

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

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

SECTION 1. The purpose of this Act is to permit pollution control bond funding for resource recovery projects, for or by a political subdivision of this State, which will be used for a public purpose and to encourage the participation of private capital.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER .
POLITICAL SUBDIVISION POLLUTION
CONTROL BONDS

Sec. -1 Definitions. As used in this chapter, unless the context otherwise requires:

(1) “Cost” or “costs” as applied to a pollution control project or portion

thereof financed under this chapter includes all or part of:

- (A) The cost of construction and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project;
 - (B) The cost of demolishing or removing any buildings or structures on land thus acquired, including the cost of acquiring any lands to which such buildings or structures may be moved;
 - (C) The cost of all machinery and equipment;
 - (D) Financing charges, interest accruing prior to, during, and for a period after completion of construction as determined by the political subdivision, provisions for reserves for principal and interest, and for extensions, enlargements, additions, replacements, renovations, and improvements;
 - (E) The cost of architectural, engineering, financial, and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction, acquisition, or financing of any project.
- (2) "Director" or "director of finance" means the director of finance of a political subdivision.
 - (3) "Governing body" means the body, council, or board charged with exercising the legislative authority of a political subdivision.
 - (4) "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.
 - (5) "Political subdivision" means a county or other political subdivision of the State created by the legislature pursuant to Article VII, section I, of the State Constitution.
 - (6) "Pollution control project" means any property, or improvements or alterations to property, designed, acquired, constructed, installed, or modified by or for a political subdivision and certified as necessary or desirable by the state department of health to abate, control, reduce, treat, eliminate, or dispose of solid or liquid in a manner which provides for the recovery of energy or material resources, or both.
 - (7) "Project agreement" means any lease, sublease, conditional sale agreement, or other similar financing contract or agreement, or combination thereof entered into under this chapter by the political subdivision, including the financing from the proceeds of the revenue bonds of a pollution control project pursuant to which legal title to that project is maintained by the political subdivision until such bonds have been retired.
 - (8) "Project party" means the person with whom the political subdivision enters into a project agreement.
 - (9) "Revenue bonds" means revenue bonds issued pursuant to this chapter.

Sec. -2 Powers. A political subdivision may:

- (1) In addition to any other powers provided by law, undertake the acquisition, construction, installation, or modification of pollution control

projects, either directly or through a project party, and to that end enter into, amend, supplement, and carry out a project agreement with a project party, and enter into and carry out any other agreement whereby the obligations of a project party under a project agreement shall 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 political subdivision of interest in property in connection with the pollution control project, such property may be acquired by the political subdivision subject to existing liens, mortgages, or other encumbrances.

- (2) Issue revenue bonds in such principal amounts as may be necessary to finance the cost of pollution control projects.
- (3) Disburse the proceeds of the revenue bonds issued for a pollution control project, either directly or through a trustee or a project party, for use and application by the political subdivision or project party in the acquisition, construction, installation, or modification of a pollution control project, or agree with the project party whereby any of these activities shall be undertaken or supervised by that project party or by a person designated by the project party, and accept the assignment of any contract for any of these activities; provided that the liability of the political subdivision under any assignment hereunder shall be limited to the proceeds of the revenue bonds and any moneys of a project party made available therefore.
- (4) Sell a pollution control project or projects at one time, or from time to time, at a price or prices which may be nominal or less than the true value, or at the time of the sale, enter into agreements for the sale upon such terms and conditions as the political subdivision may deem suitable to carry out the purposes of this chapter and take and receive notes or other evidences of indebtedness with respect to the sale; provided that legal title to a pollution control project sold hereunder shall not pass from the political subdivision to the buyer until all revenue bonds sold to finance the project costs relating to acquisition, construction, installation, or modification, operation, maintenance, and repair incurred to the date of sale have been paid or adequate provision therefor has been made.
- (5) As security for the payment of the principal and interest on revenue bonds issued to finance the costs of the pollution control project and any related agreement:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived by the political subdivision from use, lease, or operation of a pollution control project, whether then owned or thereafter acquired;
 - (B) Pledge and assign the interest and rights of the political subdivision under the project agreement or other agreement with respect to such project;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of

indebtedness received by the political subdivision with respect to such project;

- (D) Mortgage or pledge, or both, all or any part of the interest of the political subdivision in any pollution control project or project property from which is derived the revenues and receipts to pay the bonds, including in that mortgage or pledge any enlargement and addition to that project thereafter made; or
- (E) Any combination of the foregoing.
- (6) With or without terminating a project agreement, exercise any and all rights provided by law for entry and re-entry upon or to take possession of a pollution control project at any time or from time to time upon breach or default by a project party under a project agreement. The political subdivision may bring any action at law or in equity for the purpose of effecting its rights of entry or re-entry or obtaining possession of the project or for the payments of the rentals, user taxes, or charges or any other sums due and payable by the project party to the political subdivision pursuant to the project agreement.
- (7) Do all things necessary or proper to carry out the purposes of this chapter.

