 183D-11, 187A-14, [~~201G-55, 201G-74,~~] 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9, [~~325-80,~~] 353-11, 356D-54, 356D-94, 383-71, 438-5, 445-37, 482E-4, 485A-202, 501-42, 501-171, 501-218, 521-78, 578-4, 584-6, 587-33, 603-29, 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22, 651-33, 651-37, 651-51, 654-2, 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1, 806-71, and 832-23 shall be exercised to the same extent by the department of public safety."

SECTION 4. §29-15.5, Hawaii Revised Statutes

Comment

Section 29-15.5 provides for the indemnification of federal agencies when required as a condition to receiving federal aid moneys.

Subsection (c) exempts from these general procedural requirements certain sections of the Hawaii Revised Statutes that contain their own indemnification provisions relating to the receipt of federal funds, including §201G-312(b)(2) relating to mortgage guarantee agreements under the state Mortgage Guarantee Program of (the prior) housing and community development corporation. The provisions of §201G-312(b)(2) are now contained (with one minor stylist change) in §201H-152(b)(2). Thus, section 29-15.5(c) should be amended to change the reference to §201G-312(b)(2) to §201H-152(b)(2).

SECTION 4. Section 29-15.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) This section shall not affect sections [~~201G-312(b)(2)~~], 201H-152(b)(2), 212-7, or 523A-64."

SECTION 5. §46-1.5, Hawaii Revised Statutes

Comment

Section 46-1.5 enumerates the general powers and limitations of the counties. Paragraph (14) allows the counties to enact ordinances relating to police protection, sanitation, building inspections, garbage disposal, and the like, and allows the counties to provide exemptions from these ordinances for homeless facilities and other homeless assistance programs under (the prior) chapter 201G. Similarly, paragraph (25) allows the counties to enact ordinances exempting homeless facilities and assistance programs from real property taxes and other county fees and charges. Both paragraphs (14) and (25) should be amended by replacing the references to "chapter 201G" with references to chapter 356D.

SECTION 5. Section 46-1.5, Hawaii Revised Statutes, is amended to read as follows:

"§46-1.5 General powers and limitation of the counties. Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

- (1) Each county shall have the power to frame and adopt a charter for its own self-government[~~, which~~] that shall establish the county executive, administrative, and legislative structure and organization, including[~~]~~ but not limited to[~~]~~ the method of

- appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office;
- (2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures that may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property;
 - (3) Each county shall have the power to enforce all claims on behalf of the county and approve all lawful claims against the county, but shall be prohibited from entering into, granting, or making in any manner any contract, authorization, allowance payment, or liability contrary to the provisions of any county charter or general law;
 - (4) Each county shall have the power to make contracts and to do all things necessary and proper to carry into execution all powers vested in the county or any county officer;
 - (5) Each county shall have the power to:
 - (A) ~~[maintain]~~ Maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters; ~~[and to remove]~~
 - (B) Remove from the channels, and from the shores and beaches, any debris that is likely to create an unsanitary condition or become a public nuisance; provided that, to the extent any of the foregoing work is a private responsibility, the responsibility may be enforced by the county in lieu of the work being done at public expense~~[- Counties also shall have the power to construct,];~~
 - (C) Construct, acquire by gift, purchase, or by the exercise of eminent domain, reconstruct, improve, better, extend, and maintain projects or undertakings for the control of and protection against floods and flood waters, including the power to drain and rehabilitate lands already flooded~~[-, and to enact];~~ and
 - (D) Enact zoning ordinances providing that lands deemed subject to seasonable, periodic, or occasional flooding shall not be used for residence or other purposes in a manner as to endanger the health or safety of the occupants thereof, as required by the Federal Flood

Insurance Act of 1956 (chapter 1025, Public Law 1016);

- (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so;
- (7) Each county shall have the power to exercise regulatory powers over business activity as are assigned to them by chapter 445 or other general law;
- (8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for;
- (9) Each county shall have the power to provide by ordinance assessments for the improvement or maintenance of districts within the county;
- (10) Except as otherwise provided, no county shall have the power to give or loan credit to, or in aid of, any person or corporation, directly or indirectly, except for a public purpose;
- (11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend rules the county deems necessary for the public convenience and necessity;
- (12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove public nuisances and to compel the clearing or removal of any public nuisance, refuse, and uncultivated undergrowth from streets, sidewalks, public places, and unoccupied lots[~~, and in these connections, to~~]. In connection with these powers, each county may impose and enforce liens upon the property for the cost to the county of removing and completing the necessary work where the property owners fail, after reasonable notice, to comply with the ordinances. The authority provided by this paragraph shall not be self-executing, but shall become fully effective within a county only upon the enactment or adoption by the county of appropriate and particular laws, ordinances, or rules defining "public nuisances" with respect to each county's respective circumstances. The counties shall provide the property owner with the opportunity to contest the summary action and to recover the owner's property;
- (13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of

the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute~~[, provided also that]~~ where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State;

- (14) Each county shall have the power to:
- (A) ~~[make]~~ Make and enforce within the limits of the county all necessary ordinances covering: all local police matters; all matters of sanitation; all matters of inspection of buildings; all matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; all matters of the collection and disposition of rubbish and garbage; and to provide exemptions for homeless facilities and any other program for the homeless authorized by chapter ~~[201G,]~~ 356D, for all matters under this paragraph; ~~[and to appoint]~~
 - (B) Appoint county physicians and sanitary and other inspectors as necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of the department of health, subject only to limitations placed on them by the terms and conditions of their appointments; and ~~[to fix]~~
 - (C) Fix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law;
- (15) Each county shall have the power to provide public pounds~~[,]~~; to regulate the impounding of stray animals and fowl, and their disposition~~[,]~~; and to provide for the appointment, powers, duties, and fees of animal control officers;
- (16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal property within the defined boundaries of the county and to dispose of the real and personal property as the interests of the inhabitants of the county may require, except that: any property held for school purposes may not be disposed of without the consent of the superintendent of education; no property bordering the ocean shall be sold or otherwise disposed of; and all proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes;

- (17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State;
- (18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of community promotion and public celebrations, the entertainment of distinguished persons as may from time to time visit the county, for the entertainment of other distinguished persons as well as public officials when deemed to be in the best interest of the community, and the rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance;
- (19) Each county shall have the power to:
- (A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, waterworks, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings and manage, regulate, and control the same;
 - (B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, [~~telephonic,~~] telephone, and [~~telegraphic,~~] telecommunications service to the county;
 - (C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways and for flushing the sewers; and
 - (D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways;
- (20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance;
- (21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of

- succession of county officials in the event of a military or civil disaster;
- (22) Each county shall have the power to sue and be sued in its corporate name;
- (23) Each county shall have the power to establish and maintain waterworks and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises; to take over from the State existing waterworks systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same;
- (24) (A) Each county may impose civil fines, in addition to criminal penalties, for any violation of county ordinances or rules after reasonable notice and requests to correct or cease the violation have been made upon the violator. Any administratively imposed civil fine shall not be collected until after an opportunity for a hearing under chapter 91. Any appeal shall be filed within thirty days from the date of the final written decision. These proceedings shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court;
- (B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges, with the exception of fees or charges for water for residential use and sewer charges, collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges, with the exception of water for residential use and sewer charges, collected by the county. The ordinance shall specify the administrative procedures for the addition of the unpaid civil fines to the eligible taxes, fees, or charges and may require hearings or other proceedings. After addition of the unpaid civil fines to the taxes, fees, or charges, the unpaid civil fines shall not become

a part of any taxes, fees, or charges. The county by ordinance may condition the issuance or renewal of a license, approval, or permit for which a fee or charge is assessed, except for water for residential use and sewer charges, on payment of the unpaid civil fines. Upon recordation of a notice of unpaid civil fines in the bureau of conveyances, the amount of the civil fines, including any increase in the amount of the fine which the county may assess, shall constitute a lien upon all real property or rights to real property belonging to any person liable for the unpaid civil fines. The lien in favor of the county shall be subordinate to any lien in favor of any person recorded or registered prior to the recordation of the notice of unpaid civil fines and senior to any lien recorded or registered after the recordation of the notice. The lien shall continue until the unpaid civil fines are paid in full or until a certificate of release or partial release of the lien, prepared by the county at the owner's expense, is recorded. The notice of unpaid civil fines shall state the amount of the fine as of the date of the notice and maximum permissible daily increase of the fine. The county shall not be required to include a social security number, state general excise taxpayer identification number, or federal employer identification number on the notice. Recordation of the notice in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in land court under chapter 501. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing, and delinquent and may be collected in any lawful manner. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts;

- (C) Each county may impose civil fines upon any person who places graffiti on any real or personal property owned, managed, or maintained by the county. The fine may be up to \$1,000 or

may be equal to the actual cost of having the damaged property repaired or replaced. The parent or guardian having custody of a minor who places graffiti on any real or personal property owned, managed, or maintained by the county shall be jointly and severally liable with the minor for any civil fines imposed hereunder. Any such fine may be administratively imposed after an opportunity for a hearing under chapter 91, but such a proceeding shall not be a prerequisite for any civil fine ordered by any court. As used in this subparagraph, "graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances;

- (D) At the completion of an appeal in which the county's enforcement action is affirmed and upon correction of the violation if requested by the violator, the case [~~will~~] shall be reviewed by the county agency that imposed the civil fines to determine the appropriateness of the amount of the civil fines that accrued while the appeal proceedings were pending. In its review of the amount of the accrued fines, the county agency may consider the following: nature and egregiousness of the violation, duration of the violation, number of recurring and other similar violations, effort taken by the violator to correct the violation, degree of involvement in causing or continuing the violation, reasons for any delay in the completion of the appeal, and other extenuating circumstances. The civil fine [~~which~~] that is imposed by administrative order after this review is completed and the violation is corrected is subject to only judicial review, notwithstanding any provisions for administrative review in county charters;
- (E) After completion of a review of the amount of accrued civil fine by the county agency [~~which~~] that imposed the fine, the amount of the civil fine determined appropriate, including both the initial civil fine and any accrued daily civil fine, shall immediately become due and collectible following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrual of civil fine prior

to correcting the violation, shall immediately become due and collectible following reasonable notice to the violator, at the completion of all appeal proceedings;

- (F) If no county agency exists to conduct appeal proceedings for a particular civil fine action taken by the county, then one shall be established by ordinance before the county shall impose that civil fine;
- (25) Any law to the contrary notwithstanding, any county mayor may exempt by executive order donors, provider agencies, homeless facilities, and any other program for the homeless under chapter [~~201G~~] 356D 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 and grant the exemptions granted by this paragraph;
- (26) Any county may establish a captive insurance company pursuant to article 19, chapter 431; and
- (27) Each county shall have the power to enact and enforce ordinances regulating towing operations."

SECTION 6. §46-4, Hawaii Revised Statutes

Comment

Section 46-4 sets forth the powers of counties to enact ordinances regulating development within their counties through the use of zoning ordinances. Subsection (d) limits the counties' powers relative to group living facilities licensed by the State, including facilities for "elders". Subsection (f) defines "elder" by reference to the repealed "section 201G-1". The definition of "elder" has been moved to §356D-1, the general definitions section under the Hawaii public housing authority, thus, we recommend that the reference to §201G-1 be changed to §356D-1.

SECTION 6. Section 46-4, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) For purposes of this section:

"Clean and sober home" means a house that is operated pursuant to a program designed to provide a stable environment of clean and sober living conditions to sustain recovery and that is shared by unrelated adult persons who:

- (1) Are recovering from substance abuse;
- (2) Share household expenses; and

(3) Do not require twenty-four-hour supervision, rehabilitation, or therapeutic services or care in the home or on the premises~~[-The]~~; provided that the home shall meet all applicable laws, codes, and rules of the counties and State.

"Developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333F-1.

"Disabled person" means a person with a disability as defined under section 515-2.

"Drug rehabilitation home" means:

- (1) A residential treatment facility that provides a therapeutic residential program for care, diagnosis, treatment, or rehabilitation for socially or emotionally distressed persons, mentally ill persons, persons suffering from substance abuse, and developmentally disabled persons; or
- (2) A supervised living arrangement that provides mental health services, substance abuse services, or supportive services for individuals or families who do not need the structure of a special treatment facility and are transitioning to independent living;

provided that drug rehabilitation homes shall not include halfway houses or clean and sober homes.

"Elder" means an elder as defined under section ~~[201G-1.]~~ 356D-1.

"Halfway house" ~~[is defined as]~~ means a group living facility for people who:

- (1) Have been released or are under supervised release from a correctional facility;
- (2) Have been released from a mental health treatment facility; or
- (3) Are receiving substance abuse or sex offender treatment; and

are housed to participate in programs that help them readjust to living in the community.

"Intermediate care facility/mental retardation-community" means ~~[as]~~ an identifiable unit providing residence and care for eight or fewer mentally retarded individuals. Its primary purpose is the provision of health, social, and rehabilitation services to the mentally retarded through an individually designed active treatment program for each resident. No person who is predominantly confined to bed shall be admitted as a resident of such a facility.

"Mental health treatment facility" means a psychiatric facility or special treatment facility as defined under section 334-1.

"Mentally ill person" has the same meaning as defined under section 334-1.

"Totally disabled person" means a "person totally disabled" as defined under section 235-1.

"Treatment program" means a "substance abuse program" or "treatment program", as those terms are defined under section 353G-2."

