

ACT 138

H.B. NO. 19

A Bill for an Act Relating to University Projects and Authorizing the Issuance of Revenue Bonds for Housing Units.

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

SECTION 1. Chapter 306, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§306- Support facility for variable rate revenue bonds. If revenue bonds issued pursuant to this chapter are issued bearing interest at a rate or rates that vary from time to time and with a right of holders to tender the revenue bonds for purchase, the board may contract for a support facility or facilities and remarketing arrangements that are required to market the revenue bonds to the greatest advantage of the board and the university, upon terms and conditions as the board deems necessary and proper.

The board may enter into contracts or agreements with an entity or entities providing a support facility; provided that any contract or agreement shall provide, in essence, that any amount due and owing by the board under the contract or agreement on an annual basis shall be payable from the revenue of the university; provided further that any obligation issued or arising pursuant to the terms of the contract or agreement in the form of revenue bonds, notes, or other evidences of indebtedness shall only arise if:

- (1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of revenue bonds issued pursuant to this chapter; or
- (2) A like principal amount of the issue or series of revenue bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility.”

SECTION 2. Section 306-1, Hawaii Revised Statutes, is amended by amending the definitions of “board” or “board of regents” and “revenue of the university” to read:

““Board” or “board of regents” means the board of regents of the University of Hawaii, which [~~for the purposes of this chapter,~~] is hereby declared to be a [political] public corporation [~~within the meaning of that term as used in section 562(d) of title 48 of the United States Code~~].

“Revenue of the university” means all income, receipts, and revenues of whatever nature received by the university, or which it is entitled to receive [~~], as an owner, operator, and manager of the university, including legislative appropriations of special and revolving funds, other than [(1) general appropriations, (2) taxes, (3) tuition fees, and (4)] and gifts the terms of which preclude their being used for~~

payment of the cost of construction, cost of maintenance, or both, of a university project or university system.”

SECTION 3. Section 306-2, Hawaii Revised Statutes, is amended to read as follows:

“**§306-2 Powers of the board.** In addition to the powers [which] that it now possesses, the board of regents shall have the power to:

- (1) Construct and maintain university projects, including a university project included or to be in a university system;
- (2) Combine two or more university projects, now or hereafter existing on any one or more of the areas of any one or more of the educational institutions under the control of or governed by the board, into a university system or systems, and to maintain such system or systems;
- (3) Prescribe and collect rents, fees, and charges for the use of or services furnished by any university project or the facilities thereof;
- (4) With the approval of the governor, issue revenue bonds, to finance, in whole or in part the cost of construction, or maintenance, or both, of any university project, including a university project included or to be included in a university system[;], and reserves;
- (5) Pledge to the punctual payment of [such] any revenue bonds and interest thereon, the revenue of the university project or projects for the construction or maintenance of which the bonds have been issued, or the revenue of the university system in which [such] a university project is to be included, and the revenue of other or all university projects or university systems, in an amount sufficient to pay such bonds and interest as the same become due and to create and maintain reasonable reserves therefor; and
- (6) Advance such moneys of the university, not otherwise required, as are necessary to pay the expenses incurred in making the preparations for the initial issuance of revenue bonds under this chapter, and to take any other action necessary or proper for carrying into execution and administering this chapter, including providing for the full utilization of university projects and university systems in every way conducive to the furtherance of any or all of the purposes of the university.”

SECTION 4. Section 306-4, Hawaii Revised Statutes, is amended to read as follows:

“**§306-4 Revenue bonds.** (a) Revenue bonds shall be issued in the name of the board of regents, may be in one or more series, may be in a denomination or denominations, may bear a date or dates, may mature at a time or times not exceeding fifty years from their respective dates, may be payable at a place or places within or without the State, may carry registration privileges ~~[as to principal alone or as to both principal and interest]~~, may be subject to terms ~~[of]~~ and conditions of redemption [with] or to tenders for purchase or [without premium,] to purchase prior to the stated maturity at the option of the board, the holder, or both, may be executed in a manner, and may contain terms, covenants, and conditions, and may be in a form ~~[either coupon or registered with privilege of exchange from one form to another, that]~~ and printed in the manner, including typewritten, that the resolution authorizing the issuance of the bonds[;] or subsequent resolutions may provide.