Sec. -3 Exemption from taxation. All revenues and receipts derived by the political subdivision from any pollution control project shall be exempt from all state and county taxation. The right, title, and interest of the political subdivision in any pollution control project shall also be exempt from all state and county taxation. Except as provided in sections 237-27.5, 238-3(j), and 246-34.5, any leasehold or other interest of the project party or other user of that project in a pollution control project or under the project agreement or related agreement shall not be exempt from taxation to any greater extent than it would be if the costs of the project were directly financed by the project party or other user. Any other law to the contrary notwithstanding, any transfer or title, or of any interest in, a pollution control project or any portion thereof, by a project party or any person affiliated with a project party to the political subdivision or by the political subdivision to such a party, shall be exempt from the use and general excise taxes.

Sec. -4 Findings and determinations. (a) The political subdivision shall not undertake any pollution control project or enter into any project agreement with respect thereto unless the political subdivision shall first find and determine:

- (1) Either that the proposed project party is a responsible party, whether by reason of economic assets, 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, experience in the type of enterprise to be undertaken through the project, or otherwise; and
- (2) That the political subdivision will have sufficient proprietary control of the pollution control project during the time in which revenue bonds are outstanding to finance such project and to ensure that the subdivision is

able to impose rates and charges, a user tax, or a combination thereof, for the use and services of the pollution control project sufficient to pay the cost of operation, maintenance, and repair of the project and the required payments, premium, if any, and interest on any revenue bonds issued to finance the acquisition, construction, installation, or modification of that project.

Sec. -5 Project agreement. (a) Any project agreement entered into by the political subdivision shall contain provisions unconditionally obligating the project party to pay the political subdivision during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the pollution control project is used or occupied by the project party, in the form of rates, rentals, fees, charges, payments of installments of the purchase price, or otherwise, at such time or times and in such amount or amounts that will be at least sufficient:

- (1) To pay the principal, premium, if any, and interest on all revenue bonds issued to finance the costs of the pollution control project as and when the same becomes due;
- (2) To establish or maintain such reserves, if any, as may be required by the instrument authorizing or securing the revenue bonds;
- (3) To pay the fees and expenses of the paying agents and trustees for the revenue bonds;
- (4) To pay the expenses incurred by the political subdivision in administering the bonds or in carrying out the project or the project agreement; and
- (5) To pay any and all of the cost incurred by the political subdivision, directly or indirectly, in the operation, maintenance, and repair of the pollution control project or to perform these functions at its own expense.

(b) Any project agreement entered into by the political subdivision may contain such provisions as the political subdivision deems necessary or desirable to obtain or permit the participation of the state and federal government in the pollution control project or in the financing of the costs thereof.

(c) A project agreement shall also provide that the political subdivision shall have all rights and remedies generally available at law or in equity to unpaid sellers or lessors as the case may be to re-enter and take possession of a pollution control project upon the breach or default by a project party of any term, condition, or provision of a project agreement.

(d) The political subdivision may extend or renew any project agreement or any other agreement related thereto, in accordance with the project agreement.

(e) The political subdivision shall impose, prescribe, and collect rates, rentals, fees, and charges for the use and occupancy of any pollution control project, for any services provided through its operation, and for any goods or commodities produced thereby in order to provide for the timely payment of the principal, premium, if any, and interest of the revenue bonds issued to finance the costs of the project and the costs of the operation, maintenance, and repair thereof.

Sec. -6 Project revenue bonds. (a) All revenue bonds issued under this chapter shall be issued pursuant to the applicable provisions of chapter 49 except that:

- (1) 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 chapter shall constitute complete authority for such authorization, issuance, or amount.
- (2) The revenue bonds shall be payable solely from the revenues or other income derived by the political subdivision from the pollution control project for which these bonds are issued, including any payments made to the political subdivision under the project agreement or other agreements entered into with respect to the project, and shall be secured solely by these revenues and any encumbrance, mortgage, or lien granted in a pollution control project with respect to the bonds.
- (3) The final maturity date of such revenue bonds may be any date not exceeding twenty-five years from the date of such bonds; provided that such final maturity date shall not exceed the period or term of the project agreement, exclusive of any renewal or extension thereof.
- (4) The political subdivision, in determining the cost of any pollution control project, may include:
 - (A) Financing charges;
 - (B) Fees and expenses of any trustee and paying agents for these revenue bonds;
 - (C) Interest on the revenue bonds, and the expenses of the political subdivision related to such revenue bonds and the pollution control project to be financed therefrom, accruing or incurred prior to and during the period of construction and for a period not exceeding six months thereafter;
 - (D) Amounts necessary to establish or increase reserves for the revenue bonds;
 - (E) The cost of plans, specifications, studies, surveys, estimates of cost and of revenues;
 - (F) Other expenses incidental to determining the feasibility of the pollution control project;
 - (G) Administrative expenses;
 - (H) Interest cost incurred by the project party for the project prior to the issuance of the revenue bonds; and
 - (I) Such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, or extension of the pollution control project, the financing thereof, placing the project in operation, and the issuance of the revenue bonds, whether incurred prior to or after the issuance of such bonds.
- (5) If deemed necessary or advisable, the director 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, trust agreement, indenture, or mortgage with such trustee.