SECTION 7. §46-15.1, Hawaii Revised Statutes

Comment

This section, along with §46-15.2 that follows, defines and limits county powers with respect to development of low and moderate income housing.

Subsection (a) should be amended to replace the references to chapter 201G and to section 201G-116 with references to chapter 201H and section 201H-36, respectively. The prior §201G-116 set forth the powers of the prior housing and community development corporation to approve and certify for exemption from general excise taxes qualified low and moderate income housing developments. The provisions of that section, with slight stylistic changes, are in the current §201H-36.

Subsection (a) also contains a reference to section "201G-15" (administration of federal programs). Near identical provisions have been enacted into both chapters 201H and 356D (201H-16 and 356D-13, respectively). Either, or both, sections are suitable substitutions in this case. In light of the substitution of §201H-36 for §201G-116, above, we recommend that the reference to §201G-15 be changed to §201H-16 in this case.

SECTION 7. Section 46-15.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any law to the contrary notwithstanding, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the Hawaii housing finance and development corporation pursuant to chapter [~~201G~~] 201H insofar as such powers may be reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing [~~low~~] low- and [~~moderate-income~~] moderate-income housing; provided that no county shall be empowered to cause the State to issue general obligation bonds to finance a project pursuant to this section; provided further that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the Hawaii housing finance and development corporation pursuant to section [~~201G-116~~] 201H-36; and provided further that the provisions of section [~~201G-15~~] 201H-16 shall not apply to this

section unless federal guidelines specifically provide local governments with that authorization and the authorization does not conflict with any state laws. The powers shall include the power, subject to applicable limitations, to:

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

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

SECTION 8. §46-15.2, Hawaii Revised Statutes

Comment

This section enumerates additional county powers with regard to the development of low and moderate income housing projects.

Paragraph (2) of this section authorizes the counties to establish loan programs and to issue county bonds to fund these programs. Subparagraph (B) specifies that when county revenue bonds are issued under chapter 49, Hawaii Revised Statutes, the loan program must comply with chapter 201G, part II, subpart B (Housing Loan and Mortgage Programs). The provisions of that subpart are now contained in chapter 201H, part III, subpart B, which we recommend should be substituted for the prior subpart in this bill.

Subparagraph (K) of paragraph (2) requires that investment of reserves and sinking funds related to bond issuances comply with the provisions of §201G-167 (Investment of reserves, etc.). The provisions of §201G-167 appear nearly verbatim in both chapters 201H and 356D: in §201H-77 and in §356D-25. Given the substitution of chapter 201H made in subparagraph (B) suggested in the bill, we recommend changing §201G-167 to §201H-77.

SECTION 8. Section 46-15.2, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) To provide assistance and aid to persons of low and moderate income in acquiring housing by:
 - (A) ~~[providing]~~ Providing loans secured by a mortgage~~[, including by acquiring such];~~
 - (B) Acquiring those loans from private lenders ~~[for which such]~~ where the county has made advance commitment to acquire ~~[such]~~ the loans~~[,];~~ and
 - (C) ~~[to make]~~ Making and ~~[execute]~~ executing contracts with private lenders or a public agency for the origination and servicing of ~~[such]~~ the loans and ~~[pay]~~ paying the reasonable value of ~~[such]~~ those services;
- (2) In connection with the exercise of any powers granted under this section or section 46-15.1, to establish one or more loan programs and to issue bonds under chapter 47 or 49 to provide moneys to carry out the purposes of this section or section 46-15.1; provided that:

- (A) If bonds are issued pursuant to chapter 47 to finance one or more loan programs, the county may establish such qualifications as it deems appropriate;
- (B) If bonds are issued pursuant to chapter 49 to finance one or more loan programs, [~~such~~] the loan program or programs shall comply with [~~the provisions of part III.B~~] part III, subpart B of chapter [~~201G~~] 201H;
- (C) If bonds are issued pursuant to section 47-4 or chapter 49, any loan program established pursuant to this section or any county-owned dwelling units constructed under section 46-15.1 shall be and constitute an "undertaking" under section 49-1 and [~~the provisions of~~] chapter 49 shall apply to [~~such~~] the loan program or county-owned dwelling units to the extent applicable;
- (D) In connection with the establishment of any loan program pursuant to this section, a county may employ financial consultants, attorneys, real estate counselors, appraisers, and [~~such~~] other consultants as may be required in the judgment of the county and fix and pay their compensation from funds available to the county therefor;
- (E) Notwithstanding any limitation otherwise established by law, with respect to the rate of interest on any loan made under any loan program established pursuant to this section, [~~such~~] the loan may bear such rate or rates of interest per year as the county shall determine; provided that no loan made from the proceeds of any bonds of the county shall be under terms or conditions [~~which~~] that would cause the interest on [~~such~~] those bonds to be deemed subject to income taxation by the United States of America;
- (F) Notwithstanding any limitation otherwise established by law, with respect to the amount of compensation permitted to be paid for the servicing of loans made under any loan program established pursuant to this section, a county may fix such reasonable compensation as the county may determine;
- (G) Notwithstanding the requirement of any other law, a county may establish such separate funds and accounts with respect to bonds issued pursuant to chapter 47 or 49 to provide moneys to carry out

- the purposes of this section or section 46-15.1 as ~~[such]~~ the county may deem appropriate;
- (H) Notwithstanding any provision of chapter 47 or 49 or of any other law, but subject to the limitations of the ~~[State Constitution,]~~ state constitution, bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 may be sold at public or private sale at such price~~[]~~; may bear interest at such rate or rates per year~~[]~~; may be payable at such time or times~~[]~~; may mature at such time or times~~[]~~; may be made redeemable before maturity at the option of the county, the holder, or both, at such price or prices and upon such terms and conditions~~[]~~; and may be issued in coupon or registered form, or both, all as the county may determine;
- (I) If deemed necessary or advisable, the county may designate a national or state bank or trust company within or without the State to serve as trustee for the holders of bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 and enter into a trust indenture, trust agreement, or indenture of mortgage with such trustee whereby such trustee may be authorized to receive and receipt for, hold, and administer the proceeds of ~~[such]~~ those bonds and to apply the proceeds to the purposes for which ~~[such]~~ the bonds are issued, or to receive and receipt for, hold, and administer the revenues and other receipts derived by the county from the application of the proceeds of ~~[such]~~ the bonds and to apply ~~[such]~~ the revenues and receipts to the payment of the principal of, or interest on ~~[such]~~ the bonds, or both. Any such trust indenture, trust agreement, or indenture of mortgage entered into with the trustee may contain any covenants and provisions as may be deemed necessary, convenient, or desirable by the county in order to secure ~~[such]~~ the bonds. The county may pledge and assign to the trustee any agreements related to the application of the proceeds of ~~[such]~~ the bonds and the rights of the county thereunder, including the rights to revenues and receipts derived thereunder. Upon appointment of the trustee, the director of finance of the county may elect not to serve as

fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption, of [~~such~~] the bonds, or may elect to limit the functions the director of finance performs as such fiscal agent, and may appoint [~~the~~] a trustee to serve as the fiscal agent, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the director of finance deems necessary, advisable, or expedient, including[~~ing~~] without limitation[~~ing~~] the holding of [~~such~~] the bonds and coupons [~~which~~] that have been paid and the supervision and conduction or the destruction thereof in accordance with law;

(J) If a trustee is not appointed to collect, hold, and administer the proceeds of bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1, or the revenues and receipts derived by the county from the application of the proceeds of [~~such~~] the bonds, all as provided in subparagraph (I), the director of finance of [~~such~~] the county may hold [~~such~~] the proceeds or revenues and receipts, as the case may be, in a separate account in the treasury of the county, to be applied solely to the carrying out of the ordinance, trust indenture, trust agreement, or indenture of mortgage, if any, authorizing or securing [~~such~~] the bonds; and

(K) Any law to the contrary notwithstanding the investment of funds held in reserves and sinking funds related to bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 shall comply with [~~the provisions of~~] section [~~201G-167;~~] 201H-77; provided that any investment [~~which~~] that requires approval by the county council pursuant to section 46-48 or 46-50 must first be approved by the county council[~~ing~~];

(3) To acquire such policies of insurance and enter into such banking arrangements as [~~such~~] the county may deem necessary in order to better secure bonds issued to provide money to carry out the purposes of this section or section 46-15.1, including[~~ing~~] without limitation[~~ing~~] contracting for a support facility or

- facilities as may be necessary with respect to bonds issued with a right of the holders to put such bonds and contracting for interest rate swaps; and
- (4) To do any and all other things necessary or appropriate to carry out the purposes and exercise the powers granted in section 46-15.1 and this section."

Note: *§53-1, Hawaii Revised Statutes.* The reference to "chapter 201G" has already been changed by L 2006, c 180, §13, and thus has not been included in the bill.

SECTION 9. §53-17, Hawaii Revised Statutes

Comment

This section declares that redevelopment bonds issued for urban renewal projects shall be deemed legal investments and security for public funds, to the same extent as bonds issued by the Hawaii housing finance and development corporation. The reference to "chapter 201G" in this section should be amended to read "chapter 201H".

It should be noted, however, that both the Hawaii housing finance and development corporation (chapter 201H) and the Hawaii public housing authority (chapter 356D) have the authority to issue bonds, and in both cases bonds of the agencies are considered legal investments and security for public funds.

Further, section 53-17 specifically mentions bonds issued by the housing agency "in connection with slum clearance and housing projects". Both the Hawaii housing finance and development corporation and the Hawaii public housing authority have duties that include "slum clearance": Section 201H-10 (b)(3) and §356D-9 (b)(3) contain identical provisions that authorize the State or counties to enter into agreements with the respective agency "relating to the repair, closing, or demolition of unsafe, unsanitary, or unfit dwellings". It is, thus, possible to substitute either agency and chapter—or both—in this section.

We recommend, however, that only chapter 201H be substituted, and base our determination on the direction given in Act 180, Session Laws of 2006 that amended both this section 53-17, as well as section 53-1, to clearly indicate the legislature's intent that the proper agency and chapter for this substitution is chapter 201H.

SECTION 9. Section 53-17, Hawaii Revised Statutes, is amended to read as follows:

"§53-17 Bonds of agency to be legal investments. Bonds issued by a redevelopment agency in connection with one or more redevelopment plans or redevelopment projects pursuant to this

part shall be legal investments and security for public deposits to the same extent and for the same public officers and bodies, political subdivisions, persons, companies, corporations, associations, banks, institutions, and fiduciaries as bonds or obligations issued by the Hawaii housing finance and development corporation under chapter [~~201G~~] 201H in connection with slum clearance and housing projects."

SECTION 10. §104-2, Hawaii Revised Statutes

Comment

This section regulates wages and hours for laborers and mechanics employed on a public works project. Subsection (a) provides an exemption from these requirements for certain housing projects developed pursuant to chapter 201G.

While both the Hawaii housing finance and development corporation (under chapter 201H) and the Hawaii public housing authority (under chapter 356D) are authorized to develop housing projects, there are no specific provisions in chapter 356D speaking to the wage and hour requirements for employees on public works projects. Section 201H-53 does, however, include such language and mirrors the language of this subsection (a). Therefore, we recommend that the reference to chapter "201G" be changed to chapter "201H".

SECTION 10. Section 104-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall apply to every contract in excess of \$2,000 for construction of a public work project to which a governmental contracting agency is a party; provided that this chapter shall not apply to experimental and demonstration housing developed pursuant to section 46-15 or housing developed pursuant to chapter [~~201G~~] 201H if the cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

For the purposes of this subsection:

"Contract" includes but is not limited to any agreement, purchase order, or voucher in excess of \$2,000 for construction of a public work project.

"Governmental contracting agency" includes any person or entity that causes either directly or indirectly the building or development of a public work.

"Party" includes eligible bidders for and eligible developers of any public work and any housing under chapter [~~201G~~] 201H; provided that this subsection shall not apply to any housing developed under section 46-15 or chapter [~~201G~~] 201H if the entire cost of the project is less than \$500,000 and the

eligible bidder or eligible developer is a private nonprofit corporation.

"Public work" means any project, including development of any housing pursuant to section 46-15 or chapter ~~[201G,]~~ 201H, and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where the funds or resources required to undertake the project are to any extent derived either directly or indirectly from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes."

SECTION 11. §171-18.5, Hawaii Revised Statutes

Comment

This section pertains to former sugarcane lands that are conveyed to the Hawaii housing finance and development corporation for the development of housing projects, and specifies that the housing projects be as defined under "section 201G-1". The definition of "housing project" used in chapter 201H is contained in section 201H-1 and is identical to the old definition of "housing project" previously found in the repealed section 201G-1, with the addition of formatting changes. We therefore recommend that subsection 171-18.5(a) be amended to change the reference to "section 201G-1" to "section 201H-1".

We also recommend that §171-18.5 be amended by adding a new subsection, designated as subsection (e) in the bill, that codifies part of the enacting legislation for this section found in Section 2 of Act 317, Session Laws of Hawaii 1992. See also Section 1 comment to §10-13.6, Hawaii Revised Statutes.

Further, we recommend that §171-18.5 should be reviewed in its entirety by the Hawaii housing finance and development corporation. Part of subsection (a), and subsections (b) and (c) pertain to appraisals to determine land valuation prior to the conveyance of the designated parcels of land. If the conveyances have been accomplished, these subsections and part of subsection (a) can be repealed. This action, however, is beyond the scope of this report, and thus is not included in this measure.