~~[Revenue bonds may be sold at private sale to the United States, or any agency, instrumentality, or corporation thereof, to the State or any political subdivision, agency, instrumentality, or corporation thereof, or to any person or group of~~

persons offering to purchase all or a major portion of a particular issue or series. Unless sold at private sale as herein provided, revenue bonds shall be sold at public sale after public notice of the sale given at least five days prior to the date of the sale, and the notice shall be made statewide and in a financial newspaper published in any of the cities of New York, Chicago, or San Francisco. The revenue bonds shall be sold for not less than ninety-eight per cent of the principal amount thereof. Pending the preparation of definitive revenue bonds, interim receipts or temporary bonds may be issued and delivered to the purchasers of the bonds in a form and containing provisions that the board may determine. Revenue bonds, interim receipts, and temporary bonds shall be fully negotiable within the meaning of and for all the purposes of the Uniform Commercial Code, chapter 490.

It shall be legal for the State and any of its political subdivisions, or any political or public corporation, including the employees' retirement system of the State, or any instrumentality of the State, or any insurance company or building and loan association, or any savings bank or trust company, or any bank or other financial institution operating under the laws of this State, or for any personal representative, guardian, trustee, or other fiduciary, or any educational, charitable, or eleemosynary institution, to invest their funds, and moneys in their custody in revenue bonds issued under this chapter.]

(b) The board may acquire insurance policies and enter into banking arrangements upon terms and conditions that the board deems necessary or desirable, at the time of delivery of an issue of revenue bonds or a later date as the board deems in the best interests of the university, including but not limited to contracting for support facility or facilities as permitted in section 306- , and contracting for interest rate swaps, swap options, interest rate floors, and other similar contracts to hedge or reduce the amount or duration of payment, rate, spread, or similar risk, or to reduce the cost of borrowing when used in conjunction with revenue bonds issued pursuant to this chapter.

(c) The board may make arrangements necessary for the sale of each issue of revenue bonds or part that are issued pursuant to this chapter, including but not limited to arranging for the preparation and printing of the revenue bonds, the official statement, and any other documents or instruments required for the issuance and sale of revenue bonds and retaining financial, accounting, and legal consultants all upon terms and conditions as the board deems advisable and in the best interests of the State and the university. The board may offer the revenue bonds at competitive sale or may negotiate the sale of the revenue bonds to any person or group of persons, to the federal government or any board, agency, instrumentality, or corporation thereof, to the employees' retirement system of the State, to any political subdivision of the State or any board, agency, instrumentality, public corporation, or other governmental organization of the State or any political subdivision thereof.

The sale of the revenue bonds by the board by negotiation shall be at the price or prices, and upon the terms and conditions, and the revenue bonds shall bear interest at such rate or rates, or varying rates, determined from time to time in the manner as the board shall approve.

The sale of the revenue bonds by the board at competitive sale shall be at the price or prices, and upon the terms and conditions, and the revenue bonds shall bear interest at the rate or rates, or such varying rates, determined from time to time in the manner as specified by the successful bidder. The revenue bonds shall be sold in the manner provided in section 39-55.

(d) The board may delegate the responsibility for the sale and the fixing of the terms and details of revenue bonds, and any other determinations or actions as may be provided by resolution of the board, to the chairperson, the president, or other designated officer.

(e) All public officers and bodies of the State, all political subdivisions, all insurance companies and associations, all banks, savings banks, and savings institutions, including building or savings and loan associations, all credit unions, all trust companies, all personal representatives, guardians, trustees, and all other persons and fiduciaries in the State who are regulated by law as to the character of their investment may legally invest funds within their control and available for investment in revenue bonds issued under this chapter. The purpose of this subsection is to authorize any person, firm, corporation, association, political subdivision, body, or officer, public or private, to use any funds owned or controlled by them, including (without prejudice to the generality of the foregoing) sinking, insurance, investment, retirement, compensation, pension, trust funds, and funds held on deposit, for the purchase of any revenue bonds issued under this chapter.”

