

A Bill for an Act Relating to Utilities.

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

**SECTION 1. Purpose; findings and determinations.** The purpose of this Act is to implement article VII, section 12 of the Constitution of the State of Hawaii as proposed by the Hawaii Constitutional Convention of 1978 and ratified by the voters on November 7, 1978, and pertaining to the authorization for the issuance of special purpose revenue bonds to assist utilities serving the general public. This Act establishes a means whereby facilities for the local furnishing of electric energy or gas can be financed through the issuance of special purpose revenue bonds by the State.

The legislature finds and declares that the health, safety, and general welfare of the people of the State require that every opportunity be taken to assist utilities serving the general public in providing electric energy or gas at the lowest possible cost; that due to the geographical location of the State, interconnection with national or regional electric grid systems or gas pipeline systems is impossible, the consequence of which increases local cost of energy; that efforts are being made at state and federal levels to accomplish lower cost of energy, including at the federal level the provisions of the United States Internal Revenue Code exempting from federal taxation the interest on bonds issued by public bodies for the provision of facilities for the local furnishing of electric energy or gas or for air or water pollution control; that the interest on borrowings necessary to provide such facilities is a significant factor in the cost of electric energy and gas and that the interest cost would be less if tax exempt bonds could be issued for the financing thereof; that the protection and promotion of the public health and the maintenance of a standard of living compatible with decency and health at the lowest practicable cost can be encouraged with the assistance of the State through the issuance of special purpose revenue bonds by the State to finance the cost of facilities for the local furnishing of electric energy or gas; and that the assistance of utilities serving the general public by issuance by the State of special purpose revenue bonds to finance the cost of facilities for the local furnishing of electric energy or gas is a valid public purpose and in the public interest.

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

**"PART . ASSISTING UTILITIES SERVING THE GENERAL PUBLIC  
IN PROVIDING ELECTRIC ENERGY OR GAS**

**§39A- Definitions.** Whenever used in this part, unless a different meaning clearly appears from the context:

- (1) "Department" means the department of budget and finance.
- (2) "Energy project" means any facilities for each single project or multi-project program of a project party which is certified by the public utilities commission as being for the local furnishing of electric energy or gas; provided that any new generating unit for the production or generation of electric energy from fossil fuels shall not be considered an energy project for purposes of this part unless specifically authorized in any act providing for the authorization of the issuance of bonds pursuant to this part.
- (3) "Local furnishing of electric energy or gas" means providing property or land that is or will be:
  - (A) Depreciable property or land;
  - (B) Used to produce, collect, generate, transmit, store, distribute, or convey electric energy or gas, including without limitation, air or water pollution control facilities;
  - (C) Used in the trade or business of furnishing electric energy or gas; and
  - (D) Part of a system providing service to the general public of not more than two contiguous counties in the State.
- (4) "Project agreement" means any agreement entered into under this part by the department with the project party for the financing from the proceeds of special purpose revenue bonds of an energy project, including without limitation any loan agreement.
- (5) "Project party" means an electric or gas utility serving the general public and which is regulated by the public utilities commission under chapter 269.
- (6) "Special purpose revenue bonds" or "bonds" mean bonds, notes, or other evidences of indebtedness issued pursuant to this part.

**§39A- Department powers as to energy projects.** In addition to powers which it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include, but are not limited to, the following:

- (1) Notwithstanding and without compliance with sections 103-7 and 103-22 but with the approval of the governor to enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party, and to enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance

- with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for an energy project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of an energy project;
  - (4) As security for the payment of the principal of and interest on the special purpose revenue bonds issued for an energy project, to pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the energy project for which such bonds are issued; to pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to such project or such special purpose revenue bonds; and to pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to such energy project; or any combination of the foregoing;
  - (5) To 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; and
  - (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances an energy project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire an energy project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.

