ACT 85

H.B. NO. 1975

A Bill for an Act Relating to Governmental Assistance.

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

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with Article VII, Section 9, of the Constitution of the State of Hawaii.

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by $800,000, or 0.026 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 3. The legislature finds that a loan for the Trustee or Receiver or Other Responsible Operator of Hamakua Sugar Company from a private lending institution can only be secured through the use of a guaranty from the State.

The legislature finds and declares that the issuance of the loan guaranties under this Act is in the public interest and for the public health, safety, and general welfare of the State.

The purpose of this Act is to assist the Trustee or Receiver or Other Responsible Operator of Hamakua Sugar Company to continue the operations of Hamakua Sugar Company by authorizing the department of agriculture to guaranty loans from private lending institutions.

SECTION 4. Loans guarantied by the department. (a) The department of agriculture may guaranty loans made by private lending institutions to the Trustee or Receiver or Other Responsible Operator of Hamakua Sugar Company subject to the condition that each loan guarantied shall be approved by the board of agriculture under such terms and conditions that it may prescribe.

(b) The outstanding balance on all loans guarantied under this section shall not exceed $8,000,000.

(c) The terms for the loan guaranties shall be determined by the board of agriculture.

SECTION 5. Pursuant to Article VII, Section 13, clause 8, of the State Constitution that states: ''Bonds constituting instruments of indebtedness under which the State or any political subdivision incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under this section; provided that the State or political subdivision shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State or political subdivision as provided by law,'' the legislature finds and declares that the amount presented below satisfies the reasonable reserve requirement of the State Constitution.

SECTION 6. There is created a trust fund in the state treasury to be known as the Hamakua Sugar Loan Guaranty trust fund which shall serve as the reserve for all loans guarantied under this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of $800,000, for fiscal year 1992-1993, to be deposited into the Hamakua Sugar Loan Guaranty trust fund. This sum shall, when and if necessary, be expended by the department of agriculture for the purposes of this Act.

SECTION 8. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in Article VII, Section 13, of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance," the legislature finds and declares as follows:

(1) Limitation on general obligation debt. The debt limit of the State is set forth in Article VII, Section 13, of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, Section 13, also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year."

(2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 1992-93 and estimated for each fiscal year from 1993-94 to 1996-97, is as follows:

Fiscal Year	Net General Fund Revenues	Debt Limit
1989-90	$2,418,273,831	
1990-91	2,654,706,036	
1991-92	2,672,238,596	
1992-93	2,773,716,000	$477,621,805
1993-94	2,779,671,000	499,540,739
1994-95	2,910,923,000	507,246,912
1995-96	3,099,945,000	521,965,783
1996-97	(not applicable)	542,083,238

For fiscal years 1992-93, 1993-94, 1994-95, 1995-96, and 1996-97 respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 1989-90, 1990-91, and 1991-1992 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 1992, dated December 1, 1992. The net general fund revenues for fiscal years 1992-93 to 1995-96 are estimates, based on general fund revenue estimates made as of April 15, 1993, by the council on revenues, the body assigned by Article VII, Section 7, of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

(3) Principal and interest on outstanding bonds applicable to the debt limit. (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds for determining the power of the State to issue general obligation bonds within the debt limit, as of March 1, 1993, is as follows for fiscal year 1993-94 to fiscal year 2000-2001:

Fiscal Year	Principal and Interest
1993-94	$300,563,903
1994-95	305,191,838
1995-96	341,582,157
1996-97	311,408,865
1997-98	301,461,742
1998-99	270,457,448
1999-2000	261,792,602
2000-2001	194,951,353

the department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2001-2002 to fiscal year 2012-2013 when the final installment of $18,275,000 shall be due and payable.

(B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is $202,000,000, part of which is excludable in determining the power to the State to issue obligation bonds, pursuant to Article VII, Section 13, of the State Constitution.

(4) Amount of authorized and unissued general obligation bonds and guaranties. (A) As calculated from the state comptroller's bond fund report as of October 31, 1992, adjusted for Act 209, Session Laws of Hawaii 1992, the issuance of $120,000,000 taxable general obligation bonds dated October 1, 1992, Series BY, $200,000,000 general obligation bonds dated October 1, 1992, Series BZ, $90,000,000 general obligation bonds dated February 1, 1993, Series CA, the total amount of authorized but issued general obligation bonds, is $394,203,844. The total amount of general obligation bonds authorized by Act 35,

Session Laws of Hawaii 1993, is $136,500,000. The total amount of general obligation bonds previously authorized and unissued is $530,703,844.

