

ACT 61

S. B. NO. 1983-70

A Bill for an Act Relating to Exclusions from the Total Indebtedness of the State and the Certification of such Exclusions.

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

SECTION 1. Chapter 39 of the Hawaii Revised Statutes is hereby amended by adding thereto a new part to be numbered, captioned and read as follows:

**“PART IV. DETERMINATIONS OF EXCLUSIONS FROM THE
TOTAL INDEBTEDNESS OF THE STATE AND CERTIFICATION
THEREOF.**

Section 39- . Definitions. As used in this part, the following words and terms shall have the following meanings:

‘Fiscal year’ shall mean the twelve months’ period beginning on July 1 of one calendar year and ending on June 30 of the next succeeding calendar year.

‘Net general fund revenues’ shall mean for any fiscal year the amount of moneys paid into the general fund in the fiscal year, less the amounts paid therein in the fiscal year (i) received as grants from the federal government and (ii) in reimbursement of the payment therefrom during such year of the principal and interest of reimbursable general obligation bonds of the State that are

ACT 61

excluded in computing the total indebtedness of the State for the purposes of section 3 of article VI of the Constitution, as determined in accordance with the provisions of this part.

'Reimbursable general obligation bonds' shall mean general obligation bonds of the State (a) issued for an undertaking, improvement or system from which revenues, user taxes, or a combination of both may be derived, for the payment from the general fund of the principal and interest of which reimbursement is required by law to be made to the general fund from the revenue, user tax receipts or combination of both derived from the undertaking, improvement or system, and (b) issued for a political subdivision of the State, for the payment from the general fund of the principal and interest of which reimbursement is required by law to be made to the general fund from the revenue of the political subdivision.

As used in this part, the words and terms 'bonds', 'general obligation bonds', 'revenue bonds', 'user tax', 'net revenue' and 'net user tax receipts' shall have the respective meanings and inclusions given to such words and terms in section 3 of article VI of the Constitution.

Section 39- . State Debt Statement. The director of finance shall annually ascertain and set forth in a table or other summary a statement of the total indebtedness of the State as of November 1 of each year. The statement shall include the following:

1. The total indebtedness of the State, including both authorized but unissued bonds and issued and outstanding bonds; general obligation bonds and revenue bonds; and bonds which may be excluded under section 3 of article VI of the Constitution when determining the total indebtedness of the State for the purposes of that section and bonds which may not be so excluded, showing the amount of each type of such indebtedness.
2. The amount of the total indebtedness of the State which may be excluded under section 3 of article VI of the Constitution when determining the total indebtedness of the State for the purposes of that section. There shall be itemized and shown the amounts which may be excluded under each of clauses (a) through (b) of said section; in the case of revenue bonds, the undertaking, improvement or system for which such bonds are issued or are to be issued; and in the case of reimbursable general obligation bonds, the undertaking, improvement, system or political subdivision for which such bonds are issued or to be issued, and, except as to such bonds issued for a political subdivision, the revenues, user taxes, or both, from which the reimbursement to the general fund for the payment of the principal and interest of such bonds is to be made.
3. The amount of the total indebtedness of the State which may not be excluded when determining the total indebtedness of the State for the purposes of section 3 of article VI of the Constitution.

4. The amount of indebtedness of the State required to be paid or retired from such November 1 to and including the first day of the next succeeding fiscal year.
5. The net general fund revenues for each of the three preceding fiscal years, the average of such net general fund revenues and the figure which is three and one-half times such average.

The items required above to be set forth in the statement may be disclosed in such manner or arrangement as the director of finance may deem advisable, and need not be separately stated if the captions, headings or groupings disclose the information required to be set forth.

The director of finance shall also prepare and attach to the statement such supporting schedules as may be required to set forth in detail the bonds included in the itemizations required by subdivisions 1 and 2 above of this section. The supporting schedules shall also set forth a finding and determination of the net general fund receipts for the preceding fiscal year by setting forth the following for the preceding fiscal year:

- (i) the total of the moneys paid into the general fund in such fiscal year;
- (ii) the total of the moneys paid into the general fund in such fiscal year received as grants from the federal government;
- (iii) the total of the moneys paid into the general fund in such fiscal year from revenues, or user taxes, or combination thereof, derived from a public undertaking, improvement or system, to the extent such payments into the general fund were made in reimbursement of the payment during such fiscal year from the general fund of the principal and interest of reimbursable general obligation bonds issued for such undertaking, improvement or system which are to be excluded from the total indebtedness of the State;
- (iv) the total of the moneys paid into the general fund in such fiscal year from the revenue of a political subdivision, to the extent such payments into the general fund were made in reimbursement of the payment during such fiscal year from the general fund of the principal and interest of reimbursable general obligation bonds issued for the political subdivision which are to be excluded from the total indebtedness of the State;
- (v) the result obtained by subtracting from the total required to be set forth in the statement by subdivision (i) above the totals required to be set forth in the statement by subdivisions (ii), (iii) and (iv) above, which result shall constitute the net general fund revenues of the State for the preceding fiscal year.