SECTION 11. Section 171-18.5, Hawaii Revised Statutes, is amended to read as follows:

"§171-18.5 Sugarcane lands conveyed for the development of housing projects. (a) This section applies to the amount to which the department of Hawaiian home lands is entitled pursuant to ~~[Article]~~ article XII, ~~[Section]~~ section 1 of the ~~[State Constitution]~~ state constitution, from land as designated in subsection (e) previously cultivated as sugarcane land under any

provision of law [~~which~~] that is conveyed by the department to the Hawaii housing finance and development corporation for the development of housing projects as defined under section [~~201G-1.~~] 201H-1. The amount to which the department of Hawaiian home lands is entitled shall be determined by multiplying the fair market value of the land by thirty per cent. For the purpose of this section, "fair market value" means the amount of money [~~which~~] that a purchaser willing but not obliged to buy the land would pay to an owner willing but not obliged to sell it, taking into consideration the highest and best use of the land. For the purpose of this section, "highest and best use" means the most profitable, probable, and legal use to which the land can be put.

(b) Fair market value shall be determined on a per acre basis pursuant to appraisals performed in conformance with the uniform standards of professional appraisal practice as adopted by the department of commerce and consumer affairs, not more than ninety days before the conveyance of the land to the Hawaii housing finance and development corporation. The appraisals shall be performed by two disinterested appraisers each of whose services shall be contracted by the department and the department of Hawaiian home lands, respectively. If the land is [~~of~~] sugarcane lands and of the public land trust, as defined in section 10-2, the department of Hawaiian home lands and the office of Hawaiian affairs shall contract the services of one appraiser. The parties shall contract the services of the two appraisers within thirty days after the department gives written notice to the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is [~~of~~] sugarcane lands and of the public land trust, of the proposed conveyance of the land to the Hawaii housing finance and development corporation.

If any party fails or refuses to contract the services of an appraiser, then the other party may petition [~~the presiding judge of~~] the circuit court [~~of the State~~] in the county where the land is located to appoint the other of the two appraisers. If the two appraisers are unable to agree on a fair market value, then within thirty days thereafter, the department and the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is [~~of~~] sugarcane lands and of the public land trust, shall contract for the services of a mutually selected third appraiser and the decision of the majority of the appraisers shall be final with respect to determination of the fair market value of the land. If the department and the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is [~~of~~] sugarcane lands and of the public land trust, are unable to

agree on the selection of the third appraiser, any party may petition [~~the presiding judge of~~] the circuit court [~~of the State~~] in the county where the land is located to appoint the third appraiser.

(c) The amount due to the department of Hawaiian home lands shall be due and payable by the State on the date of conveyance of the land to the Hawaii housing finance and development corporation. Payment to the department of Hawaiian home lands may be in the form of public lands or moneys. If payment is to be made in the form of public lands, the lands shall be mutually agreed upon by the department of land and natural resources and the department of Hawaiian home lands, and shall be of value comparable to the amount due to the department of Hawaiian home lands. Any monetary payment shall be an obligation of the Hawaii housing finance and development corporation. Any portion of that amount that is not paid on the date of conveyance shall be subject to simple interest annually, established pursuant to the fifteen year treasury rate at the time of the conveyance and payable annually by the State to the department of Hawaiian home lands.

(d) Thirty per cent of the revenue received by the Hawaii housing finance and development corporation from commercial, industrial, or other [~~non-residential~~] nonresidential use of the land shall be paid annually to the department of Hawaiian home lands, provided that:

- (1) The department of Hawaiian home lands shall not receive payment under this subsection until the Hawaii housing finance and development corporation recovers all moneys previously paid to the department of Hawaiian home lands for that portion of land used for commercial, industrial, or other [~~non-residential~~] nonresidential purposes;
- (2) If borrowed moneys are used to finance the development of land for commercial, industrial, or other [~~non-residential~~] nonresidential purposes, annual payments due to the department of Hawaiian home lands under this subsection shall be made pursuant to the following order of priority:
 - (A) The Hawaii housing finance and development corporation satisfies as a first priority the amount computed annually on the pro rata portion (not the total debt service over the life of the debt) of its total debt service on the borrowed moneys;
 - (B) The Hawaii housing finance and development corporation satisfies as a second priority its operating expense obligations (directly incurred

from the development and operating of land used for commercial, industrial, or other [~~non-residential~~] nonresidential purposes) in an amount not exceeding one per cent of revenues; and

(C) After the first and second priorities are satisfied, the Hawaii housing finance and development corporation shall make annual payments due to the department of Hawaiian home lands under this subsection from any remaining revenues; and

(3) In the event of a sale of land used for commercial, industrial, or other [~~non-residential~~] nonresidential purposes, the department of Hawaiian home lands shall receive thirty per cent of the revenue received by the Hawaii housing finance and development corporation.

(e) This section shall apply only to the Hawaii housing finance and development corporation's developments known as Kealakehe and Lahaina."

SECTION 12. §171-19.5, Hawaii Revised Statutes

Comment

Section 171-19.5 establishes the infrastructure development fund under the department of land and natural resources to fund infrastructure in the Kikala-Keokea area of the island of Hawaii. Subsection (c) provides that once the infrastructure design and construction is completed, or on January 1, 2005, all remaining moneys in the fund shall be transferred to the Kikala-Keokea housing revolving fund "established in section 201G-170.5". The fund has been transferred to the Hawaii housing finance and development corporation in section 201H-81. The citation to that section should be substituted for the former §201G-170.5.

Further, we recommend that §171-19.5 should be reviewed in its entirety by the Hawaii housing finance and development corporation. If the purpose of the infrastructure development fund has been accomplished and remaining moneys have been transferred to the Kikala-Keokea housing revolving fund, the section may be repealed. This action, however, is beyond the scope of this report.

SECTION 12. Section 171-19.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Upon fulfillment of the purposes of this section, any unexpended or unencumbered funds appropriated by the legislature or remaining in the infrastructure development fund as of the close of business on December 31, 2004, shall not lapse into that fund or to the credit of the general fund, but shall be

transferred to the credit of the Kikala-Keokea housing revolving fund established in section [~~201G-170.5~~] 201H-81 as of that date; provided that any unexpended or unencumbered moneys that were provided by the office of Hawaiian affairs and deposited into the infrastructure development fund for the purpose of infrastructure development shall be refunded to the office of Hawaiian affairs upon the completion of the fund's intended purpose. No funds shall be transferred until all funding commitments entered into by the department of land and natural resources to complete the design and construction of infrastructure improvements have been executed."

SECTION 13. §201H-10, Hawaii Revised Statutes

Comment

Section 201H-10(b) enumerates the powers of state and county agencies in assisting the Hawaii housing finance and development corporation in developing housing projects. Paragraph (4) of the subsection authorizes these agencies to invest funds in bonds issued by the corporation "to the extent provided under section 201G-161".

The prior §201G-161 set forth the powers of the previous housing corporation to issue revenue bonds pursuant to chapter 39, part III, Hawaii Revised Statutes, and provides for security for the issued bonds and the pledge of revenues of the undertaking. The contents of the former §201G-161 are now contained, with minor stylistic changes, in the present §201H-71.

It should be noted, however, that the corporation is also authorized to issue bonds outside of §201H-71, including bonds for infrastructure development (§201H-72), bonds to purchase federal housing projects (§201H-73), Hula Mae bonds, and general obligation bonds (§§201H-33 and 201H-35). For this reason, we recommend that section 201H-10(b) be amended by deleting the specific reference to §201G-161, thus allowing state and county agencies to invest public moneys in any of the bonds issued by the corporation. In this respect, the paragraph would mirror the scope of authority found in §356D-9(b)(4) relating to investment in bonds of the Hawaii public housing authority.

SECTION 13. Section 201H-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects located within their respective territorial boundaries, any state or county agency, 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 the agency:
 - (A) Cause the services customarily provided by the agency 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 bonds or other obligations of the corporation [~~to the extent provided under 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~~] those 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~~] those 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, with the approval of the governor

and with or without consideration, may grant, sell, convey, or lease, for any period, any parts of [~~such~~] those 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 governmental agency authorized by law to engage in the development or administration of [~~low-rent~~] low-income 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 governmental agency.

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

SECTION 14. §205-4, Hawaii Revised Statutes

Comment

This section sets forth procedures to be followed in seeking approval of the land use commission in reclassifying lands. Subsection (a) exempts petitions for district boundary changes for housing projects developed pursuant to §201G-118, and requires the land use commission to adopt rules for processing boundary change petitions made pursuant to §201G-118.

The prior §201G-118 exempted the previous housing corporation projects from statutes, ordinances, charter provisions, and rules relating to planning, zoning, construction standards, and the like. Paragraph 201G-118(a)(5) specifically referred to district boundary change petitions made pursuant to §205-4. The provisions of that section are now contained in §201H-38, with reference to land use commission procedures carried in paragraph (a)(4) of that section. We recommend that section 201G-118 be changed to section 201H-38.

SECTION 14. Section 205-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any department or agency of the State, any department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified, may petition the land use commission for a change in the boundary of a district. This section applies to all petitions for changes in district boundaries of lands within conservation districts, lands designated or sought to be designated as important agricultural lands, and lands greater

than fifteen acres in the agricultural, rural, and urban districts, except as provided in section [~~201G-118.~~] 201H-38. The land use commission shall adopt rules pursuant to chapter 91 to implement section [~~201G-118.~~] 201H-38."

SECTION 15. §206-1, Hawaii Revised Statutes

Comment

Section 206-1 contains definitions pertaining to housing development by the department of land and natural resources under the Oahu land development law. Three definitions in this section reference terms defined in the prior §201G-1: "government" and "federal government"; and "real property" used in the definition of "lands".

Both sections 201H-1 and 356D-1 contain the same definitions for these terms as were previously found in §201G-1. Since chapter 206 involves primarily the development of fee simple housing units within a development area, we recommend that §201H-1 be substituted for the former §201G-1.

SECTION 15. Section 206-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definitions of "government" and "federal government" to read:

"Government" and "federal government" shall have the respective [~~meaning~~] meanings set forth in section [~~201G-1.~~] 201H-1."

2. By amending the definition of "lands" to read:

"Lands" means either undeveloped lands or land together with improvements and appurtenances and includes real property as defined in section [~~201G-1.~~] 201H-1. All lands owned by the State, [~~or~~] any political subdivision, or the federal government are "government lands". All other lands are "private lands"."

SECTION 16. §237-23, Hawaii Revised Statutes

Comment

This section provides general excise tax exemptions to specified persons, businesses, and organizations. Subsection (a)(4) provides a tax exemption for nonprofit organizations and corporations operating facilities and programs for the homeless "authorized under chapter 201G, part IV". Homeless assistance programs and facilities have been transferred to the Hawaii public housing authority and their provisions now appear in part VII of chapter 356D. The section should be amended to replace "chapter 201G, part IV" with "part VII of chapter 201H".

SECTION 16. Section 237-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply to the following persons:

- (1) Public service companies (as that term is defined in section 239-2), with respect to the gross income, either actual gross income or gross income estimated and adjusted, which is included in the measure of the tax imposed by chapter 239;
- (2) Public utilities owned and operated by the State or any county or other political subdivision thereof;
- (3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of such societies, orders, or associations, and to their dependents;
- (4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended, as well as that of operating a prepaid legal services plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under ~~[chapter 201G, part IV]~~ part VII of chapter 201H;
- (5) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare which shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
- (6) Hospitals, infirmaries, and sanitarium;
- (7) Cooperative associations incorporated under chapter 421 or Code section 521 cooperatives which fully meet the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
 - (A) The exemption shall apply only to the gross income derived from activities which are pursuant to purposes and powers authorized by chapter 421,

- except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
- (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all [~~such~~] those persons shall be so taxable; and
 - (C) As used in this paragraph, "section 521 cooperatives" mean associations which qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;
- (8) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;
 - (9) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual (provided that the exemption shall apply only to the activities of [~~such~~] those persons in the conduct of cemeteries and not to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of [~~such~~] those persons); and
 - (10) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations."

SECTION 17. §237-29, Hawaii Revised Statutes

Comment

Section 237-29 provides an excise tax exemption for income received from a housing project "certified or approved under section 201G-116". The prior §201G-116 set forth the powers of the former housing and community development corporation to approve and certify for tax exemption qualified low and moderate income housing developments. The provisions of that section, with slight stylistic changes, are in the current §201H-36. We recommend that subsections (a) and (b) of this section be amended to replace the reference to section "201G-116" with reference to section "201H-36".

SECTION 17. Section 237-29, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) All gross income received by any qualified person or firm for the planning, design, financing, construction, sale, or lease in the State of a housing project which has been certified or approved under section [~~201G-116~~] 201H-36 shall be exempt from general excise taxes.

(b) All gross income received by a nonprofit or a limited distribution mortgagor for a low and moderate income housing project certified or approved under section [~~201G-116~~] 201H-36 shall be exempt from general excise taxes."

SECTION 18. §247-7, Hawaii Revised Statutes

Comment

This section sets forth the distribution of conveyance tax revenues. Paragraph (2) provides that a portion of the tax receipts be deposited into the rental housing trust fund, formerly found under §201G-432. The fund has been transferred to the Hawaii housing finance and development corporation, and the statutory provisions are found in §201H-202. We recommend that paragraph 247-7(2) be amended to change the reference to section "201G-432" to section "201H-202".

