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H. B. NO. 493

A Bill for an Act Relating to Revenue Bonds and Amending Part III of Chapter 39, Hawaii Revised Statutes.

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

SECTION 1. Part III of Chapter 39, Hawaii Revised Statutes, is hereby amended to read as follows:

“PART III. REVENUE BONDS

“Sec. 39-51. Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

‘Bonds’ means bonds, notes and other instruments of indebtedness.

‘Department’ means any state department, board, commission, officer, authority, or agency (other than a “municipality” defined by section 49-1) which is charged by law with the administration of an undertaking.

‘Department head’ means any officer having charge of a department for which there is no governing body.

‘Governing body’ means any board, commission, or other body consisting of more than one person, having charge of a department.

‘Revenue’ means the moneys collected from the rates, rentals, fees and charges prescribed for the use and services of, and the facilities and commodities furnished by, the undertaking.

‘Revenue bonds’ means all bonds payable solely from and secured solely

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by the revenue, or user taxes, or any combination of both, of the undertaking for which such bonds are issued.

'Undertaking' means any public works and properties, improvement or system, from the ownership or operation of which, by the State or a department thereof, revenue may be derived, or with respect to which user taxes may be derived.

'User taxes' means taxes on goods or services or on the consumption thereof, the receipts of which are substantially derived from the consumption, use or sale of goods and services in the utilization of the functions or services furnished by the undertaking.

"Sec. 39-52. Declaration of policy. It is declared to be the policy of the State that any department acquiring, purchasing, constructing, reconstructing, improving, bettering, or extending an undertaking pursuant to this chapter, shall manage the undertaking in the most efficient manner consistent with sound economy and public advantage, and consistent with the protection of bondholders.

"Sec. 39-53. Additional powers of departments. In addition to the powers which it may otherwise have, any department shall have power under this part:

- (1) To construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better, or extend any undertaking within its jurisdiction, and to acquire by gift, purchase, or the exercise of the right of eminent domain, lands or rights in land or water rights in connection therewith;
- (2) To operate and maintain any undertaking within its jurisdiction and furnish the services, facilities, and commodities thereof for its own use and for the use of public and private consumers;
- (3) To issue revenue bonds of the State in the amounts authorized by specific act or acts of the legislature of the State to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking;
- (4) To impose, prescribe and collect rates, rentals, fees and charges for the use and services of, and the facilities and commodities furnished by, the undertaking; and
- (5) To pledge the punctual payment of the revenue bonds and interest thereon, or to covenant to pay into any special funds from which any of the revenue bonds may be payable, the revenues of the undertaking, or of any part thereof, or the user taxes derived therefrom, or any combination of both (including improvements, betterments, or extensions thereto thereafter constructed or acquired) sufficient to pay the revenue bonds and interest as they shall become due and to create and maintain reasonable reserves to pay the principal and interest; provided, that no user taxes shall be pledged to such payment unless the legislature in the specific act or acts authorizing the issuance of the revenue bonds shall have provided that such revenue

bonds may be payable from and secured by such user taxes. The amount so pledged or covenanted to be paid may consist of all or any part or portion of such revenue, or of such user taxes, or any combination of both.

The department, in determining the cost, may include all costs and estimated costs of the issuance of the revenue bonds, all engineering, inspection, fiscal, and legal expenses, and interest which it is estimated will accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this part.

“Sec. 39-54. Authorization of undertaking; form and contents of revenue bonds. The issuance of revenue bonds for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking shall be authorized:

- (1) By a resolution or resolutions of the governing body of the department, which may be adopted at the same meeting at which the same are introduced by a majority of all the members of the governing body of the department then in office, and shall take effect immediately upon filing with the director of finance of the State, or
- (2) By a certificate or certificates of a department head, which shall take effect immediately upon filing with the director of finance.

