

A Bill for an Act Relating to County Bonds.

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

SECTION 1. Section 47-2, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 47-2 Issuance authorized; limitation. Each county in the State shall have the power to issue general obligation bonds of the county within the limitation, for the purpose, upon the terms, and in the manner in this part, stated, and such general obligation bonds are hereby authorized to be issued. The total funded debt of the county that is outstanding and unpaid at any time shall not exceed the sum equal to fifteen per cent of the total of the assessed values for tax rate purposes of real property in the county, as determined by the last tax assessment rolls pursuant to law. In determining the total funded debt of the county there shall be excluded bonds of the county which may be excluded therefrom by reasons of clauses 1, 2, 3, 4, 5, 6, 8, and 9 of section 13 of Article VII of the Constitution of the State and there shall be included the principal amount then outstanding of general obligation bonds issued by the State for the county, to the extent such principal amount is required to be included by clause 7 of section 13 of Article VII of the Constitution.”

SECTION 2. Section 47-2.1, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 47-2.1 Bonds for revenue-producing undertakings. General obligation bonds may be issued under this part for an undertaking as defined in section 49-1 or for any other undertaking for which such bonds are authorized to be issued by other provisions of general law. Such bonds may be combined into, issued, and sold with other general obligation bonds of the county as a single issue of bonds. The governing body may require that the general fund of the county shall be reimbursed from the revenue of the undertaking for all of the principal of and interest on such bonds, or for such part thereof as the governing body may determine, and may further provide that such bonds shall be additionally secured by a pledge of the revenues of the undertaking, subject to the rights of the holder of any bonds then outstanding and the provisions of the ordinances or resolutions authorizing the outstanding bonds. Whenever the undertaking shall be under the management and control of a department or board of the county and such department or board has the power and authority under chapter 49 to issue revenue bonds under that chapter, no bonds shall be authorized under this chapter for such undertaking by the governing body of the county unless such department or board by resolution shall have requested the issuance thereof and no pledge of the revenue of the undertaking shall be made to the payment and security of the bonds unless consented to by the department or board, and if so required by chapter 49, or by charter or by the provisions of the resolutions securing the revenue bonds issued for the undertaking, such pledge may be made by the department or board in the resolution requesting the issuance of the proposed bond issue.”

SECTION 3. Section 47-7, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 47-7 Issuance, interest rate, denominations, maturities, places payable, registration, redemption, medium of payment, sale, or other disposal. (a) The director of finance of the county may, upon authorization of its governing body, issue from time to time and in accordance with the provisions of this chapter, bonds of the county authorized for issuance by the governing body thereof. All bonds issued under authority of this chapter:

- (1) Shall bear interest payable semi-annually at a coupon or stated rate or rates not exceeding eight per cent a year;
- (2) If for a term exceeding two years, shall be in serial form maturing in substantially equal installments of principal, or maturing in substantially equal installments of both principal and interest, the first installment of principal to mature not later than five years from the date of issue of such series and the last installment not later than twenty-five years from the date of such issue and the last installment on general obligation bonds sold to the federal government shall mature not later than thirty-five years from the date of such issue;
- (3) May be payable as to both principal and interest at places within and without the State;
- (4) May be issued in coupon form without privilege of registration or registrable as to principal only or as to both principal and interest or in fully registrable form;
- (5) May be made redeemable at any time or times prior to their stated maturities at prices not exceeding one hundred four per cent of the par value thereof; and
- (6) Shall be payable, as to principal, premium, if any, and interest, in any coin or currency of the United States which at the time of payment is legal tender for public and private debts.

(b) Unless the governing body shall itself perform the actions, the director of finance of each county, from time to time and without further authorization of the governing body, shall determine the form, date, denominations, and maturities of the bonds theretofore authorized by the governing body to be issued under the authority of this chapter, the place or places within or without the State at which the principal and interest of the bonds or any of them shall be payable and at which the bonds may be registered, and the time or times, prices, and method of their redemption, and the basis of award of such bonds, and shall offer for sale and sell the whole or any part of any issue of the bonds. The bonds shall be sold for not less than their par value, and shall be sold by means of public advertisement for tenders, either (1) with the interest rate or rates to be borne by the bonds having theretofore been fixed by the governing body, in which event the bonds shall be sold to the bidder offering the highest price therefor, or (2) with the interest rate or rates to be borne by the bonds to be specified by the bidders therefor, in which event the bonds shall be sold in accordance with the provisions of subsection (c).

