

ACT 268

H.B. NO. 208

A Bill for an Act Relating to the Hawaii Community Development Authority.

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

SECTION 1. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new part to read:

“PART IV. REVENUE BONDS FOR PUBLIC FACILITY PROJECTS

§206E-151 Findings and declarations. 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 the redevelopment of community development districts; that because of their location within or proximity to the urban core, the redevelopment and revitalization of these districts will alleviate community needs for employment, housing, parks, open space, and commercial and industrial facilities; that a significant deterrent to redevelopment is the cost of public facilities; that interest rates on moneys necessary to finance such public facilities add significantly to the cost of such facilities and that more favorable interest rates would be available through the issuance of tax-exempt bonds; and that the availability of revenue bonds to finance the cost of public facilities will facilitate redevelopment of community development districts.

The legislature further finds that the powers conferred, the issuance of revenue bonds, and the expenditure of public moneys under this part constitute

a serving of a valid public purpose, and that this enactment is in the public interest and is so declared as an express legislative determination.

§206E-152 Definitions. The following words or terms as used in this part shall have the following meanings, unless a different meaning clearly appears from the context:

“Revenue bonds” means bonds, notes, or other evidence of indebtedness of the authority issued to finance any public facility under this part.

“Trustee” means a national or state bank or trust company within or without the State which enters into a trust indenture.

“Trust indenture” means an agreement by and between the authority and the trustee, which sets forth the duties of the trustee with respect to the revenue bonds, the security thereof, and other provisions as deemed necessary or convenient by the authority to secure the revenue bonds.

§206E-153 Revenue bonds; authorization. (a) The authority, with the approval of the governor, may issue from time to time revenue bonds in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for the purpose of constructing, acquiring, remodeling, furnishing, and equipping any public facility, including acquisition of the site thereof.

(b) All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) The revenue bonds shall be issued in the name of the authority and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance.

§206E-154 Revenue bonds; payment and security. (a) The revenue bonds shall be payable from and secured by the revenues derived from the public facility for which the revenue bonds are issued, including revenue derived from insurance proceeds and reserve accounts and earnings thereon.

(b) The authority may pledge revenues derived from the public facility financed from the proceeds of the revenue bonds to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any note or other undertaking, obligation, or property held by the authority to secure the loans.

(d) Any pledge made by the authority shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the authority from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon such filing, the revenues, moneys, or property so pledged thereafter received by the authority shall immediately be subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be prior to the lien of all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this part.

§206E-155 Revenue bonds; interest rate, price, and sale. (a) The revenue bonds shall bear interest at a rate or rates payable monthly, quarterly, or semi-annually.

(b) The authority shall include the costs of undertaking the public facility for which the revenue bonds are issued in determining the principal amount of revenue bonds to be issued. In determining the cost of undertaking the public facility, the authority may include the cost of constructing, acquiring, remodel-

ing, furnishing, and equipping the public facility, including acquisition of the site thereof; the cost of purchasing or funding loans or other agreements entered into for the public facility; the costs of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and marketing services incurred; reserve account, trustee, custodian, and rating agency fees; and any capitalized interest.

(c) The revenue bonds may be sold at public or private sale, and for a price as may be determined by the authority to be in the best interest of the State.

§206E-156 Revenue bonds; investment of proceeds, and redemption.

Subject to any agreement with the holders of its revenue bonds, the authority may:

- (1) Invest its moneys not required for immediate use, including proceeds from the sale of revenue bonds, in any investment in accordance with procedures prescribed in a trust indenture; and
- (2) Purchase its revenue bonds out of any fund or money of the authority available therefor, and hold, cancel, or resell the revenue bonds.

§206E-157 Revenue bonds; special funds. (a) A separate special fund shall be established for each public facility financed from the proceeds of the revenue bonds secured under the same trust indenture. Each fund shall be designated "public facility revenue bond special fund" and shall bear additional designation as the authority deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, including particularly section 206E-16, all revenues, income, and receipts derived from the public facility for which the revenue bonds are issued shall be paid into the public facility revenue bond fund established for that public facility and applied as provided in the proceedings authorizing the issuance of the revenue bonds.

§206E-158 Trustee; designation, duties. (a) The authority shall designate a trustee for each issue of revenue bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the authority to receive and receipt for, hold, and administer the proceeds of the revenue bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the authority to hold and administer the public facility revenue bond special fund established pursuant to section 206E-156,¹ and to receive and receipt for, hold, and administer the revenues derived by the authority from the public facility for which the revenue bonds are issued and to apply these revenues to the payment of the cost:

- (1) Of undertaking the public facility;
- (2) Of administering and operating the proceedings providing for the issuance of the revenue bonds;
- (3) To pay the principal or interest on these bonds;
- (4) To the establishment of reserves; and
- (5) To other purposes as may be authorized in the proceedings providing for the issuance of the revenue bonds.

(d) Notwithstanding section 39-65, the director of finance may appoint the trustee to serve as fiscal agent for:

- (1) The payment of the principal of and interest on the revenue bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the director of finance in sections 36-3 and 39-12, and the third sentence of section 39-65, to appoint the trustee or others as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections.

§206E-159 Trust indenture. (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as deemed necessary or convenient by the authority for the purposes of this part.

(b) A trust indenture may allow the authority to pledge and assign to the trustee loans and other agreements related to the public facility, and the rights of the authority thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any revenue bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the revenue bonds required by section 39-64 may be facsimiles of their signatures.

(d) A trust indenture shall also contain provisions as to:

- (1) The investment of the proceeds of the revenue bonds, the investment of any reserve for the bonds, the investment of the revenues of the public facility, and the use and application of the earnings from investments; and
- (2) The terms and conditions upon which the holders of the revenue bonds or any portion of them or any trustee thereof may institute proceedings for the foreclosure of any loan or other agreement or any note or other undertaking, obligation, or property securing the payment of the bonds and the use and application of the moneys derived from the foreclosure.

(e) A trust indenture may also contain provisions deemed necessary or desirable by the authority to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the financing of the costs of undertaking the public facility."

SECTION 2. Issuance of revenue bond; amount authorized. Revenue bonds may be issued by the authority pursuant to part III, chapter 39, Hawaii Revised Statutes, and part IV, chapter 206E, Hawaii Revised Statutes, in an aggregate principal amount not to exceed \$15,000,000, at such times and in such amounts as it deems advisable for the purpose of undertaking, operating, and maintaining public facilities provided under chapter 206E, Hawaii Revised Statutes.

SECTION 3. Severability. If any provision of this Act, or any provision of the part to be added pursuant hereto to chapter 206E, Hawaii Revised Statutes, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect any other provision of this Act or the part or the application thereof to other persons or circumstances which can be given effect without the invalid provision or application, and to this end the provisions this Act and the part are severable.

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

(Approved June 6, 1985.)

Note

1. Should probably read "206E-157".