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CHAPTER 206E
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

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PART I. GENERAL PROVISIONS

§206E-1 Findings and purpose. The legislature finds that many areas of the State are substantially undeveloped, blighted, or economically depressed, and are or are potentially in need of renewal, renovation, or improvement to alleviate such conditions as dilapidation, deterioration, age, and other such factors or conditions which make such areas an economic or social liability.

The legislature further finds that there exists within the State vast, unmet community development needs. These include, but are not limited to, a lack of suitable affordable housing; insufficient commercial and industrial facilities for rent; residential areas which do not have facilities necessary for basic liveability, such as parks and open space; and areas which are planned for extensive land allocation to one, rather than mixed uses.

It is further determined that the lack of planning and coordination in such areas has given rise to these community development needs and that existing laws and public and private mechanisms have either proven incapable or inadequate to facilitate timely redevelopment and renewal.

The legislature finds that a new and comprehensive authority for community development must be created to join the strengths of private enterprise, public development and regulation into a new form capable of long-range planning and implementation of improved community development. The purpose of this chapter is to establish such a mechanism in the Hawaii community development authority, a public entity which shall determine community development programs and cooperate with private enterprise and the various components of federal, state, and county governments in bringing plans to fruition. For such areas designated as community development districts, the legislature believes that the planning and implementation program of the Hawaii community development authority will result in communities which serve the highest needs and aspirations of Hawaii's people.

The legislature finds that the creation of the Hawaii community development authority, the establishment of community development districts, and the issuance of bonds pursuant to this chapter to finance public facilities serve the public interest and are matters of

statewide concern. [L 1976, c 153, pt of §1; am L 1985, c 38, §1; am L 1993, c 311, §3]

§206E-2 Definitions. As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

(1) "Authority" means the Hawaii community development authority established by section 206E-3.

(2) "County" means any county of the State.

(3) "Local governing body" means the county council.

(4) "Project" means a specific work or improvement, including real and personal properties, or any interest therein, acquired, owned, constructed, reconstructed, rehabilitated, or improved by the authority, including a residential project, a redevelopment project, or a commercial project, all as defined herein, or any combination thereof, which combination shall hereinafter be called and known as a "multipurpose project".

(A) "Residential project" means a project or that portion of a multipurpose project, including residential dwelling units, designed and intended for the purpose of providing housing and such facilities as may be incidental or appurtenant thereto;

(B) "Redevelopment project" means an undertaking for the acquisition, clearance, replanning, reconstruction, and rehabilitation or a combination of these and other methods, of an area for a residential project, for an incidental commercial project, and for other facilities incidental or appurtenant thereto, pursuant to and in accordance with this chapter. The terms "acquisition, clearance, replanning, reconstruction, and rehabilitation" shall include renewal, redevelopment, conservation, restoration, or improvement, or any combination thereof;

(C) "Commercial project" means an undertaking involving commercial or light industrial development, which includes a mixed use development where commercial or light industrial facilities may be built into, adjacent to, under or above residential units.

(5) "Project cost" means the total of all costs incurred by the authority in carrying out all undertakings which it deems reasonable and necessary for the development of a project including but not limited to: studies; surveys; plans; specifications; architectural, engineering, or any other development related services; acquisition of land and any improvement thereon; site preparation and development; construction; reconstruction; rehabilitation; the necessary expenses in administering the chapter; the cost of financing the project; and relocation costs.

(6) "Public agency" means any office, department, board, commission, bureau, division, public corporation agency, or instrumentality of the federal, state, or county government.

(7) "Public facilities" includes streets, utility and service corridors, and utility lines where applicable, sufficient to adequately service developable improvements in the district, sites for schools, parks, parking garage, sidewalks, pedestrian ways, and other community facilities. "Public facilities" shall also include public highways, as defined by statute, storm drainage systems, water systems, street lighting systems, off-street parking facilities, and sanitary sewerage systems.

(8) "Qualified person" includes any individual, partnership, corporation or any public agency, possessing the competence, expertise, experience, and resources, including financial, personnel and tangible resources, required for the purposes of the project and such other qualifications as may be deemed desirable by the authority in administering the chapter.

(9) "Real property" means lands, structures, and interests in land, including lands under water and riparian rights, space rights, and air

rights and any and all other things and rights usually included within the term. Real property also means any and all interests in such property less than full title, such as easements, incorporeal hereditaments and every estate, interest, or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages, or otherwise. [L 1976, c 153, pt of §1; am L 1979, c 126, §1; am L 1982, c 228, §4; am L 1984, c 21, §1]

§206E-3 Hawaii community development authority; established. (a) There is established the Hawaii community development authority, which shall be a body corporate and a public instrumentality of the State, for the purpose of implementing this chapter. The authority shall be placed within the department of business, economic development, and tourism for administrative purposes.

(b) The authority shall consist of thirteen voting members. The director of finance, the director of business, economic development, and tourism, the comptroller, and the director of transportation, or their respective designated representatives shall serve as ex officio, voting members. One member shall be appointed by the governor from a list of not less than three prospective appointees submitted by the president of the senate, and one member shall be appointed by the governor from a list of not less than three prospective appointees submitted by the speaker of the house of representatives. Seven members shall be appointed by the governor for staggered terms pursuant to section 26-34; provided that four members shall be appointed at large and, initially, three members, hereinafter referred to as county members, shall be selected from a list of ten prospective appointees recommended by the local governing body of the county in which the initial designated district is situated; and provided further that when vacancies occur in any of the three positions for which the members were selected from a list of county recommendations, the governor shall fill such vacancies on the basis of one from a list of four recommendations, two from a list of seven recommendations, or three from a list of ten recommendations. The list of recommendations shall be made by the local governing body of the county. If an

additional district is designated by the legislature, the total membership of the authority shall be increased as prescribed above by the appointment of three additional members, except as provided for in section 206E-191. Notwithstanding section 92-15, a majority of all members shall constitute a quorum to do business, and the concurrence of a majority of all members shall be necessary to make any action of the authority valid; except that, on any matter relating solely to a specific community development district, the members representing districts other than that specific community development district shall neither vote, nor shall they be counted to constitute a quorum, and concurrence shall be required of a majority of that portion of the authority made up of all ex officio voting members, members at large, and county and district members representing the district for which action is being proposed in order for such action to be valid. All members shall continue in office until their respective successors have been appointed and qualified. Except as herein provided, no member appointed under this subsection shall be an officer or employee of the State or its political subdivisions.

(c) The authority shall appoint the executive director who shall be the chief executive officer. The authority shall set the salary of the executive director, who shall serve at the pleasure of the authority and shall be exempt from chapter 76.

(d) The authority shall annually elect the chairperson and vice chairperson from among its members.