The revenue bonds shall bear interest at such rate or rates, payable semiannually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding thirty years from their respective dates, may be payable in such medium of payment, at such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner; may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as the resolution or certificate, subsequent resolutions or certificates, may provide. The revenue bonds may be sold at private sale to the United States, or any agency, instrumentality or corporation thereof, or to the state employees retirement system, or to any political subdivision of the State. Unless so sold at private sale, the revenue bonds shall be sold at public sale after notice of the sale published once at least five days prior to the sale in a newspaper circulating in the State and in a financial newspaper published in any of the cities of New York, Chicago, or San Francisco. The revenue bonds shall be sold for not less than ninety-eight percent of the principal amount thereof. Pending the preparation of the definitive revenue bonds, interim receipts or certificates in such form and with such provisions as the department may determine may be issued to the purchaser or purchasers of revenue bonds sold pursuant to this chapter. The revenue bonds and interim receipts or certificates shall be fully negotiable within the meaning of and for all the purposes of chapter 490, Uniform Commercial Code.

“Sec. 39-55. Covenants in resolution or certificate authorizing issuance of revenue bonds. Any resolution or certificate authorizing the issuance of revenue bonds under this part may contain covenants as to:

- (1) The purpose or purposes to which the proceeds of sale of the revenue bonds shall be applied and the use and disposition thereof;

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- (2) The use and disposition of the revenue of the undertaking for which the revenue bonds are to be issued, or the user taxes derived therefrom, or both, to the extent pledged to the payment of the revenue bonds, including the creation and maintenance of reserves;
- (3) The issuance of other or additional bonds payable from the revenue of the undertaking, or the user taxes derived therefrom, or both, to the extent pledged to the payment of the revenue bonds;
- (4) The operation, maintenance and repair of the undertaking;
- (5) The insurance to be carried thereon and the use and disposition of insurance moneys, the insurance being by this section authorized to be carried, and no undertaking shall have recourse to the state insurance fund for the repair or replacement of any property in the undertaking, or for payment of claims under chapter 386 (relating to workmen's compensation);
- (6) Books of account and the inspection and audit thereof; and
- (7) The terms and conditions upon which the holders of the revenue bonds or any proportion of them or any trustee therefor shall be entitled to the appointment of a receiver by any court of competent jurisdiction, which court shall have jurisdiction in the proceedings, and which receiver may enter and take possession of the undertaking, operate, maintain, and repair the same, impose and prescribe rates, rentals, fees or charges, collect, receive and apply all revenue, and receive and apply all user taxes, thereafter arising therefrom in the same manner and to the same extent as the department itself might do;

provided, that all covenants shall be subject to review by the Governor; and provided, further, the provisions of this section with respect to user taxes shall be applicable only if the legislature in the specific act or acts authorizing the issuance of the revenue bonds has provided that the revenue bonds may be paid from and secured by the user taxes derived from the undertaking.

The provisions of this part and any resolution or certificate shall be a contract with the holder or holders of the revenue bonds; and the duties of the department, its governing body and department head, under this part, and any resolution or certificate shall be enforceable by any bondholder, by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

“Sec. 39-56. Validity of revenue bonds. The revenue bonds bearing the signature of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the State or of the department. The validity of the revenue bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which the revenue bonds are issued. The resolution or certificate authorizing the revenue bonds may provide that the revenue bonds shall contain a re-

cital that they are issued pursuant to this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

“Sec. 39-57. Lien and charge of revenue bonds. Unless otherwise provided in the resolution or certificate, all revenue bonds of the same issue shall, subject to the prior and superior rights of outstanding revenue bonds, claims or obligations, have a prior and paramount lien and charge on the revenue, or the user taxes, or combination of both, pledged to the payment thereof, of the undertaking for which the revenue bonds have been issued, over and ahead of all bonds of any issue payable from such revenue, or user taxes, or combination of both, which may be subsequently issued and over and ahead of any claims or obligations of any nature against such revenue, or user taxes, or combination of both, subsequently arising or subsequently incurred. All revenue bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, of sale, of execution, or of delivery, by a lien and charge on the revenue or user taxes, or combination of both, pledged to the payment thereof, in accordance with this chapter and the resolution or certificate authorizing the revenue bonds.

