

## ACT 146

S.B. NO. 1961-86

A Bill for an Act Relating to Aloha Tower Development Corporation.

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

SECTION 1. Section 206J-1, Hawaii Revised Statutes, is amended to read as follows:

“[ [ ]§206J-1[ ] ] **Findings and purpose.** The legislature finds that the area in downtown Honolulu on the waterfront, bounded by piers 8, 9, 10, and 11 and Nimitz Highway, including the Hale Awa Ku Moko Building and Irwin Memorial Park, hereinafter called the Aloha Tower complex, is one of the most valuable properties in downtown Honolulu and that certain portions of this area should be redeveloped, renovated, or improved to better serve the economic, maritime, and recreational needs of the people of Hawaii.

The legislature further finds that the Aloha Tower complex still serves a vital maritime function that must be maintained to insure adequacy and viability for existing and future maritime activities.

The purpose of this chapter is to establish a new public body corporate and politic [and], public instrumentality, and agency of the State for the purpose of undertaking the redevelopment of the Aloha Tower complex to strengthen the international economic base of the community in trade activities, to enhance the beautification of the waterfront, and in conjunction with the department of transportation, to better serve modern maritime uses, and to provide for public access and use of the waterfront property. Properly developed, the Aloha Tower complex will further serve as a stimulant to the commercial activities of the downtown business community and help transform the waterfront into a “people place.”

The legislature finds and determines that the purpose of this chapter is in the public interest and constitutes a valid public purpose.”

SECTION 2. Section 206J-2, Hawaii Revised Statutes, is amended to read as follows:

“§206J-2 Definitions. As used in this chapter, unless the context clearly requires otherwise:

[(1)] “Board” means the board of directors of the development corporation established in section 206J-4, and any successor thereto.

[(2)] “Bonds” means revenue bonds, special facilities revenue bonds, notes, or other instruments of indebtedness of the development corporation issued under this chapter and shall include refunding bonds.

[(3)] “Development corporation” means the Aloha Tower Development Corporation established by section 206J-4.

[(4)] “Maritime” means the administration of chapter 266 by the department of transportation.

[(5)] “Project” means a public undertaking, improvement, or system consisting of a work or improvement including personal property or any interest therein, acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by the development corporation, and including public facilities[.] and, any law to the contrary notwithstanding, facilities for and functionally related and subordinate to maritime purposes.

[(6)] “Project cost” means the total cost in carrying out all undertakings that the development corporation deems reasonable and necessary for the development of a project, including but not limited to the cost of studies, surveys, plans, and specifications, architectural, design, engineering, or any other special related services; the cost of site preparation and development, demolition, construction, reconstruction, rehabilitation, and improvement; the cost of financing such project, including interest on bonds issued to finance such project from the date thereof to the estimated date of completion of such project as determined by the board; the cost of an allocable portion of the administrative and operating expenses of the development corporation related to the development of such project; and the cost of any indemnity and surety bonds, premiums on policies of insurance, legal fees, and fees and expenses of trustees, depositories, and paying agents for the bonds; all as the development corporation shall deem necessary.

[(7)] “Public agency” means any office, department, board, commission, bureau, division, public corporation, agency, or instrumentality of the federal, state, or county government.

[(8)] “Public facilities” means streets, utility and service corridors, and utility lines where applicable, sufficient to adequately service developable improvements in the area, parking garages, sidewalks, pedestrian ways, parks, and other community facilities.

[(9)] “Qualified person” means any individual, partnership, corporation, or any public agency, possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible resources, required for the purposes of the project and such other qualifications as may be deemed desirable by the development corporation in administering this chapter.

[(10)] “Real property” means lands, structures, and interests therein and natural resources including water, minerals, and all such things connected with land, including lands under water and riparian rights, space rights, and air rights and any and all other things and rights usually included within the term. Real property also means any and all interests in such property less than fee title,

such as leasehold interests, easements, incorporeal hereditaments, and every estate, interest, or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages, or otherwise.”

SECTION 3. Section 206J-4, Hawaii Revised Statutes, is amended to read as follows:

“**[ [ ]§206J-4[ ] ] Aloha Tower Development Corporation; established.** (a) There is established the Aloha Tower Development Corporation, which shall be a public body corporate and politic [and], a public instrumentality, and an agency of the State. The development corporation shall be placed within the department of planning and economic development for administrative purposes, pursuant to section 26-35.