(e) The members of the authority appointed under subsection (b) shall serve without compensation, but each shall be reimbursed for expenses, including travel expenses, incurred in the performance of their duties. [L 1976, c 153, pt of §1; am L 1983, c 180, §1; am L 1987, c 336, §7, c 339, §4, and c 355, §4; am L 1990, c 293, §8; am L 1993, c 311, §4; gen ch 1993; am L 2000, c 253, §150; am L 2002, c 184, §3]

§206E-4 Powers; generally. Except as otherwise limited by this chapter, the authority may:

(1) Sue and be sued;

(2) Have a seal and alter the same at pleasure;

(3) Make and execute contracts and all other instruments necessary or convenient for the

exercise of its powers and functions under this chapter;

(4) Make and alter bylaws for its organization and internal management;

(5) Make rules with respect to its projects, operations, properties, and facilities, which rules shall be in conformance with chapter 91;

(6) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76;

(7) Prepare or cause to be prepared a community development plan for all designated community development districts;

(8) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, clear, improve, and rehabilitate, and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same;

(9) Acquire or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities, including but not limited to streets, sidewalks, parks, schools, and other public improvements;

(10) By itself, or in partnership with qualified persons, acquire, reacquire, construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of or encumber any project, and in the case of the sale of any project, accept a purchase money mortgage in connection therewith; and repurchase or otherwise acquire any project which the authority has theretofore sold or otherwise conveyed, transferred, or disposed of;

(11) Arrange or contract for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, or other places, or for the furnishing of facilities or for the acquisition of property or property

rights or for the furnishing of property or services in connection with a project;

(12) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on such terms and conditions as it deems advisable;

(13) Prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time to modify such plans, specifications, designs, or estimates;

(14) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

(15) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;

(16) Contract for and accept gifts or grants in any form from any public agency or from any other source;

(17) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter; and

(18) Allow satisfaction of any affordable housing requirements imposed by the authority upon any proposed development project through the construction of reserved housing, as defined in section 206E-101, by a person on land located outside the geographic boundaries of the authority's jurisdiction. Such substituted housing shall be located on the same island as the development project and shall be substantially equal in value to the required reserved housing units that were to be developed on site. The authority shall establish the following priority in the development of reserved housing:

(A) Within the community development district;

(B) Within areas immediately surrounding the community development district;
(C) Areas within the central urban core;
(D) In outlying areas within the same island as the development project.

The Hawaii community development authority shall adopt rules relating to the approval of reserved housing that are developed outside of a community development district. The rules shall include, but are not limited to, the establishment of guidelines to ensure compliance with the above priorities. [L 1976, c 153, pt of §1; am L 1990, c 86, §6; am L 1997, c 359, §3; am L 2000, c 253, §150; am L 2002, c 184, §4]

§206E-5 Designation of community development districts; community development plans. (a) The legislature, by statute, may designate an area as a community development district if it determines that there is need for replanning, renewal, or redevelopment of that area. The designation shall describe the boundaries of the district.

(b) After designation, the authority shall develop a community development plan for the designated district. The plan shall include but not be limited to community development guidance policies, district-wide improvement program and community development rules.

(c) The authority may enter into cooperative agreements with qualified persons or public agencies, where the powers, services, and capabilities of such persons or agencies are deemed necessary and appropriate for the development of the community development plan.

(d) Whenever possible, planning activities of the authority shall be coordinated with federal, state and county plans. Consideration shall be given to state goals and policies, adopted state plan or land use guidance policies, county general plans, development plans, and ordinances.

(e) The authority shall hold a public hearing on a proposed community development plan pursuant to chapter 91 and, after consideration of comments received and appropriate revision, shall submit the community development plan to the governor for the governor's approval.

After approval, the governor shall submit to the legislature requests for appropriations, authorization to issue bonds, or both, to implement the community development plan in an orderly, affordable, and feasible manner. The governor shall submit the requests to the legislature as part of the executive budget or supplemental budget, as appropriate. In addition to the information, data, and materials required under chapter 37, the requests shall be accompanied by:

(1) Plans, maps, narrative descriptions, and other appropriate materials on the:
   (A) Locations and design of projects or public facilities proposed to be funded; and
   (B) Phase of the community development plans proposed to be implemented with the requested funds; and
(2) Other information deemed by the governor of significance to the legislature regarding the projects or public facilities proposed to be funded, including a discussion of the public benefits intended by, and adverse effects which may result from, implementation of the projects or public facilities.

(f) The authority may amend the community development plan as may be necessary. Amendments shall be made in accordance with chapter 91. [L 1976, c 153, pt of §1; gen ch 1985; am L 1987, c 355, §5]

NEW SECTION – IN ACCORDANCE TO ACT 251 (2006)

§206E-5.5 Community and public notice requirements; posting on the authority's website; required. (a) The authority shall adopt community and public notice procedures pursuant to chapter 91 that shall include at a minimum:

(1) A means to effectively engage the community in which the authority is planning a development project to ensure that community concerns are received and considered by the authority;
(2) The posting of the authority's proposed plans for development of community development districts, public hearing notices, and minutes of its proceedings on the authority's website; and

(3) Any other information that the public may find useful so that it may meaningfully participate in the authority's decision-making processes.

(b) The authority shall notify the president of the senate and speaker of the house:

(1) Of any public hearing upon posting of the hearing notice; and

(2) With a report detailing the public's reaction at the public hearing, within one week after the hearing.

NEW SECTION – IN ACCORDANCE TO ACT 251 (2006)

§206E-5.6 Public hearing for decision making; separate hearing required. (a) When rendering a decision regarding:

(1) An amendment to any of the authority's community development rules established pursuant to chapter 91 and section 206E-7; or

(2) The acceptance of a developer's proposal to develop lands under the authority's control,

the authority shall render its decision at a public hearing separate from the hearing that the proposal under paragraph (1) or (2) was presented.

(b) The authority shall issue a public notice in accordance with section 1-28.5 and post the notice on its website; provided that the decision-making hearing shall not occur earlier than five business days after the notice is posted. Prior to rendering a decision, the authority shall provide the general public with the opportunity to testify at its decision-making hearing.

(c) The authority shall notify the president of the senate and speaker of the house:

(1) Of any public hearing upon posting of the hearing notice; and

(2) With a report detailing the public's reaction at the public hearing, within one week after the hearing.

§206E-6 District-wide improvement program. (a) The authority shall develop a district-wide improvement program to identify necessary district-wide public facilities within a community development district.

(b) Whenever the authority shall determine to undertake, or cause to be undertaken, any public facility as part of the district-wide improvement program, the cost of providing the public facilities shall be assessed against the real property in the community development district specially benefiting from such public facilities. The authority shall determine the areas of the community development district which will benefit from the public facilities to be undertaken and, if less than the entire community development district benefits, the authority may establish assessment areas within the community development district. The authority may issue and sell bonds in such amounts as may be authorized by the legislature to provide funds to finance such public facilities. The authority shall fix the assessments against real property specially benefited. All assessments made pursuant to this section shall be a statutory lien against each lot or parcel of land assessed from the date of the notice declaring the assessment until paid and such lien shall have priority over all other liens except the lien of property taxes. As between liens of assessments, the earlier lien shall be superior to the later lien.

(c) Bonds issued to provide funds to finance public facilities shall be secured solely by the real properties benefited or improved, the assessments thereon, or by the revenues derived from the program for which the bonds are issued, including reserve accounts and earnings thereon, insurance proceeds, and other revenues, or any combination thereof. The bonds may be additionally secured by the pledge or assignment of loans and other agreements or any note or other undertaking, obligation, or property held by the authority. Bonds issued pursuant to this section and the income therefrom shall be exempt from all state and county taxation, except transfer and estate taxes. The bonds shall be issued according and subject to the provisions of the rules adopted pursuant to this section.

(d) Any other law to the contrary notwithstanding, in assessing real property for public facilities, the authority shall assess the real property within an assessment area according to the special benefits conferred upon the real property by the public facilities. These methods may include assessment on a frontage basis or according to the area of real property within an assessment area or any other assessment method

which assesses the real property according to the special benefit conferred, or any combination thereof. No such assessment levied against real property specially benefited as provided by this chapter shall constitute a tax on real property within the meanings of any constitutional or statutory provisions.

(e) The authority shall adopt rules pursuant to chapter 91, and may amend the rules from time to time, providing for the method of undertaking and financing public facilities in an assessment area or an entire community development district. The rules adopted pursuant to this section shall include, but are not limited to, the following: methods by which the authority shall establish assessment areas; the method of assessment of real properties specially benefited; the costs to be borne by the authority, the county in which the public facilities are situated, and the property owners; the procedures before the authority relating to the creation of the assessment areas by the owners of real property therein, including provisions for petitions, bids, contracts, bonds, and notices; provisions relating to assessments; provisions relating to financing, such as bonds, revolving funds, advances from available funds, special funds for payment of bonds, payment of principal and interest, and sale and use of bonds; provisions relating to funds and refunding of outstanding debts; and provisions relating to limitations on time to sue, and other related provisions.