“Sec. 39-58. Revenue bonds not a general obligation of State. Revenue bonds issued under this part shall be payable solely from and secured solely by the revenue, or the user taxes, or combination of both, pledged to the payment thereof, of the undertaking for which the bonds have been issued, or secured solely by and payable solely from a special fund to be maintained from such revenue, or user taxes, or combination of both, pledged to such special fund, and shall not constitute a general obligation of the State or a charge upon the general fund of the State, nor shall the full faith and credit of the State be pledged to the payment of the principal and interest thereof. Each bond issued under this part shall recite in substance that the said revenue bonds and the interest thereon are payable solely from and secured solely by the revenue, or the user taxes, or combination of both, pledged to the payment thereof, of the undertaking for which the revenue bond is issued, or secured solely by and payable solely from a special fund to be maintained from such revenue, or user taxes, or combination of both, pledged to such special fund, and that the revenue bond is not a general obligation of the State and the full faith and credit of the State are not pledged to the payment of such principal and interest.

“Sec. 39-59. Undertakings to be self-sustaining. The department issuing revenue bonds pursuant to this part shall impose, prescribe and collect rates, rentals, fees or charges for the use and services of and the facilities and commodities furnished by the undertaking for which the revenue bonds are issued, and shall revise such rates, rentals, fees or charges from time to time whenever necessary, so that, together with the proceeds of the user taxes derived with respect to the undertaking pledged to the payment of such revenue bonds, such undertaking shall be and always remain self-sustaining. The rates, rentals, fees or charges imposed and prescribed shall produce revenue which, together with the proceeds of such user taxes, will be at least sufficient:

(1) To make the required payments of the principal of and interest on all

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bonds issued for the undertaking, including the payment of all bonds and interest thereon for the payment of which such revenue, or user taxes, or combination of both, are or shall have been pledged, charged or otherwise encumbered, or which are otherwise payable from such revenue, or user taxes, or combination of both, or are payable from a special fund maintained, or to be maintained, from such revenue, or user taxes, or combination of both, including reserves therefor, and to maintain the special fund in an amount at least sufficient to pay when due all bonds and interest thereon which are payable from the special fund, including reserves therefor;

- (2) To pay the cost of operation, maintenance and repair of the undertaking, including reserves therefor; and
- (3) To carry out the covenants of the resolution or resolutions or certificate or certificates authorizing the issuance of the revenue bonds, including any covenants approved by the Governor as to the minimum amounts of revenue to be produced by the undertaking for which the revenue bonds are issued.

The legislature of the State hereby covenants, pledges and obligates itself, whenever it shall have authorized the issuance for an undertaking of revenue bonds payable solely from and secured solely by the user taxes derived with respect to such undertaking, or payable from and secured by such user taxes and the revenue, or any combination of both, of such undertaking to impose, or continue to impose, user taxes with respect to the undertaking in amounts at least sufficient, together with the revenue of the undertaking pledged to such payment and security, so that the undertaking shall be and always remain self-sustaining and so that all payments referred to in the preceding paragraph of this section including reserves therefor, may be made when due and so that the covenants referred to in said provisions may be complied with.

“Sec. 39-60. Use of revenue and user taxes of undertaking. Whenever any revenue bonds have been issued under this part for an undertaking, the revenue, or the user taxes, or combination of both, from which such revenue bonds are payable and by which they are secured of such undertaking shall be deposited in a special fund and shall be appropriated, applied or expended, and the department shall have the right to appropriate, apply or expend the same, in the amount necessary therefor for the following purposes and in the following order of priority:

- (1) To pay when due all revenue bonds and interest thereon issued for the undertaking, for the payment of which the revenue, or user taxes, or combination of both, is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;
- (2) To pay or provide for the payment of the cost of operation, maintenance and repair of such undertaking, including reserves therefor;
- (3) For such purposes, within the jurisdiction, powers, duties, and functions of the department, including the creation and maintenance of reserves, as shall have been covenanted in any resolution, resolutions, certificate or certificates of the department providing for the

issuance of revenue bonds;

- (4) To reimburse the general fund of the State for all bond requirements for general obligation bonds which are or shall have been issued for the undertaking, or to refund any of such general obligation bonds, except insofar as such obligation of reimbursement has been or shall be canceled by the legislature, such bond requirements being the interest on term and serial bonds, sinking fund for term bonds, and principal of serial bonds maturing the following year;
- (5) To provide for betterments and improvements to the undertaking, including reserves therefor;
- (6) To provide such special reserve funds and other special funds as are or may be created by law.