- (c) The bonds shall be sold on one or the other of the following bases:
- (1) To the bidder offering to purchase the bonds at the lowest interest cost, such interest cost for the purpose of this paragraph being the figure obtained by adding together the amounts of interest payable on the bonds from their date to their respective maturity dates at the rate or rates specified by the bidder

and deducting from the sum obtained the amount of any premium offered by the bidder, or

- (2) To the bidder offering to purchase the bonds at the lowest interest cost, such interest cost for the purpose of this paragraph being the rate obtained by doubling the semi-annual interest rate (compounded semi-annually) necessary to discount the principal and interest payments on the bonds from the dates of payment thereof to the date of the bonds and to the price bid (the price bid for the purpose of this paragraph shall not include the amount of interest accrued on the bonds from their date to the date of delivery and payment therefor);

provided that in any case the right shall be reserved to reject any and all bids and waive any irregularity or informality in any bid.

(d) Bonds offered for sale without a specified rate or rates of interest shall, without further action of the governing body, bear interest at the rate or rates specified by the successful bidder therefor. The advertisement for tenders required by this section shall be published at least once and at least five days prior to the date of the sale in a newspaper circulating in the county and in a financial newspaper or newspapers published in any of the cities of New York, Chicago, or San Francisco, and shall set forth therein the basis to be used in determining the successful bidder. Notwithstanding the foregoing provisions of this section as to public sale, any bonds authorized pursuant to this chapter may, with the approval of the governing body, be sold by the director of finance at private sale to the United States, the State, or any board, agency, or instrumentality of either thereof, or may, with the approval of the governing body, be deposited by the director of finance with and pledged to, or be otherwise disposed of to any board, agency, or instrumentality of the State or of the United States government to secure the repayment of or an actual payment of, any loans or advances made or to be made, under the authority of an act or acts of the legislature of Hawaii or of the Congress of the United States authorizing the loans or advances by the board, agency, or instrumentality to the county for the construction in whole or in part of any public improvement, the cost of which or any part thereof, would be payable out of the proceeds of the bonds, if sold."

SECTION 4. Chapter 47C, Hawaii Revised Statutes, is amended as follows:

1. The title of chapter 47C is amended to read:

**“INDEBTEDNESS OF THE COUNTIES, EXCLUSIONS
FROM THE FUNDED DEBT
AND CERTIFICATION THEREOF”**

2. Sections 47C-1 to 47C-4 are amended to read:

“Sec. 47C-1 Definitions. As used in sections 47C-1 through 47C-6, the following words and terms shall have the following meanings or inclusions:

“Chairman of the finance committee” shall mean the chairman of the finance committee of the council of the county, or if the council of the county does not have a finance committee, the member of the council appointed by the council to perform the functions required by this chapter to be performed by the chairman of the finance committee of the council.

“Corporation counsel” shall mean the chief legal advisor or legal representative of the county.

“County” shall include each county of the State, including the city and county of Honolulu.

“Director of finance” shall mean the director of finance of the county, or if the county does not have a director of finance, the officer of the county in whom is vested the functions and powers of maintaining the treasury of the county and issuing and selling, paying interest on, and redeeming bonds of the county.

“Fiscal year” shall mean the fiscal year of the county as defined in section 46-41.

“Special assessment bonds” shall mean bonds issued under special improvement statutes when the only security for such bonds is the properties benefited or improved or the assessments thereon.

As used in sections 47C-1 through 47C-6, the words or terms “bonds”, “general obligation bonds”, “net revenue”, “net user tax receipts”, “reimbursable general obligation bonds”, “revenue bonds”, “special purpose revenue bonds”, and “user tax” shall have the respective meanings and inclusions given to such words and terms in section 12 of Article VII of the Constitution.

Sec. 47C-2 Determination of funded debt. Within ninety days after the last day of each fiscal year, the director of finance of each county shall ascertain and set forth in a tabular summary the total indebtedness of the county outstanding and unpaid as of the last day of such fiscal year. The summary shall include the following:

- (1) An itemization of the total principal amount of all general obligation bonds, reimbursable general obligation bonds, revenue bonds, special assessment bonds, special purpose revenue bonds, and all other bonds of the county outstanding and unpaid, including bonds which may be excluded under clauses 1, 2, 3, 4, 5, 6, 8, and 9 of section 13 of Article VII of the Constitution when determining the funded debt of the county for the purposes of that section together with a grand total of such total principal amounts.
- (2) The total principal amount of all bonds of the State required by clause 7 of section 13 of Article VII of the Constitution to be included when determining the funded debt of the county for the purposes of that section.
- (3) A grand total of the total principal amounts set forth in the summary pursuant to paragraphs (1) and (2) of this section.
- (4) An itemization of the total of the principal amount of all general obligation bonds, reimbursable general obligation bonds, revenue bonds, special assessment bonds, and special purpose revenue bonds of the county outstanding and unpaid which may be excluded under clauses 1, 2, 3, 4, 5, 6, 8, and 9 of section 13 of Article VII of the Constitution when determining the total funded debt of the county for the purposes of that section, together with a grand total of such total principal amounts.
- (5) The difference between the grand total principal amount set forth in the summary pursuant to paragraph (3) of this section and the grand total principal amount set forth in the summary pursuant to paragraph (4) of this section.