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

**§39A- Conditions precedent to negotiating and entering into a project agreement.** The department prior to entering into negotiations with any project party shall require that the State shall be reimbursed for any and all costs and expenses (direct or indirect) incurred by it in implementing and administering this part as determined by the department 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 amount of such deposit in excess of the amount required to reimburse the State shall be returned by the department to the project party which

has made such deposit. The State shall not be required to pay to the project party any interest or earnings on such deposit.

The department shall not enter into any project agreement with respect to any energy project unless the department shall first find and determine either that the project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through such project, or otherwise, or that the obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through such energy project, or otherwise.

**§39A- Project agreement.** No special purpose 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 energy project for the financing of which such bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the energy project is used or occupied by the project party, such sum or sums, 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 special purpose revenue bonds issued to finance the energy project as and when the bonds 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 special purpose revenue bonds;
  - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) incurred in connection with such special purpose revenue bonds; and
  - (D) To pay the expenses (direct or indirect) incurred by the State in administering such bonds or in carrying out the project agreement, as determined by the department.
- (2) To operate, maintain, and repair the energy project as long as the same is used in the business of local furnishing of electric energy or gas, and to pay all costs of such operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the energy project and shall be paid into the general fund of the State.

**§39A- Issuance of special purpose revenue bonds to finance energy projects.** In addition to the other powers which it may otherwise have, the department may issue special purpose revenue bonds to finance, in whole or in part, the costs of an energy project. All bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds issued pursuant to this part shall be issued in the name of the department and not in the name of the State.

The department in determining the cost of any energy project, may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of such energy project;
- (2) Interest on such bonds and the expenses of the State in connection with such bonds and the energy 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;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of cost and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the energy project;
- (6) Administration expenses;
- (7) Interest cost incurred by the project party with respect to the energy project prior to the issuance of the special purpose revenue bonds; and
- (8) Such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, or extension of the energy project, the financing thereof, placing of the energy project in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to utilities serving the general public and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of such bonds to assist, project parties, is in the public interest.

**§39A- Authorization of special purpose revenue bonds.** (a) Special purpose revenue bonds for each single project or multi-project program for each type of utility serving the general public shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each energy project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine,

and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or at private sale, and for such price as it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the department upon the cancellation of such mutilated bond or coupon, may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, in lieu of and in substitution for such lost, stolen, or destroyed bond or coupon. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has (1) paid the reasonable expense and charges in connection therewith, and (2) in the case of a lost, stolen, or destroyed bond or coupon, has filed with the department or its fiduciary, evidence satisfactory to such department or its fiduciary that such bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof, and (3) has furnished indemnity satisfactory to the department.

(d) The department may provide that CUSIP identification numbers shall be imprinted on any such bonds. In the event such numbers are imprinted on any such bonds (1) no such number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted, and (2) no liability shall attach to the department or any officer or agent thereof, including any fiscal agent, paying agent, or registrar for such bonds, by reason of such numbers or any use made thereof, including any use thereof made by the department, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The department may require that all costs of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds. For the purposes of this subsection, the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

**§39A- Special purpose revenue bond anticipation notes.** Whenever the department authorizes the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of such notes shall not exceed the authorized principal amount of such bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such bonds, the maximum amount of bonds in anticipation of which the notes are issued that has

been authorized shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and the details of such notes shall be governed by the provisions of this part with respect to special purpose revenue bonds insofar as the provisions may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note.

**§39A- Powers with respect to and security for special purpose revenue bonds.** In order to secure the payment of any of the special purpose revenue bonds issued pursuant to this part, and interest thereon, or in connection with such bonds, the department shall have the power as to such bonds:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued for the energy project financed from proceeds thereof, and interest thereon, and to covenant against thereafter pledging any such revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues.
- (2) To pledge and assign the interest and rights of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder.
- (3) To covenant as to the use and disposition of the proceeds from the sale of such bonds.
- (4) To covenant to set aside or pay over reserves and sinking funds for such bonds and as to the disposition thereof.
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.
- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, conditions, or obligation.
- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to 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 special purpose revenue bonds issued for the energy 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 derived by the department under the project agreement and to apply such revenues to the payment of the principal and interest on such bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering such bonds or in carrying out the project agreement. 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 necessary or convenient or desirable in order to secure such bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform such functions with respect to such payments, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation, the holding of the special purpose revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with law.