It should be noted that Section 21 of Act 100, Session Laws of Hawaii 2006, amended this section with a "drop dead" date of June 30, 2007. As the effective date of this bill is proposed to be July 1, 2007, the section is set forth after the repeal and reenactment of Act 100 has matured.

SECTION 18. Section 247-7, Hawaii Revised Statutes, is amended to read as follows:

"§247-7 Disposition of taxes. All taxes collected under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law; provided that of the taxes collected each fiscal year:

- (1) Ten per cent shall be paid into the land conservation fund established pursuant to section 173A-5;
- (2) Thirty per cent shall be paid into the rental housing trust fund established by section [~~201G-432~~] 201H-202; and
- (3) Twenty-five per cent shall be paid into the natural area reserve fund established by section 195-9; provided that the funds paid into the natural area reserve fund shall be annually disbursed by the

department of land and natural resources in the following priority:

- (A) To natural area partnership and forest stewardship programs after joint consultation with the forest stewardship committee and the natural area reserves system commission;
- (B) Projects undertaken in accordance with watershed management plans pursuant to section 171-58 or watershed management plans negotiated with private landowners, and management of the natural area reserves system pursuant to section 195-3; and
- (C) The youth conservation corps established under chapter 193."

SECTION 19. §321-15.6, Hawaii Revised Statutes

Comment

This section sets forth the department of health's requirements for licensure of adult residential care homes. Subsection (b), among other things, limits the number of residents permitted in Type I and Type II care homes based, in part, upon the needs and abilities of the residents. These criteria include consideration of whether or not the resident is an "elder", which is defined by referencing the definition of "elder" found in prior §201G-1.

The housing for elders program, as well as the definitions relative to the program, has been transferred to the Hawaii public housing authority. The definition of "elder" formerly found in §201G-1 is now contained in §356D-1. We recommend that subsection 321-15.6(b) be amended to change section "201G-1" to section "356D-1".

It should be noted that the language of subsection (b), as set out in this bill, reflects the form of the subsection that will exist on July 1, 2007—the proposed effective date of this bill—and that the language of subsection (b) that will exist until July 1, 2007 is not being amended since it will be obsolete by the time this bill take effect.

SECTION 19. Section 321-15.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The director shall adopt rules regarding adult residential care homes in accordance with chapter 91 that shall be designed to:

- (1) Protect the health, safety, and civil rights of persons residing in facilities regulated;
- (2) Provide for the licensing of adult residential care homes; provided that the rules shall allow group

living in two categories of adult residential care homes as licensed by the department of health:

- (A) Type I allowing five or fewer residents; provided that up to six residents may be allowed at the discretion of the department to live in a type I home~~[+]~~, provided that the primary caregiver or home operator is a certified nurse aide who has completed a state-approved training program and other training as required by the department; and
 - (B) Type II allowing six or more residents, including but not limited to the mentally ill, elders, persons with disabilities, the developmentally disabled, or totally disabled persons who are not related to the home operator or facility staff;
- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
 - (4) Provide penalties for the failure to comply with any rule.

For the purposes of this subsection:

"Developmentally disabled" means a person with developmental disabilities as defined under section 333F-1.

"Elder" has the same meaning as defined under section ~~[201G-1.]~~ 356D-1.

"Mentally ill" means a mentally ill person as defined under section 334-1.

"Persons with disabilities" means persons having a disability under section 515-2.

"Totally disabled person" has the same meaning as a person totally disabled as defined under section 235-1."

SECTION 20. §346-152, Hawaii Revised Statutes

Comment

This section provides exemptions from licensing requirements for certain child caring facilities and programs. Paragraph (a)(7) exempts homeless facilities and programs "authorized under part IV of chapter 201G" from licensure by the department of human services. Homeless assistance programs and facilities have been transferred to the Hawaii public housing authority and their provisions now appear in part VII of chapter 356D. Paragraph (a)(7) should be amended to substitute "part IV of chapter 201G" with reference to "part VII of chapter 356D".

SECTION 20. Section 346-152, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Nothing in this part shall be construed to include:

- (1) A person caring for children related to the caregiver by blood, marriage, or adoption;
- (2) A person, group of persons, or facility caring for a child less than six hours a week;
- (3) A kindergarten, school, or program licensed by the department of education;
- (4) A program that provides exclusively for a specialized training or skill development for children, including[~~7~~] but not limited to[~~7~~] programs providing such activities as athletic sports, foreign language, the Hawaiian language, dance, drama, music, or martial arts;
- (5) A multiservice organization or community association, duly incorporated under the laws of the State, [~~which~~] that operates for the purpose of promoting recreation, health, safety, or social group functions for eligible pupils in public and private schools through seventeen years of age;
- (6) Programs for children four years of age and older, [~~which~~] that operate for no more than two consecutive calendar weeks in a three-month period;
- (7) A provider agency operating or managing a homeless facility or any other program for homeless persons authorized under part [~~IV~~] VII of chapter [~~201G~~] 356D;
- (8) After-school, weekend, and summer recess programs conducted by the department of education pursuant to section 302A-408;
- (9) Child care programs for children five years of age and older conducted by counties pursuant to section 302A-408; provided that each county [~~adopt~~] adopts rules for its programs;
- (10) Any person who enters a home in a child caring capacity and only cares for children who are of that household; and
- (11) A person caring for two or fewer children unrelated to the caregiver by blood, marriage, or adoption."

SECTION 21. §467-2, Hawaii Revised Statutes

Comment

This section provides exemptions from licensing as a real estate broker or salesperson for certain persons and real estate transactions. Paragraph (5) exempts transactions relating to homeless facilities and programs "authorized under part IV of chapter 201G" from licensure. Homeless assistance programs and facilities have been

transferred to the Hawaii public housing authority and their provisions now appear in part VII of chapter 356D. We recommend that this substitution be made.

SECTION 21. Section 467-2, Hawaii Revised Statutes, is amended to read as follows:

"§467-2 Exceptions. The provisions requiring licensing as a real estate broker or salesperson shall not apply:

- (1) To any individual who, as owner of any real estate or acting under power of attorney from the owner, performs any of the acts enumerated in the definitions of real estate broker and real estate salesperson with reference to such real estate; provided that the term "owner" as used in this paragraph shall not include any individual engaged in the business of real estate development or brokerage or include an individual who acquires any interest in any real estate for the purpose or as a means of evading the licensing requirements of this chapter; and provided further that the term individual "acting under power of attorney" as used in this paragraph shall not include any individual engaged in the business of real estate development or brokerage or any individual who acts under a power of attorney for the purpose or as a means of evading the licensing requirements of this chapter;
- (2) To any person acting as a receiver, trustee in bankruptcy, personal representative, or trustee acting under any trust agreement, deed of trust, or will, or otherwise acting under any order of authorization of any court;
- (3) To any individual who leases, offers to lease, rents, or offers to rent, any real estate or the improvements thereon of which the individual is the custodian or caretaker;
- (4) To any person who manages, rents, or operates a hotel; or
- (5) To any provider agency owning, leasing, operating, or managing a homeless facility[~~7~~] or any other program for the homeless authorized under part [~~IV~~] VII of chapter [~~201G~~] 356D."

SECTION 22. §480-11, Hawaii Revised Statutes

Comment

This section provides exemptions for certain organizations and business activities from state antitrust laws. Subsection (d) declares that donors and provider agency transactions and agreements under "chapter 201G, part IV" are not considered in restraint of trade. The former part IV of chapter 201G set forth provisions relating to homeless assistance programs and facilities; these programs and facilities have been transferred to the Hawaii public housing authority and their provisions now appear in part VII of chapter 356D. We recommend that this substitution be made.

It should be noted that language similar to this subsection (d) exists in chapter 356D, part VII, i.e., in §356D-132. The existence of this language confirms the substitution recommended in this bill.

SECTION 22. Section 480-11, Hawaii Revised Statutes, is amended to read as follows:

"§480-11 Exemption of certain cooperative organizations; insurance transactions; approved mergers of federally regulated companies; homeless facility and program donors and provider agencies. (a) Nothing in this chapter shall be construed to forbid the existence and operation of fishery, agricultural, or consumer cooperative organizations or associations instituted for the purpose of mutual help~~[, and which]~~ that are organized and operated under chapter 421, 422, or 421C, or ~~[which]~~ that conform and continue to conform to the requirements of the Capper-Volstead Act (7 U.S.C. Section 291 and 292); provided that if any such organization or association monopolizes or restrains trade or commerce in any section of this State to such an extent that the price of any fishery, agricultural, or consumer product is unduly enhanced by reason thereof, this chapter shall apply to ~~[such]~~ those acts.

(b) This chapter shall not apply to any transaction in the business of insurance ~~[which]~~ that is in violation of any section of this chapter if the transaction is expressly permitted by the insurance laws of this State; ~~[and]~~ provided ~~[further]~~ that nothing in this section shall render this chapter inapplicable to any agreement to boycott, coerce, or intimidate or any act of boycott, coercion, or intimidation.

(c) This chapter shall not apply to mergers of companies where ~~[such]~~ the mergers are approved by the federal regulatory agency ~~[which]~~ that has jurisdiction and control over ~~[such]~~ the mergers.

(d) This chapter shall not apply to:

- (1) Any provider agencies or donors under ~~[chapter 201G, part IV;]~~ part VII of chapter 356D;

- (2) Any provider agency or donor method or act that complies with [~~chapter 201G, part IV;~~] part VII of chapter 356D; or
- (3) Any cooperation or agreement authorized pursuant to rule under [~~chapter 201G, part IV.~~] part VII of chapter 356D."

SECTION 23. §514A-14.5, Hawaii Revised Statutes

Comment

This section mandates ownership and access to parking stalls for condominium owners under the (old) Condominium Property Regimes law (chapter 514A). Subsection (c) of this section provides exemptions from these requirements for housing developments, including, in subsection (c)(1), "apartments developed under chapter 201G".

This section was originally enacted in 1986 (Act 111, SLH 1986); subsection (c) was added to this section in 1987 (Act 269, SLH 1987). At that time, the paragraph's exemption read: "To apartments developed under chapters 356, 359, and 359G". Chapters 356, 359, and 359G, as they existed at that time, pertained to housing projects developed and operated by the (then) Hawaii housing authority: chapter 356 being "Low Income Housing"; chapter 359 being "State Housing Projects" including housing for elders and rent supplements; and chapter 359G being "Housing Projects" developed on a for-sale basis for low- and moderate-income persons.

In 1987, the housing finance and development corporation was also established (Act 337, SLH 1987, codified in chapter 201E, Hawaii Revised Statutes), and the functions of the Hawaii housing authority relating to the financing and development of housing and residential leasehold functions were transferred to this new agency. The following year, §514A-14.5(c) was amended to change the exemption for chapter 359G projects to projects developed pursuant to chapter 201E.

This situation existed until 1997, when the housing and community development corporation of Hawaii was created (Act 350, SLH 1997) and functions of both the Hawaii housing authority and the housing finance and development corporation were merged into one agency.

From the history of this section, it seems clear that the legislature intended the exemption of subsection (c) to apply to both public housing projects and for-sale housing developments. For this reason, we recommend that subsection (c)(1) be amended by substituting both chapters 201H and 356D for the reference to chapter 201G.

As to whether or not chapter 356D is applicable to these provisions as public housing projects are generally not "for-sale" housing, we note the enactment of part IX

of chapter 356D (section 356D-161) that gives the Hawaii public housing authority the power to sell a public housing unit to a tenant under the state sales housing program.

SECTION 23. Section 514A-14.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) This section does not apply:

- (1) To apartments developed under chapter [~~201G~~] 201H or 356D;
- (2) To apartments in a mixed-use project developed under chapter 206E that has a shared parking program approved by the Hawaii community development authority; provided that such a program shall require the availability of the use of not less than one parking space per apartment; and
- (3) To apartments designated in the declaration of condominium property regime for hotel, time share, transient vacation rental, or commercial use."

SECTION 24. §514A-108, Hawaii Revised Statutes

Comment

Section 514A-108 was enacted in 1980 (Act 189, SLH 1980) to enumerate exemptions from the owner-occupancy sales provisions under the (prior) Condominium Property Regimes law (chapter 514A). On enactment, the section exempted "any project developed pursuant to...chapter...356, 359, or 359G" from the owner-occupancy requirement. As noted in the commentary for the previous section, the enumeration of these chapters in the enacting legislation indicated the intent that both public housing projects, as well as projects financed and developed on a for-sale basis would have this exemption.

In 1992, §514A-108 was amended to, among other things, provide that projects developed pursuant to (then) chapter 201E (for-sale housing projects) as well as chapters 356 and 359 (public housing projects) could elect whether or not to be subject to the owner-occupancy requirement (Act 50, SLH 1992).

From the history of this section, it seems clear that the legislature intended the exemption of subsection (a) to apply to both public housing projects and for-sale housing developments. For this reason, we recommend that subsection (a) be amended by substituting both chapters 201H and 356D for the reference to chapter 201G.

SECTION 24. Section 514A-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This part shall not apply to a project developed pursuant to section 46-15 or 46-15.1, or chapter 53, [~~201G, or~~]

201H, 206[+], or 356D; provided that the developer of the project may elect to be subject to this part through a written notification to the commission."

