

ACT 161

S. B. NO. 377

A Bill for an Act Relating to Anti-Pollution Projects and the Issuance of Revenue Bonds for such Projects.

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

SECTION 1. Purpose. (a) The purpose of this Act is to establish a means whereby anti-pollution measures can be financed through the issuance of revenue bonds by the department of budget and finance.

(b) The Legislature finds and declares that the health, safety and general welfare of the people of the State demand the control, reduction, abatement, treatment, elimination, disposal or prevention of air, water, sewage, visual and other pollution; that efforts are being made at the federal and state levels to accomplish such objectives, including at the federal level by the provisions of Section 103(c)(4), the U.S. Internal Revenue Code of 1954, as amended, exempting from federal taxation the interest on bonds issued by public bodies for certain anti-pollution facilities; that the foregoing anti-pollution measures by industry can be encouraged, initiated or financed with the assistance of the State through the issuance of revenue bonds; and that the promotion, initiating or financing of such anti-pollution measures through the assistance of the State is a public purpose.

SECTION 2. Chapter 39, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

“PART V. ANTI-POLLUTION REVENUE BONDS

Sec. 39-125 Definitions. As used in this part, unless the context otherwise requires:

- (1) ‘Anti-pollution project’ means any properties, or improvements or alterations to properties, designed, acquired, constructed, installed or modified, and certified as necessary or desirable by the Depart-

ment of Health to abate, control, reduce, treat, eliminate, dispose of or prevent air, water, thermal, radioactive or nuclear, visual, noise, aesthetic or other types of pollution, or for the supply or distribution of water, or for the collection, treatment or disposal of liquid or solid waste, or for any combination of the foregoing.

- (2) 'Department' means the department of budget and finance.
- (3) 'Person' means an individual, firm, partnership, corporation, association, cooperative or other legal entity, governmental body or agency, board, bureau or other instrumentality thereof, or any combination of two or more of the foregoing.
- (4) 'Project agreement' means any lease, sub-lease, conditional sale agreement, installment sale agreement, lending arrangement or other contract or agreement, or combination thereof, entered into under this part by the department for the financing from the proceeds of revenue bonds of an anti-pollution project.
- (5) 'Project party' means the person with whom the department enters into a project agreement.
- (6) 'Revenue bonds' means revenue bonds issued pursuant to this part.

Sec. 39-126 Powers. The department is authorized to:

- (1) Notwithstanding and without compliance with sections 103-7 and 103-22 but with the approval of the governor, enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party, and enter into and carry out any agreement whereby the obligations of a project party under a project agreement will be unconditionally guaranteed by, or the performance thereof assigned to, a person other than the project party. Without limiting the generality of the foregoing, if the project agreement provides for the acquisition by the department of interests in properties in connection with the anti-pollution project, such properties may be acquired by the department subject to existing liens, mortgages or other encumbrances.
- (2) Issue with the approval of the governor revenue bonds in such principal amounts as may be necessary to yield the amount of the cost of the anti-pollution project.
- (3) Lend the proceeds of the revenue bonds issued for the anti-pollution project to the project party for use and application by the project party to the construction, acquisition, remodeling, reconstruction, rehabilitating, expanding, extending, enlarging, improving, furnishing and equipping of the anti-pollution project, or agree with the project party whereby any of the foregoing activities shall be undertaken or supervised by such project party or by a person designated by the project party, and accept the assignment of any contract for any of such activities; provided that the liability of the department under any such assignment shall be limited to the proceeds of the revenue bonds and any moneys of the project party made available therefor.
- (4) Sell at one time or from time to time and without public bidding for

such sale the anti-pollution project or any part thereof at a price which may be a nominal amount or less than the true value or at the time of the sale, enter into agreements for such sale upon such terms and conditions as the department may deem suitable to carry out the purposes of this part and take and receive notes or other evidences of indebtedness with respect to the sale.

- (5) As security for the payment of the principal of and interest on revenue bonds issued to finance the costs of the anti-pollution project and any agreement made in connection therewith, (a) pledge, assign, hypothecate or otherwise encumber all or any part of the revenues and receipts derived by the department from the anti-pollution project, whether then owned or thereafter acquired; pledge and assign the interests and rights of the department under the project agreement or other agreement with respect to such project; or pledge and assign any bond, debenture, note or other evidence of indebtedness received by the department with respect to such project; or (b) mortgage or pledge, or both, all or any part of the interest of the department in any anti-pollution project or projects or the property of which it is a part from which is derived the revenues and receipts from which such bonds are payable, including in such mortgage or pledge any enlargement and addition to such project or projects thereafter made; or (c) any combination of the foregoing.
- (6) Extend or renew any project agreement or any other agreement related thereto, provided that any such renewal or extension shall be subject to the approval of the governor, unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor.