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties.
- (9) To make such covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure such bonds, notwithstanding that such covenants, acts, or things may not be enumerated herein; it being the purpose hereof to give the department power to do all things in the issuance of such bonds and for their security that may be consistent with the Constitution of the State of Hawaii.

**§39A- Security for special purpose revenue bonds.** Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other supplemental agreements entered into with respect to the energy project, and shall be secured solely by such revenues and by the pledges and assignments authorized by this part. All special purpose revenue bonds of the same issue, subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanics' and materialmen's liens, shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the energy project for which such bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable from the revenues which may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the department may reserve the right and privilege to subsequently issue additional series of special purpose revenues bonds, from time to time, payable from the revenues derived from such project agreement on a parity with the special purpose revenue bonds theretofore issued and the subsequently issued series of special purpose revenue bonds, may be secured, without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this part.

Notwithstanding any other provision hereof, the property in the energy project and all interest of the project party in the energy project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds, and the rights of the

department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the energy project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage.

**§39A- Special purpose revenue bonds not a general obligation of the State.** No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of taxing power of the State to pay such bonds or the interest thereon and no moneys other than the revenues pledged to such bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this part shall recite in substance that such bond, including interest thereon, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that such bond is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the revenues specifically pledged thereto.

**§39A- Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the department. The special purpose revenue bonds shall contain a recital that they are issued pursuant to this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

**§39A- Use of revenues derived from project agreement.** The department shall have the right to appropriate, apply, or expend the revenues derived from the project agreement for an energy project for the following purposes:

- (1) To pay when due all special purpose revenue bonds and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefor; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operation, and maintenance of the energy project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State.

**§39A- Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state and county taxation except inheritance, transfer, and estate taxes.

**§39A- Exemption from taxation of department property.** All revenues derived by the department from any energy project or under the project agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the department in any energy project shall also be exempt from all state and county taxation. Except as otherwise provided by law, the interest of the project party or user of such project in an energy 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 energy project were directly financed by the project party or other user.

**§39A- Refunding special purpose revenue bonds.** The legislature, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. The legislature may provide, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of (1) financing the cost of an energy project or improvement or expansion thereof, and (2) refunding special purpose revenue bonds which shall theretofore have been issued under this part and shall then be outstanding, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. Nothing in this section shall require or be deemed to require the department to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded which were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any law authorizing the issuance thereof, or, in the event the department elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such special purpose revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the bonds, shall be governed by the foregoing provisions of this part insofar as the provisions may be applicable.

**§39A- Status of special purpose revenue bonds under Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all such special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration.

**§39A- Treatment of special purpose revenue bonds in regulatory proceedings.**  
 (a) In the setting of rates to be paid by the consumers of utility services, the public utilities commission shall provide such consumers the maximum benefits derived by the utility from the use of such bonds.

(b) For the purpose of public disclosure, the public utilities commission, in every rate proceeding involving a public utility which has utilized special purpose revenue bonds, shall make estimates of (A) the probable amounts which would have been incurred by the utility as capital costs if financing by means other than special purpose bonds were utilized, (B) the amount the utility pays for such bonds, including the principal and sinking fund requirements, the interest, and other expenses appropriately attributable to special purpose revenue bond financing, and (C) the difference between (A) and (B), or the estimated savings realized by the consumers of the utility services.

**§39A- Special purpose revenue bonds as legal investments and lawful**

## ACT 151

**security.** The special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. Such special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and such bonds shall be lawful and sufficient security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto.

**§39A- Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall be controlling.

**§39A- Expiration.** No new special purpose revenue bond shall be issued under this part after June 30, 1984.”

**SECTION 3.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 4.** This Act shall take effect upon its approval.

(Approved June 16, 1981.)