Unless and until adequate provision has been made for the foregoing purposes, the State shall not have the right to transfer to its general fund or apply to any other purposes any part of the revenue, or user taxes, pledged to the payment of such revenue bonds, of such undertaking.

“Sec. 39-61. Undertaking and revenue bonds exempt from taxation.

So long as the State owns any undertaking, the property and revenue of the undertaking shall be exempt from all state, county, and municipal taxation. Revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state, county, and municipal taxation except inheritance, transfer, and estate taxes.

“Sec. 39-62. Consent of governmental agencies. It shall not be necessary for any department proceeding under this part to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other like instrumentality of the State or its political subdivisions in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate an undertaking.

“Sec. 39-63. Construction. The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and revenue bonds may be issued under this part for this purpose, notwithstanding that any other law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking, and without regard to the requirements, restrictions, limitations or other provisions contained in any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other laws, the provisions of this part shall be controlling.

“Sec. 39-64. Execution of revenue bonds. Revenue bonds issued pursuant to this part shall be executed by the head of the department and sealed with the seal of the department or in lieu thereof shall bear a lithographed or engraved facsimile of such seal. Further, they shall be countersigned by the state director of finance or in lieu thereof shall bear a lithographed or engraved facsimile of the signature of the director. The coupons pertaining to the bonds shall be executed with the lithographed or engraved facsimile signatures of the

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head of the department and the director of finance. In the case of a department having a governing body, the member thereof who is the chairman or other titular head shall, for the purposes hereof, be the head of the department.

“Sec. 39-65. Duties of the director. The director of finance of the State, when requested by the department, shall render full and complete assistance to any department in the preparation and sale of revenue bonds issued pursuant to this part. The director shall be the fiscal agent of the department for the payment of all principal and interest, and for the transfer of bonds. The provisions of sections 36-3 and 39-12, relating to the appointment by the director of other fiscal agents and transfer agents, and to the status of funds held by these fiscal agents, to the extent that they may appropriately be applied, shall be deemed incorporated in this part.

The director shall cause to be set up in the treasury of the State suitable accounts for the deposit of all revenues of the undertaking, and for the payment of all revenue bonds and the interest thereon and for all other payments provided or required by this part, and for the holding of all reserves created under this part.

“Sec. 39-66. Investment of reserves. The director of finance, with the approval of the department, may invest any money held as reserves, which in the department’s judgment are in excess of the amounts necessary for the meeting of immediate requirements, in bonds, notes, or other obligations of the United States, or of the State, or of any political or municipal corporation or subdivision of the State. Income derived therefrom shall be treated as revenue of the undertaking; expenses of purchase, safekeeping, sale, and redemption, and all other expenses attributable to the investments shall be proper expenses of the undertaking. Securities so purchased shall be considered as being deposited in the director’s custody or control by the department.

“Sec. 39-67. Transfers to department. When there are moneys in the general, special, or revolving funds of the State which in the director of finance’s judgment are in excess of the amounts necessary for the immediate state requirements, the director may make temporary transfers of such moneys to the department for purposes for which bonds may be issued, if in his judgment the action will not impede or hamper the necessary financial operations of the State. The total of temporary transfers for any undertaking shall not exceed the sum of the unissued bonds authorized therefor by the legislature. The general, special, or revolving funds shall be reimbursed from the proceeds of sale of such bonds upon the eventual issuance and sale of such bonds. The sale of such bonds shall not be deferred beyond the date fixed by the director for reimbursement.

Likewise, the director may make temporary transfers from such funds to any account which has been set up in the treasury for the payment of revenue bonds, or the interest thereon, or to any other account which has been set up in the treasury for the making of such other payments as are provided or required in this part. Any transfer may be made when the account is first opened and prior to any payment therefrom, or prior to the issuance of revenue bonds for

the undertaking, or at any time when the account may be temporarily depleted. No transfer shall be made unless, in the director's judgment, the account to which the moneys are transferred will be able to effect reimbursement on or before the date fixed by the director for reimbursement.

