

ACT 212

H.B. NO. 2050

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

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

SECTION 1. Section 266-52, Hawaii Revised Statutes, is amended to read as follows:

“**§266-52 Powers.** In addition and supplemental to the powers granted to the department by law, the department may:

- (1) With the approval of the governor, and without public bidding, enter into a special facility lease or an amendment or supplement thereto whereby the department agrees with another person engaged in maritime and maritime-related operations to construct, acquire, remodel, furnish, or equip a special facility solely for the use by such other person to a special facility lease; provided that such special facility lease may be amendatory and supplemental to an existing lease between the department and such other person for the land upon which the special facility which is the subject of such special facility lease is to be situated.
- (2) With the approval of the governor[, issue]:
 - (A) Issue special facility revenue bonds in such principal amounts as may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility; provided that the total principal amount of

the special facility revenue bonds which may be issued pursuant to the authorization of this [paragraph] subparagraph shall not exceed [\$50,000,000.] \$100,000,000; and

- (B) Issue special facility revenue refunding bonds, without further authorization by the legislature, to refund outstanding special facility revenue bonds, including special facility revenue refunding bonds, or any part thereof, at or before the maturity or redemption date, issued pursuant to this part; provided that any issuance of the refunding bonds shall not reduce the amount authorized by the legislature as provided in paragraph (2)(A).
- (3) Perform and carry out the terms and provisions of any special facility lease.
 - (4) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, remodel, furnish, or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease.
 - (5) Construct any special facility on land owned by the State.
 - (6) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by such other person. Neither such undertaking by such other person nor the acceptance by the department of a contract theretofore entered into by such other person therefor, shall be subject to section 103-22."

SECTION 2. Section 266-53, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~266-53] Findings and determination for special facility leases. The department shall not enter into any special facility lease unless the department shall first find and determine that:

- (1) The special facility which is to be the subject of such special facility lease will not be used to provide services, commodities, supplies, or facilities which are then adequately being made available through the harbors system of the State;
- (2) The use or occupancy of the special facility under such special facility lease would not result in the reduction of the revenues derived from the harbors system to an amount below the amount required to be derived therefrom by section [~~39-59;~~] 39-61; and
- (3) The entering into of such special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the State and the department then outstanding."

SECTION 3. Section 266-55, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~266-55] Special facility revenue bonds. All special facility revenue bonds authorized to be issued shall be issued pursuant to [sections 39-51 to 39-70,] part III of chapter 39, except as follows:

- (1) No such revenue bonds shall be issued unless at the time of issuance the department shall have entered into a special facility lease with respect to the special facility for which such revenue bonds are to be issued.

- (2) Such revenue bonds shall be issued in the name of the department, and not in the name of the State.
- (3) No further authorization of the legislature shall be required for the issuance of the special facility revenue bonds, but the approval of the governor shall be required for such issuance.
- (4) Such revenue bonds shall be payable solely from and secured solely by the revenues derived by the department from the special facility for which they are issued, as defined in section 266-51(1).
- (5) The final maturity date of such revenue bonds shall not be later than either the estimated life of the special facility for which they are issued or the initial term of the special facility lease.
- (6) If deemed necessary or advisable by the department, or to permit the obligations of the other person to the special facility lease to be registered under the U.S. Securities Act of 1933, the department with the approval of the state director of finance may appoint a national or state bank within or without the State to serve as trustee for the holders of the revenue bonds and may enter into a trust indenture or trust agreement with such trustee. The trustee may be authorized by the department to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued and to apply such revenues to the payment of the principal and interest on such revenue bonds. In the event that any such trustee shall be appointed, any trust indenture or agreement entered into by the department with the trustee may contain the covenants and provisions authorized by [sections 39-51 to 39-70] part III of chapter 39 to be inserted in a resolution adopted or certificate issued, as though the words "resolution" or "certificate" as used in [those sections] that part read "trust indenture or agreement". Such covenants and provisions shall not be required to be included in the resolution or certificate authorizing the issuance of the revenue bonds if included in the trust indenture or agreement. Any resolution or certificate, trust indenture, or trust agreement adopted, issued, or entered into by the department pursuant to this part may also contain any provisions required for the qualification thereof under the U.S. Trust Indenture Act of 1939. The department may pledge and assign to the trustee the special facility lease and the rights of the department including the revenues thereunder.
- (7) If the department with the approval of the state director of finance shall have appointed or shall appoint a trustee for the holders of the revenue bonds, then notwithstanding the second sentence of section [39-65] 39-68 the director of finance may elect not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption, of the revenue bonds, or may elect to limit the functions the director shall perform as such fiscal agent. The department with the approval of the director of finance may appoint the trustee to serve as such fiscal agent, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including, without limitation, the holding of the revenue bonds and coupons which have been paid, and the supervision and destruction thereof in accordance with sections 40-10 and 40-11. Nothing in this paragraph shall be a limitation upon or be construed as a limitation upon the powers granted in the preceding paragraph to the department with the approval of the director of finance to appoint the

trustee, or granted in sections 36-3 and [39-12] 39-13 and the third sentence of section [39-65] 39-68 to the director of finance to appoint the trustee or others, as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower such fiscal agents, paying agents, and registrars to perform the functions referred to in such paragraph and sections, it being the intent of this paragraph to confirm that the director of finance as aforesaid may elect not to serve as fiscal agent for the revenue bonds or may elect to limit the functions the director shall perform as such fiscal agent, as the director of finance may deem necessary, advisable, or expedient.

- (8) The department may sell such revenue bonds either at public or private sale.
- (9) If no trustee shall be appointed to collect, hold, and administer the revenues derived from the special facility for which such revenue bonds are issued, such revenues shall be held in a separate account in the treasury of the State, separate and apart from the harbor special fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing such revenue bonds.
- (10) If the resolution, certificate, trust indenture, or trust agreement shall provide that no revenue bonds issued thereunder shall be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of such revenue bonds, signatures of the officers of the State upon such bonds and the coupons thereof as required by section [39-64] 39-56 may be evidenced by their facsimile signatures.
- (11) The proceeds of such revenue bonds may be used and applied by the department to reimburse the other person to the special facility lease for all preliminary costs and expenses, including architectural and legal costs.
- (12) If the special facility lease shall require the other person to operate, maintain, and repair the special facility which is the subject of such lease, at the other person's expense, such requirement shall constitute compliance by the department with section [39-59(2),] 39-61(a)(2), and none of the revenues derived by the department from such special facility shall be required to be applied to the purposes of section [39-60(2).] 39-62(2). Sections [39-60(4), 39-60(5), and 39-60(6)] 39-62(4), 39-62(5), and 39-62(6) shall not be applicable to the revenues derived from a special facility lease."

SECTION 4. Section 266-56, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 6. If H.B. No. 2052² is passed by the legislature during this Regular Session of 1993, whether before or after the effective date of this Act, the corresponding provisions of SECTION 1 of H.B. No. 2052² shall be amended to conform to SECTION 1 of this Act.

SECTION 7. This Act shall take effect on July 1, 1993.

(Approved June 10, 1993.)

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Notes

- 1. Edited pursuant to HRS §23G-16.5.
- 2. Act 2.