If payments from the general fund were made in the preceding fiscal year for interest or principal of reimbursable general obligation bonds issued for an undertaking, improvement or system, the supporting schedules shall also set forth in brief and summary form the following with respect to each such undertaking, improvement or system:

ACT 61

- a. The total of the revenues or user taxes, or both, derived in the fiscal year from or with respect to the undertaking, improvement or system;
- b. The total of the costs of operation, maintenance and repair of the undertaking, improvement or system during the fiscal year;
- c. The total of payments made during the fiscal year of interest and principal on revenue bonds issued for the undertaking, improvement or system;
- d. The total of the payments made during the fiscal year from the general fund for interest and principal on reimbursable general obligation bonds issued for such undertaking, improvement or system;
- e. The amount paid into the general fund during the fiscal year from the total revenues or user taxes, or both, of the undertaking, improvement or system, derived during such fiscal year, after there has been deducted from such total the costs of operation, maintenance and repair of the undertaking, improvement or system for such fiscal year and the required payments of the principal and interest of all revenue bonds issued for the undertaking, improvement or system;
- f. The percentage obtained by dividing the figure required to be set forth in the schedule by subdivision d. above into the figure required to be set forth by subdivision e. above, which percentage shall constitute the percentage of the reimbursable general obligation bonds issued for the undertaking which may be excluded under clause (e) of section 3 of article VI of the Constitution when determining the total indebtedness of the State for the purpose of that section.

The supporting schedule shall also set forth or make reference to relevant statutory, bond ordinance or bond certificate provisions, and any other relevant financial information, necessary to explain or justify the findings and determinations inherent in the statement of indebtedness. The director of finance shall indicate in the supporting schedules whether the financial findings and figures are based upon the records of his office or upon audited statements and reports, and if based upon the latter, shall identify in the schedules the audited reports and statements.

Section 39- . Supplementary Statement. As soon as may be practicable after the effective date of an act authorizing the issuance of bonds, the director of finance shall prepare a supplemental statement with respect to such bonds evidencing that such bonds at the time of authorization thereof either were within the limitations of section 3 of article VI of the Constitution or were excludable at the time of authorization under one of clauses (b), (c), (d), (f) or (g) of section 3 of article VI of the Constitution when determining the total indebtedness of the State for the purposes of that section. The supplemental statement shall be based upon the statement prepared, in accordance with the second section of this part, as of November 1 of the fiscal year in which occurred the session of the legislature at which the bonds were authorized. The supplemental statement shall contain such additional information or revisions as may

be necessary to make current the statement on which it is based. There shall either be included in the supplemental statement or included in supporting schedules attached thereto such legal and financial findings as may be necessary to explain or justify the supplemental statement. A supplemental schedule may be limited solely to bonds eligible under clauses (b), (c), (d), (f) or (g) of section 3 of article VI of the Constitution for exclusion from the total indebtedness of the State when determining such total indebtedness for the purposes of that section, in which case only such findings and information need be set forth in the supplemental statement as are necessary to justify such exclusion.

Section 39- . Legislative Determinations. The provisions of this section shall be applicable to all computations and determinations required for the purposes of section 3 of article VI of the Constitution.

In determining whether an authorization of bonds would cause to be exceeded the limitations on the total indebtedness of the State set forth in section 3 of article VI, or whether such bonds may be excluded from such total indebtedness under clauses (c), (d), (f) or (g) of that section, 'time of authorization' shall mean as to bonds authorized by an act of the legislature which both authorizes the issuance of such bonds and specifies the particular purpose or purposes to which the proceeds of the bonds are to be applied, the day such act becomes effective. If an act of the legislature making appropriations and authorizing the issuance of bonds to finance such appropriations provides that certain of the appropriations to be financed by the issuance of bonds shall take effect on a day or days differing from the day on which shall become effective the remainder of the appropriations made therein to be financed by bonds, 'time of authorization' shall mean as to the principal amount of bonds authorized to be issued to finance an appropriation or appropriations, the respective day or days such appropriation or appropriations become effective. If an item specified by the legislature to be financed by bonds is vetoed by the governor, in whole or by a reduction in the amount thereof, as provided in section 17 of article III of the Constitution and the item or the amount thereof reduced, as the case may be, is not again approved by the legislature as provided in section 18 of article III of the Constitution, that principal amount of bonds authorized by the legislature to finance the item, or portion thereof reduced, as the case may be, shall not be considered to have been authorized. If an act authorizing the issuance of bonds sets forth therein a specific calendar date upon which the act or parts thereof shall become effective in lieu of stating that the act or such parts thereof shall become effective upon approval by the governor and the governor shall approve such act on a later date than the specific calendar date set forth in such act, 'time of authorization' shall mean both such specific calendar date and the day or approval of the act by the governor. If an act of the legislature authorizes the issuance of revenue bonds without reference to any specific appropriation or undertaking, improvement or system to be financed from the proceeds of such bonds, or the issuance of refunding bonds, without any limitation upon the amount of such revenue bonds or refunding bonds which may be issued and without requiring the further approval of the legislature for the issuance of such revenue bonds or refunding bonds, 'time of au-

