

ACT 237

H.B. NO. 6

A Bill for an Act Relating to Counties.

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

SECTION 1. The purpose of the 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 of November 7, 1978, and pertaining to the authorization for the issuance of special purpose revenue bonds by counties to assist a processing enterprise consisting of the design, acquisition, coordination, installation, or modification of pollution control projects for the disposal of solid waste. This Act establishes a means whereby such pollution control projects can be financed through the issuance of special purpose revenue bonds by counties.

The legislature of the State of Hawaii hereby finds and declares that the health, safety, and general welfare of the people of the State require that every opportunity be taken to assist in the provision of pollution control projects for the disposal of solid waste at the lowest possible cost and particularly projects which incidentally provide electric energy; that due to the geographical location of the State, disposal of solid waste creates an urgent need for alternatives to landfill; that due to the foregoing it is in the public interest of the people of the State to assist such pollution control projects; that efforts are being made at state and federal levels to lower the cost of solid waste disposal, including at the federal level the provisions of Section 103(b)(4)(E) of the U.S. Internal Revenue Code of 1954, as amended, exempting from federal taxation the interest on bonds issued by public bodies for the provision of facilities for, among other things, solid waste disposal; that the interest on borrowings necessary to provide such facilities is a significant factor in the cost of such facilities and that the interest on indebtedness incurred to finance such facilities would be less if tax exempt; 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 counties of the State to finance the cost of facilities for the disposal of solid waste; and that the issuance of special purpose revenue bonds to finance the cost of facilities for the disposal of solid waste is a valid public purpose and in the public interest.

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 processing enterprises consisting of pollution control projects for the disposal of solid waste.

SECTION 2. Chapter 48E, Hawaii Revised Statutes, is repealed and the Hawaii Revised Statutes is amended by adding a new chapter to read as follows:

"CHAPTER 48E POLITICAL SUBDIVISION POLLUTION CONTROL SPECIAL PURPOSE REVENUE BONDS

§48E-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 pollution control 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 county, 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 pollution control project or incident to the construction, acquisition, or financing of any pollution control project, including without limitation, premiums to insure payments of the principal of and interest on special purpose revenue bonds issued under this chapter or the payment of the obligations of a project party under a project agreement, and fees for issuance of letters of credit or other banking arrangements whether for the county or a project party.
- (2) "County" means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and the county of Maui.
- (3) "Director" or "director of finance" means the director of finance of a county.
- (4) "Governing body" means the body, council, or board charged with exercising the legislative authority of a county.
- (5) "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.
- (6) "Pollution control project" means any processing enterprise consisting of property, or improvements or alterations to property, designed, acquired, constructed, installed, or modified, and certified as necessary or desirable by the state department of health, to abate, control, reduce,

treat, eliminate, or dispose of solid waste, and specifically includes facilities which incidentally provide for the recovery of energy or material resources, or both.

- (7) "Project agreement" means any lease, sublease, loan agreement, conditional sale agreement, or other similar financing contract or agreement, or combination thereof entered into under this chapter by the county, including the financing of a pollution control project from the proceeds of the special purpose revenue bonds.
- (8) "Project party" means the person with whom the county enters into a project agreement.
- (9) "Special purpose revenue bonds" means bonds, notes, or other evidences of indebtedness of a county issued pursuant to this chapter.

§48E-2 County powers. In addition to any other powers provided by law, a county may:

- (1) Subject to the approval of the governing body of the county, 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 or insured by, or the performance thereof assigned to, a person other than the project party;
- (2) By separate ordinance, approved by two-thirds of the members to which the governing body of the county is entitled, issue special purpose revenue bonds pursuant to this chapter in such principal amounts as may be necessary to finance the cost of the pollution control project;
- (3) Lend or otherwise apply the proceeds of the special purpose revenue bonds issued for a pollution control project, either directly or through a trustee or a project party, for use and application by the 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;
- (4) As security for the payment of the principal of and interest on special purpose 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 or to be derived by the county under the project agreement;
 - (B) Pledge and assign the interests and rights of the county under the project agreement or other agreement with respect to such pollution control project;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the county with respect to such pollution control project; or
 - (D) Any combination of the foregoing;

- (5) With or without terminating a project agreement, exercise any and all rights provided by law for entry and reentry 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, including any action at law or in equity for the purpose of effecting its rights of entry or reentry 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 county pursuant to the project agreement; and
- (6) Do all things necessary or proper to carry out the purposes of this chapter.