The department may enter into a project agreement with respect to any anti-pollution project, or may issue revenue bonds under this part to finance the costs of any anti-pollution project, even though such project may have been commenced or may be completed prior to the effective date of this part, so long as such project shall not have been completed prior to January 1, 1972.

Sec. 39-127 Compliance with state and local law. The financing of any anti-pollution project under this part shall not relieve any project party or other user of such project from all laws, ordinances and rules and regulations of the State and county or any departments or boards thereof with respect to compliance with master plans, zoning, obtaining of building permits, compliance with building and health codes and other laws, ordinances or rules and regulations of similar nature pertaining to the project, and such laws shall be applicable to such party or such other user to the same extent it would be if the costs of the anti-pollution project were directly financed by the project party.

Sec. 39-128 Exemption from taxation. All revenues and receipts derived by the department from any anti-pollution project shall be exempt from all state, county and municipal taxation. The right, title and interest of the department or the State in any anti-pollution project shall also be exempt from

all state, county and municipal taxation. Except as modified by Act 134, Session Laws of Hawaii 1970, the leasehold or other interest of the project party or user of such project in an anti-pollution project or under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the anti-pollution project were directly financed by the project party or other user.

Sec. 39-129 Findings and determinations. The department shall not undertake any anti-pollution project or enter into any project agreement with respect to any anti-pollution project unless the department shall first find and determine either that the person with whom it is proposed to enter into the project agreement is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise, or that the obligations of the project party under the project agreement will be unconditionally guaranteed by, or the performance thereof is assigned to, a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise.

Sec. 39-130 Project agreement. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the anti-pollution project is used or occupied by the project party, such sum or sums in the form of rentals or installment sales payments or otherwise, at such time or times and in such amount or amounts that will be at least sufficient: (a) to pay the principal and interest on all revenues bonds issued for the anti-pollution project as and when the same become due, including any premium payable upon any required redemption of such bonds; (b) to establish or maintain such reserve, if any, as may be required by the instrument authorizing or securing the revenue bonds; (c) to pay the fees and expenses of the paying agents and trustees for such revenue bonds; and (d) to pay the expenses incurred by the department in administering such bonds or in carrying out such project or the project agreement.
- (2) If title to or ownership of all or any part of the anti-pollution project shall be in the State or if the interest of the department in the anti-pollution project shall be mortgaged, pledged or otherwise encumbered to secure the revenue bonds, then so long as such title or ownership shall be in the State or such mortgage, pledge or other encumbrance shall not be satisfied and discharged and released, to operate, maintain and repair the anti-pollution project or to pay to the department all costs incurred by the department in the operation, maintenance and repair of the project.
- (3) If the anti-pollution project is a facility for the supply or distribution of water to or the collection or treatment of sewage and other waste disposal from a single or multi-family residential development, or a

combination thereof, to grant to the county in which such facility is located an option to purchase such facility at any time at a purchase price not to exceed the aggregate of (a) the principal amount of the revenue bonds issued for the anti-pollution project outstanding at the time of the exercise of the option, (b) the interest to accrue on such bonds to the earlier of their maturity date or the next date they may be redeemed in accordance with the terms thereof, (c) any premium payable upon such redemption and (d) all fees and expenses of the trustees and paying agents to be incurred with respect to such bonds to the earlier of their maturity or the next date they may be redeemed in accordance with the terms thereof and any other fees and expenses incurred or to be incurred upon the exercise of such option or the retirement of such bonds; provided that nothing in this subsection shall require such revenue bonds to be issued subject to an option permitting the redemption of the revenue bonds at any particular time prior to their stated maturity date; and provided, further, that nothing in this subsection shall in any way be a limitation upon the exercise by the State or the county of any right of eminent domain now or hereafter possessed by either thereof.

Moneys received by the department pursuant to clause (d) of subsection (1) of this section shall not be, nor be deemed to be, revenues of the anti-pollution project and shall be paid into the general fund.