(f) Any provisions to the contrary notwithstanding, the authority may, in its discretion, enter into any agreement with the county in which the public facilities are located, to implement all or part of the purposes of this section.

(g) All sums collected under this section shall be deposited in the Hawaii community development revolving fund established by section 206E-16; except that notwithstanding section 206E-16, all moneys collected on account of assessments and interest thereon for any specific public facilities financed by the issuance of bonds shall be set apart in a separate special fund and applied solely to the payment of the principal and interest on these bonds, the cost of administering, operating, and maintaining the program, the establishment of reserves, and other purposes as may be authorized in the proceedings providing for the issuance of the bonds. If any surplus remains in any special fund after the

payment of the bonds chargeable against such fund, it shall be credited to and become a part of the Hawaii community development revolving fund. Moneys in the Hawaii community development revolving fund may be used to make up any deficiencies in the special fund.

(h) If the public facilities to be financed through bonds issued by the authority may be dedicated to the county in which the public facilities are to be located, the authority shall ensure that the public facilities are designed and constructed to meet county requirements.

(i) Notwithstanding any law to the contrary, whenever as part of a district-wide improvement program it becomes necessary to remove, relocate, replace, or reconstruct public utility facilities, the authority shall establish by rule the allocation of cost between the authority, the affected public utilities, and properties that may specially benefit from such improvement, if any. In determining the allocation of cost, the authority shall consider the cost allocation policies for improvement districts established by the county in which the removal, relocation, replacement, or reconstruction is to take place. [L 1976, c 153, pt of §1; am L 1982, c 228, §5; am L 1984, c 20, §§1, 2; am L 1985, c 38, §2 and c 51, §1; am L 1986, c 4, §1 and c 105, §1; am L 1987, c 8, §1 and c 355, §6]

Note

Bond authorization increase. L 1994, c 149, §1

[§206E-7] Community development rules. The authority shall establish community development rules under chapter 91 on health, safety, building, planning, zoning, and land use which, upon final adoption of a community development plan, shall supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of land and construction thereon. Rules adopted under this section shall follow existing law, rules, ordinances, and regulations as closely as is consistent with standards meeting minimum requirements of good design, pleasant amenities, health, safety, and coordinated development. The authority may, in the community development plan or by a community development rule, provide that lands within a community development district shall not be developed beyond existing uses or that improvements

thereon shall not be demolished or substantially reconstructed, or provide other restrictions on the use of the lands. [L 1976, c 153, pt of §1]

[§206E-8] Use of public lands; acquisition of state lands. (a) Any provision of chapter 171 to the contrary notwithstanding, the governor may set aside public lands located within community development districts to the authority for its use.

(b) If state lands under the control and management of other public agencies are required by the authority for its purposes, the agency having the control and management of those required lands shall, upon request by the authority and with the approval of the governor, convey, or lease such lands to the authority upon such terms and conditions as may be agreed to by the parties.

(c) Notwithstanding the foregoing, no public lands shall be set aside, conveyed, or leased to the authority as above provided if such setting aside, conveyance, or lease would impair any covenant between the State or any county or any department or board thereof and the holders of bonds issued by the State or such county, department, or board. [L 1976, c 153, pt of §1]

§206E-8.5 Developments within special management areas and shoreline setback. (a) Notwithstanding chapter 205A, all requests for developments within a special management area and shoreline setback variances for developments on any lands within a community development district, for which a community development plan has been developed and approved in accordance with section 206E-5, shall be submitted to and reviewed by the lead agency as defined in chapter 205A. In community development districts for which a community development plan has not been developed and approved in accordance with section 206E-5, parts II and III of chapter 205A shall continue to be administered by the applicable county authority until a community development plan for the district takes effect.

(b) In the review of such requests, the lead agency shall conform to the following, as deemed appropriate:

(1) Applicable county rules adopted in accordance with section 205A-26 for the review of developments within a special management area,

except that paragraph (2)(C) of section 205A-26 shall not apply; and

(2) Part III of chapter 205A and applicable county rules for the review of developments within the shoreline setback.

(c) With the approval of the lead agency, the developments may be allowed without a special management area permit or shoreline setback variance as required by chapter 205A. [L 1990, c 86, §§5, 18; am L 1999, c 35, §1; am L 2002, c 208, §2]

[§206E-9] Acquisition of real property from a county. Notwithstanding the provision of any law or charter, any county, by resolution of its local governing body, may, without public auction, sealed bids, or public notice, sell, lease for a term not exceeding sixty-five years, grant or convey to the authority any real property owned by it which the authority certifies to be necessary for its purposes. The sale, lease, grant, or conveyance shall be made with or without consideration and upon such terms and conditions as may be agreed upon by the county and the authority. Certification shall be evidenced by a formal request from the authority. Before the sale, lease, grant, or conveyance may be made to the authority, a public hearing shall be held by the local governing body to consider the same. Notice of the hearing shall be published at least ten days before the date set for the hearing in such publication and in such manner as may be designated by such local governing body. [L 1976, c 153, pt of §1]

[§206E-10] Condemnation of real property. The authority upon making a finding that it is necessary to acquire any real property for its immediate or future use for the purposes of this chapter, may acquire the property by condemnation pursuant to chapter 101, including property already devoted to a public use. Such property shall not thereafter be taken for any other public use without the consent of the authority. No award of compensation shall be increased by reason of any increase in the value of real property caused by the designation of a community development district or plan adopted pursuant to a designation, or the actual or proposed acquisition, use or disposition of any other

real property by the authority. [L 1976, c 153, pt of §1]

§206E-10.5 Relocation. (a) Any provision of law to the contrary notwithstanding, the authority shall adopt rules pursuant to chapter 91 to insure the appropriate relocation within or outside the district of persons, families, and businesses displaced by governmental action within the district. The rules may include, but are not limited to, the establishment and operation of a central relocation office; relocation payments for actual moving costs; fixed payments for losses suffered; payments for replacement housing or business locations; relocation payments and loans to displaced businesses for certain costs related to the re-establishment of their business operations; and other similar relocation matters.

(b) The authority shall provide relocation assistance to persons, families, and businesses within the district that are displaced by private action; provided that such assistance shall not include any form of direct monetary payments except that the authority may make relocation loans to displaced businesses in accordance with rules adopted by the authority for the purposes of this section. Temporary relocation facilities within or outside the district may be made available to displacees; provided that those displaced by government action shall be afforded priority to the facilities. [L 1982, c 228, §3; am L 1984, c 21, §2; am L 1990, c 86, §10]

§206E-11 Construction contracts. The authority shall award construction contracts in conformity with the applicable provisions of chapter 103D. [L 1976, c 153, pt of §1; am L Sp 1993, c 8, §54]

§206E-12 Dedication for public facilities as condition to development. The authority shall establish rules requiring dedication for public facilities of land or facilities, or cash payments in lieu thereof, by developers as a condition of developing real property pursuant to the community development plan. Where state and county public facilities dedication laws, ordinances,

or rules differ, the provision for greater dedication shall prevail. [L 1976, c 153, pt of §1; am L 1984, c 15, §1]

[§206E-13] Public projects. Any project or activity of any county or agency of the State in a designated district shall be constructed, renovated, or improved in consultation with the authority. [L 1976, c 153, pt of §1]

§206E-14 Sale or lease of redevelopment projects. (a) The authority may, without recourse to public auction, sell, or lease for a term not exceeding sixty-five years, all or any portion of the real or personal property constituting a redevelopment project to any person, upon such terms and conditions as may be approved by the authority, if the authority finds that the sale or lease is in conformity with the community development plan.