§48E-3 Compliance with state and local law. The financing of and pollution control project under this chapter shall not relieve any project party or other user of such project from compliance with all 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 pollution control 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 project, and such laws shall be applicable to such project party or such other user to the same extent they would be if the costs of the pollution control project were directly financed by the project party.

§48E-4 Conditions precedent. The county shall not undertake any pollution control project or enter into any project agreement with respect thereto unless the governing body shall first find and determine either:

- (1) 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 pollution control project, or otherwise, or
- (2) That the obligations of the project party under the project agreement will be unconditionally guaranteed or insured by, or that the performance thereof is assigned to, or guaranteed or insured by, a person who is a responsible party, whether by reason of economic assets, experience in the type of enterprise to be undertaken through the pollution control project, or otherwise.

§48E-5 Project agreement. (a) Any project agreement entered into by the county shall contain provisions unconditionally obligating the project party to pay the county 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, at such time or times and in such amount or amounts that will be at least sufficient:

- (1) To pay the principal of, and premium, if any, and interest on all special purpose revenue bonds issued to finance the costs of the pollution control project as and when the same becomes due, including upon any required redemption thereof;

- (2) To establish or maintain such reserves, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
- (3) To pay the fees and expenses of the paying agents and trustees for the special purpose revenue bonds;
- (4) To pay the expenses incurred by the county in administering the bonds or in carrying out the project agreement; provided that moneys received by the county to pay such expenses shall not be, nor be deemed to be, revenues derived under the project agreement which may be pledged as security for special purpose revenue bonds and shall be paid into the county fund from which such payments are made; and
- (5) To pay any and all of the cost, direct or indirect, in the operation, maintenance, and repair of the pollution control project.

(b) Any project agreement entered into by the county may contain such provisions as the county 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 provide that the county shall have all rights and remedies generally available at law or in equity to reenter 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 county may extend or renew any project agreement or any other agreement related thereto, in accordance with the project agreement.

§48E-6 Issuance of special purpose revenue bonds to finance pollution control projects. In addition to the other powers which any county otherwise may have, any county shall have the power and is authorized to issue special purpose revenue bonds to finance, in whole or in part, the costs of a pollution control project. The legislature of the State of Hawaii finds and determines that the exercise of the powers vested in a county by this chapter constitutes assistance to processing enterprises and that the issuance of special purpose revenue bonds to finance facilities of or for a project party is in the public interest.

§48E-7 Authorization of special purpose revenue bonds. (a) The governing body of a county, by an ordinance finally enacted by an affirmative vote of two-thirds of the members to which such governing body is entitled, and by a separate ordinance for each single pollution control project or a single program of pollution control projects may authorize the issuance of special purpose revenue bonds for the purposes of this chapter; provided the governing body of such county finds that the issuance of such bonds is in the public interest. Special purpose revenue bonds issued pursuant to this chapter may be in one or more series for each single pollution control project or single program of pollution control projects. 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 county, the holder, or both, at such price or prices and under such terms and conditions, all as may be determined by the county.

The county 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 of Hawaii. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the county 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 county may sell special purpose revenue bonds in such manner, either at public or at private sale, and for such price as it may determine to be for the best interest of the county.

(b) Prior to the preparation of definitive special purpose revenue bonds, the county 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 chapter or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the county may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of such mutilated bond or coupon, or 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 county, or its fiduciary, evidence satisfactory to such county 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 county.

(d) The governing body of a county issuing special purpose revenue bonds pursuant to this chapter in its discretion may provide that CUSIP identification numbers shall be imprinted on such bonds. If 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 county 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 county, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The governing body in its discretion may require that all cost of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds. For the purposes of this section, the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

§48E-8 Special purpose revenue bond anticipation notes. Whenever the governing body of the county shall have authorized the issuance of special purpose revenue bonds under this chapter, special purpose revenue bond anticipation notes of the county are authorized to 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 governing body of the county issuing the notes, and the maximum principal amount of such notes shall not exceed the authorized principal amount of such bonds. The notes shall be payable from and secured 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 chapter 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.

