

ACT 58

A Bill for an Act Relating to Industrial Development Bonds.

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

SECTION 1. This Act is hereby declared to be an urgency measure deemed necessary in the public interest within the meaning of section 11 of Article III of the Constitution of the State of Hawaii.

The following is a statement of the facts constituting such urgency:

The State of Hawaii suffers from areas of chronic unemployment. Furthermore, the State is committed to a policy of aggressive development of the industrial base of the State. In order that local governments may exercise initiative in industrial development and may help themselves alleviate their unemployment problems, it is urgent to authorize them to issue industrial development bonds, while at the same time protecting the State against potential abuses from local issuance of industrial development bonds.

SECTION 2. The Revised Laws of Hawaii 1955, as amended, are hereby amended by adding thereto a new chapter to be appropriately designated and to read as follows:

"CHAPTER INDUSTRIAL DEVELOPMENT BONDS

Sec. . . .-1. Purpose. The purpose of this Act is to authorize the issuance of industrial development bonds by political subdivisions of the State, to provide technical assistance to political subdivisions which choose to issue such bonds, and to ensure that such issuance of industrial development bonds is placed under proper safeguards so that the fiscal integrity of the State and its political subdivisions is preserved, and so that the issuance of industrial development bonds contributes to the orderly industrial development of the State.

Sec. . . .-2. Definitions. As used in this Act:

(a) "Industrial development bond" means any general obligation or revenue bond issued by any political subdivision of the State for the purpose of financing the purchase or lease of land; the purchase or construction, including reconstruction, improvement, expansion, extension and enlargement, of buildings and appurtenances; and the purchase and installation of machinery, equipment or fixtures, when such purchases or leases are made primarily for sale or continuing lease to a private individual, partnership or corporation for use in connection with the operation of an industrial enterprise;

(b) "Political subdivision" means a county or other political sub-

division created by the legislature pursuant to Article VII, section 1, of the Constitution of the State of Hawaii;

(c) "Governing body" means the body, council or board charged with exercising the legislative authority of a political subdivision of the State; and

(d) "Department" means the department of planning and economic development.

Sec. . . .-3. Department authority. (a) The department may employ personnel necessary to carry out the provisions of this Act. The department is empowered to issue rules and regulations in accordance with chapter 6C and to require information necessary for the administration of this Act.

(b) All departments, divisions, boards, bureaus, commissions or other agencies of the State shall provide such assistance and information as the department may require to enable it to carry out its duties under this Act.

Sec. . . .-4. Certificate of convenience and necessity. No political subdivision may issue industrial development bonds without first having been issued a certificate of convenience and necessity therefor. Such certificate shall be issued by the department upon a petition of the governing body of the political subdivision proposing to issue industrial development bonds upon the department finding:

(a) That the political subdivision has a contract, approved by its governing body, with an individual, partnership or corporation to lease the property to be acquired with the proceeds of the industrial development bonds for occupancy and use in connection with the conduct of an industrial enterprise for a period of years, and for the lessee to pay an annual rental adequate to meet interest and principal payments falling due during the term of the lease;

(b) That the lessee of the property is a responsible party;

(c) That the contract for lease of the property provides for:

(1) The reasonable maintenance, less normal wear and tear, of the property by the lessee;

(2) Insurance to be carried on the property and the use and disposition of insurance moneys; and

(3) The rights of the political subdivision and the lessee respecting the disposition of the property financed by the proposed industrial development bonds upon retirement of the bonds or termination of the contract by expiration or failure to comply with any of the provisions thereof;

(d) In addition to the above, the contract may provide for the rights of the bondholders; the care and disposition of rental receipts; and such other safeguards as are deemed to be necessary by the department;

(e) That opportunities for employment are inadequate in the area from which the proposed industrial plan would reasonably draw its labor force and that there exists in that area a condition of substantial and persistent unemployment or underemployment;

(f) That the proposed project will provide employment having a reasonable relationship to the volume of the bonds issued as compared to investment per employee of comparable industrial facilities;

(g) That financing by banks, other financial institutions or other parties, of the property required by the lessee is not readily available to lessee on ordinary commercial terms in adequate amounts either on the local or the national market;

(h) That no portion of the proposed industrial development bond issues will be purchased by the lessee or any affiliate or subsidiary of the lessee at the time of the initial marketing;

(i) That the facility offered the lessee is intended to accommodate expansion of an enterprise located elsewhere or a new enterprise and not primarily the relocation of an existing facility;

(j) That adequate provision is being made to meet any increased demand upon community public facilities that might result from the proposed project; and

(k) That the issuance of the proposed bonds and the operation of the enterprise of the lessee will not disrupt the fiscal stability of the issuing political subdivision in the event it should become necessary for it to assume responsibility for payment of the interest and principal of the proposed development bonds.

Sec.-5. Procedure. (a) Within thirty days after a political subdivision files a petition, completed in accordance with the rules and regulations authorized by section 3 of this Act, the department shall upon due notice hold a hearing upon the petition. The department shall reasonably expedite any such hearing and shall advise the petitioning political subdivision of its decision within thirty days of the adjournment of a hearing. If the department approves the petition, a certificate of convenience and necessity shall be issued forthwith. Failure of the department to advise the petitioning political subdivision of its decision within thirty days of the conclusion of the hearing shall constitute approval of such petition, and the political subdivision shall be entitled to receive such certificate. Decisions of the department shall be reviewable as provided by chapter 6C of the Revised Laws of Hawaii 1955, as amended.

(b) A certificate of convenience and necessity issued as provided by this Act shall expire twelve months from the date of its issuance, provided that upon written application by the political subdivision to the department, the department in its discretion may extend the expiration date of such certificate.

Sec.-6. Authorization for issuance of bonds. A political subdivision which holds a certificate of convenience and necessity issued and in force pursuant to this Act may issue local government general obligation or revenue bonds, subject to the limitations and procedures of this Act, of the Constitution of the State of Hawaii, and of the applicable provisions of chapter 139 and chapter 140, Revised Laws of Hawaii 1955, as amended, and of other applicable laws.

Sec.-7. Annual report. The department shall make an annual report to the governor and the legislature, including recommendations to further the purposes of this Act.

Sec.-8. Provisions of chapter controlling. Insofar as the provisions of this chapter are inconsistent with the provisions of any law or charter, the provisions of this chapter shall be controlling. The powers

conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law or charter.

Sec. . . . -9. Severability. If any section, subsection, sentence, clause or phrase of this Act is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Act. The legislature hereby declares that it would have approved this Act and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 2, 1964.) **S.B. 288.**