The trustee may be authorized to receive and receipt for, hold, and administer the proceeds of the revenue bonds issued for the pollution control project and to apply the proceeds to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the revenues and other receipts derived from the pollution control project and to apply these revenues and receipts to the payment of the principal, or interest on such revenue bonds, or both. In the event that the trustee is appointed, any trust indenture, trust agreement, or indenture or mortgage entered into with the trustee may contain any covenants and provisions authorized by this chapter as deemed necessary by the director for the purposes of this chapter, and these covenants or provisions need not be included in a resolution adopted or certificate issued under this chapter. Any resolution, certificate, trust indenture, trust agreement, indenture, or mortgage adopted, issued, or entered into pursuant to this chapter may also contain any provisions required for the qualification thereof under the United States Trust Indenture Act of 1939 or deemed necessary or desirable by the director for the security and protection of the holders of the revenue bonds or to carry out the purposes of this chapter. The director may pledge and assign to the trustee the project agreement and other agreements related thereto and the rights of the director thereunder, including the rights to revenues and receipts, and may grant a mortgage on the interest of the pollution control project to the trustee for the benefit of the holders of such revenue bonds.

- (6) If the director of finance appoints a trustee for the holders of the revenue bonds, the director 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 the director performs as such fiscal agent. The director may appoint the trustee to serve as the 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 deems 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.
- (7) The resolution, certificate, trust indenture, trust agreement, or indenture of mortgage may also contain provisions deemed necessary or desirable by the director relating 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 all or some of the holders of the revenue bonds 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.

- (8) The resolution, certificate, trust indenture, trust agreement, or indenture of mortgage may also contain such provisions as deemed necessary or desirable by the director in order to obtain or permit the participation of the federal government in the pollution control project or in the financing of the costs thereof, including, without limitation, costs of construction, operation, maintenance, and repair, whether such participation is in the form of grants, interest subsidies, or otherwise.
- (9) If a trustee is not appointed to collect, hold, and administer the proceeds of the revenue bonds or the revenues and receipts derived by the political subdivision from the pollution control project for which such revenue bonds are issued, these proceeds or revenues and receipts, as the case may be, shall be held in a separate account in the treasury of the political subdivision, to be applied solely to the carrying out of the resolution, certificate, trust indenture, trust agreement, or indenture of mortgage authorizing or securing such revenue bonds. This section or any other law to the contrary notwithstanding, the proceeds of each issue of revenue bonds and any and all revenues and other receipts from any project party for the operation, use, and occupancy of the pollution control project shall be maintained in separate funds by an appointed trustee or in the treasury of the political subdivision. Such proceeds shall be used to pay the costs of such pollution control project, and such revenues and receipts shall be used to provide for payment of the principal, premium, if any, and interest on the revenue bonds, the cost of operation and the maintenance and repair of the project, any reserves therefor, and for such other purposes, within the jurisdiction, powers, duties, and functions of the political subdivision as shall have been covenanted in any resolution or certificate of the political subdivision providing for the issuance of such revenue bonds.
- (10) Proceeds of such revenue bonds may be used and applied to reimburse the director, the project party, or other user of the pollution control project for all costs of the pollution control project incurred prior to or after the issuance of the revenue bonds.

Sec. -7 Transactions for utility services. Any other law to the contrary notwithstanding, the disposal of liquid or solid waste by the political subdivision or project party is a utility service, but shall not place the political subdivision or a project party in any way under the jurisdiction of the public utilities commission; provided that in the case of a project party, the project party shall not provide any utility services other than the disposal of liquid, solid waste, or any combination thereof or the sales of goods or commodities, including energy produced by the operation of any pollution control project, where these sales are made only to registered public utilities, industrial or commercial concerns, or counties or county agencies and not to the general public.

Sec. -8 Liquidated damages. This chapter or any other law to the contrary notwithstanding, a project agreement or a contract for the provisions of utility services, goods, or commodities, including water or electrical energy, by

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the political subdivision or by a project party, may provide for the payment of liquidated damages by a purchaser or by a project party; provided that this liquidated damages provision shall be reasonable and shall be enforceable if measured and established by reference to the proportionate relationship of the payments owed by the party subject to the liquidated damages provision to the total costs of the pollution control project, the cost of maintenance, operation, and repair thereof, and to the total operating capacity thereof.

Sec. -9 Sale of revenue bonds. Notwithstanding the provisions of chapter 49, the revenue bonds authorized by this chapter may be sold at public or private sale at such price or prices and may bear interest at such rate or rates as the governing body of the political subdivision determines."

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

(Approved June 2, 1978.)