§48E-9 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 chapter, and interest thereon, or in connection with such bonds, a county shall have the power as to such bonds:

- (1) To pledge all or any part of the receipts derived by the county from the project agreement to the punctual payment of special purpose revenue bonds issued for the pollution control project financed from the proceeds thereof, and interest thereon, and to covenant against thereafter pledging any such receipts to any other bonds or any other obligations of the county for any other purpose, except as otherwise provided in the ordinance 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 project agreement and other agreements related thereto rights, duties, and obligations of the county 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) If deemed necessary or advisable by the director of finance, to designate a national or state bank or trust company within or without the State 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 to receive and receipt for, hold, and administer the proceeds of the special purpose 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 by the county under the project agreement and to apply such revenues and receipts to the payment of the principal of, or interest on such special purpose revenue bonds, or both. If a trustee is appointed, any trust indenture, trust agreement, or indenture of mortgage entered into with the trustee may contain any covenants and provisions as may be deemed necessary, convenient, or desirable by the director in order to secure such bonds. The county may pledge and assign to the trustee the project agreement and other agreements related thereto and the rights of the county thereunder, including the rights to revenues and receipts thereunder. If the director of finance appoints a trustee for the holders of the special purpose 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 special purpose 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 special purpose revenue bonds and coupons which have been paid and the supervision and conduction or the destruction thereof in accordance with law;

- (8) If a trustee is not appointed pursuant to paragraph (7), to hold such proceeds or revenues and receipts, as the case may be, in a separate account in the treasury of the county, to be applied solely to the carrying out of the ordinance, trust indenture, trust agreement, or indenture of mortgage, if any, authorizing or securing such special purpose revenue bonds;
- (9) To execute all instruments necessary or convenient in the exercise of the powers granted by this chapter or in the performance of its covenants and duties; and
- (10) To make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure such bonds, or in the discretion of the governing body of the county, which tend to make such bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated in this chapter; it being the purpose hereof to give each county the 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.

§48E-10 Lien of special purpose revenue bonds. (a) Special purpose revenue bonds shall be payable from the revenues derived by the county from payments made to the county under the project agreement or other agreements entered into with respect to the pollution control project, and shall be secured by such revenues and by the pledges and assignments authorized by this chapter.

(b) All special purpose revenue bonds of the same issue shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the pollution control 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 but subject to the prior and superior rights of outstanding bonds, claims, or obligations; provided that the right and privilege may be reserved in any ordinance authorizing the issuance of special purpose revenue bonds to subsequently issue additional special purpose revenue bonds, from time to time, payable from the receipts derived from such project agreement on a parity with the special purpose revenue bonds thereby authorized and the subsequently issued special purpose revenue bonds conforming to the reserved right and privilege then shall rank on such parity as to security and source of payment.

(c) All special purpose revenue bonds of the same issue shall be equally and ratably secured without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the receipts in accordance with this chapter and the ordinance authorizing the special purpose revenue bonds.

§48E-11 Special purpose revenue bonds not a general obligation of county. No holder or holders of any special purpose revenue bonds issued under this chapter shall ever have the right to compel any exercise of taxing power of the county to pay such bonds or the interest thereon. No special purpose revenue bond shall be secured, directly or indirectly, by the general credit of the county or by any revenues or taxes of the county, other than receipts derived from the project agreement with respect to the pollution control project for which such bonds have been issued or from any security for such project agreement, and no moneys other than such receipts shall be applied to the payment thereof. Each special purpose revenue bond issued under this chapter shall recite in substance that such bond, including interest thereon, is not a general obligation of the county and is payable from the receipts 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 county or by any revenues or taxes of the county other than the revenues specifically pledged thereto.

§48E-12 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 county issuing the bonds. The validity of the special purpose revenue bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the pollution control project for which the special purpose revenue bonds are issued.

The ordinance authorizing the special purpose revenue bonds may provide that the special purpose revenue bonds shall contain a recital that they are issued pursuant to this chapter, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

§48E-13 Use of receipts derived from project agreement. Any county issuing special purpose revenue bonds pursuant to this chapter for a pollution control project shall have the right to appropriate, apply, or expend the receipts derived from the project agreement entered into with respect thereto for the following purposes:

- (1) To pay when due all special purpose revenue bonds and interest thereon, for the payment of which the receipts 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 pollution control project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, no county shall transfer receipts derived from the project agreement to its general fund.