SECTION 25. §514B-99.5, Hawaii Revised Statutes

Comment

Chapter 514B, Hawaii Revised Statutes, sets forth a revised condominium law, enacted during the 2004 and 2005 sessions. Many of the provisions of the (prior) Condominium Property Regimes law (chapter 514A) have been carried forward in chapter 514B, with appropriate amendments.

Section 514B-99.5, exemptions from sales to owner-occupants, is nearly identical to §514A-108, recommended for amendment above. While there is no legislative history to the chapter 514B section on which to rely, we believe that substituting reference to both chapters 201H and 356D for the chapter 201G citation, would be the correct substitution.

As to whether or not chapter 356D is applicable to these provisions as public housing projects are generally not "for-sale" housing, we note the enactment of part IX of chapter 356D (section 356D-161) that gives the Hawaii public housing authority the power to sell a public housing unit to a tenant under the state sales housing program.

SECTION 25. Section 514B-99.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This subpart shall not apply to:

- (1) A project developed pursuant to section 46-15 or 46-15.1, or chapter 53, [~~201G, or~~ 201H, 206[+], or 356D]; provided that the developer of the project may elect to be subject to this subpart through a written notification to the commission;
- (2) Condominium projects where the developer conveys all of the residential units in the project to a spouse, or family members related by blood, descent or adoption; and
- (3) Condominium projects consisting of two or fewer units."

SECTION 26. §516-1, Hawaii Revised Statutes

Comment

Section 516-1 contains general definitions applicable to the Residential Leaseholds law. The definition of "corporation" in this section was amended by Act 196,

Session Laws of Hawaii 2005, and Act 180, Session Laws of Hawaii 2006, to clarify the legislature's intent that the Residential Leaseholds law should be under the scope of authority of the Hawaii housing finance and development corporation. The acts, however, failed to correct the reference to "chapter 201G" that exists in this definition. The Revisor of Statutes has corrected this definition, substituting reference to "chapter 201G" with reference to "chapter 201H".

The purpose of the amendment recommended in this bill is to ratify the substitution made by the Revisor to this definition.

SECTION 26. Section 516-1, Hawaii Revised Statutes, is amended by amending the definition of "corporation" to read as follows:

"Corporation" means the Hawaii housing finance and development corporation created by chapter [+]201H[+]."

SECTION 27. §516-31, Hawaii Revised Statutes

Comment

The purpose of the amendment recommended in this section is to ratify the substitution of "chapter 201H" for "chapter 201G" previously made by the Revisor of Statutes.

SECTION 27. Section 516-31, Hawaii Revised Statutes, is amended to read as follows:

"§516-31 Disposition by lease. The Hawaii housing finance and development corporation may lease any of the residential lots in a development tract at such lease rentals and upon such terms and conditions as it may determine. The leases shall be subject to all of the rights of lessees enumerated in part III [~~of this chapter~~]. The corporation [~~may~~], in its discretion, may utilize any of the residential lots and rent out the same for periods of twenty years or less for the purposes set forth in chapter [+]201H[+], or for any other purpose, all upon such terms and conditions as the corporation may determine."

SECTION 28. §516-104, Hawaii Revised Statutes

Comment

Section 516-104 allows the Hawaii housing finance and development corporation to invest its moneys and to redeem its revenue bonds issued under the Residential Leaseholds law. Paragraph (1) provides that investment of funds shall be made "in accordance with section 201G-167". The provisions of the former §201G-167

(Investment of reserves, etc.) appear nearly verbatim in §201H-77 and in §356D-25. Given that this chapter is under the scope of authority of the Hawaii housing finance and development corporation, we recommend changing the reference to §201G-167 to reflect only §201H-77, and not to include the reference to §356D-25.

SECTION 28. Section 516-104, Hawaii Revised Statutes, is amended to read as follows:

"§516-104 Revenue bonds; investment of proceeds~~[7]~~ and redemption. Subject to any agreement with the holders of its revenue bonds, the corporation may:

- (1) Invest its moneys not required for immediate use, including proceeds from the sale of any revenue bonds, in accordance with section [~~201G-167;~~] 201H-77;
- (2) Purchase its revenue bonds out of any fund or money of the corporation available therefor, and hold, cancel, or resell the revenue bonds."

SECTION 29. §521-7, Hawaii Revised Statutes

Comment

Section 521-7 provides exemptions from the Residential Landlord-Tenant Code for specified residential housing situations. Paragraph (9) provides an exemption from the Code for occupancy in a homeless facility or program "authorized under chapter 201G, part IV". Homeless assistance programs and facilities have been transferred to the Hawaii public housing authority and their provisions now appear in part VII of chapter 356D. We recommend that this substitution be made in this bill.

It should be noted that paragraph (10) provides an exemption from the Code for occupancy in a public housing project or complex "pursuant to the federal low rent public housing program". This exemption applies only to federal housing projects; state housing projects are subject to the Code pursuant to §356D-44(c). The Legislature may wish to consider further amending this paragraph to clarify this exemption for federal housing projects by providing a citation to the particular provisions of chapter 356D where the federal project is "directly controlled, owned, or managed" by the Hawaii public housing authority (e.g., part II of chapter 356D). This action is beyond the scope of this report and is not included in this proposed legislation.

SECTION 29. Section 521-7, Hawaii Revised Statutes, is amended to read as follows:

"§521-7 Exclusions from application of chapter. Unless created solely to avoid the application of this chapter, this chapter shall not apply to:

- (1) Residence at an institution, whether public or private, where residence is merely incidental to

- detention or the provision of medical, geriatric, educational, religious, or similar services;
- (2) Residence in a structure directly controlled and managed by the University of Hawaii for housing students or faculty of the University of Hawaii or residence in a structure erected on land leased from the University of Hawaii by a nonprofit corporation for the exclusive purpose of housing students or faculty of the University of Hawaii;
 - (3) Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser;
 - (4) Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization;
 - (5) Transient occupancy on a day-to-day basis in a hotel or motel;
 - (6) Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon ~~[such]~~ that employment or by a pensioner of the owner or landlord or occupancy for a period of up to four years subsequent thereto, pursuant to a plan for the transfer of the dwelling unit or the property of which it is a part to the occupant;
 - (7) A lease of improved residential land for a term of fifteen years or more, measured from the date of the commencement of the lease;
 - (8) Occupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner's rights;
 - (9) Occupancy in a homeless facility~~[7]~~ or any other program for the homeless authorized under ~~[chapter 201G, part IV7]~~ part VII of chapter 356D;
 - (10) Residence or occupancy in a public housing project or complex directly controlled, owned, or managed by the Hawaii public housing authority pursuant to the federal low rent public housing program; or
 - (11) Residence or occupancy in a transitional facility for abused family or household members."

PART II. AMENDMENTS TO 2006 SESSION LAWS

During the Regular Session of 2006, the Legislature enacted a number of measures amending chapter 201G, Hawaii Revised Statutes. Part II of this proposed legislation amends the current sections of chapters 201H and 356D, Hawaii Revised Statutes, to incorporate the amendments that were made to the now repealed chapter 201G.

SECTION 30. Purpose/Background

Note: §201H-15, Hawaii Revised Statutes. The amendments made to the former §201G-14 by Section 37 of Act 196, Session Laws of Hawaii 2005, as amended by Section 17 of Act 180, Session Laws of Hawaii 2006, are not included in this proposed measure. The amendments made by Act 196, SLH 2005, are repealed on July 1, 2007 pursuant to Act 180, SLH 2006, which is the effective date of the bill.

SECTION 31. §201H-38, Hawaii Revised Statutes

Comment

This section implements the amendments made by Section 4 of Act 217, Session Laws of Hawaii 2006.

Section 4 of Act 217 amended the prior §201G-118 (exemption of housing development from statutes, ordinances, charter provisions, and rules) by allowing "county councils and the land use commission to approve projects with modifications as well as approve or deny" the housing projects (CCR 119-06).

The provisions of the prior §201G-118 have been transferred to the Hawaii housing finance and development corporation in §201H-38, Hawaii Revised Statutes, and we recommend that §201H-38 be amended by adding the substantive amendments made to the former §201G-118 by Act 217.

SECTION 31. Section 201H-38, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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 that shall be exempt from all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwelling units thereon; provided that:

- (1) The corporation finds the housing 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 housing project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or of the various boards of water supply authorized under chapter 54;
- (3) The legislative body of the county in which the housing project is to be situated shall have approved the project[+] with or without modifications:
 - (A) The legislative body shall approve, approve with modification, 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, modifying, 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, approve with modification, 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."

SECTION 32. §201H-202, Hawaii Revised Statutes

Comment

This section implements the amendments made by Section 20 of Act 100, Session Laws of Hawaii 2006.

Section 201G-432, Hawaii Revised Statutes, established the rental housing trust fund and provided, in subsection (i) that the fund may be used to provide grants for rental units for very low-income persons and families, and required the (prior) housing and community development corporation of Hawaii to report to the legislature on whether or not this grant program was effective in developing rental housing for this target group. Subsection (i) specifically provided that this grant program would be a temporary one by authorizing the use of the trust fund for this purpose from July 1, 2005, to June 30, 2007.

Section 20 of Act 100, SLH 2006, intended to extend the operation of the grant program by extending its sunset date from June 30, 2007, to June 30, 2009.

The rental housing trust fund has been transferred to the Hawaii housing finance and development corporation, and its provisions are found in §201H-202. We recommend that subsection 201H-202(i) be amended to incorporate the amendments made by Act 100, Section 20.

The amendments made to the former §201G-432 by Section 5 of Act 196, Session Laws of Hawaii 2005, as amended by Section 17 of Act 180, Session Laws of Hawaii 2006, are not included in this measure. Act 180, SLH 2006, intended to make the amendments to §201G-432 by Act 196, SLH 2005, permanent by repealing the "drop dead" provision enacted as part of Act 196. The amendments made to §201G-432 are included in the current §201H-202 as enacted by Act 180, SLH 2006, and thus, the amendment made by Act 180 are not included in this bill.

SECTION 32. Section 201H-202, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) For the period commencing July 1, 2005, through June 30, [~~2007,~~] 2009, the fund may be used to provide grants for rental units set aside for persons and families with incomes at or below thirty per cent of the median family income in any project financed in whole or in part by the fund in proportion of those units to the total number of units in the project. At the conclusion of the period described in this subsection, the corporation shall report to the legislature on the number and use of grants provided and whether the grants were an effective

use of the funds for purposes of developing rental housing for families at or below thirty per cent of the median family income."

Note: *§201H-211, Hawaii Revised Statutes. The amendments made to the former §201G-441 by Section 4 of Act 38, Session Laws of Hawaii 2006, have already been incorporated into the new §201H-211 and thus, §201H-211 is not amended in this bill.*

SECTION 33. §356D-3, Hawaii Revised Statutes

Comment

This section implements the amendments made by Section 2 of Act 179, Session Laws of Hawaii 2006.

Section 2 of Act 179 amended the prior §201G-3 (board of directors of the housing and community development corporation) by adding two members to the board: an advocate for low-income or homeless persons; and an advocate for persons with disabilities. The Act also amended the number of members needed to constitute a quorum, in light of the additional members to the board.

Both the Hawaii housing finance and development corporation (chapter 201H, Hawaii Revised Statutes), and the Hawaii public housing authority (chapter 356D, Hawaii Revised Statutes) have governing boards, and statutory provisions setting forth membership on their boards (§201H-3 and §356D-3, respectively). Either, or both, sections are candidates for amendment.

We recommend that only §356D-3 be amended. The basis for this recommendation is that the legislative intent of Act 179, SLH 2006, was to implement recommendations of the joint legislative housing and homeless task force, including "addition of two new members to the Hawaii Public Housing Authority board of directors" (CCR 185-06, page 3).

The prior §201G-3(a) also included provisions related to staggered terms for board members, and subsection (c), set forth for amendment by Section 2 of Act 179, included quorum provisions, compensation for board members, and payment of necessary expenses. These administrative provisions can be found in §201H-3 (board of directors for the Hawaii housing finance and development corporation), but are absent in §356D-3 that is proposed to be amended in this bill.

We recommend adding these provisions, with the amendment of Section 2, Act 179, to §356D-3.

SECTION 33. Section 356D-3, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]§356D-3[§]~~ **Board; establishment, functions, duties.**

(a) There is created a board of directors consisting of ~~[nine]~~ eleven members, of whom ~~[seven]~~ nine 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. At least one public member shall be a person who is directly assisted by the authority under the federal low-rent public housing or federal section 8 tenant-based housing assistance payments program while serving on the board. One public member shall be an advocate for low-income or homeless persons. One public member shall be a person with a disability or an advocate for persons with disabilities. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows: four members to be appointed for four years; three members to be appointed for three years; and two members to be appointed for two years. The director of human services, or a designated representative, and a representative of the governor's office, shall be ex officio voting members. The authority 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 human services and the governor's representative shall be ineligible to serve as chairperson of the board.

(c) Seven members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the authority. 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."

SECTION 34. §356D-44, Hawaii Revised Statutes

Comment

This section implements the amendments made by Section 3 of Act 179, Session Laws of Hawaii 2006.

Section 3 of Act 179 amended the prior §201G-44 (administration of state low-income public housing projects and programs) primarily to delete "the requirement that there be an intent to demolish public housing units before they may be decommissioned" (CCR 185-06). This provision was not included in the enactment of the new §356D-44, thus amendment is not necessary.