(b) In the case of residential projects or redevelopment projects, the terms of the sale shall provide for the repurchase of the property by the authority at its option, in the event that the purchaser, if other than a state agency, desires to sell the property within ten years, provided that this requirement may be waived by the authority if the authority determines that a waiver will not be contrary to the community development plan. The authority shall establish at the time of original sale a formula setting forth a basis for a repurchase price based on market considerations including but not being limited to interest rates, land values, construction costs, and federal tax laws.

If the purchaser in a residential project is a state agency, the authority may include as a term of the sale a provision for the repurchase of the property in conformance with this section. [L 1976, c 153, pt of §1; am L 1985, c 49, §1]

§206E-15 Residential projects; cooperative agreements. *Section effective July 1, 2006.* (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 administration 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 administration 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. [L 1976, c 153, pt of §1; am L 1979, c 126, §2; am L 1987, c 337, §8; am L 1990, c 86, §7; am L 1997, c 350, §14; am L 2005, c 196, §26(b)]

[§206E-16] Hawaii community development revolving fund. There is created the Hawaii community development revolving fund into which all receipts and revenues of the authority shall be deposited. Proceeds from the fund shall be used for the purposes of this chapter. [L 1976, c 153, pt of §1]

[§206E-16.5] Expenditures of revolving funds under the authority exempt from appropriation and allotment. Except as to administrative expenditures, and except as otherwise provided by law, expenditures from any revolving fund administered by the authority may be made by the authority without appropriation or allotment of the legislature; provided that no expenditure shall be made from and no obligation shall be incurred against any revolving fund in excess of the amount standing to the credit of the fund or for any purpose for which the fund may not lawfully be expended. Nothing in sections 37-31

to 37-41 shall require the proceeds of any revolving fund administered by the authority to be reappropriated annually. [L Sp 1995, c 11, §4]

[§206E-17] Exemption from taxation. The authority shall not be required to pay assessments levied by any county, nor shall the authority be required to pay state taxes of any kind. [L 1976, c 153, pt of §1]

[§206E-18] Assistance by state and county agencies. Any state or county agency may render services upon request of the authority. [L 1976, c 153, pt of §1]

[§206E-19] Annual report. The authority shall submit to the governor and the legislature, at least twenty days prior to the start of any regular session, a complete and detailed report of its activities. [L 1976, c 153, pt of §1]

§206E-20 Court proceedings; preferences; venue. (a) Any action or proceeding to which the authority, the State, or the county may be a party, in which any question arises as to the validity of this chapter, shall be brought in the circuit court of the circuit where the case or controversy arises, and shall be heard and determined in preference to all other civil cases pending therein except election cases, irrespective of position on the calendar.

(b) Upon application of counsel to the authority, the same preference shall be granted in any action or proceeding questioning the validity of this chapter in which the authority may be allowed to intervene.

(c) Any action or proceeding to which the authority, the State, or the county may be a party, in which any question arises as to the validity of this chapter or any portion of this chapter, may be filed in the circuit court of the circuit where the case or controversy arises, which court is hereby vested with original jurisdiction over the action.

(d) Notwithstanding any provision of law to the contrary, declaratory relief may be obtained for the action.

(e) Any party aggrieved by the decision of the circuit court may appeal in accordance with part I of chapter 641 and the appeal shall be given priority. [L 1976, c 153, pt of §1; am L 1985, c 37, §1; am L 2001, c 251, §6]

[§206E-21] Issuance of bonds. The director of finance may, from time to time, issue general obligation bonds pursuant to chapter 39 in such amounts as may be authorized by the legislature, for the purposes of this chapter. [L 1976, c 153, pt of §1]

§206E-22 Violations and penalty. (a) The authority may set, charge, and collect reasonable fines for violation of this chapter or any rule adopted pursuant to chapter 91. Any person violating any of the provisions of this chapter or any rule adopted pursuant to chapter 91, for which violation a penalty is not otherwise provided, shall be fined not more than $500 a day and shall be liable for administrative costs incurred by the authority.

(b) The authority may maintain an action for an injunction to restrain any violation of the provisions of this chapter and may take any other lawful action to prevent or remedy any violation.

(c) Any person violating any provision of this chapter shall, upon conviction, be punished by a fine not exceeding $1,000 or by imprisonment not exceeding thirty days, or both. The continuance of a violation after conviction shall be deemed a new offense for each day of such continuance. [L 1982, c 228, §2; am L 1993, c 136, §1]

PART II. KAKAAKO COMMUNITY DEVELOPMENT DISTRICT

[§206E-31] Kakaako community development district; purposes. The legislature finds that:

(1) The Kakaako district is centrally located in Honolulu proper, in close proximity to the central business district, the government center, commercial, industrial and market facilities, major existing and contemplated transportation routes and recreational and service areas;

(2) Due to its present function as a service and light industrial area, the district is relatively underdeveloped and has especially in view of its proximity to the urban core where the pressure for all land uses is strong the potential for increased growth and development that can alleviate community needs such as low-income housing, parks and open space, and commercial and industrial facilities;

(3) The district, if not redeveloped or renewed, has the potential to become a blighted and deteriorated area. Due to its present economic importance to the State in terms of industry and subsequent employment, there is a need to preserve and enhance its value and potential;

(4) Kakaako has a potential, if properly developed and improved, to become a planned new community in consonance with surrounding urban areas.

In coordinating community development in the Kakaako district, the authority shall plan a mixed-use district whereby industrial, commercial, residential, and public uses may coexist compatibly within the same area.

The authority shall plan for the above uses, but shall also respect and support the present function of Kakaako as a major economic center, providing significant employment in such areas as light industrial, wholesaling, service, and commercial activity. [L 1976, c 153, pt of §1]

NEW SECTION – IN ACCORDANCE TO ACT 317, EFFECTIVE JULY 11, 2006.

§206E-31.5 Prohibitions. Anything contained in this chapter to the contrary notwithstanding, the authority is prohibited from:

(1) Selling or otherwise assigning the fee simple interest in any lands in the Kakaako community development district to which the authority in its corporate capacity holds title, except with respect to:
   (A) Utility easements;
   (B) Remnants as defined in section 171-52;
   (C) Grants to any state or county department or agency; or
   (D) Private entities for purposes of any easement, roadway, or infrastructure improvements; or

(2) Approving any plan or proposal for any residential development in that portion of the Kakaako community development district makai of Ala Moana boulevard and between Kewalo basin and the foreign trade zone.

§206E-32 District; established, boundaries. The Kakaako community development district is established. The district shall include that area bounded by King Street; Piikoi Street from its intersection with King Street to Ala Moana Boulevard; Ala Moana Boulevard, inclusive, from Piikoi Street to its intersection with the Ewa boundary of Ala Moana Park also identified as the Ewa boundary of tax map key 2-3-37:01; the Ewa boundary of tax map key 2-3-37:01 from its intersection with Ala Moana Boulevard to the shoreline; the shoreline from its intersection with the property line representing the Ewa boundary of property identified by tax map key 2-3-37:01 to the property line between Pier 2 and Pier 4; the property line between Pier 2 and Pier 4 from its intersection with the shoreline to Ala Moana Boulevard; Ala Moana Boulevard from its intersection with the property line between lands identified by Pier 2 and Pier 4 to Punchbowl Street; and Punchbowl Street to its intersection with King Street; provided that the following parcels at Pier 1 and Pier 2 shall be deleted from the Kakaako community development district

boundaries and conveyed to the department of land and natural resources to be set aside for the department of transportation and the foreign trade zone division of the department of business, economic development, and tourism, to ensure continued maritime and foreign commerce use: all of lot 3 and parcels 2, 3-A, A, and B of the Forrest Avenue subdivision, as shown on the map filed with the bureau of conveyance of the State of Hawaii as file plan 2335; and lots A-1 and A-2, as shown on map 2, filed in the office of the assistant registrar of the land court of the State of Hawaii with land court application 1328; and provided further that all existing easements affecting and appurtenant to the parcels to be deleted from the Kakaako community development district boundaries shall not be affected by this change.