§48E-14 Special purpose revenue bonds exempt from taxation. Special purpose revenue bonds issued pursuant to this chapter and the income therefrom shall be exempt from all state and county taxation except inheritance, transfer, and estate taxes.

§48E-15 Exemption from taxation by county property. All revenues derived by the county from any project agreement shall be exempt from all state and county taxation. Any right, title, and interest of the county in any pollution control 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 a pollution control 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 pollution control project were directly financed by the project party or other user.

§48E-16 Refunding special purpose revenue bonds. The governing body of a county, by separate ordinance finally enacted by an affirmative vote of two-thirds of the members to which such governing body is entitled, may authorize the issuance of refunding special purpose revenue bonds of the county for the purpose of refunding any special purpose revenue bonds then outstanding and issued by that county under this chapter, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. Each county is authorized to provide, by separate ordinance finally enacted by an affirmative vote of two-thirds of the members to which such governing body is entitled, for the issuance of a single issue of special purpose revenue bonds of the county for the combined purposes of (1) financing the cost of a pollution control project or improvement or expansion thereof, and (2) refunding special purpose revenue bonds of the county which theretofore shall have been issued under this chapter and then shall be outstanding, whether or not such outstanding special purpose revenue bonds have matured or then are subject to redemption.

Nothing in this section shall require or be deemed to require a county to elect 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 ordinance authorizing the issuance thereof, or, if a county 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 county with respect to the bonds, shall be governed by the foregoing provisions of this chapter insofar as the provisions may be applicable.

§48E-17 Status of special purpose revenue bonds under Uniform Commercial Code. Notwithstanding any of the provisions of this chapter or any recitals in any special purpose revenue bonds issued under this chapter, 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.

§48E-18 Special purpose revenue bonds as legal investments and lawful security. The special purpose revenue bonds issued pursuant to this chapter shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building 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.

§48E-19 Construction of this chapter. The powers conferred by this chapter shall be supplemental to the powers conferred by any other law. Nothing contained in this chapter shall prohibit a county from providing for a pollution control project of the nature described in this part as a public undertaking, improvement, or system under chapter 47 or 49."

SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"§46- Contracts for solid waste disposal. Any other law to the contrary notwithstanding, a county is authorized from time to time to contract with users or operators of a project for the abatement, control, reduction, treatment, elimination, or disposal of solid waste, whether established or to be established under chapter 48E or as a public undertaking, improvement, or system under chapter 47 or 49, or otherwise. The contract may be included in an agreement, may be for such periods as agreed upon by the parties, and, without limiting the generality of the foregoing, may include:

- (1) Provisions for the delivery to the project of minimum amounts of solid waste and payments for the use of the project based on the delivery of the minimum amounts (which payments the political subdivision may

be obligated to make, whether or not such minimum amounts are actually delivered to the project);

- (2) Unit prices, which may be graduated; and
- (3) Adjustments of the minimum amounts and the unit prices.

The payments, unit prices, or adjustments need not be specifically stated in the contract but may be determined by formula if set forth in the contract. The contract may include provisions for arbitration and reasonable restrictions against other disposal by the county or by other public or private entities or persons over which the county shall have jurisdiction of the substances covered by the contract while the contract is in force and disposal under the contract is practicable.

§46- Transactions for utility services. Any other law to the contrary notwithstanding, the disposal of solid waste by a county or project party is a utility service, but shall not place the county or 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 solid waste or the sales of goods or commodities, including electric energy, produced by the operation of the pollution control project where such sales are made only to registered public utilities, industrial or commercial concerns, or counties or county agencies and not to the general public. If the project party is also a registered public utility, nothing contained in this section shall prohibit the sale of electric energy to the general public.

§46- Liquidated damages. Any other law to the contrary notwithstanding, a contract for the provision of utility services, goods, or commodities, including water or electrical energy, by a county or by a project party, may provide for the payment of liquidated damages by a purchaser or by the project party; provided that such liquidated damages provision shall be deemed 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."

SECTION 4. 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 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved June 9, 1983.)

Note

- 1. Edited pursuant to HRS §23G-16.5.