Section 3 also amended §201G-44 by requiring, rather than allowing, the prior agency to "construct, develop, and administer...state low-income public housing projects and programs" and requires, rather than allows, the agency to offer decommissioned low-income public housing projects for rehabilitation into emergency or transitional homeless facilities and low-income housing units. We recommend that these amendments be made to the current §356D-44.

SECTION 34. Section 356D-44, Hawaii Revised Statutes, is amended to read as follows:

"[~~f~~]**§356D-44**[~~]~~ **Administration of state low-income public housing projects and programs**. (a) The authority [~~may~~] shall construct, develop, and administer property or housing for the purpose of state low-income public housing projects and programs.

(b) The authority [~~may~~] shall offer any decommissioned low-income public housing project, except for federal housing projects, to nonprofit or for-profit organizations or government agencies for rehabilitation into emergency or transitional shelter facilities for the homeless or rehabilitation into rental units that set aside at least fifty per cent of the units to persons or families with incomes at or below fifty per cent of the area median family income; provided that:

- (1) The housing project is wholly owned by the State on either state-owned or ceded lands;
- (2) The authority has determined that the housing project is not eligible for rehabilitation using the authority's current resources; and
- (3) The nonprofit or for-profit organization or government agency demonstrates expertise in rehabilitation of housing projects and has community, public, and private resources to substantially pay for the rehabilitation.

The land and improvements may be leased to the nonprofit or for-profit organization or government agency for a period not to exceed ninety-nine years for a sum of \$1 per year.

(c) State low-income housing projects shall be subject to chapter 521.

(d) The authority shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the state low-income housing projects or programs and to carry out any state program under subsection (a)."

SECTIONS 35 and 36. §§356D-91 and 92, Hawaii Revised Statutes

Comment

These sections implement the amendments made by Sections 1 to 5 of Act 24, Session Laws of Hawaii 2006.

The purpose of Act 24, SLH 2006, was "to make housekeeping amendments to various public housing laws, including changes to conform to federal regulations" (HSCR 1154-06). Act 24 amended various sections of the prior part II, subpart C, of chapter 201G relating to evictions from federal public housing projects, specifically §§201G-52 through 201G-56.

The functions and authority over low-income public housing projects have been transferred to the Hawaii public housing authority, and the specific statutory provisions relating to evictions from federal public housing projects are now found in part V of chapter 356D (§§356D-91 to 98). We recommend that the amendments made by Section 1 and portion of Section 2 of Act 24, SLH 2006, be made to the current §§356D-91 and 356D-92.

It should be noted that the prior §§201G-51 to 56 were substantially amended by Act 227, Session Laws of Hawaii 2002 that included a repeal and reenactment provision. The enactment of §§356D-91 to 96 without a repeal and reenactment provision makes the changes made by Act 227 permanent.

Of further note, the amendments made by Section 2 of Act 24, SLH 2006, to section §201G-52(e); Section 3 of Act 24 to §201G-53; Section 4 of Act 24 to §201G-55; and Section 5 of Act 24 to §201G-56, have already been incorporated into the language of the chapter 356D sections.

SECTION 35. Section 356D-91, Hawaii Revised Statutes, is amended by amending the definitions of "public housing project" and "tenant" to read as follows:

"Public housing project" or "complex" means a low-income federally assisted housing project [directly] as established by the United States Housing Act of 1937, as amended, and controlled, owned, developed, or managed by the authority pursuant to [~~part II.~~] the federal low-rent public housing program.

"Tenant" means any person occupying a [~~room,~~] dwelling [~~unit,~~] accommodation or living quarters[~~, or space~~] in any public housing project, under or by virtue of any tenancy, lease, [~~license, or permit~~] or rental agreement under or from the authority."

SECTION 36. Section 356D-92, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

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

- (1) The tenant has [~~thirty days~~] ten business 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,~~] ten business days, the authority has the right to proceed with the eviction hearing pursuant to section 356D-93."

§§356D-96 and 97, Hawaii Revised Statutes

Act 202, Session Laws of Hawaii 2004, amended numerous sections of the Hawaii Revised Statutes to transfer appellate jurisdiction over certain controversies from the Hawaii supreme court to the intermediate appellate court. Act 94, Session Laws of Hawaii 2006, amended the 2004 act by adding a "drop dead" provision, repealing the amendments made in 2004 on June 30, 2010.

Among the matters appealable to the intermediate appellate court, rather than the supreme court, are grievances relating to evictions from federal low-income housing projects, previously found in §§201G-57 and 201G-58, Hawaii Revised Statutes, and now contained in §§356D-96 and 356D-97, Hawaii Revised Statutes. The chapter 356D sections were enacted with the language added by the 2004 act, but without the "repeal and reenactment" provisions of Act 94, SLH 2006. Thus, the enactment of the cited sections in chapter 356D makes permanent the amendments made in 2004.

Sections 356D-96 and 356D-97 are not proposed for amendment in this bill. If the legislature considers that the change in appellate jurisdiction should be a temporary one, and subject to repeal in 2010 along with the other sections of Act 202, SLH 2004, we recommend that this be accomplished in separate legislation.

§§356D-152 and 153, Hawaii Revised Statutes

Sections 18 and 19 of Act 100, Session Laws of Hawaii 2006, amended the State Rent Supplement Program under the former chapter 201G, Hawaii Revised Statutes, by amending the sections defining "housing owner" and "qualified tenant" (§§201G-232 and 201G-233, respectively).

The Rent Supplement Program has been transferred to the Hawaii public housing authority under chapter 356D, part VIII. The provisions of the prior §201G-232

are now contained in §356D-152; and the prior §201G-233 is now contained in §356D-153. The amendments made by Act 100, SLH 2006 have already been incorporated into the enacting language of these new sections; thus, §§356D-152 and 356D-153 need not be proposed for amendment in the bill.

SECTION 37. Act 100, Section 2, SLH 2006

Comment

This section proposes amendment to Section 2 of Act 100, Session Laws of Hawaii 2006. Act 100 added a new section to the prior part IV, chapter 201G, Hawaii Revised Statutes (homeless assistance programs and facilities). Those programs have been transferred to the Hawaii public housing authority, and their statutory provisions are now found in part VII of chapter 356D.

Act 100, SLH 2006, should be amended to correct the citation to chapter 356D, part VII, and to make technical amendments to the section.

SECTION 37. Act 100, Session Laws of Hawaii 2006, is amended by amending section 2 to read as follows:

"SECTION 2. Chapter [~~201G~~] 356D, Hawaii Revised Statutes, is amended by adding a new section in part [~~IV~~] VII to be appropriately designated and to read as follows:

"[~~§201G—~~] §356D- **Temporary emergency housing.** (a) In addition to any other duties prescribed by law, the [~~administration~~] authority shall develop, in consultation with the four counties, a procedure for identifying locations that shall be used for temporary emergency shelters for homeless individuals and families. The [~~administration~~] authority shall actively partner with and monitor the efforts of the counties.

(b) Each county shall be responsible for partnering with nonprofit organizations to locate, designate, and maintain the areas that shall be used for temporary emergency shelters. The designated locations may include private, county, and state lands and federal lands at Kalaeloa.

(c) The [~~administration~~] authority shall pursue and secure Barbers Point Barracks as temporary housing for homeless families and individuals.

(d) The [~~administration~~] authority shall submit an annual report to the legislature detailing the activities and outcomes under this section no later than twenty days prior to the convening of each regular session beginning with the [~~2007~~] 2008 regular session." "

PART III. OTHER CONFORMING AMENDMENTS

SECTION 38. Purpose

SECTION 38. The purpose of this part is to make other conforming amendments to the Hawaii Revised Statutes and Session Laws of Hawaii to implement the repeal of the housing and community development corporation of Hawaii and the transfer of its powers and functions to the Hawaii housing finance and development corporation and the Hawaii public housing authority.

SECTION 39. §26-14, Hawaii Revised Statutes

Comment

Section 26-14, Hawaii Revised Statutes, sets forth the general powers and duties of the department of human services. Subsection 26-14(d) should be amended to change the reference to the "housing and community development corporation of Hawaii" to the "Hawaii public housing authority".

SECTION 39. Section 26-14, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The [~~housing and community development corporation of Hawaii~~] Hawaii public housing authority and the Hawaii state commission on the status of women are placed within the department of human services for administrative purposes only."

Section 40. §26-18, Hawaii Revised Statutes

Comment

Section 26-18, Hawaii Revised Statutes, sets forth the general powers and duties of the department of business, economic development, and tourism. Subsection 26-18(b) should be amended to include the Hawaii housing finance and development corporation as part of the department.

SECTION 40. Section 26-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The following are placed in the department of business, economic development, and tourism for administrative purposes as defined by section 26-35: Aloha Tower development corporation, Hawaii community development authority, Hawaii housing finance and development corporation, high technology development corporation, land use commission, natural energy

laboratory of Hawaii authority, and any other boards and commissions as shall be provided by law.

The department of business, economic development, and tourism shall be empowered to establish, modify, or abolish statistical boundaries for cities, towns, or villages in the State and shall publish, as expeditiously as possible, an up-to-date list of cities, towns, and villages after changes to statistical boundaries have been made."

Section 41. §91-13.5, Hawaii Revised Statutes

Comment

Section 91-13.5, Hawaii Revised Statutes, was amended by Acts 217 and 280, Session Laws of Hawaii 2006. Act 217 amended this section by adding subsection (d) that set a 45-day time period for agency reviews relating to housing projects "under section 201G-118". With the repeal of chapter 201G, Hawaii Revised Statutes, by Act 180, Session Laws of Hawaii 2006, the provisions of §201G-118, relating to exemptions for housing developments from statutes, ordinances, charter provisions, and rules, are now found in §201H-38. We recommend that the reference to "section 201G-118" be changed to "section 201H-38".

SECTION 41. Section 91-13.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Notwithstanding any other law to the contrary, any agency that reviews and comments upon an application for a business or development-related permit, license, or approval for a housing project developed under section [~~201G-118~~] 201H-38 shall respond within forty-five days of receipt of the application, or the application shall be deemed acceptable as submitted to the agency."

Section 42. §257-7, Hawaii Revised Statutes

Comment

Chapter 257, Hawaii Revised Statutes, allows low- and moderate-income persons and households to establish tax-exempt savings programs to assist in future educational expenses, purchase of a first home, and start-up business expenses. Section 257-7 provides that the savings accounts, and any interest earned on the moneys in those accounts, shall be disregarded in the determination of eligibility for certain public assistance benefit programs. (For similar federal program, see the Assets for Independence Act, Title IV of the Community Opportunities, Accountability, and Training and Educational Services Human Services Reauthorization Act of 1998, P.L. 105-285, Section 415.)

Section 257-7 refers to benefit programs of the department of human services and the housing and community development corporation of Hawaii. At the time this chapter was enacted (1999), the housing and community development corporation's functions included the public housing programs transferred in 2006 to the department of human services. This section should be amended by deleting the reference to the housing and community development corporation.

SECTION 42. Section 257-7, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]257-7[§]~~ **Assets; disregarded.** The department of human services ~~[and the housing and community development corporation of Hawaii]~~ shall collaborate with individual development account fiduciary organizations to ensure that the accounts as provided for in this chapter, including any earned interest, shall be disregarded in the determination of benefits or eligibility for services account holders may receive from ~~[said agencies]~~ the department of human services as allowed by federal and state laws and regulations.

The department of human services shall establish rules to be aligned with individual development accounts after June 28, 1999."

Section 43. §302A-831, Hawaii Revised Statutes

Comment

The teachers' housing program was transferred from the housing and community development corporation of Hawaii to the Hawaii public housing authority, and from the Hawaii public housing authority to the department of education on July 1, 2008. We recommend that this section be amended to correct the reference to the housing and community development corporation of Hawaii.

SECTION 43. Section 302A-831, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]302A-831[§]~~ **Purpose.** The purpose of this subpart is to transfer the administration of the teachers' housing program from the ~~[housing and community development corporation of Hawaii]~~ Hawaii public housing authority to the department of education. This subpart also establishes a revolving fund for the accounting and control of receipts and disbursements in connection with the department of education's functions of planning, constructing, repairing, maintaining, and operating housing programs for teachers employed and assigned by the department of education."

SECTIONS 44 to 47. Session Laws of Hawaii

Comment

Sections 44 to 47 propose amendments to various Session Laws of Hawaii to correct existing references to the housing and community development corporation of Hawaii to the Hawaii housing finance and development corporation. The Session Laws set forth for possible amendment are existing law that were not codified as part of the Hawaii Revised Statutes.

SECTION 44. Act 291, Session Laws of Hawaii 1980, as amended by Act 304, Session Laws of Hawaii 1996, as amended by Act 185, Session Laws of Hawaii 2004, is amended by amending section 11 to read as follows:

"SECTION 11. **Issuance of revenue bond; amount authorized.** Revenue bonds may be issued by the [~~housing and community development corporation of Hawaii~~] Hawaii housing finance and development corporation pursuant to part III, chapter 39 and subpart [~~B~~] A of part III of chapter [~~201G,~~] 201H, Hawaii Revised Statutes, in an aggregate principal amount not to exceed \$300,000,000, at such times and in such amounts as the [~~housing and community development corporation of Hawaii~~] Hawaii housing finance and development corporation deems advisable for the purpose of undertaking and maintaining any of the housing loan programs under subpart [~~B~~] A of part III of chapter [~~201G,~~] 201H, Hawaii Revised Statutes, relating to the funding or purchasing of eligible project loans."