The director of finance shall also prepare and attach to the tabular summary such supporting schedules as may be required to set forth in detail the bonds included in the itemizations required by paragraphs (1) and (4) of this section. Such supporting schedules shall also set forth or make reference to the relevant statutory, charter, ordinance, or other legal provision, and the relevant figures of assessment collections, revenues, user tax receipts, cost of operation, maintenance, and repair, net revenues, net user tax receipts, reimbursements to the general fund, and other financial information, justifying the inclusion of such bonds in the itemization required by paragraph (4) of this section. 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.

Sec. 47C-3 Supplemental determination. Whenever the county proposes to issue bonds, the director of finance shall prepare a supplemental summary of the indebtedness of the county setting forth therein such information and findings as of a date within thirty days of the delivery of such bonds as will bring up to date and make current the most recent summary prepared in accordance with the provisions of section 47C-2. The director of finance shall also prepare and attach to such supplemental summary such supporting schedules as may be required to set forth in detail the variations and changes from the summary prepared in accordance with section 47C-2, including such legal and financial findings as will justify any changes in the itemizations set forth in such previous summary pursuant to the requirements of paragraph (4) of section 47C-2. If all the bonds proposed to be issued may be excluded when determining the funded debt of the county for the purposes of section 13 of Article VII of the Constitution by reason of the provisions of clause 2 or 4 of that section, the supplemental summary and supporting schedules may be limited to such bonds and findings as are necessary to justify such exclusion under such clauses.

In the event proceeds of the bonds proposed to be issued are to be applied to the retirement in the then fiscal year of outstanding bonds, including notes issued in anticipation of the issuance of the bonds proposed to be issued, for the purpose of applying the provisions of clause 1 of section 13 of Article VII of the Constitution to the bonds to be retired, that amount of such proceeds to be so applied may be considered and treated as moneys irrevocably set aside for the payment of such bonds.

Sec. 47C-4 Exclusionary provisions. The provisions of this section shall be applicable in determining whether any bonds or portion thereof may be excluded under section 13 of Article VII of the Constitution when determining the funded debt of the county for the purposes of that section.

In the event that any general obligation bonds have been issued for assessable improvements, only the principal amount of such bonds for which at least one interest payment date has elapsed may be excluded by reason of the provisions of clause 5 of section 13 of Article VII of the Constitution. Subject to the provisions of the preceding sentence, the principal amount of general obligation bonds issued for assessable public improvements which may be excluded by reason of the provisions of clause 5 shall be that percentage of the total principal amount of such bonds which is equal to the percentage of the total of the principal and interest of such bonds theretofore becoming due for the payment of which reimbursement has been made to the general

fund of the county from assessment collections available therefor.

In the event that any general obligation bonds have been issued for a public undertaking, improvement, or system from which revenues, user taxes, or a combination of both may be derived for the payment of all or part of the principal and interest as reimbursement to the general fund, only the principal amount of such bonds issued prior to the then current fiscal year and for which at least one interest payment date has elapsed may be excluded by reasons of the provisions of clause 6 of section 13 of Article VII of the Constitution. Subject to the provisions of the last sentence, the principal amount of general obligation bonds issued for such a public undertaking, improvement, or system which may be excluded by reason of such clause 6 shall be that percentage of the total principal amount of such bonds which is equal to the percentage of the principal and interest of such bonds which became due in the immediately preceding fiscal year for the payment of which reimbursement was made to the general fund of the county from the net revenue, net user tax receipts, or a combination of both, derived from such public undertaking, improvement, or system in such immediately preceding fiscal year. 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. Amounts derived from any extra or special motor vehicle fuel tax by law set aside for the use of a county, and amounts received by a county as its share of any motor vehicle fuel taxes or motor vehicle license fees, may be considered and treated as revenue of any street or highway undertaking, improvement, or system of the county, including any tunnels, bridges, or overpasses for the movement of motor vehicles. If the costs of operation, maintenance, and repair of a public undertaking, improvement, or system are the responsibility of the State or a governmental body other than the county, the county shall not be deemed to derive net revenue, or net user taxes, or combination of both, from such undertaking, improvement, or system unless the amount of revenues, or user taxes, or combination of both, received by the State or such other governmental body from such undertaking, improvement, or system are at least equal to such costs of operation, maintenance, and repair.

Amounts received from on-street parking may be considered and treated as revenues of a parking undertaking.”