The district shall also include that parcel of land identified by tax map key 2-1-14:16, situated mauka of Pier 6 and Pier 7 and makai of Nimitz Highway, being the site for the existing Hawaiian Electric power plant and related facilities. [L 1976, c 153, pt of §1; am L 1982, c 228, §6; am L 1987, c 355, §2; am L 1990, c 86, §4]

§206E-33 Kakaako community development district; development guidance policies. The following shall be the development guidance policies generally governing the authority's action in the Kakaako community development district:

(1) Development shall result in a community which permits an appropriate land mixture of residential, commercial, industrial, and other uses. In view of the innovative nature of the mixed use approach, urban design policies should be established to provide guidelines for the public and private sectors in the proper development of this district; while the authority's development responsibilities apply only to the area within the district, the authority may engage in any studies or coordinative activities permitted in this chapter which affect areas lying outside the district, where the authority in its discretion decides that those activities are necessary to implement the intent of this chapter. The studies or coordinative activities shall be limited to facility systems, resident and

industrial relocation, and other activities with the counties and appropriate state agencies. The authority may engage in construction activities outside of the district; provided that such construction relates to infrastructure development or residential or business relocation activities; provided further, notwithstanding section 206E-7, that such construction shall comply with the general plan, development plan, ordinances, and rules of the county in which the district is located;

(2) Existing and future industrial uses shall be permitted and encouraged in appropriate locations within the district. No plan or implementation strategy shall prevent continued activity or redevelopment of industrial and commercial uses which meet reasonable performance standards;

(3) Activities shall be located so as to provide primary reliance on public transportation and pedestrian facilities for internal circulation within the district or designated subareas;

(4) Major view planes, view corridors, and other environmental elements such as natural light and prevailing winds, shall be preserved through necessary regulation and design review;

(5) Redevelopment of the district shall be compatible with plans and special districts established for the Hawaii Capital District, and other areas surrounding the Kakaako district;

(6) Historic sites and culturally significant facilities, settings, or locations shall be preserved;

(7) Land use activities within the district, where compatible, shall to the greatest possible extent be mixed horizontally, that is, within blocks or other land areas, and vertically, as integral units of multi- purpose structures;

(8) Residential development may require a mixture of densities, building types, and configurations in accordance with appropriate urban design guidelines; integration both vertically and horizontally of residents of varying incomes, ages, and family groups; and

an increased supply of housing for residents of low- or moderate-income may be required as a condition of redevelopment in residential use. Residential development shall provide necessary community facilities, such as open space, parks, community meeting places, child care centers, and other services, within and adjacent to residential development;

(9) Public facilities within the district shall be planned, located, and developed so as to support the redevelopment policies for the district established by this chapter and plans and rules adopted pursuant to it. [L 1976, c 153, pt of §1; am L 1978, c 119, §1; am L 1982, c 228, §7; am L 1990, c 86, §8]

[§206E-34 Cultural public market.] (a) There shall be established within the Hawaii community development authority a state cultural public market.

(b) The cultural public market shall be located on state land within the Kakaako Makai area and developed pursuant to sections 206E-31, 206E-32, and 206E-33. A public parking lot shall be included.

(c) The Hawaii community development authority shall:

(1) Designate and develop the state-owned land for the cultural public market;

(2) Accept, for consideration, input regarding the establishment of the cultural public market from the following departments and agencies:

(A) The department of agriculture;

(B) The department of business, economic development, and tourism;

(C) The department of land and natural resources;

(D) The department of labor and industrial relations; and

(E) The Hawaii tourism authority;

(3) Consider and determine the propriety of using public-private partnerships in the development and operation of the cultural public market;

(4) Develop, distribute, and accept requests for proposals from private entities for plans to develop and operate the cultural public market; and

(5) Ensure that the Hawaiian culture is the featured culture in the cultural public market.

(d) Requests for proposals for the cultural public market shall contemplate but not be limited to the inclusion of the following types of facilities and services:

(1) Retail outlets for ethnically diverse products;

(2) Venues for businesses with ethnic themes, including restaurants and other service-related businesses;

(3) Theaters, stages, and arenas designed to showcase cultural performing artists as well as community performing arts;

(4) Exhibition space or museums that showcase artwork created by international and local artists; and

(5) Museums or other educational facilities focusing on the history and cultures of the various ethnic groups within Hawaii, including Hawaiian history. [L 2005, c 231, §2]

PART III. RESERVED HOUSING LOAN PROGRAMS

§206E-101 Definitions. The following words or terms as used in this part shall have the following meanings, unless a different meaning clearly appears from the context:

"Authority" means the Hawaii community development authority.

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

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

(2) Meets other qualifications as established by rules adopted by the authority.

"Eligible loan" means a loan to an eligible borrower for the purchase of a reserved housing unit; provided that the property financed is located in the community development district, is and will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the authority.

"Mortgage lender" means any bank, trust company, savings bank, national banking association, savings and

loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, which:

(1) Is authorized to do business in the State;

(2) Customarily provides service or otherwise aids in the financing of mortgages on single family or multi-family residential property; and

(3) Is a financial institution whose accounts are federally insured, or is an institution which is an approved mortgagee for the Federal Housing Administration, or is an approved lender for the Veterans Administration or the United States Department of Agriculture, or is an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Mortgage Corporation.

"Reserved housing" means housing designated for residents in the low- or moderate-income ranges who meet such eligibility requirements as the authority may adopt by rule.

"Reserved housing loan programs" includes all or any part of the loan to lenders program, the purchase of existing loans program, the advance commitments program, and the eligible loan and eligible project loan funding program authorized under this part.

"Revenue bonds" means bonds, notes, or other evidence of indebtedness of the authority issued to finance any of the reserved housing loan programs under this part.

"Trustee" means a national or state bank or trust company within or without the State which enters into a trust indenture.

"Trust indenture" means an agreement by and between the authority and the trustee, which sets forth the duties of the trustee with respect to the revenue bonds, the security therefor, and other provisions as deemed necessary or convenient by the authority to secure the revenue bonds. [L 1982, c 228, pt of §8; am L 1997, c 258, §12]

§206E-102 Rules; eligible loans. (a) The authority shall establish requirements for reserved housing units financed by an eligible loan, and may consider, but not be limited to the location, age,

condition, and other characteristics of the reserved housing units.

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

(c) All eligible loans made shall comply with applicable state and federal laws. [L 1982, c 228, pt of §8]

§206E-103 Revenue bonds; authorization. (a) The authority, with the approval of the governor, may issue from time to time revenue bonds in amounts not exceeding the total amount of bonds authorized by the legislature for the purpose of undertaking and maintaining any of the reserved housing loan programs.

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

(c) The revenue bonds shall be issued in the name of the authority, and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding forty years from the date of issuance. [L 1982, c 228, pt of §8]

§206E-104 Revenue bonds; payment and security. (a) The revenue bonds shall be payable from and secured by the revenues derived from the benefits of the reserved housing loan programs for which the revenue bonds are issued, including:

(1) Any payment made for eligible loans or eligible project loans or other agreements entered into for the reserved housing loan programs;
(2) Revenues derived from insurance proceeds;
(3) Reserve accounts and earnings thereon; and
(4) Revenues resulting from loans to mortgage lenders or from the payment on account of principal of and interest on loans purchased from mortgage lenders.

(b) The authority may pledge any revenue derived from the reserved housing loan programs financed from the proceeds of the revenue bonds to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other

agreements or any note or other undertaking, obligation, or property held by the authority to secure the loans.

