

ACT 126

H.B. NO. 2897-80

A Bill for an Act Relating to Special Facility Revenue Bonds.

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

SECTION 1. Findings and purpose. The legislature finds and declares that ocean cargo transportation provided by persons engaged in maritime and maritime-related operations is essential to the social and economic well-being of the people of the State of Hawaii; that the cost of providing this service is incorporated in the rates and charges assessed to the users thereof, which is in turn passed on to the general public; that one of the significant economic factors that has a long-term adverse impact upon users and the general public is the extremely high cost of financing of construction of harbor special facilities through conventional means; that the avail-

ability and use of lower cost financing for that purpose will have a favorable financial impact upon the cost of transporting ocean cargo which in turn will benefit such users and the general public; and that it is therefore in the public interest and a public purpose that the department of transportation be allowed to make available lower cost financing through the issuance of special facility revenue bonds for the construction, acquisition, remodeling, furnishing, and equipping of state-owned special facilities, for use by persons engaged in maritime and maritime operations as leasehold tenants thereof.

SECTION 2. Chapter 266, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART
SPECIAL FACILITY PROJECTS**

Sec. 266- Definitions. For the purpose of this part, if not inconsistent with the context:

- (1) “Special facility” means one or more buildings, structures, or facilities on land owned by the State for maritime operations, including cargo handling and control; storage, repair, maintenance, and servicing of marine and marine-related equipment; and offices and accommodations for the personnel and employees of persons engaged in maritime and maritime-related operations which are the subject of a special facility lease.
- (2) “Special facility lease” includes a contract, lease, or other agreement, or any combination thereof, the subject matter of which is the special facility.
- (3) “Remodeling” includes reconstruction, renovation, rehabilitation, improvement, betterment, or extension of a special facility.

Sec. 266- Powers. In addition and supplemental to the powers granted to the department by law, the department may:

- (1) With the approval of the governor, and without public bidding, enter into a special facility lease or an amendment or supplemental thereto whereby the department agrees with another person engaged in maritime and maritime-related operations to construct, acquire, or remodel and furnish or equip a special facility solely for the use by such other person to a special facility lease; provided that such special facility lease may be amendatory and supplemental to an existing lease between the department and such other person for the land upon which the special facility which is the subject of such special facility lease is to be situated.
- (2) With the approval of the governor, issue special facility revenue bonds in such principal amounts as may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishings, and equipping of any special facility; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this paragraph shall not exceed \$20,000,000.
- (3) Perform and carry out the terms and provisions of any special facility lease.
- (4) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the

special facility lease.

- (5) Construct any special facility on land owned by the State.
- (6) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by such other person. Neither such undertaking by such other person nor the acceptance by the department of a contract theretofore entered into by such other person therefor, shall be subject to section 103-22.

Sec. 266- Findings and determination for special facility leases. The department shall not enter into any special facility lease unless the department shall first find and determine that:

- (1) The special facility which is to be the subject of such special facility lease will not be used to provide services, commodities, supplies, or facilities which are then adequately being made available through the harbors system of the State;
- (2) The use or occupancy of the special facility under such special facility lease would not result in the reduction of the revenues derived from the harbors system to an amount below the amount required to be derived therefrom by section 39-59; and
- (3) The entering into of such special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the State and the department then outstanding.

Sec. 266- Special facility lease. (a) In addition to the conditions and terms set forth in this part, any special facility lease entered into by the department shall contain provisions obligating the other person to the special facility lease:

- (1) To pay to the department during the term of the special facility lease, whether the special facility is capable of being used or occupied or is being used or occupied by the other person, a rental or rentals at such time or times and in such amount or amounts as will be sufficient: to pay the principal and interest on all special facility revenue bonds issued for the special facility, to establish or maintain any reserves for such payments, and to pay all fees and expenses of the trustees, paying agents, transfer agents, and other fiscal agents for the special facility revenue bonds issued for the special facility.
- (2) To pay to the department a ground rental equal to the fair market rental of the land, if the special facility is situated on land owned by the department.
- (3) To either operate, maintain, and repair the special facility and pay the costs thereof or to pay to the department all costs of operation, maintenance, and repair of the special facility.

(b) Any moneys derived by the department pursuant to subsection (a)(1) of this section shall be deemed revenues of the special facility. Any moneys received by the department pursuant to subsection (a)(2) and (3) of this section shall be paid into the harbor special fund and shall not be nor be deemed to be revenues of the special facility.