ACT 61

thorization' shall mean as to any particular principal amount of such bonds, the day the governor has authorized the issuance thereof if the approval of the governor is required for their issuance or the day of delivery of and payment therefor if the approval of the governor is not required for their issuance.

In determining whether an authorization of bonds would cause to be exceeded the limitations on the total indebtedness of the State set forth in section 3 of article VI, or whether such bonds may be excluded from such total indebtedness under clauses (c), (d), (f) or (g) of that section, the authorization of such bonds and the 'time of authorization' thereof shall be deemed to be made in the same fiscal year in which occurs the session of the legislature enacting the act making the authorization, even though the effective date of the act may occur or be in the next succeeding fiscal year by reason or the definition of 'fiscal year' set forth in the first section of this part.

The state highway system established in part III of chapter 264 shall be deemed to be a public system that produces revenues and user tax receipts. All liquid fuel taxes as defined in section 243-1, other than taxes on aviation fuel as defined in that section, which are paid into the state highway fund created by section 248-8 and which are not required by sections 243-6 and 248-9 to be paid to the counties shall be deemed to be user taxes derived in the utilization of the functions and services furnished by the state highway system.

Amounts received from the federal government for the payment or reimbursement of costs of operation, maintenance and repair of a public undertaking, improvement or system or for the payment of the principal and interest of bonds issued for such public undertaking, improvement or system, may be considered and treated as revenues of such undertaking, improvement or system. If such amounts are deposited in the general fund immediately upon their receipt by the State, such amounts shall be deducted from the general fund revenues when determining the net general fund revenues for the purposes of this part, to the extent such amounts are utilized to justify or support a determination that bonds of the State may be excluded when determining the total indebtedness of the State for the purposes of section 3 of article VI of the Constitution.

Section 39- . Concurrence in Statements; Copies of Statement to Legislature. Upon the preparation by the director of finance of any statement, supplemental statement and support schedules required by the provisions of this part, he shall submit such statement, supplemental statement and supporting schedules to the attorney general for his concurrence as to all legal findings upon which such statement, supplemental statement and supporting schedules are based, and to the comptroller for his concurrence as to all matters therein. The attorney general and the comptroller shall notify the director of finance in writing of their concurrence in such statement, supplemental statement and supporting schedules. If the attorney general or the comptroller shall disagree with any items included in the statement, supplemental statement and supporting schedules, the attorney general or the comptroller, as the case may be, shall notify the director of finance in writing of his concurrence as to all other items and as to the items of disagreement and his reasons therefor. The director of fi-

nance shall thereupon certify the statement, supplemental statement and supporting schedules to the governor and the presiding officers of the legislature, setting forth in such certification any items therein disagreed to by the attorney general or the comptroller. The summary and schedules so certified shall be conclusive as to all items therein concurred to by the attorney general and the comptroller.

The director of finance shall cause to be reproduced and delivered to the legislature by December 1 of each year a sufficient number of copies of the certified statement prepared as of November 1 of such year as required by the second section of this part, so that a copy of the statement may be distributed to each member of the legislature at the next regular session thereof. Only the statement itself shall be required to be reproduced, and the copies need not include any of the supporting schedules required by the second section of this part.

Section 39- . Declaratory Judgment Action. In the event the certification by the director of finance of any statement, supplemental statement and supporting schedules filed with the governor and the presiding officers of the legislature shall set forth therein that the attorney general or the comptroller has disagreed as to any item therein, the governor, at his election, or the legislature at its election, may direct the attorney general to file a declaratory judgment action in the name of the State against the director of finance. Such action may be filed in any circuit court of the State, which courts are hereby vested with jurisdiction over such actions. If the items disagreed to concern only questions of law and all facts involved are stipulated to by the attorney general, comptroller and director of finance, the attorney general at his discretion may file such action in the supreme court, which court is hereby vested with original jurisdiction over such action. Upon any findings and determinations having been made by the court, the director of finance shall revise the statements, supplemental statements and supporting schedules to reflect such findings and determinations and shall certify the revised summary and supporting schedules to the governor and the presiding officers of the legislature.

