

ACT 284

H.B. NO. 2892

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

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

SECTION 1. Section 261-52, Hawaii Revised Statutes, is amended to read as follows:

“§261-52 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 to construct, acquire, or remodel and furnish or equip a special facility solely for the use by [such other] another person to a special facility lease[.];
- (2) With the approval of the governor, issue special facility revenue bonds in [such] principal amounts [as] that may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility, including the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this paragraph shall not exceed [\$100,000,000;] \$200,000,000; provided that these funds not be expended on nonpublic air facilities[.];
- (3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds which may be issued as provided in paragraph (2);
- [(3)] (4) Perform and carry out the terms and provisions of any special facility lease[.];
- [(4)] (5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and 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)] (6) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition[.]; and
- [(6)] (7) 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 under-

taken or supervised by [such other] another person. Neither [such] the undertaking by [such] the other person nor the acceptance by the department of a contract theretofore entered into by [such] the other person therefor, shall be subject to chapter 103D.”

SECTION 2. Section 261-54, Hawaii Revised Statutes, is amended to read as follows:

“**[[§261-54]] Special facility lease.** (a) In addition to the conditions and terms set forth in this part, any special facility lease entered into by the department shall at least contain provisions obligating the other person to the special facility lease:

- (1) To pay to the department during the initial term of the special facility lease, whether the special facility is capable of being used or occupied or is being used or occupied by the other person, a rental or rentals at [such] the time or times and in [such] the amount or amounts that will be sufficient: to pay the principal and interest on all special facility revenue bonds issued for the special facility, to establish or maintain any reserves for [such] these payments, and to pay all fees and expenses of the trustees, paying agents, transfer agents, and other fiscal agents for the special facility revenue bonds issued for the special facility[.];
- (2) To pay to the department [a]:
 - (A) A ground rental, equal to the fair market rental of the land, if the land on which the special facility is located was not acquired from the proceeds of the special facility revenue bonds; or [to pay to the department a]
 - (B) A properly allocable share of the administrative costs of the department in carrying out the special facility lease and administering the special facility revenue bonds issued for the special facility, if the land was acquired from the proceeds of the special facility revenue bonds[.];
- (3) To either operate, maintain, and repair [such] the special facility and pay the costs thereof or to pay to the department all costs of operation, maintenance, and repair of the special facility[.];
- (4) To:
 - (A) Insure, or cause to be insured, the special facility under builder’s risk insurance (or similar insurance) in the amount of the cost of construction of the special facility to be financed from the proceeds of the special facility revenue bonds;
 - (B) Procure and maintain, or cause to be procured or maintained, to the extent commercially available, a comprehensive insurance policy providing protection and insuring the department and its officers, agents, servants, and employees (and so long as special facility revenue bonds are outstanding, the trustee) against all direct or contingent loss or liability for damages for personal injury or death or damage to property, including loss of use thereof, occurring on or in any way related to the special facility or occasioned by reason of occupancy by and the operations of the other person upon, in, and around the special facility;
 - (C) Provide all risk casualty insurance, including insurance against loss or damage by fire, lightning, flood, earthquake, typhoon, or hurricane, with standard extended coverage and standard vandalism and other malicious mischief endorsements; and

- (D) Provide insurance for workers' compensation, employer's liability, and aircraft liability (including passenger liability) for personal injury or death or damage to property (the other party may self-insure for workers' compensation if permitted by law);
provided that all policies with respect to loss or damage of property including fire or other casualty and extended coverage and builder's risk shall provide for payments of the losses to the department, the other person, or the trustee as their respective interests may appear; and provided further that the insurance may be procured and maintained as part of or in conjunction with other policies carried by the other person; and provided further that the insurance shall name the department, and so long as any special facility revenue bonds are outstanding, the trustee, as additional insured; and
- (5) To indemnify, save, and hold the department, the trustee and their respective agents, officers, members, and employees harmless from and against all claims and actions and all costs and expenses incidental to the investigation and defense thereof, by or on behalf of any person, firm, or corporation, based upon or arising out of the special facility or the other person's use and occupancy thereof, including, without limitation, from and against all claims and actions based upon and arising from any:
 - (A) Condition of the special facility;
 - (B) Breach or default on the part of the other person in the performance of any of the person's obligations under the special facility lease;
 - (C) Fault or act of negligence of the other person or the person's agents, contractors, servants, employees, or licensees; or
 - (D) Accident to or injury or death of any person or loss of or damage to any property occurring in or about the special facility, including any claims or actions based upon or arising by reason of the negligence or any act of the other person.

Any moneys received by the department pursuant to [subsections (a)(2) and (a)(3) of this section] paragraphs (2) and (3) shall be paid into the airport revenue fund and shall not be nor be deemed to be revenues of the special facility.

(b) The term and all renewals and extensions of the term of any special facility lease (including any amendments or supplements thereto) shall not extend beyond the lesser of the reasonable life of the special facility which is the subject of [such] the special facility lease, as estimated by the department at the time of the entering into thereof, or thirty years.

(c) Any special facility lease entered into by the department shall be subject to chapter 171 and shall contain [such] any other terms and conditions [as] that the department deems advisable to effectuate the purposes of this part."

SECTION 3. Section 261-55, Hawaii Revised Statutes, is amended to read as follows:

"§261-55 Special facility revenue bonds. All special facility revenue bonds authorized to be issued shall be issued pursuant to [the provisions of 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] the revenue bonds are to be issued[.];

- (2) [Such] The 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] the issuance[.];
- (4) [Such] The 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[.];
- (5) The final maturity date of [such] the 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] the 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] the revenues to the payment of the principal and interest on [such] the 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] The 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 agreement or indenture. 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 provisions of the second sentence of section [[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 of finance shall perform as [such] the fiscal agent. The department with the approval of the director of finance may appoint the trustee to serve as [such] the fiscal agent, and may authorize and empower the trustee to perform [such] the functions with respect to [such] payment, purchase, registration, transfer, exchange, and redemption, [as] that 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 conduction of the destruction thereof in accordance with [the provisions of] sections 40-10 and 40-11. Nothing in this paragraph shall be a limitation upon or 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 [[39-13[]] and the third sentence of section [[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] the fiscal agents, paying agents, and registrars to perform the functions referred to in [said] that 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 of finance shall perform as [such] the fiscal agent, [as] that the director of finance may deem necessary, advisable, or expedient[.];

- (8) The department may sell [such] the 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] the revenue bonds are issued, [such] the revenues shall be held in a separate account in the treasury of the State, separate and apart from the airport revenue fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing [such] the 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] the revenue bonds, signatures of the officers of the State upon [such] the bonds required by section [[39-56[]] may be facsimiles of their signatures[.];
- (11) Proceeds of [such] the 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[.]; and
- (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] the lease, at the other person's expense, [such] the requirement shall constitute compliance by the department with section [[39-61(a)(2)[]], and none of the revenues derived by the department from [such] the special facility shall be required to be applied to the purposes of section [[39-62(2)[]]. Sections [[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. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 20, 1998.)