SECTION 5. Section 306-6, Hawaii Revised Statutes, is amended to read as follows:

~~“§306-6 Validity of bonds. [Revenue bonds issued under this chapter shall bear the signatures of the chairperson and executive officer of the board of regents, either of which signatures may be a lithographed or engraved facsimile of such signature so long as at least one of said signature is a manual signature, and shall be sealed with the seal of the board or in lieu thereof shall bear a lithographed or engraved facsimile of such seal. The coupons pertaining to the revenue bonds shall be executed with the lithographed or engraved facsimile signatures of the chairperson and executive officer of the board.]~~ Revenue bonds bearing the signature of officers in office at the date of the signing thereof shall be valid and binding obligations, notwithstanding that, before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to be officers. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the construction or maintenance of the university project or projects or university system or systems for which the bonds were issued. The resolution authorizing the issuance of revenue bonds may provide that 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.”

SECTION 6. Section 306-8, Hawaii Revised Statutes, is amended to read as follows:

“§306-8 Payment and security of revenue bonds; revenue bonds not a debt of the State. Revenue bonds issued under this chapter shall be payable ~~[solely]~~ from and secured ~~[solely]~~ by the revenues of the university ~~[project or projects or university system or systems]~~ pledged to the payment thereof, and ~~[such]~~ those revenues shall be applied to ~~[such]~~ the payment in accordance with ~~[the provisions of]~~ this chapter and the resolution or resolutions authorizing the issuance of the revenue bonds. No holder or holders of any revenue bonds issued under this chapter shall ever have the right to compel any exercise of the taxing power of the State to pay ~~[such]~~ the bonds~~;~~ or interest thereon. Each revenue bond shall recite in substance that the bond, including interest thereon, is payable ~~[solely]~~ from and secured ~~[solely]~~ by the ~~[revenue]~~ revenues pledged to the payment thereof, and that the bond does not constitute ~~[an indebtedness of the State within the meaning of any limitation of law.]~~ a general or moral obligation or charge upon the general fund of the State and the full faith and credit of the State are not pledged to the payment of the principal and interest.”

SECTION 7. Section 306-10, Hawaii Revised Statutes, is amended to read as follows:

“§306-10 University revenue-undertakings fund. ~~[The director of finance shall establish as a special deposit in the treasury of the State, a special or revolving fund into which all revenues received from all university projects or university systems constructed, maintained, or both, by the board under this chapter shall be paid, which special or revolving fund]~~ There is hereby created a special fund to be administered by the university and shall be known as the university revenue-undertakings fund[-], into which all revenue derived from a university project or university system shall be deposited. The university may deposit other revenue of the university into the fund. At the direction of the board, there may be established such accounts in the university revenue-undertakings fund as required by the resolution or resolutions authorizing revenue bonds. In the event that revenue bonds are issued under this chapter payable from the revenues of a university parking unit or the revenues of a university system [which] that includes a university parking unit, the board in the resolution or resolutions authorizing such revenue bonds may direct that all or any part of the moneys required by sections 308-2 and 308-3 to be paid into the university parking revolving fund created by [said] section 308-2 shall be deposited in the university revenue-undertakings fund in lieu of being deposited in the university parking revolving fund, and thereafter all such moneys or such part thereof as the board has directed shall be deposited in the university revenue-undertakings fund in lieu of being deposited in the university parking revolving fund. All moneys in the university revenue-undertakings fund are appropriated and shall be applied in accordance with the provisions of the resolution or resolutions of the board authorizing the issuance of revenue bonds under this chapter:

- (1) To provide for all costs of construction, operation, repair, and maintenance of university projects or university systems, including reserves therefor;
- (2) To pay when due all revenue bonds and interest thereon, for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves therefor;
- (3) To reimburse the university for all moneys advanced to pay the expenses incurred in making the preparation for the initial issuance of revenue bonds under this chapter;
- (4) To reimburse the general fund of the State for all bond requirements for general obligation bonds [which] that are or shall have been issued for a university project or university system, or to refund any of [such] those general obligation bonds, except insofar as [such] the obligation of reimbursement has been or shall be cancelled by the legislature, [such] the bond requirements being the interest on term and serial bonds, sinking fund for term bonds, and principal of serial bonds maturing the following year;
- (5) To provide a reserve for betterments and improvements to, and renewals and replacements of, university projects or university systems. If adequate provision has been made for all the foregoing purposes, and if permitted by the covenants in the resolution or resolutions authorizing the issuance of revenue bonds under this chapter, any surplus moneys remaining in the university revenue-undertakings fund at the end of any fiscal year may be expended by the board in subsequent years in furtherance of any or all of the purposes of the university.

~~[The comptroller of the State shall open and keep in the comptroller's books a separate and special account of the university revenue-undertakings fund which~~

~~shall be known as the university revenue undertakings fund account and which shall at all times show the exact condition thereof, including reserves.~~

~~Moneys appropriated as hereinabove provided shall be payable by the director of finance, upon warrants issued by the comptroller, upon vouchers approved by the board or its duly authorized agent.]”~~

SECTION 8. Section 306-11, Hawaii Revised Statutes, is amended to read as follows:

“§306-11 University project, university system, bonds exempt from taxation. The property and revenue of any university project or university system shall be exempt from all [~~state, county, and municipal~~] taxation and assessments. Revenue bonds issued under this chapter[;] and all income therefrom shall be exempt from all [~~state,~~] taxation by the State, any county, [and municipal taxation] or other political subdivision, except inheritance, transfer, and estate taxes.”

SECTION 9. Section 306-12, Hawaii Revised Statutes, is amended to read as follows:

“§306-12 Powers herein, additional to other powers. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other [~~general, special, or local~~] law[. Insofar] concerning any university project, university system, or any combination, or the issuance of revenue bonds. Revenue bonds may be issued pursuant to this chapter for those purposes notwithstanding any other law to the contrary that provides for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of a similar undertaking or the establishment, maintenance, or extension of a similar university project, university system, or any combination thereof, or the issuance of revenue bonds, without regard to the requirements, restrictions, limitations, or other law. Except as expressly provided in this chapter, insofar as this chapter is inconsistent with any other [~~general, special, or local~~] law, this chapter shall be controlling.”

SECTION 10. There is hereby authorized the issuance of revenue bonds under chapter 306, Hawaii Revised Statutes (HRS), in the principal amount of \$100,000,000 to finance in whole or in part the cost of construction, or the cost of maintenance, or both, of any university project, as defined in chapter 306, HRS, constituting one or more university housing units, as defined in chapter 306, HRS, whether or not a part of a university system, as defined in chapter 306. The proceeds of the revenue bonds and any premiums or interest derived from bonds issued pursuant to this section are appropriated for fiscal year 2005-2006 for the construction and repair of university housing units; provided that the construction of new housing units at the University of Hawaii at Manoa campus shall only be undertaken on sites currently used for student housing.

SECTION 11. Whenever revenue bonds authorized by this Act are issued, the board of regents is authorized to apply the proceeds of those revenue bonds to the purpose for which the bonds are issued.

SECTION 12. The appropriations made for the construction and repair of university housing units authorized in this Act shall not lapse at the end of the fiscal period for which the appropriation or authorization is made; provided that all appropriations that are unencumbered as of June 30, 2010, shall lapse as of that date.

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SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 14. This Act shall take effect upon its approval; provided that section 10 shall take effect on July 1, 2005.

(Approved June 20, 2005.)

Note

1. Edited pursuant to HRS §23G-16.5.