SECTION 45. Act 274, Session Laws of Hawaii 1998, is amended by amending section 1 to read as follows:

"SECTION 1. The provisions of section [~~201G 120(a),~~] 201H-40(a), Hawaii Revised Statutes, relating to the corporation's requirement to first offer 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 [~~housing and community development corporation of Hawaii~~] Hawaii housing finance and development corporation to owner-builders or nonprofit organizations assisting owner-builders in construction of units, shall not apply to the [~~housing and community development corporation of Hawaii's~~] Hawaii housing finance and development corporation's current or future development in Kapolei, Oahu, consisting of approximately 888 acres, known as the Villages of Kapolei."

SECTION 46. Act 100, Session Laws of Hawaii 2001, is amended by amending sections 1 and 2 to read as follows:

"SECTION 1. The purpose of this Act is to authorize the [~~housing and community development corporation of Hawaii,~~]

Hawaii housing finance and development corporation, in coordination with the respective counties, to establish the affordable housing requirements for undeveloped parcels in the villages of Kapolei, Oahu; villages of Leiali`i, Maui; and villages of La`i`opua, Hawaii, irrespective of any other law, rule, or ordinance to the contrary.

SECTION 2. Notwithstanding Act 15, Session Laws of Hawaii 1988, the affordable housing requirements for the undeveloped parcels in the villages of Kapolei, Oahu, villages of Leiali`i, Maui, and villages of La`i`opua, Hawaii, shall be established by agreement between the [~~housing and community development corporation of Hawaii~~] Hawaii housing finance and development corporation and the respective counties.

The undeveloped parcels are further defined as follows:

Villages of Kapolei: Tax map key numbers 9-1-16:35, 36, 37, 38, 39, 58, 59, 64, 76, 82, 88, 90, 93; 9-1-79:1 through 35, 54, 129 through 134; 9-1-92:37 through 66, 104; 9-1-104:1 through 88; and 9-1-105:1 through 117.

Villages of Leiali`i: Tax map key numbers 4-5-21:3, por. 4, 18, 19, por. 20, por. 21, por.22; and 4-5-36:1 through 14, 55, through 61, 69 through 104.

Villages of La`i`opua: Tax map key numbers 7-4-21:1 through 18 and 7-4-20:1 through 7."

SECTION 47. Act 198, Session Laws of Hawaii 2005, is amended by amending section 3 to read as follows:

"SECTION 3. Notwithstanding Act 15, Session Laws of Hawaii 1988, the affordable housing requirements for the undeveloped parcels in Puukolii village shall be established by agreement among:

- (1) The developer;
- (2) The [~~housing and community development corporation of Hawaii;~~] Hawaii housing finance and development corporation; and
- (3) The appropriate agency or department of the county of Maui that is charged with the responsibility of administering affordable housing projects, unless such undeveloped parcels are part of a larger development that requires the approval of the Maui county council.

The affordable housing requirement shall include a requirement for housing that is affordable to households earning up to one hundred twenty per cent of the county median income.

The undeveloped parcels in Puukolii village are defined as tax map key numbers 4-4-02: por. 02 and 4-4-06: por. 01."

**PART IV. PROVISIONS RECOMMENDED FOR REVIEW BY
THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION AND THE
HAWAII PUBLIC HOUSING AUTHORITY**

Background

The Hawaii Housing Authority was created under the Territory of Hawaii (Act 190, Session Laws of Hawaii 1935). The purpose of the Authority was the "clearance, replanning and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income". The legislature found that the public works projects instituted by the Authority would "relieve unemployment which now constitutes an emergency" (page 243, SLH 1935).

To accomplish these purposes, the legislature provided the Hawaii Housing Authority with powers to construct and operate housing projects; lease or rent dwellings and housing accommodations; purchase, lease or otherwise acquire property, including by the use of the power of eminent domain; borrow moneys; and to issue bonds.

The powers and duties of the Authority, which was designated part of the (then) Department of Social Services were generally set forth in:

Chapter 356, part I	general powers and duties
part II	housing loan and mortgage programs
part III	rental assistance program
Chapter 359, parts I and II	military and veterans' housing
part III	housing for elders
part IV	housing revenue bonds
part V	downpayment reserve plan
part VI	rent supplements
part VII	sales housing program
part VIII	housing development fund
part IX	general provisions
Chapter 359A	teachers' housing
Chapter 359G	development and financing of housing projects
Chapter 360	public housing projects
Chapter 516	residential leaseholds
Chapter 519	residential lease rent renegotiations

In 1987, under proposals to redefine the functions and authority of the (then) Department of Social Services and Housing, the powers and duties of the Hawaii Housing Authority related to the development of housing projects, housing financing, residential leaseholds, and lease rent renegotiations under chapters 356, 359, 359G, 516, and 519, Hawaii Revised Statutes, were transferred to a newly created agency, the

Housing Finance and Development Corporation (Act 337, Session Laws of Hawaii 1987, codified as chapter 201E, Hawaii Revised Statutes).

The Housing Finance and Development Corporation was placed under the (then) Department of Planning and Economic Development, while the Hawaii Housing Authority remained under the (renamed) Department of Human Services primarily to develop and operate public housing projects.

This situation existed until 1997, when the Housing and Community Development Corporation of Hawaii was created (Act 350, Session Laws of Hawaii 1997, codified as chapter 201G, Hawaii Revised Statutes) and the functions and authority of both the Hawaii Housing Authority and the Housing Finance and Development Corporation were merged into one agency.

Act 180, Session Laws of Hawaii 2006, repealed the Housing and Community Development Corporation of Hawaii and divided its functions and authority between two agencies: the Hawaii Housing Finance and Development Corporation under the Department of Business, Economic Development, and Tourism, and the newly-created Hawaii Public Housing Authority under the Department of Human Services.

Act 350, SLH 1997, amended a number of statutory provisions in the Hawaii Revised Statutes, including substituting various references to the Hawaii Housing Authority with reference to the Housing and Community Development Corporation of Hawaii. As Act 180, SLH 2006, again provides for separate agencies to oversee housing functions in the State, it is advisable to revisit pertinent sections of the Hawaii Revised Statutes (including but not limited to those amended by Act 350, SLH 1997) to review whether or not both the Hawaii Public Housing Authority, as well as the Hawaii Housing Finance and Development Corporation, should be included in those sections in keeping with the pre-1997 division of powers and functions.

Hawaii Revised Statutes Sections for Review

(Text of Sections Appear in Attachment B)

§27-11, Hawaii Revised Statutes

This section was amended by L 2005, c 196 §26(a) and L 2006, c 180, §16, to change the reference to "the housing and community development corporation of Hawaii" to "the Hawaii public housing authority".

Act 210, Session Laws of Hawaii 1995, amended §27-11(1) by specifying that housing projects developed by the (then) housing finance and development corporation—including the impact of future projects on the need for school facilities—would be considered by the department of education in its planning of educational facilities and infrastructure development. Similar language was added to chapter 201E, Hawaii Revised Statutes (specifically §201E-30(a)(3)). It is clear that the "housing

projects" mentioned in §27-11(1) applied to projects developed under the housing financing functions of the housing agency. Upon repeal of chapter 201E, the provisions of the prior §201E-30 were added to §201G-12. When the housing and community development corporation of Hawaii was repealed in 2006, the provisions of §201G-12 were transferred to both §201H-12 and §356D-11; however, the specific provisions regarding planning for school facilities appears only in §201H-12(a)(3).

Given the history of this section, and the current language of chapters 201H and 356D, it would appear that §27-11 should be amended to either:

- (1) Change the reference to the "Hawaii public housing authority" to the "Hawaii housing finance and development corporation"; or
- (2) Add the Hawaii housing finance and development corporation to the Hawaii public housing authority, and add provisions in §356D-11(a) to mirror the language found in §201H-12(a)(3).

§36-24, Hawaii Revised Statutes

Section 36-24 allows the state director of finance to make temporary loans to state and county agencies.

This section was amended by the 1987 legislation that created the housing finance and development corporation (section 3 of Act 337, Session Laws of Hawaii 1987) to replace the reference to the Hawaii housing authority with a reference to the housing finance and development corporation. The intent of the amendment was clearly to allow temporary loans for state housing financing programs, and the section was amended by L 2005, c 196 and L 2006, c 180 to continue authorization of loans to the (now) Hawaii housing finance and development corporation.

However, the reference itself is not necessary. The language of the section allows loans "to any state or county department, board, commission, officer, authority, or agency authorized under the laws of the State to issue bonds". This language would include the Hawaii housing finance and development corporation. Further, it should be noted that the Hawaii public housing authority is also permitted to issue bonds for housing development. As such, this agency would also be covered by §36-24. It would appear that either:

- (1) The reference to the Hawaii housing finance and development corporation should be repealed; or
- (2) The Hawaii public housing authority should be added.

§53-6, Hawaii Revised Statutes

Part I of chapter 53, Hawaii Revised Statutes (the Urban Redevelopment Act), allows each county to create a local redevelopment agency to investigate and identify areas in the county where unsafe or blighted areas exist, to plan for the demolition and redevelopment of these areas, and to acquire private property within the area designated as a redevelopment project.

Section 53-6 requires the redevelopment agency, in developing a redevelopment plan for an area, to plan for housing for persons displaced in the redevelopment project, conferring with the "Hawaii housing authority" with respect to placement of displaced persons in the authority's projects. Section 53-22(e) allows to governor to request budget appropriations to provide housing for these displaced persons. Section 53-6 was amended by the 1987 act to change the reference to "Hawaii housing authority" to the "housing finance and development corporation". Subsequent amendments by the 2005 and 2006 acts changed the (original) Hawaii housing authority to the "Hawaii public housing authority".

It may be appropriate to amend section 53-6 should be amended to change "Hawaii public housing authority" to the "Hawaii finance and development corporation" because:

- (1) From the history of these sections, it appears clear that these sections were meant to apply to the housing financing programs of the housing agency, now within the Hawaii finance and development corporation;
- (2) Act 180, SLH 2006, specifically amended §53-1 (the definitions section for this chapter) to change the reference to the former "housing and community development corporation of Hawaii" to the current Hawaii finance and development corporation (see notes to the housing bill amendment to §53-17);
- (3) Other sections of this chapter, in referring to the state housing agency, specifically refer to the (current) Hawaii finance and development corporation; and
- (4) Pursuant to the amendments made to chapter 111, Hawaii Revised Statutes, by Act 337, SLH 1987, it is the housing financing agency, rather than the public housing agency, that is responsible for housing assistance to displaced persons.

§76-16, Hawaii Revised Statutes

Subsection (a)(21) provides civil service exemption for employees hired under the Hawaii public housing authority's "tenant hire program". This paragraph was added

by Act 31, Session Laws of Hawaii 1979, to allow the (then) Hawaii housing authority "to pursue the goal established by the United States Department of Housing and Urban Development (HUD), that approximately 25 per cent of the authority's work force be comprised of persons residing in housing projects maintained or operated by the authority" (page 44, SLH 1979).

We recommend that the Hawaii public housing authority review this paragraph to determine if, in fact, the tenant hire program is still operating and this civil service exemption is still necessary.

§171-2, Hawaii Revised Statutes

Section 171-2 defines lands deemed to be "public lands", and therefore under the jurisdiction of the department of land and natural resources, and lists lands owned or controlled by specified state agencies that are outside the department's jurisdiction.

Prior to 1987, §171-2 excluded from the definition of "public lands" those "lands to which the Hawaii housing authority in its corporate capacity holds title". Act 337, SLH 1987, that established the housing finance and development corporation, added a further exclusion in §171-2 for the corporation's properties. After 1997, when the two agencies merged into the housing and community development corporation of Hawaii, this section was further amended to change the reference to the housing and community development corporation of Hawaii to the (present) Hawaii housing finance and development corporation.

It would appear that this section should be amended to include both the Hawaii housing finance and development corporation and the Hawaii public housing authority, as both agencies are authorized to acquire, own, and hold real property.

§206E-15, Hawaii Revised Statutes

Section 206E-15 authorizes the Hawaii community development authority to enter into cooperative agreements with the Hawaii housing finance and development corporation for the financing, development, construction, sale, lease, or rental of dwelling units and housing projects, and allows the corporation to develop housing for low- or moderate-income persons within or without the community development district.

Prior to 1987, the housing agency referred to in this section was the Hawaii housing authority. Act 337, SLH 1987, that established the housing finance and development corporation, added the corporation to this section, allowing the Hawaii community development authority to work with either the public housing authority or the housing finance corporation in effective affordable housing requirements for development districts. After 1997, when the two agencies merged into the housing and community development corporation of Hawaii, this section was further amended to

change the reference to the housing and community development corporation of Hawaii to the (present) Hawaii housing finance and development corporation.

We recommend that this section be reviewed to determine whether both the Hawaii housing finance and development corporation and the Hawaii public housing authority should be included in this section, as both agencies are authorized to acquire, own, and hold real property and develop housing projects.

§247-3, Hawaii Revised Statutes

Section 247-3 provides exemptions to the conveyance tax under specific situations or involving particular parties. Act 196, Session Laws of Hawaii 2005, amended this section to provide a tax exemption for the transfer of real property to organizations for low-income housing development. The amendment specified that the organization would be "certified by the Hawaii housing finance and development corporation". Act 196 is the same legislation that created the (then) Hawaii housing finance and development administration.