3. Section 47C-7 is amended to read:

“**Sec. 47C-7 Effect of summary.** In the event of the issuance of bonds by the county, the summary most recently prepared pursuant to section 47C-2 prior to the issuance of such bonds, together with the supplementary summary pertaining to such issuance prepared pursuant to section 47C-3, both as certified to the council, shall be utilized in determining whether the issuance of such bonds would cause the limit set forth in section 13 of Article VII of the Constitution on the funded debt of the county to be exceeded by such issuance. Such summaries shall be conclusive as to all items therein concurred to by the corporation counsel and the chairman of the finance committee and as to all items therein revised to reflect the findings of the council of the county upon public hearing or the findings and determination of the circuit court in a declaratory judgment action. In the event that the disagreement of the corporation

counsel or the chairman of the finance committee as to any item in a summary or supporting schedules has not been resolved upon public hearing or by a declaratory judgment action, the bonds or portion thereof to which such disagreement pertains shall be included in determining the funded debt of the county for the purposes of section 13 of Article VII of the Constitution unless and until such disagreement is resolved upon public hearing or by a declaratory judgment action.”

SECTION 5. Section 49-1, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 49-1 Definitions.** Whenever used in this chapter, unless a different meaning clearly appears from the context:

The term “undertaking” means any one or combination of two or more of the following—water, sewerage, gas or electric, heat, light or power works, plants, and systems, together with all parts thereof and appurtenances thereto, including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment and disposal works, and generating plants. The term “undertaking” also means the public off-street parking facilities as defined in chapter 56.

The term “municipality” embraces the city and county of Honolulu and the other counties of the State, the board of water supply of the city and county of Honolulu, and the boards of water supply of the other counties of the State.

The term “governing body” includes councils, bodies, and boards, by whatsoever names they may be known, having charge of the finances of a municipality.”

SECTION 6. Section 49-3, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 49-3 Additional powers of municipalities.** In addition to the powers which it may now have, any municipality may under this chapter:

- (1) Construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better, or extend any undertaking, within or without the municipality, or partially within or partially without the municipality, and 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) Operate and maintain any undertaking and furnish the services, facilities, and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of the municipality;
- (3) Issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking;
- (4) Prescribe and collect rates, fees, rentals, and charges for the services, facilities, and commodities furnished by the undertaking; and
- (5) Pledge to the punctual payment of the bonds and interest thereon an amount of the revenues of the undertaking (including improvements, betterments, or extensions thereto thereafter constructed or acquired) or of any part of the undertaking, sufficient to pay the bonds and interest as the same shall become due and create and maintain reasonable reserves therefor. The

amount may consist of all or any part or portion of the revenue. The governing body of the municipality in determining the cost may include all costs and estimated costs of the issuance of the 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 chapter.”

SECTION 7. Section 49-5, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 49-5 Covenants in resolution authorizing issuance of bonds.** Any resolution or resolutions authorizing the issuance of bonds under this chapter may contain covenants as to:

- (1) Purpose or purposes to which the proceeds of sale of the bonds may be applied and the use and disposition thereof;
- (2) Use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves;
- (3) Transfer from the general funds of the municipality to the account or accounts of the undertaking an amount equal to the cost of furnishing the municipality or any of its departments, boards, or agencies, at their request, with the services, facilities, and commodities of the undertaking;
- (4) Issuance of other or additional bonds payable from the revenue of the undertaking;
- (5) Operation and maintenance of the undertaking;
- (6) Insurance to be carried thereon and the use and disposition of insurance moneys;
- (7) Books of account and the inspection and audit thereof; and
- (8) Terms and conditions upon which the holders of the 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 and maintain the same, prescribe rates, fees, rentals, or charges, and collect, receive, and apply all revenue thereafter arising therefrom in the same manner as the municipality itself might do.

The provisions of this chapter and the resolution or resolutions shall be a contract with the holder or holders of the bonds, and the duties of the municipality and of its governing body and officers under this chapter and the resolution or resolutions shall be enforceable by any bondholder, by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.”

SECTION 8. Section 49-9, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 49-9 Undertakings to be self-supporting.** The governing body of a municipality issuing bonds pursuant to this chapter shall prescribe and collect reasonable rates, fees, rentals, or charges for the services, facilities, and commodities of the undertaking, and shall revise the rates, fees, rentals, or charges from time to time

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whenever necessary so that the undertaking shall be and always remain self-supporting. The rates, fees, rentals, or charges prescribed shall be such as will produce revenue at least sufficient:

- (1) To pay when due all bonds and interest thereon, for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves therefor, and
- (2) To provide for all expenses of operation and maintenance of the undertaking, including reserves therefor.”

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 10. This Act shall take effect upon its approval.

(Approved May 14, 1979.)

* The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.