(d) Any pledge made by the authority shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the authority from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon such filing, the revenues, moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be prior to the lien of all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. [L 1982, c 228, pt of §8]

§206E-105 Revenue bonds; interest rate, price, and sale. (a) The revenue bonds shall bear interest at a rate or rates payable monthly, quarterly, or semi-annually.

(b) The authority shall include the costs of undertaking and maintaining the reserved housing loan programs for which the revenue bonds are issued in determining the cost of undertaking and maintaining the reserved housing loan programs, the authority may include the cost of purchasing or funding loans or other agreements entered into for the reserved housing loan programs; the costs of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and marketing services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period not to exceed one year from the date of issuance.

(c) The revenue bonds may be sold at public or private sale, and for a price as may be determined by the authority to be in the best interest of the State.

(d) Section 39-65 shall not apply to revenue bonds issued for the purpose of undertaking and maintaining any of the reserved housing loan programs as permitted by this part. The legislature consents to the taxation by the United States of interest on revenue bonds issued for the purpose of undertaking and maintaining any of the

reserved housing loan programs as permitted by this part. [L 1982, c 228, pt of §8]

Revision Note

Section "39-65" substituted for "39-61".

§206E-106 Revenue bonds; investment of proceeds, and redemption. Subject to any agreement with the holders of its revenue bonds, the authority may:

(1) Notwithstanding any other law to the contrary, invest its moneys not required for immediate use, including proceeds from the sale of any revenue bonds, in any investment in accordance with procedures prescribed in a trust indenture;

(2) Purchase its revenue bonds out of any fund or money of the authority available therefor, and hold, cancel, or resell the revenue bonds. [L 1982, c 228, pt of §8]

§206E-107 Trustee; designation, duties. (a) The authority shall designate a trustee for each issue of revenue bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the authority to receive and receipt for, hold, and administer the proceeds of the revenue bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the authority to hold and administer the reserved housing loan program revenue bond special fund established pursuant to section 206E-109, and to receive and receipt for, hold, and administer the revenues derived by the authority from the benefits of the reserved housing loan program for which the revenue bonds are issued and to apply these revenues to the payment of the cost of administering, operating, and maintaining the reserved housing loan programs, to pay the principal of and interest on these bonds, to the establishment of reserves, and to other purposes as may be authorized in the proceedings providing for the issuance of the revenue bonds.

(d) Notwithstanding section 39-68, the director of finance may appoint the trustee to serve as fiscal agent for:

(1) The payment of the principal of and interest on the revenue bonds; and

(2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the director of finance in sections 36-3 and 39-13, and the third sentence of section 39-68, to appoint the trustee or others as fiscal agents, paying agents and registrars for the revenue bonds or to authorize and empower those fiscal agents and registrars to perform the functions referred to in those sections. [L 1982, c 228, pt of §8]

Revision Note

Section "39-68" substituted for "39-65". "39-13" substituted for "39-12".

§206E-108 Trust indenture. (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as deemed necessary or convenient by the authority for the purposes of this part.

(b) A trust indenture may allow the authority to pledge and assign to the trustee loans and other agreements related to the reserved housing loan programs, and the rights of the authority thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any revenue bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the revenue bonds required by section 39-56 may be facsimiles of their signatures.

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

(1) The investment of the proceeds of the revenue bonds, the investment of any reserve for the bonds, the investment of the revenues of the reserved housing loan programs, and the use and application of the earnings from investments; and

(2) The terms and conditions upon which the holders of the revenue bonds or any portion of them or any trustee thereof may institute proceedings for the foreclosure of any loan or other agreement or any note or other undertaking, obligation or property securing the payment of the bonds and the use and application of the moneys derived from the foreclosure.

(e) A trust indenture may also contain provisions deemed necessary or desirable by the authority to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the reserved housing loan programs or in the financing of the costs of administering, operating, or maintaining such reserved housing loan programs. [L 1982, c 228, pt of §8]

Revision Note

Section "39-56" substituted for "39-64".

§206E-109 REPEALED. L 2002, c 178, §11.

§206E-110 Reserved housing loan programs; procedures and requirements. (a) The authority shall establish procedures for:

(1) The submission of requests or the invitation of proposals for loans to mortgage lenders;

(2) The purchase of existing loans by auction, invitation of tenders, or negotiation;

(3) The making of advance commitments to purchase and the purchasing of eligible loans or eligible project loans to be made by mortgage lenders by auction, invitation of tenders, or negotiation; and

(4) Loan applications made through mortgage lenders to eligible borrowers or qualified sponsors.

(b) The authority shall establish standards and requirements for:

(1) The allocation of loans to mortgage lenders;

(2) The allocation of funds to purchase existing loans from mortgage lenders;

(3) The making of advance commitments and allocation of funds to purchase eligible loans or eligible project loans from mortgage lenders; and

(4) The participation by mortgage lenders as originators and processors of eligible loans or eligible project loans on behalf of the authority.

(c) The standards and requirements for the allocation of funds to mortgage lenders adopted by the authority shall be designed to include the maximum number of qualified mortgage lenders as participants in the reserved housing loan programs.

(d) The authority may adopt rules necessary or convenient for the operation of the reserved housing loan programs under this part. [L 1982, c 228, pt of §8]

§206E-111 Reserved housing loan programs; general powers. (a) The authority may make, enter into, and enforce all contracts or agreements which are necessary, convenient, or desirable for the purpose of the performance of its duties in executing the reserved housing loan programs.

(b) The authority may require representations and warranties as it determines necessary to secure its loans. [L 1982, c 228, pt of §8]

§206E-112 Reserved housing loan programs; self supporting. The interest rate, fees, charges, premiums, and other terms of the loans made under the reserved housing loan programs shall be at least sufficient to pay the cost of administering and maintaining the portion of the specific reserved housing loan programs for which the revenue bonds have been issued, and to assure payment of the principal of and interest on the revenue bonds as they become due. [L 1982, c 228, pt of §8]

§206E-113 Reserved housing loan programs; fees. The authority may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, for its reserved housing loan programs.

The fees, premiums, and charges shall be deposited into the reserved housing loan program revenue bond special fund established for the particular reserved housing loan program or part thereof from which the fees, premiums and charges are derived as determined by the authority. [L 1982, c 228, pt of §8]

§206E-114 Reserved housing loan programs; evidence of eligible loan or eligible project loan. (a) Each mortgage lender who participates in any reserved housing loan program shall submit evidence, as deemed satisfactory by the authority, that eligible loans or eligible project loans have been made from the proceeds of the revenue bonds.

(b) The authority may inspect the books and records of the mortgage lenders as may be necessary for this section. [L 1982, c 228, pt of §8]

§206E-115 Loans to lenders program. (a) The authority may make loans to mortgage lenders under terms and conditions requiring that the loan proceeds be used within a time period prescribed by the authority to make eligible loans in an aggregate principal amount substantially equal to the amount of the loan.

(b) The loan made to a mortgage lender shall be a general obligation of the respective mortgage lender.

(c) The loan as determined by the authority shall:

(1) Bear a date or dates;

(2) Mature at a time or times;

(3) Be evidenced by a note, bond or other certificate of indebtedness;

(4) Contain other provisions consistent with this part.

(d) Subject to any agreement with the holders of its revenue bonds, the authority may consent to any modification to the rate of interest, time, and payment of any installment of principal or interest, security or any other term of any loan to a mortgage lender or any bond, note, contract, or agreement of any kind to which the authority is a party. [L 1982, c 228, pt of §8]

§206E-116 Loan to lenders program; collateral security. (a) Loans made to mortgage lenders shall be

additionally secured by a pledge of a lien upon collateral security in an amount as the authority deems necessary to assure the payment of principal of and interest on the loans as they become due.

(b) The authority shall determine the nature and type of collateral security required.