(b) The development corporation shall consist of a board of directors having seven voting members. The director of planning and economic development, the director of transportation, the chairperson of the board of land and natural resources, and the mayor of the city and county of Honolulu, or their respective designated representatives, shall serve as ex officio voting members. Three members from the public at large shall be appointed by the governor for staggered terms pursuant to section 26-34 and shall also serve as voting members; provided that no public member shall be an officer or employee of the State or its political subdivisions. All members shall continue in office until their respective successors have been appointed. The director of [the] planning and economic development shall serve as chairperson of the board.

(c) The members of the board appointed under subsection (b) shall serve without compensation, but each member shall be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

(d) The board shall appoint a chief executive officer. The board shall set the salary of the executive officer, who shall serve at the pleasure of the board and shall be exempt from chapters 76 and 77.”

SECTION 4. Section 206J-6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The development corporation or its lessees shall not exercise any jurisdiction over the provided replacement facilities located within the Aloha Tower complex required for necessary maritime purposes and activities[.]; except that facilities functionally related and subordinate to maritime purposes, such as hotel facilities for maritime passengers, concession facilities adjacent to maritime terminal facilities, public parking facilities which are situated on property not currently under the jurisdiction of the department of transportation, and office facilities may be under the jurisdiction of the development corporation or its lessees. Jurisdiction over any such replacement facilities shall be in the department of transportation.”

SECTION 5. Section 206J-8, Hawaii Revised Statutes, is amended to read as follows:

“**[ [ ]§206J-8[ ] ] Use of public lands.** The governor may set aside applicable portions of the area designated as the Aloha Tower complex to the development corporation for the purpose specified in this chapter; provided that such setting aside would not impair any covenant between the State or any department or board thereof and holders of revenue bonds issued by the State or such department or board, or the development corporation may lease applicable portions of the Aloha Tower complex from the department of transportation. The development corporation shall annually reimburse to the department of

transportation any losses in revenues caused by any action of the development corporation. The development corporation shall provide replacement facilities for maritime activities at no cost to the department of transportation.”

SECTION 6. Section 206J-9, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§206J-9[ ] **Construction contracts.** The development corporation shall award construction contracts in conformity with chapter 103 and this chapter.”

SECTION 7. Section 206J-10, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§206J-10[ ] **Public projects.** Any project or activity of any public agency of the State in the Aloha Tower complex shall be constructed, renovated, or improved in consultation with the development corporation and the department of transportation.”

SECTION 8. Section 206J-11, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§206J-11[ ] **Lease of projects.** The development corporation may lease for a term not exceeding sixty-five years, all or any portion of the real, personal, or mixed property constituting a project under its jurisdiction as provided herein to any qualified person, upon such terms and conditions as may be approved by the board, if the board finds that the lease is in conformity with the development plan for the Aloha Tower complex. Notwithstanding any other provision to the contrary, the development corporation shall establish requirements and conditions relating to the terms of lease and the qualifications of any person to draw or bid for the lease.”

SECTION 9. Section 206J-12, Hawaii Revised Statutes, is amended to read as follows:

“§206J-12 **Bonds; bond anticipation notes.** (a) The development corporation, with the approval of the governor, may issue bonds in such amounts as authorized from time to time by law and as deemed advisable for any of its corporate purposes. The principal of, premium, if any, and interest on such bonds shall be payable, subject to the prior payment to the harbor special fund for the loss of revenues or incurrence of costs and expenses because of any action taken by the development corporation or of any rent payable to the department of transportation for the lease of properties within the Aloha Tower complex:

- (1) Exclusively from the moneys derived from rates, rentals, fees, and charges of the project financed with the proceeds of such bonds imposed under section 206J-5(b), or from such moneys together with any grant from the government in aid of such project; or
- (2) Exclusively from the moneys derived from rates, rentals, fees, and charges of certain designated projects imposed under section 206J-5(b), whether or not they are financed in whole or in part with the proceeds of the bonds; or
- (3) From [its] the moneys derived from rates, rentals, fees, and charges imposed under section 206J-5(b), generally[.], and any other revenues derived by the development corporation from whatever source.