The department prior to entering into negotiations with respect to a project agreement or at any time during such negotiations shall require that as a condition to such negotiations or the continuation thereof it shall be reimbursed for any and all costs and expenses incurred by it even though a project agreement may not be entered into and may further require the deposit of moneys with the department as security for such reimbursement. Any amounts of such deposit in excess of the amount required to reimburse the department shall be returned by the department to the party which has made such deposit.

Any project agreement entered into by the department may contain such provisions as the department may deem necessary or desirable to obtain or permit the participation of the federal government in the anti-pollution project or in the financing of the costs thereof, including, without limitation, costs of construction, operation, maintenance and repair and whether such participation to be in the form of grants, interest subsidiaries or otherwise.

Sec. 39-131 Project revenue bonds. All revenue bonds issued under this part shall be issued pursuant to the provisions of part III of this chapter, except as hereinafter set forth in this section, and each anti-pollution project shall constitute an 'undertaking' for purposes of said part III and the department shall constitute a 'department' thereunder.

(1) The provisions of the first sentence of section 39-61 and the provisions of sections 39-62, 39-66 and 39-67 shall not be applicable.

(2) The department shall not have the power to exercise the right of eminent domain with respect to any anti-pollution project or to operate any anti-pollution project; provided that nothing in this clause shall prohibit the department from being the lessor or seller of any anti-pollution project, or

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from financing the costs thereof, as otherwise provided by or contemplated in this part.

(3) No specific act or acts of the Legislature shall be required for the authorization or issuance of the revenue bonds or the amount thereof, and this part shall constitute complete authority for such authorization, issuance or amount.

(4) No such revenue bonds shall be issued unless at the time of issuance the department shall have already entered into a project agreement with respect to the anti-pollution project for which such revenue bonds are to be issued.

(5) Such revenue bonds shall be issued in the name of the department and not in the name of the State.

(6) The revenue bonds shall be payable solely from the revenues or other income derived by the department from the anti-pollution project for which such bonds are issued, including any payments made to the department under the project, agreement or other agreements entered into with respect to the project, and shall be secured solely by such revenues and any encumbrance, mortgage or lien granted with respect to such bonds.

(7) The final maturity date of such revenue bonds may be any date not exceeding forty (40) years from the date of such bonds; provided that such final maturity date shall also not exceed the period or term of the project agreement, exclusive of any renewal or extension thereof.

(8) The department, in determining the cost of any anti-pollution project, may also include financing charges; fees and expenses of any trustee and paying agents for such revenue bonds, interest on the revenue bonds, and the expenses of the department in connection with such revenue bonds and the anti-pollution project to be financed from the proceeds of such bonds, accruing or incurred prior to and during the period of construction and for not exceeding six months thereafter; amounts necessary to establish or increase reserves for the revenue bonds; the cost of plans, specifications, studies, surveys, estimates of cost and of revenues; other expenses incidental to determining the feasibility or practicability of the anti-pollution project; administrative expenses; interest cost incurred by the project party with respect to the project prior to the issuance of the revenue bonds; and such other costs, commissions and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment or extension of the anti-pollution project, the financing thereof, placing of same in operation and the issuance of the revenue bonds, whether incurred prior to or after the issuance of such bonds.

(9) If deemed necessary or advisable by the department, the director of finance may appoint a national or state bank or trust company within or without the State to serve as trustee for the holders of the revenue bonds and may enter into a trust indenture or trust agreement or indenture of mortgage with such trustee. The trustee may be authorized by the department to receive and receipt for, hold and administer the proceeds of the revenue bonds issued for the anti-pollution project and to apply the same to the purposes for which such bonds are issued, or to receive and receipt for, hold and administer the revenues and other receipts derived by the department from the anti-pollution project and to apply such revenues and receipts to the payment of the principal

and interest on such revenue bonds, or both. In the event that such trustee shall be appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be authorized by part III of this chapter as may be deemed necessary by the department for the purposes of this part, and any covenants or provisions so contained need not be included in a resolution adopted or certificate issued under those sections. Any resolution or certificate, trust indenture or trust agreement or indenture of mortgage adopted, issued or entered into by the department pursuant to this part may also contain any provisions required for the qualification thereof under the U.S. Trust Indenture Act of 1939 or deemed necessary or desirable by the department for the security and protection of the holders of the revenue bonds or to carry out the purposes of this part. The department may pledge and assign to the trustee the project agreement and other agreements related thereto and the rights of the department, including the revenues and receipts, thereunder and may grant a mortgage on the interest of the department in the anti-pollution project to the trustee for the benefit of the holders of such revenue bonds.