While it is clear that the legislature intended the exemption established in §247-3(17) refer specifically to powers of the corporation, it is unclear what type of "certification" is referred to. The corporation is designated as the state housing credit agency administering the low-income housing credit (§201H-15); however, it is unclear from the language of paragraph 247-3(17) if this is the legislature's intent.

Further, it should be noted that the Hawaii public housing authority also has authority to lease housing projects to nonprofit or for-profit organizations for low-income housing purposes (see, e.g., §356D-44(b)(3)).

We recommend that this section be reviewed to determine if:

- (1) The term "certified" should be clarified by reference to a particular section or power under chapter 201H, Hawaii Revised Statutes; and
- (2) The Hawaii public housing authority should be added to this tax exemption.

Appendix A

SECTION 14, ACT 180 SESSION LAWS OF HAWAII 2006

SECTION 14. The legislative reference bureau shall prepare proposed legislation that substitutes references made to "chapter 201G" or any specific section or part of chapter 201G, as the case may be, in sections 10-13.6, 26-14.6, 29-15.5, 46-1.5, 46-4, 46-15.1, 46-15.2, 53-1, 53-17, 104-2, 171-18.5, 171-19.5, 201H-10, 205-4, 206-1, 237-23, 237-29, 247-7, 321-15.6, 346-152, 467-2, 480-11, 514A-14.5, 514A-108, 514B-99.5, 516-1, 516-31, 516-104, and 521-7, Hawaii Revised Statutes, with the corresponding chapter, part, or section number of the new law created and codified under this Act, as appropriate.

The legislative reference bureau shall submit the proposed legislation to the legislature not later than twenty days prior to the convening of the 2007 regular session.

Appendix B

HAWAII REVISED STATUTES SECTIONS FOR REVIEW

§27-11 Planning, construction, and improvements of public school facilities and grounds; custodial and janitorial services for public schools; transportation of school children. The following functions and services, heretofore performed by the several counties under contractual arrangements with the State, shall be directly administered and performed by the department or departments, or divisions of government designated by the governor:

- (1) Planning, construction, and improvements of public school facilities and grounds; provided that the department of education shall add to its list of considerations in the planning and development of schools the role of the **Hawaii public housing authority** in developing housing projects and the resulting educational needs of those housing projects; and provided further that nothing in this section shall be construed to prohibit the **Hawaii public housing authority** from planning educational facilities and related infrastructure as a necessary and integral part of its housing projects;
- (2) Repair, maintenance, custodial, and janitorial services for public school facilities; and
- (3) Transportation of school children.

§36-24 Loans to state and county agencies. When there are moneys in the general, special, or revolving funds of the State which in the director of finance's judgment are in excess of the amounts necessary for the immediate state requirements, the director may make temporary loans therefrom to the employees retirement system, the board of water supply of the city and county of Honolulu, the **Hawaii housing finance and development corporation**, or to any state or county department, board, commission, officer, authority, or agency authorized under the laws of the State to issue bonds, or to the several counties, if in the director's judgment the action will not impede or hamper the necessary financial operations of the State. The loans to any county shall not at any time be more than \$100,000 over the amount of tax moneys which the director estimates will be paid by the director to the county during the balance of the calendar year, provided that in the case of the city and county of Honolulu the loans may be made up to \$250,000 over the amount of tax moneys which the director estimates will be paid by the director to the city and county during the balance of the calendar year. The loans to other organizations shall not at any time exceed the amount of moneys which the director estimates the organization will be in receipt of, from bond funds or other sources, during the twelve months following the loan. The loans shall be without interest. Loans to counties shall be made only upon the request of the county treasurer approved by the county council. All loans shall be repaid upon the demand of the director. In the absence of any demand, loans to counties shall be repaid before June 30 of the following year, pursuant to the following procedure: from time to time as tax moneys which are payable to the borrowing county are deposited into the treasury, the director shall retain therefrom

sufficient moneys to cover the amounts of all loans, and shall reimburse the general, special, or revolving funds therewith.

§53-6 Initiation and approval of redevelopment plan. (a) Before adopting a redevelopment plan, the redevelopment agency shall be assured that satisfactory housing facilities are available or that reasonable provisions will be made for the temporary housing of individuals and families displaced by the removal of living facilities from the redevelopment project. In making the determination the agency may confer with the **Hawaii public housing authority** with respect to the possible placement of displaced families in projects owned and operated by the **authority**.

(b) The agency shall submit the redevelopment plan to the planning commission for study and approval thereof. The planning commission may approve, amend and approve, or disapprove the plan. If the planning commission disapproves the plan or amends the plan and the amendment is not approved by the agency, the agency may submit the plan as disapproved or amended to the council which may nevertheless approve or amend and approve the plan by resolution, but only by the affirmative vote of at least five of its members, after holding a public hearing and subject to the procedure set forth in the next paragraph.

After the planning commission has approved a redevelopment plan, and upon acceptance thereof by the agency if amended, the agency shall submit the plan to the council which shall hold a public hearing thereon, after giving published notice thereof on three separate days, the first publication to be at least ten days before the date of the hearings, and may approve, amend and approve, or disapprove the plan by resolution; provided that the council shall not approve, or amend and approve, the plan unless it finds that the redevelopment project area is a blighted area within the urban limits of the county; and provided further that any amendment made by the council must be accepted by the agency before final approval by the council. If the council approves a redevelopment plan, published notice of the approval shall be given by at least three publications and further proceedings with respect to the redevelopment project covered by the plan shall be stayed for a period of thirty days after the first publication of the notice. Actions, suits, or proceedings to contest the validity of the proceedings prescribed by the foregoing provisions of this chapter or of the redevelopment plan shall be barred upon the expiration of the period of thirty days, and no action thereafter commenced shall raise any question concerning the validity of the proceedings provided by the foregoing provisions of this chapter or of the redevelopment plan, and in all actions, suits, or proceedings commenced after the expiration of the period of thirty days, except as to matters affecting jurisdiction, the validity of the proceedings prescribed by the foregoing provisions of this chapter and of the plan shall be conclusively presumed. Upon the expiration of the thirty-day period, the agency may further proceed with the redevelopment project or projects covered by the redevelopment plan. Upon acquisition of the lands in the redevelopment project by the agency, the lands shall automatically be rezoned as to land use in conformance with provisions of the approved redevelopment plan.

(c) Hearings and trial upon any issue raised in any action, suit, or proceeding in any court involving the construction, interpretation, or validity of this chapter, or

involving the legality or validity of any action taken or proposed to be taken under or pursuant to this chapter, whether by way of injunction, suit for declaratory judgment, submission on agreed statement of facts, or otherwise, shall be given precedence in the trial courts and, on appeal. An appeal to the intermediate appellate court, subject to chapter 602, shall lie from any decision of any trial court holding valid or invalid any provision of this chapter, or any contract made or proposed, or other action taken or proposed to be taken, under or pursuant to this chapter.

(d) Whenever the agency determines that a proposed redevelopment project or an auxiliary redevelopment project initiated pursuant to this chapter may be undertaken by the owners of project lands therein or by developers of the owners as effectively, expeditiously, and economically as if undertaken as a public undertaking by the agency itself, then the redevelopment plan for the project approved and adopted pursuant to this section shall include a provision for the execution of the project by an alternative method of private development thereof on the basis of an agreement between the agency and the owners or developers and imposing such requirements, restrictions, and sanctions as the agency may deem necessary to effectuate the basic purposes of this chapter and to assure the successful completion of the project by private development.

If at any time after the initial adoption of the redevelopment plan, the agency determines that a change in the plan is in the public interest and in furtherance of the purpose of redevelopment, the plan or any part thereof may be amended by following the same procedure as set forth above for the adoption of the original plan.

§76-16 Civil service and exemptions. (a) The State Constitution mandates that the employment of persons in the civil service, as defined by law, be governed by the merit principle. The legislature declares that the public policy of the State is that all positions in the civil service systems of the respective jurisdictions shall be filled through civil service recruitment procedures based on merit and that the civil service system of the respective jurisdictions shall comprise all positions, whether permanent or temporary, in the jurisdiction now existing or hereafter established and embrace all personal services performed for the jurisdiction, except employees or positions exempted under this section, or sections 46-33 and 76-77.

(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;

- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;

- (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;
 - (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
 - (D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
 - (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
 - (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;
 - (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
 - (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;
 - (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
 - (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;

- (19) Household employees at the official residence of the president of the University of Hawaii;
- (20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the **Hawaii public housing authority**; provided that not more than twenty-six per cent of the **authority's** work force in any housing project maintained or operated by the **authority** shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
- (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution;
- (25) Sheriff, first deputy sheriff, and second deputy sheriff;
- (26) A gender and other fairness coordinator hired by the judiciary; and
- (27) Positions in the Hawaii national guard youth challenge academy.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955.

(c) No position shall be exempted from civil service recruitment procedures unless it is in accordance with this section. In addition to the exemptions under subsection (b), sections 46-33 and 76-77, or other law, the director may exempt additional positions if the reason for exempting the position is for the same reason as a position that is included in the list of exemptions for the respective jurisdiction.

(d) The director may provide for an exemption from civil service recruitment procedures if the appointment to the position has a limitation date and it would be impracticable to recruit under civil service recruitment procedures because the required probation period that is part of the examination process cannot be completed by the limitation date. The rules shall not permit additional exemptions from civil service recruitment procedures for the same position when the position will be filled for a duration that would be sufficient to recruit under civil service recruitment procedures and allow for completion of the required probation period.

(e) It is also the public policy of the State that all civil service positions be covered under the classification systems of the jurisdictions, unless the position was exempted from the classification systems by law prior to July 1, 2002 or based on reasons set forth in rules. The rules may include reasons for a temporary exemption of a position, such as the establishment of a new class is pending, or for a permanent exemption when the establishment of a class is impracticable.

(f) The exemption of a position from the classification systems, whether temporary or permanent, or an appointment with a limitation date shall not itself result in

an exemption from civil service recruitment procedures. Civil service recruitment procedures based on merit shall be followed for all positions unless exempted under subsection (b), (c), or (d). Applicants referred under civil service recruitment procedures shall be informed if the appointment has a limitation date or if the position is temporarily or permanently exempted from the classification systems.

(g) Each director shall be responsible for ensuring that all exemptions from civil service recruitment procedures or from the classification systems are consistent with this section. With respect to positions exempted under this section prior to July 1, 2002 by any other law, the director shall review these positions to determine whether the positions should continue to be exempt and if so, whether from civil service recruitment procedures or the classification systems, or both. If the director determines that a position should no longer be exempt from either or both based on the intent of this section, the director shall consult with the appropriate appointing authority and its chief executive on removing the exemptions. With the approval of the chief executive, the director shall take whatever action is necessary to remove the exemptions, including submittal of proposed legislation to remove the exemptions.

(h) The director shall establish rules to implement this section that shall be in accordance with the following:

- (1) Whenever a position exempted under subsection (b) or (c) is no longer exempted from the civil service, normal civil service recruitment procedures shall apply, unless the incumbent is to be retained without the necessity for examination by action of the legislature; provided that in such event, the incumbent shall be retained, but only if the incumbent meets the minimum qualification requirements of the position; and
- (2) The manner for setting the compensation of incumbents upon their inclusion in the classification systems shall be fair and equitable in comparison to the compensation of other incumbents with comparable experience in the same or essentially similar classes; provided that the compensation of incumbents who are in the same bargaining unit, prior to and after their inclusion in the classification systems, shall be in accordance with the applicable collective bargaining agreement.

(i) Employees in positions subject to civil service recruitment procedures shall be entitled to become and remain members of the civil service for the duration of their appointments as provided in section 76-27. Employees in positions exempted from civil service recruitment procedures shall not be entitled to membership in the civil service.

(j) Employees in positions that are exempted from the classification plan, whether temporarily or permanently, may be entitled to membership in the civil service as provided in subsection (i).

§171-2 Definition of public lands. "Public lands" means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including accreted lands not otherwise awarded, submerged lands, and lands beneath tidal

waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the State Constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the **Hawaii housing finance and development corporation** in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (9) Lands which are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
- (10) Lands which are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title; and
- (11) Lands to which the high technology development corporation in its corporate capacity holds title.

§206E-15 Residential projects; cooperative agreements. (a) If the authority deems it desirable to develop a residential project, it may enter into an agreement with qualified persons to construct, maintain, operate, or otherwise dispose of the residential project. Sale, lease, or rental of dwelling units in the project shall be as provided by the rules established by the authority. The authority may enter into cooperative agreements with the **Hawaii housing finance and development corporation** for the financing, development, construction, sale, lease, or rental of dwelling units and projects.

(b) The authority may transfer the housing fees collected from private residential developments for the provision of housing for residents of low- or moderate-income to the **Hawaii housing finance and development corporation** for the financing, development, construction, sale, lease, or rental of such housing within or without the community development districts. The fees shall be used only for projects owned by the State or owned or developed by a qualified nonprofit organization. For the purposes of

this section, "nonprofit organization" means a corporation, association, or other duly chartered organization registered with the State, which organization has received charitable status under the Internal Revenue Code of 1986, as amended.

§247-3 Exemptions. The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;
- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale;
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition;
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;

- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
- (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 414, 414D, 415A, 421, 421C, 425, 425E, or 428 to the surviving or new entity;
- (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership; and
- (17) Any document or instrument conveying real property to any nonprofit or for-profit organization that has been certified by the **Hawaii housing finance and development corporation** for low-income housing development.