All revenue bonds authorized by this section shall be issued pursuant to part III of chapter 39, except as provided in this chapter. The bonds shall be secured by

a pledge of such moneys and may be additionally secured by a mortgage of any project or other property of the development corporation to the extent of its interest therein. Neither the board members nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(b) Bonds issued pursuant to this chapter may be in one or more issues and in one or more series within an issue and shall be authorized pursuant to resolution of the board. The bonds shall be dated, [shall] may bear interest at such rate or rates[,] payable at such time or times as the corporation may determine with the approval of the governor, except for deeply discounted bonds which are subject to redemption or retirement at the accreted value thereof; provided that the discounted value of such bonds shall not exceed ten per cent of issue and no such bond shall be issued without prior approval of the director of finance and the governor, shall mature at such time or times not exceeding forty years from their date or dates, shall have such rank or priority, and may be made redeemable before maturity at the option of the development corporation, the holders, or either, at such price or prices and under such terms and conditions, all as may be determined by the development corporation. The development corporation shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and, subject to the approval of the state director of finance, the place or places of payment of principal and interest, which may be at any bank or trust company approved by the state director of finance within or without the State. The bonds may be issued in coupon or in registered form, or both, as the development corporation 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 development corporation may sell bonds in such manner, either at public or private sale, and for such price as it may determine.

(c) Prior to the preparation of definitive bonds, the development corporation 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.

(d) Should any bond issued under this chapter or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the development corporation 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 (1) has paid the reasonable expense and charges in connection therewith, (2) in the case of a lost, stolen, or destroyed bond or coupon, has filed with the development corporation or its fiduciary evidence satisfactory to the development corporation 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 development corporation.

(e) The development corporation in its discretion may provide that CUSIP identification numbers shall be printed on 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 development corporation 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 development corporation, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The development corporation in its discretion 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.

(f) Whenever the development corporation has authorized the issuance of bonds under this chapter, bond anticipation notes of the development corporation 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 bond anticipation notes shall be authorized by the development corporation, 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 bonds in anticipation of which the notes are issued and the moneys[,] derived from rates, rents, fees, and charges, and other 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 that has been authorized in anticipation of which the notes are issued 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 this chapter with respect to bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this subsection shall mature within five years from the date of the original note.

(g) In order to secure the payment of any of the bonds issued pursuant to this chapter, and interest thereon, or in connection with such bonds, the development corporation shall have the power as to such bonds:

- (1) To pledge all or any part of the moneys[,] derived from rates, rents, fees, and charges, and other revenues derived by the development corporation as provided in this chapter to the punctual payment of bonds and interest thereon, and to covenant against thereafter pledging any such moneys[, notes, charges,] and other revenues to any other bonds or any other obligations of the development corporation for any other purpose, except as otherwise stated in the proceedings providing for the issuance of bonds permitting the issuance of additional bonds to be equally and ratably secured by a lien upon such moneys[, rates, charges,] and other revenues.
- (2) To pledge and assign the interest of the development corporation under any lease and other agreements related to a project and the rights, duties, and obligations of the development corporation thereunder, including the right to receive [revenues] payments 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", 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, condition, or obligation.
- (7) Subject to the approval of the state director of finance, 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 bonds and to enter into a trust indenture, trust agreement, or indenture of mortgage with such trustee. The trustee may be authorized by the development corporation to receive and receipt for, hold, and administer the proceeds of such bonds and to apply the same to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the moneys[,] derived from rates, rents, fees, and charges, and other revenues derived by the development corporation under a lease or other agreement related to a project, and to apply such moneys[, rents, charges,] and other revenues to the payment of the principal of and interest on such bonds, or both, and any excess moneys[, rents, charges,] and other revenues to the payment of expenses incurred by the development corporation in administering such bonds or in carrying out such lease or other agreement. In the event that such trustee shall be appointed, any trust indenture, trust agreement, or indenture of mortgage entered into by the development corporation with the trustee may contain whatever covenants and provisions as may be necessary, convenient, or desirable in order to secure such bonds. The development corporation may pledge and assign to the trustee the interest of the development corporation under a lease and other agreements related to a project and the rights, duties, and obligations of the development corporation thereunder, including the right to receive revenues thereunder. The development corporation 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 bonds, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the development corporation may deem necessary, advisable, or expedient, including without limitation the authentication of bonds and the holding of the 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, convenient, or desirable in order to secure such bonds, notwithstanding that such covenants, acts, or things may not be enumerated in this chapter.