In the event the certification by the director of finance shall set forth therein that the attorney general or the comptroller has disagreed to any item therein, until such time as the disagreement is resolved by a declaratory judgment action: (a) if the subject matter of the disagreement is concerned with whether certain revenues constitute general fund revenues, or whether such revenues must be deducted in determining net general fund revenues for the purposes of this part, such revenues shall not be considered to be general fund revenues, or shall be deducted in determining net general fund revenues, as the case may be; and (b) if the subject matter of the disagreement is concerned with whether bonds may be excluded under section 3 of article VI of the Constitution in determining the total indebtedness of the State for the purposes of that part, the bonds shall be included in making such determination.

Section 39- . Arrangement of Statements and Schedules and Forms; Incorporation. In preparing the statements, supplemental statements and supporting schedules required by this part, the director of finance may arrange,

ACT 61

group and set forth information and figures in such manner as he deems necessary or advisable. Such information and figures need not be set out or arranged in the same order as is set forth in this part, so long as the information and figures required by this part are set forth.

All findings certified to in accordance with this part shall be deemed to be incorporated into subsequent statements, supplemental statements and supporting schedules to the extent relevant thereto. Such findings need not be made again in any subsequent statement, supplemental statement or supporting schedule, nor shall the legal and financial basis for such findings need be set forth again.

The director of finance may compose and adopt and have printed or otherwise reproduced any forms he deems will facilitate the preparation and understanding of statements, supplemental statements and supporting schedules required by this part.

All departments, boards, authorities and officers of the State shall cooperate with the director of finance to the extent required to enable him to prepare the statements, supplemental statements and supporting schedules required by this part.

Section 39- . Transitional Provisions. The director of finance shall prepare a statement setting forth in tabular form all bonds of the State authorized but unissued on November 4, 1968. He shall also prepare and attach to such statement such supporting schedules setting forth such information and findings as may be required as will evidence that the bonds at the time or times of authorization thereof were within the limitations of section 3 of article VI of the Constitution as in effect at such time or times.

The director of finance shall also prepare in the manner set forth in the second section of this part a determination of the net general fund revenues of the State for each of the fiscal years ending June 30, 1966 through June 30, 1969. Such determination shall be made by the director as though the amendments to section 3 of article VI of the Constitution had been in effect for the full period of each of such fiscal years. The director shall prepare a supplemental statement as to each authorization of bonds enacted by the legislature at the regular sessions of 1969 and 1970, corresponding to a supplemental statement required by the third section of this part. He shall also prepare a statement or statements of indebtedness on which such supplemental statements shall be based, which statement or statements shall correspond to a statement of indebtedness required by the second sentence* of this part, but in lieu of being made as of November 1 of any year may be made as of the time of authorization of the bonds to which the supplemental schedule pertains. The director shall attach to the statements of indebtedness the determination of net general fund revenues for the fiscal years ending June 30, 1966 through June 30, 1969, and shall prepare and attach to such supplemental statements and statement of indebtedness such supporting schedules as would be attached to a statement or supplemental statement prepared under the second or third sections of this part. The statement of indebtedness and supplemental statements required by

* Probably should read "section".

this paragraph may be combined by the director into a single statement, or may be in two or more statements, as the director may determine.

All statements required by this section shall be submitted to the attorney general and the comptroller for their concurrence and certified to the governor and the presiding officers of the legislature. Such statements so certified shall be conclusive as to all matters therein concurred to by the attorney general and the comptroller.

Section 39- . Legislative Certification as to Bonds Issued for Assessable Improvements. The legislature hereby finds, determines and certifies that: (1) there are no bonds of the State authorized or issued, the only security for which is the properties benefited or improved or the assessments thereon; and (2) there are no general obligation bonds of the State authorized or issued for improvements, the costs of which are to be assessed in whole or in part against properties benefited or improved by such improvements.”

SECTION 2. The revisor of statutes may appropriately number the sections to be added to chapter 39, Hawaii Revised Statutes, pursuant to section 1 of this Act, and may re-word and re-number the references in said sections and make such other formal or verbal changes thereto, as may be necessary to conform with the Hawaii Revised Statutes.

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

(Approved June 6, 1970.)