(c) A statement designating the collateral security pledged, the mortgage lender pledging the collateral, and the authority's interest in the pledged collateral may be filed with the bureau of conveyances. Where a statement has been filed, no possession, further filing, or other action under any state law shall be required to perfect any security interest which may be deemed to have been created in favor of the authority. The mortgage lender shall be deemed the trustee of an express trust for the benefit of the authority in all matters relating to the pledged collateral.

(d) Subject to any agreement with the holders of its revenue bonds, the authority may collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders. The authority may acquire, take possession, sell at public or private sale with or without bidding, or otherwise deal with the collateral to protect its interests. [L 1982, c 228, pt of §8]

§206E-117 Purchase of existing loans program. (a) The authority may contract with a mortgage lender to purchase, in whole or in part, existing loans, whether or not eligible loans. The contract may contain provisions as determined by the authority to be necessary or appropriate to provide security for its revenue bonds, including but not limited to provisions requiring the:

(1) Repurchase of the loans, in whole or in part, by mortgage lenders at the option of the authority;

(2) Payments of premiums, fees, charges, or other amounts by mortgage lenders to provide a reserve or escrow fund for the purposes of protecting against loan defaults; and

(3) Guarantee by, or for recourse against, mortgage lenders, with respect to defaults on these loans of the authority.

(b) The authority shall require as a condition of each purchase of existing loans from a mortgage lender

that the mortgage lender proceed to make and disburse eligible loans in an aggregate principal amount substantially equal to the amount of the proceeds from the purchase by the authority of loans therefrom. [L 1982, c 228, pt of §8]

§206E-118 Advance commitments program. (a) The authority may contract with a mortgage lender for the advance commitment to purchase eligible loans or eligible project loans.

(b) The contract may contain provisions as determined by the authority to be necessary or appropriate to provide security for its revenue bonds. [L 1982, c 228, pt of §8]

§206E-119 Eligible loan and eligible project loan funding program. (a) The authority may contract with mortgage lenders to fund eligible loans or eligible project loans.

(b) The contract may contain provisions as determined by the authority to be necessary or appropriate to provide security for its revenue bonds. [L 1982, c 228, pt of §8]

§206E-120 Loans; service and custody. The authority may contract for the service and custody of its loans. The contract may provide for the payment of fees or charges for the services rendered; provided that the fees or charges shall not exceed the usual, customary, and reasonable charges for the services rendered. [L 1982, c 228, pt of §8]

§206E-121 Loans; sale, pledge, or assignment. (a) Subject to any agreement with the holders of its revenue bonds, the authority may sell its loans at public or private sale at a price and upon terms and conditions as it determines.

(b) Subject to any agreement with the holders of its revenue bonds, the authority may pledge or assign its loans, other agreements, notes, or property to secure the loans or agreements. [L 1982, c 228, pt of §8]

§206E-122 Loans; insurance and guarantees. The authority may procure insurance or guarantees against any default of its loans, in amounts and from insurers or guarantors, as it deems necessary or desirable. [L 1982, c 228, pt of §8]

§206E-123 Loans; default. The authority may renegotiate, refinance, or foreclose any loan in default.

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

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

The authority may bid for and purchase the property secured by the loan at any foreclosure or other sale, or acquire or take possession of the property secured by the loan.

The authority may operate, manage, lease, dispose of, or otherwise deal with the property secured by the loan. [L 1982, c 228, pt of §8]

PART IV. REVENUE BONDS FOR PUBLIC FACILITY PROJECTS

§206E-151 Findings and declarations. The legislature finds and declares that the health, safety, and general welfare of the people of the State require that every opportunity be taken to assist the redevelopment of community development districts; that the redevelopment and revitalization of these districts will alleviate community needs for employment, housing, parks, open space, and commercial and industrial facilities; that a significant deterrent to redevelopment is the cost of public facilities; that interest rates on moneys necessary to finance such public facilities add significantly to the cost of such facilities and that more favorable interest rates would be available through the issuance of tax-exempt bonds; and that the availability of revenue bonds to finance the cost of public facilities will facilitate redevelopment of community development districts.

The legislature further finds that the powers conferred, the issuance of revenue bonds, and the expenditure of public moneys under this part constitute a

serving of a valid public purpose, and that this enactment is in the public interest and is so declared as an express legislative determination. [L 1985, c 268, pt of §1; am L 1993, c 311, §5]

§206E-152 Definitions. The following words or terms as used in this part shall have the following meanings, unless a different meaning clearly appears from the context:

"Revenue bonds" means bonds, notes, or other evidence of indebtedness of the authority issued to finance any public facility under this part.

"Trustee" means a national or state bank or trust company within or without the State which enters into a trust indenture.

"Trust indenture" means an agreement by and between the authority and the trustee, which sets forth the duties of the trustee with respect to the revenue bonds, the security thereof, and other provisions as deemed necessary or convenient by the authority to secure the revenue bonds. [L 1985, c 268, pt of §1]

Revision Note

Definitions rearranged.

§206E-153 Revenue bonds; authorization. (a) The authority, with the approval of the governor, may issue from time to time revenue bonds in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for the purpose of constructing, acquiring, remodeling, furnishing, and equipping any public facility, including acquisition of the site thereof.

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

(c) The revenue bonds under this part are declared to be issued for a public purpose and, together with interest thereon, shall be exempt from all state and county taxation except estate and transfer taxes. The legislature consents to federal income taxation of interest on revenue bonds issued under this part, if it is determined by the authority that such issuance is in the best interest of the State.

(d) The revenue bonds shall be issued in the name of the authority and not in the name of the State. The

final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance. [L 1985, c 268, pt of §1; am L 1987, c 138, §1]

§206E-154 Revenue bonds; payment and security. (a) The revenue bonds shall be payable from and secured by the revenues derived from the public facility for which the revenue bonds are issued, including revenue derived from insurance proceeds and reserve accounts and earnings thereon.

(b) The authority may pledge revenues derived from the public facility financed from the proceeds of the revenue bonds to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any note or other undertaking, obligation, or property held by the authority to secure the loans.

(d) Any pledge made by the authority shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the authority from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon such filing, the revenues, moneys, or property so pledged thereafter received by the authority shall immediately be subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be prior to the lien of all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this part. [L 1985, c 268, pt of §1]

§206E-155 Revenue bonds; interest rate, price, and sale. (a) The revenue bonds shall bear interest at a rate or rates payable monthly, quarterly, or semi-annually.

(b) The authority shall include the costs of undertaking the public facility for which the revenue bonds are issued in determining the principal amount of revenue bonds to be issued. In determining the cost of undertaking the public facility, the authority may include the cost of constructing, acquiring, remodeling, furnishing, and equipping the public facility, including acquisition of the site thereof; the cost of purchasing or funding loans or other agreements entered into for the public facility; the costs of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and marketing services incurred; reserve account, trustee, custodian, and rating agency fees; and any capitalized interest.

(c) The revenue bonds may be sold at public or private sale, and for a price as may be determined by the authority to be in the best interest of the State. [L 1985, c 268, pt of §1]

§206E-156 Revenue bonds; investment of proceeds, and redemption. Subject to any agreement with the holders of its revenue bonds, the authority may:

(1) Invest its moneys not required for immediate use, including proceeds from the sale of revenue bonds, in any investment in accordance with procedures prescribed in a trust indenture; and

(2) Purchase its revenue bonds out of any fund or money of the authority available therefor, and hold, cancel, or resell the revenue bonds. [L 1985, c 268, pt of §1]

§206E-157 Revenue bonds; special funds. (a) A separate special fund shall be established for each public facility financed from the proceeds of the revenue bonds secured under the same trust indenture. Each fund shall be designated "public facility revenue bond special fund" and shall bear additional designation as the authority deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, including particularly section 206E-16, all revenues, income, and receipts derived from the public facility for which the revenue bonds are issued shall be paid into the

public facility revenue bond fund established for that public facility and applied as provided in the proceedings authorizing the issuance of the revenue bonds. [L 1985, c 268, pt of §1]

§206E-158 Trustee; designation, duties. (a) The authority shall designate a trustee for each issue of revenue bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the authority to receive and receipt for, hold, and administer the proceeds of the revenue bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the authority to hold and administer the public facility revenue bond special fund established pursuant to section 206E-157, and to receive and receipt for, hold, and administer the revenues derived by the authority from the public facility for which the revenue bonds are issued and to apply these revenues to the payment of the cost:

(1) Of undertaking the public facility;

(2) Of administering and operating the proceedings providing for the issuance of the revenue bonds;

(3) To pay the principal or interest on these bonds;

(4) To the establishment of reserves; and

(5) To other purposes as may be authorized in the proceedings providing for the issuance of the revenue bonds.