(B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State has incurred a contingent liability as a guarantor is $202,000,000, part of which pursuant to Article VII, Section 13, of the State Constitution, is excludable in determining the power to the State to issue general obligation bonds. The total amount of guaranties authorized by this Act is $8,000,000 and are herein validated. The total amount of guaranties previously authorized and the guaranties validated by this Act is $210,000,000.

(5) Proposed general obligation bond issuance. As reported by the department of budget and finance for fiscal years 1992-93, 1993-94, 1994-95, 1995-96, and 1996-97, the State proposes to issue $136,500,000 during the remainder of fiscal year 1992-93 and $100,000,000 semiannually in each of fiscal years 1993-94, 1994-95, 1995-96, and 1996-97. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the third year, the bonds maturing in substantially equal installments of principal, and interest payments commencing six months from the date of issuance and being paid semiannually thereafter. It is assumed that this practice will continue to be applied to the bonds which are proposed to be issued.

(6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted. From the schedule reported in paragraph (5), the total amount of general obligation bonds which the State proposes to issue during the period of March 1, 1993, to June 30, 1996, is $736,500,000. The total amount of $736,500,000 which is proposed to be issued prior to July 1, 1996, is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is $530,703,844 as reported in paragraph (4). The $736,500,000 proposed to be issued during the period of March 1, 1993, to June 30, 1996, and the $200,000,000 during the fiscal year 1996-97 will be sufficient to meet requirements of $530,703,844 with the remaining amount being applied to such other appropriations as the legislature may subsequently authorize.

(7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds.

(A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issuance because:

(i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in the budget will be implemented and will require the application of proceeds from a particular bond issue; and

(ii) While at the present time, all of the special funds which are required to make reimbursements to the general fund on bonds issued are in a condition to qualify all of the reimbursable bonds for exclusion, it cannot be stated with certainty that such a condition will continue.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, as reported in paragraph (3) herein, the average proportion of principal and interest which is excludable each year from calculation against the debt limit is 8.4 per cent for the ten years from fiscal year 1993-94 to fiscal year 2002-2003. For the purpose of this declaration, the assumption is made that five per cent of each bond issue will be excludable from the debt limit, an assumption which the director finds to be reasonable and conservative.

(B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guarantied by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under Article VII, Section 13, of the State Constitution for the fiscal years 1993-94, 1994-95, 1995-96, and 1996-97 are as follows:

Fiscal year	Total amount of General Obligation Bonds not otherwise excluded by Article VII, section 13 of the State Constitution
1993-94	$ 2,574,780,933
1994-95	2,585,794,970
1995-96	2,535,215,924
1996-97	2,498,159,186

Based on the foregoing and based on the assumption that the full amount of guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided by, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to Article VII, Section 13, of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which must be included in determining the power of the State to issue general obligation bonds is $29,605,857.

(8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of 7.0 per cent for the remainder of fiscal year 1992-93 and 7.5 per cent for the ensuing fiscal years, as reported by the department of budget and finance, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, and the guaranties authorized by this Act, will not cause the debt limit to be exceeded at the time of each bond issuance:

Time of Issue and Amount of Issue to be Counted Against Debt Limit	Debt Limit at Time of Issuance	Greatest Amount & Year of Principal & Interest
2nd issue remainder FY 1992-93 $136,500,000	$477,621,805	$388,328,014 (1995-96)
1st half FY 1993-94 $95,000,000	$499,540,739	$395,453,014 (1995-96)
2nd half FY 1993-94 $95,000,000	$499,540,739	$402,578,014 (1995-96)
1st half FY 1994-95 $95,000,000	$507,246,912	$409,703,014 (1995-96)
2nd half FY 1994-95 $95,000,000	$507,246,912	$416,828,014 (1995-96)
1st half FY 1995-96 $95,000,000	$521,965,783	$403,614,697 (1996-97)
2nd half FY 1995-96 $95,000,000	$521,965,783	$410,739,697 (1996-97)

(9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 9. The legislature finds the bases for the declaration of findings set forth in this Act are reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 10. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 11. This Act shall take effect upon its approval.

(Approved April 29, 1993.)