If the director of finance shall appoint a trustee for the holders of the revenue bonds, then notwithstanding the provisions of the second sentence of section 39-65, the director of finance may elect not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange and redemption, of the revenue bonds, or may elect to limit the functions he shall perform as such fiscal agent. The director of finance may appoint the trustee to serve as such fiscal agent, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange and redemption, as the director of finance may deem necessary, advisable, or expedient, including without limitation the holding of the revenue bonds and coupons which have been paid and the supervision and conduction or the destruction thereof in accordance with the provisions of Sections 40-10 and 40-11. Nothing in this paragraph shall be a limitation or construed as a limitation, upon the powers granted to the director of finance in sections 39-3 and 39-12 and the third sentence of section 39-65 to appoint the trustee or others as fiscal agents, paying agents and registrars for the revenue bonds or to authorize and empower such fiscal agents, paying agents and registrars to perform the functions referred to in said sections, it being the intent of this paragraph to permit, as aforesaid, the director of finance at his election not to serve as fiscal agent for the revenue bonds or to limit the functions he shall perform as such fiscal agent, as he may deem necessary, advisable, or expedient.

If the resolution, certificate, trust indenture or trust agreement or indenture of mortgage shall provide that any revenue bonds issued thereunder shall not be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of such revenue bonds, all signatures of the officers of the State upon such bonds required by section 39-64 may be facsimiles of their signatures.

(10) The resolution, certificate, trust indenture, trust agreement or indenture of mortgage may also contain provisions deemed necessary or desir-

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able by the department as to (a) the investment of the proceeds of the revenue bonds, the investment of any reserve for such bonds and the investment of the revenues and receipts of the project and the use and application of the earnings from such investments; and (b) the terms and conditions upon which the holders of the revenue bonds or any portion of them or any trustee therefor may institute proceedings for the foreclosure of any mortgage granted to secure the payment of such bonds and the use and application of the moneys derived from such foreclosure.

(11) The resolution, certificate, trust indenture, trust agreement or indenture of mortgage may also contain such provisions as may be deemed necessary or desirable by the department in order to obtain or permit the participation of the federal government in the anti-pollution project or in the financing of the costs thereof, including, without limitation, costs of construction, operation, maintenance and repair and whether such participation be in the form of grants, interest subsidies or otherwise.

(12) If no trustee shall be appointed to collect, hold and administer the proceeds of the revenue bonds or the revenues and receipts derived by the department from the anti-pollution project for which such revenue bonds are issued, such proceeds or revenues and receipts, as the case may be, shall be held in a separate account in the treasury of the State, to be applied solely to the carrying out of the resolution, certificate, trust indenture or trust agreement or indenture of mortgage authorizing or securing such revenue bonds.

(13) The department may sell such revenue bonds either at public or private sale and at a price not less than ninety-five (95) per cent of the principal amount thereof.

(14) Proceeds of such revenue bonds may be used and applied to reimburse the department or the project party or other user of the anti-pollution project for all costs of the anti-pollution project incurred by any thereof prior to or after the issuance of the revenue bonds.

(15) The obligation contained in the project agreement that the project party or other user of the anti-pollution project shall operate, maintain and repair at his expense the anti-pollution project which is the subject of such agreement shall constitute compliance by the department with section 39-59(2), and none of the revenues and receipts derived by the department from such project shall be required to be applied to the purposes of section 39-60(2). Sections 39-60(4), 39-60(5) and 39-60(6) shall not be applicable to the revenues or receipts derived by the department from a project or under a project agreement.”

SECTION 3. If any provision of this Act, or any provision of the part to be added pursuant hereto to Chapter 39, Hawaii Revised Statutes, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect any other provision of the Act or said part of the application thereof to other persons or circumstances which can be given effect without the invalid provision or application, and to this end the provisions of this Act and said part are severable.

SECTION 4. The attorney general is directed to either intervene in a suit brought to determine the constitutionality of this bill or to bring a declara-

tory judgment action for a determination that revenue bonds issued under this Act shall be excluded under Section 3(b) of Article VI of the Constitution when determining the total indebtedness of the State.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 22, 1973.)