(d) Notwithstanding section 39-68, the director of finance may appoint the trustee to serve as fiscal agent for:

(1) The payment of the principal of and interest on the revenue bonds; and

(2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the revenue bonds and coupons

which have been paid and the supervision of the destruction thereof in accordance with law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the director of finance in sections 36-3 and 39-13, and the third sentence of section 39-68, to appoint the trustee or others as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections. [L 1985, c 268, pt of §1]

Revision Note

Section "206E-157" substituted for "206E-156". Section "39-68" substituted for "39-65". Section "39-13" substituted for "39-12".

§206E-159 Trust indenture. (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as deemed necessary or convenient by the authority for the purposes of this part.

(b) A trust indenture may allow the authority to pledge and assign to the trustee loans and other agreements related to the public facility, and the rights of the authority thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any revenue bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the revenue bonds required by section 39-56 may be facsimiles of their signatures.

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

(1) The investment of the proceeds of the revenue bonds, the investment of any reserve for the bonds, the investment of the revenues of the public facility, and the use and application of the earnings from investments; and

(2) The terms and conditions upon which the holders of the revenue bonds or any portion of them or any trustee thereof may institute proceedings for the foreclosure of any loan or other agreement or any note or other undertaking,

obligation, or property securing the payment of the bonds and the use and application of the moneys derived from the foreclosure.

(e) A trust indenture may also contain provisions deemed necessary or desirable by the authority to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the financing of the costs of undertaking the public facility. [L 1985, c 268, pt of §1]

Revision Note

Section "39-56" substituted for "39-64".

PART V. HAMAKUA COMMUNITY DEVELOPMENT DISTRICT—REPEALED

§§206E-171 to 173 REPEALED. L 2002, c 208, §3.

[PART VI.] SPECIAL FACILITY PROJECTS

Note

Grants for projects; exemption from chapter 42F. L 2001, c 180, §4.

[§206E-181] Definitions. For the purpose of this part, if not inconsistent with the context:

"Special facility" means one or more buildings or structures and the land thereof for the construction of facilities that provides benefits to the community at large including, without limitation, an ocean science center that incorporates research and education programs and which is the subject of a special facility lease.

"Special facility lease" includes a contract, lease, or other agreement, or any combination thereof, the subject matter of which is the same special facility. [L 2001, c 180, pt of §2]

§206E-182 Powers. In addition and supplemental to the powers granted to the authority by law, the authority may:

(1) With the approval of the governor, enter into a special facility lease or an amendment or supplement thereto whereby the authority agrees to construct, acquire, or remodel and furnish

or equip a special facility solely for the use by another person to a special facility lease;

(2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield all or a portion of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility;

(3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds which may be issued as provided in paragraph (2);

(4) Perform and carry out the terms and provisions of any special facility lease;

(5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease;

(6) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition; and

(7) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person. [L 2001, c 180, pt of §2; am L 2004, c 216, §26]

[§206E-183] Findings and determination for special facility leases. The authority shall not enter into any special facility lease unless the authority at or prior to the entering into of such special facility lease shall find and determine that the entering into of such special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or

certificate authorizing any bonds of the authority then outstanding. [L 2001, c 180, pt of §2]

[§206E-184] Special facility lease. (a) In addition to the conditions and terms set forth in this part, any special facility lease entered into by the authority shall at least contain provisions obligating the other person to the special facility lease:

(1) To pay to the authority during the initial term of the special facility lease, whether the special facility is capable of being used or occupied or is being used or occupied by the other person, a rental or rentals at the time or times and in the amount or amounts that will be sufficient:
    (A) To pay the principal and interest on all special facility revenue bonds issued for the special facility;
    (B) To establish or maintain any reserves for these payments; and
    (C) To pay all fees and expenses of the trustees, paying agents, transfer agents, and other fiscal agents for the special facility revenue bonds issued for the special facility;
(2) To pay to the authority:
    (A) A ground rental, as determined by the authority, if the land on which the special facility is located was not acquired from the proceeds of the special facility revenue bonds; or
    (B) A properly allocable share of the administrative costs of the authority in carrying out the special facility lease and administering the special facility revenue bonds issued for the special facility, if the land was acquired from the proceeds of the special facility revenue bonds;
(3) To either operate, maintain, and repair the special facility and pay the costs thereof or to pay to the authority all costs of operation, maintenance, and repair of the special facility;

(4) To:

(A) Insure, or cause to be insured, the special facility under builder's risk insurance (or similar insurance) in the amount of the cost of construction of the special facility to be financed from the proceeds of the special facility revenue bonds;

(B) Procure and maintain, or cause to be procured or maintained, to the extent commercially available, a comprehensive insurance policy providing protection and insuring the authority and its officers, agents, servants, and employees (and so long as special facility revenue bonds are outstanding, the trustee) against all direct or contingent loss or liability for damages for personal injury or death or damage to property, including loss of use thereof, occurring on or in any way related to the special facility or occasioned by reason of occupancy by and the operations of the other person upon, in, and around the special facility;

(C) Provide all risk casualty insurance, including insurance against loss or damage by fire, lightning, flood, earthquake, typhoon, or hurricane, with standard extended coverage and standard vandalism and other malicious mischief endorsements; and

(D) Provide insurance for workers' compensation and employer's liability for personal injury or death or damage to property (the other party may self-insure for workers' compensation if permitted by law);

provided that all policies with respect to loss or damage of property including fire or other casualty and extended coverage and builder's risk shall provide for payments of the losses to the authority, the other person, or the trustee as their respective interests may appear; and provided further that the insurance may be procured and maintained as part of or in conjunction with other policies carried by the

other person; and provided further that the insurance shall name the authority, and so long as any special facility revenue bonds are outstanding, the trustee, as additional insured; and

(5) To indemnify, save, and hold the authority, the trustee and their respective agents, officers, members, and employees harmless from and against all claims and actions and all costs and expenses incidental to the investigation and defense thereof, by or on behalf of any person, firm, or corporation, based upon or arising out of the special facility or the other person's use and occupancy thereof, including, without limitation, from and against all claims and actions based upon and arising from any:

(A) Condition of the special facility;

(B) Breach or default on the part of the other person in the performance of any of the person's obligations under the special facility lease;

(C) Fault or act of negligence of the other person or the person's agents, contractors, servants, employees, or licensees; or

(D) Accident to, or injury or death of, any person or loss of, or damage to any property occurring in or about the special facility, including any claims or actions based upon or arising by reason of the negligence or any act of the other person.

Any moneys received by the authority pursuant to paragraphs (2) and (3) shall be paid into the Hawaii community development revolving fund and shall not be nor be deemed to be revenues of the special facility.

(b) The term and all renewals and extensions of the term of any special facility lease (including any amendments or supplements thereto) shall not extend beyond the lesser of the reasonable life of the special facility which is the subject of the special facility lease, as estimated by the authority at the time of the entering into thereof, or thirty years.

(c) Any special facility lease entered into by the authority shall contain any other terms and conditions