No holder or holders of any bonds issued under this chapter 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.

(h) 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 development corporation. The 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.

(i) The development corporation may issue bonds for the purpose of refunding any bonds then outstanding and issued under this chapter whether or not such outstanding bonds have matured or are then subject to redemption. The development corporation may issue bonds for the combined purposes of (1) financing or refinancing the cost of a project, improvement, or expansion thereof, and (2) refunding bonds which shall theretofore have been issued under this chapter and shall then be outstanding, whether or not such outstanding bonds have matured or are then subject to redemption. Nothing in this subsection shall require or be deemed to require the development corporation to elect to redeem or prepay bonds being refunded, or to redeem or prepay 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 proceedings authorizing the issuance thereof, or, in the event the development corporation elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such 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 development corporation with respect to the bonds, shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.”

SECTION 10. Section 206J-13, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§206J-13[ ] **State and political subdivisions not liable on bonds.** The bonds and other obligations of the development corporation (and such bonds and obligations shall so state on their face) shall not be a debt of the State or of any political subdivision; neither the State nor any political subdivision shall be liable thereon, nor in any event shall they be payable solely out of funds or properties other than those of the development corporation pledged thereto.”

SECTION 11. Section 206J-14, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§206J-14[ ] **Bonds exempt from taxation.** Bonds and the income therefrom issued pursuant to this chapter shall be exempt from all state and county taxation except [inheritance, transfer, and] estate and transfer taxes.”

SECTION 12. Section 206J-15, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§206J-15[ ] **Bonds as legal investments and lawful security.** Bonds issued pursuant to this chapter 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 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.”



SECTION 13. Section 206J-16, Hawaii Revised Statutes, is amended to read as follows:

“[ [§206J-16[ ] ] **Exemption from taxation of development corporation.** All revenues derived by the development corporation from any project or under a lease or other agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the development corporation in any project shall also be exempt from all state and county taxation. Except as otherwise provided by law, the interest of a qualified person or other user of a project under a lease or other agreements related to a project shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by the qualified person or other user.”

SECTION 14. Section 206J-17, Hawaii Revised Statutes, is amended to read as follows:

“[ [§206J-17[ ] ] **Aloha Tower fund.** There is created the Aloha Tower fund. All moneys, rentals, charges, and other revenues of the development corporation shall be deposited into the fund; provided that the development corporation may establish a separate account with respect to each issue of bonds issued under this chapter and direct the moneys, rentals, charges, and other revenues pledged to the payment of such issue of bonds be credited to such account and, as permitted by section 206J-12(g)(7), designate a trustee to receive and receipt for, hold, and administer the moneys in such account. In the event moneys are to be credited to a separate account held by a trustee as aforesaid, such moneys may be paid directly to such trustee with appropriate entries made with respect to the fund for purposes of accounting. The moneys on deposit in the fund shall be used for the purposes of this chapter.”

SECTION 15. Section 206J-18, Hawaii Revised Statutes, is amended to read as follows:

“[ [§206J-18[ ] ] **Assistance by state and county agencies.** Every state or county agency may render services upon request of the development corporation.”

SECTION 16. Section 206J-19, Hawaii Revised Statutes, is amended to read as follows:

“[ [§206J-19[ ] ] **Annual report.** The development corporation shall submit to the governor and the legislature, at least twenty days prior to the start of each regular session, a complete and detailed report of its activities.”

SECTION 17. Section 206J-20, Hawaii Revised Statutes, is amended to read as follows:

“[ [§206J-20[ ] ] **Court proceedings; preference.** Any action or proceeding to which the development corporation, the State, or a county may be a party, in which any question arises as to the validity of this chapter, shall be preferred over all other civil causes, except election cases, without respect to position on the calendar. The same preference shall be given upon application of counsel to the development corporation in any action or proceeding questioning the validity of this chapter in which the development corporation has duly intervened.”

SECTION 18. Section 206J-21, Hawaii Revised Statutes, is amended to read as follows:

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“[ [ ]§206J-21[ ] ] **Construction of this chapter.** The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, this chapter shall be controlling.”

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 20. This Act shall take effect upon its approval.

(Approved May 13, 1986.)