(c) The term and all renewals and extensions of the term of any special facility lease (including any amendments or supplements thereto) shall not extend beyond the reasonable life of the special facility which is the subject of such special facility lease, as estimated by the department at the time of the entering into thereof, or thirty-five years, whichever is less.

(d) Any special facility lease entered into by the department shall be subject to chapter 171 and shall contain such other terms and conditions as the department deems advisable to effectuate the purposes of this part.

Sec. 266- Special facility revenue bonds. All special facility revenue bonds authorized to be issued shall be issued pursuant to sections 39-51 to 39-70, except as follows:

- (1) No such revenue bonds shall be issued unless at the time of issuance the department shall have entered into a special facility lease with respect to the special facility for which such revenue bonds are to be issued.
- (2) Such revenue bonds shall be issued in the name of the department, and not in the name of the State.
- (3) No further authorization of the legislature shall be required for the issuance of the special facility revenue bonds, but the approval of the governor shall be required for such issuance.
- (4) Such revenue bonds shall be payable solely from and secured solely by the revenues derived by the department from the special facility for which they are issued, as defined in section 266- (a)(1).
- (5) The final maturity date of such revenue bonds shall not be later than either the estimated life of the special facility for which they are issued or the initial term of the special facility lease.
- (6) If deemed necessary or advisable by the department, or to permit the obligations of the other person to the special facility lease to be registered under the U.S. Securities Act of 1933, the department with the approval of the state director of finance may appoint a national or state bank 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 with such trustee. The trustee may be authorized by the department to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued and to apply such revenues to the payment of the principal and interest on such revenue bonds. In the event that any such trustee shall be appointed, any trust indenture or agreement entered into by the department with the trustee may contain the covenants and provisions authorized by sections 39-51 to 39-70 to be inserted in a resolution adopted or certificate issued, as though the words "resolution" or "certificate" as used in those sections read "trust indenture or agreement". Such covenants and provisions shall not be required to be included in the resolution or certificate authorizing the issuance of the revenue bonds if included in the trust indenture or agreement. Any resolution or certificate, trust indenture, or trust agreement 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. The department may pledge and assign to the trustee the special facility lease and the rights of the

- department including the revenues thereunder.
- (7) If the department with the approval of the state director of finance shall have appointed or shall appoint a trustee for the holders of the revenue bonds, then notwithstanding 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, redemption, of the revenue bonds, or may elect to limit the functions the director shall perform as such fiscal agent. The department with the approval of 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 department 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 destruction thereof in accordance with sections 40-10 and 40-11. Nothing in this paragraph shall be a limitation upon or be construed as a limitation upon the powers granted in the preceding paragraph to the department with the approval of the director of finance to appoint the trustee, or granted in sections 36-3 and 39-12 and the third sentence of section 39-65 to the director of finance 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 such paragraph and sections, it being the intent of this paragraph to confirm that the director of finance as aforesaid may elect not to serve as fiscal agent for the revenue bonds or may elect to limit the functions the director shall perform as such fiscal agent, as the director of finance may deem necessary, advisable, or expedient.
 - (8) The department may sell such revenue bonds either at public or private sale.
 - (9) If no trustee shall be appointed to collect, hold, and administer the revenues derived from the special facility for which such revenue bonds are issued, such revenues shall be held in a separate account in the treasury of the State, separate and apart from the harbor special fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing such revenue bonds.
 - (10) If the resolution, certificate, trust indenture, or trust agreement shall provide that no revenue bonds issued thereunder shall be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of such revenue bonds, signatures of the officers of the State upon such bonds and the coupons thereof as required by section 39-64 may be evidenced by their facsimile signatures.
 - (11) The proceeds of such revenue bonds may be used and applied by the department to reimburse the other person to the special facility lease for all preliminary costs and expenses, including architectural and legal costs.
 - (12) If the special facility lease shall require the other person to operate, maintain, and repair the special facility which is the subject of such lease, at the other person's expense, such requirement shall constitute compliance by the department with section 39-59(2), and none of the revenues derived by

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the department from such special facility 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 derived from a special facility lease.

Sec. 266- Limitation on bond issuance. No special facility revenue bonds shall be issued under this part after June 30, 1983.”

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

(Approved May 24, 1980.)