No interest shall be charged upon any transfer so made, and transfers shall be made only upon the request of the department.

“Sec. 39-68. General laws applicable. The provisions of part II, relating to destroyed or defaced bonds, and to lost, destroyed, or stolen coupons, to the extent that they are applicable, shall apply to revenue bonds issued pursuant to this part.

“Sec. 39-69. Revenue bonds legal investments. All public officers and bodies of the State, all political subdivisions, all insurance companies and associations, all banks, savings banks, and savings institutions, including building or savings and loan associations, all trust companies, all executors, administrators, guardians, trustees, and all other persons and fiduciaries in the State who are regulated by law as to the character of their investment, may legally invest funds within their control and available for investment in revenue bonds of the State. The purpose of this section is to authorize any persons, firms, corporations, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including (without prejudice to the generality of the foregoing), sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any revenue bonds of the State.

“Sec. 39-70. Refunding revenue obligations. Whenever the State or any department thereof shall have outstanding any revenue bonds and the department, with the approval of the Governor and the director of finance, determines that it will be financially sound and advantageous to the State to refund the outstanding revenue bonds, the department, with the approval of the Governor, shall have the power to provide for the issuance of refunding revenue bonds with which to call and redeem the outstanding revenue bonds or any part thereof at or before the maturity or redemption date thereof, with the right to include various series and issues of the outstanding revenue bonds in a single issue of refunding revenue bonds, and to issue refunding revenue bonds to pay any redemption premium and interest to accrue and become payable on the outstanding revenue bonds being refunded and to establish reserves for the refunding revenue bonds, and also to issue revenue bonds partly to refund outstanding revenue bonds and partly for the construction or acquisition of improvements and additions to and extensions of the undertaking for the construction or acquisition of which the outstanding revenue bonds were issued. The refunding revenue bonds shall be payable solely from and secured solely by the revenue of the undertaking, or the user taxes derived with respect to such undertaking, or a combination of both, from which were payable and by which were secured the outstanding revenue bonds to be refunded, and shall be a valid claim only as against such revenue, or user taxes, or combination of both. The interest rate or rates on the refunding revenue bonds shall not be

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limited by the interest rate or rates borne by any of the revenue bonds to be refunded thereby. The refunding revenue bonds may in the discretion of the department, with the approval of the Governor and the director of finance, be exchanged at par for the revenue bonds which are being refunded or may be sold at public or private sale in such manner and at such price or prices as the department shall deem for the best interests of the State and may be issued and delivered at any time prior to the date of maturity or redemption date of the revenue bonds to be refunded that the department determines to be in the best interest of the State. The refunding revenue bonds shall, except as specifically provided in this section, be issued in accordance with the provisions with respect to revenue bonds set forth in this part. Pending the time the proceeds derived from the sale of refunding bonds issued hereunder are required for the purposes for which they were issued, such proceeds, upon authorization or approval of the Governor, may be invested in obligations of, or obligations unconditionally guaranteed by, the United States of America or in savings accounts, time deposits or certificates of deposit of any bank or trust company within or without the State, to the extent that such savings accounts, time deposits or certificates of deposit are collaterally secured by a pledge of obligations of, or obligations unconditionally guaranteed by, the United States of America, and to further secure such refunding revenue bonds, or the revenue bonds being refunded, or both, the State may enter into a contract with any bank or trust company, within or without the State, with respect to the safekeeping and application of the proceeds of such refunding revenue bonds, and the safekeeping and application of the earnings of such investment. All revenue bonds so refunded and redeemed by the issue and sale or issue and exchange of refunding revenue bonds shall be canceled. The determination of the department with respect to the financial soundness and advantage of the issuance and delivery of refunding revenue bonds authorized hereby when approved by the Governor and the director of finance shall be conclusive, but nothing herein shall require the holders of any outstanding revenue bonds being refunded to accept payment thereof otherwise than as provided in the revenue bonds to be refunded.”

SECTION 2. This Act shall take effect upon its approval.

(Approved April 30, 1969.)