

ACT 44

S.B. NO. 1370

A Bill for an Act Relating to Special Purpose Revenue Bonds.

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

SECTION 1. Section 39A-34, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-34 Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with any project party, shall require that the ~~[State shall be reimbursed for any and]~~ project party shall agree to pay all fees, costs, and expenses (direct or indirect) [incurred] ~~assessed by [it]~~ the department in implementing and administering this part, as determined by the department, even though a project agreement may not be entered into and may further require the deposit of moneys with the department [for such reimbursement.] to pay for fees, costs, and expenses. Any amount of ~~[such]~~ the deposit in excess of the amount required to ~~[reimburse]~~ pay the State shall be returned by the department to the party ~~[which has]~~ that made [such] the deposit. The State shall not be required to pay to the project party any interest or earnings on ~~[such]~~ the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the department shall ~~[first find and]~~ determine ~~[either]~~ that ~~[the]~~:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through ~~[such]~~ the project, or otherwise~~;~~; or ~~[that the]~~
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through ~~[such]~~ the project, or otherwise.”

SECTION 2. Section 39A-35, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-35 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing or refinancing of which ~~[such]~~ the revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, ~~[such]~~ the sum or sums, at ~~[such]~~ the time or times, and in ~~[such]~~ the amounts that ~~[will]~~ shall be ~~[at least]~~ sufficient:
  - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as ~~[and when the same]~~ the bonds become due, including any premium payable upon any required redemption of ~~[such]~~ the bonds;
  - (B) To establish or maintain ~~[such]~~ a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
  - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) ~~[incurred]~~ assessed in connection with ~~[such]~~ the special purpose revenue bonds; and

(D) To pay the fees, costs, and expenses (direct or indirect) [incurred] assessed by the [State, as determined by the] department~~;~~ in administering [such] the bonds or in carrying out the project agreement~~[-]; and~~

(2) To operate, maintain, and repair the project as long as [the same] it is used in the provision of health care to the general public, and to pay all costs of [such] the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) [of this section] shall not be, nor be deemed to be, revenues of the project and shall be paid into the general fund of the State.”

SECTION 3. Section 39A-74, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-74 Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with respect to a project agreement or at any time during [such] the negotiations, shall require that as a condition to [such] the negotiations or the continuation thereof the [State shall be reimbursed for any and] project party shall agree to pay all fees, costs, and expenses [incurred] (direct or indirect) assessed by [it] the department even though a project agreement may not be entered into and may further require the deposit of moneys with the department [as security for such reimbursement.] to pay for fees, costs, and expenses. Any amount of [such] the deposit in excess of the amount required to reimburse the State shall be returned by the department to the party [which has] that made [such] the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance [such] the project pursuant to section 39A-77 and the department has [thereafter found and] determined [either] that [the]:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through [such] the project, or otherwise~~[-];~~ or [that the]
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through [such] the project, or otherwise.”

SECTION 4. Section 39A-75, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-75 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing of which [such] the revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, [such] the sum or sums, at [such] the time or times, and in [such] the amounts that [will] shall be [at least] sufficient:
  - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as [and when the same]

the bonds become due, including any premium payable upon any required redemption of [such] the bonds;

- (B) To establish or maintain [such] a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
  - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) [incurred] assessed in connection with [such] the special purpose revenue bonds; and
  - (D) To pay the fees, costs, and expenses (direct or indirect) [incurred] assessed by the [State, as determined by the] department~~[,]~~ in administering [such] the bonds or in carrying out the project agreement~~[,]~~; and
- (2) To operate, maintain, and repair the project as long as ~~[the same]~~ it is used as provided in the project agreement and to pay all costs of [such] the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, or be deemed to be, revenues of the project and shall be paid into the general fund of the State.”

SECTION 5. Section 39A-114, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-114 Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with respect to a project agreement or at any time during [such] negotiations, shall require that as a condition to [such] the negotiations or the continuation thereof, the [State shall be reimbursed for any and] project party shall agree to pay all fees, costs, and expenses [incurred] (direct or indirect) assessed by [it] the department even though a project agreement may not be entered into and may further require the deposit of moneys with the department [as security for such reimbursement.] to pay for fees, costs, and expenses. Any amount of [such] the deposit in excess of the amount required to reimburse the State shall be returned by the department to the party [which has] that made [such] the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance such project pursuant to section 39A-117 and the department has [thereafter found and] determined [either] that [the]:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through [such] the project, or otherwise[,]; or [that the]
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through [such] the project, or otherwise.”

SECTION 6. Section 39A-115, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-115 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing of which [such] the revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, ~~[such]~~ the sum or sums, at ~~[such]~~ the time or times, and in ~~[such]~~ the amounts that ~~[will]~~ shall be ~~[at-least]~~ sufficient:
  - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as ~~[and when the same]~~ the bonds become due, including any premium payable upon any required redemption of ~~[such]~~ the bonds;
  - (B) To establish or maintain ~~[such]~~ a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
  - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) ~~[incurred]~~ assessed in connection with ~~[such]~~ the special purpose revenue bonds; and
  - (D) To pay the fees, costs, and expenses (direct or indirect) ~~[incurred]~~ assessed by the ~~[State, as determined by the]~~ department~~;~~ in administering ~~[such]~~ the bonds or in carrying out the project agreement~~;~~ and
- (2) To operate, maintain, and repair the project as long as ~~[the same]~~ it is used as provided in the project agreement and to pay all costs of ~~[such]~~ the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, or be deemed to be, revenues of the project and shall be paid into the general fund of the State.”

SECTION 7. Section 39A-154, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-154 Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with respect to a project agreement or at any time during ~~[such]~~ negotiations, shall require that as a condition to ~~[such]~~ the negotiations or the continuation thereof, the ~~[State shall be reimbursed for any and]~~ project party shall agree to pay all fees, costs, and expenses ~~[incurred]~~ (direct or indirect) assessed by ~~[it]~~ the department even though a project agreement may not be entered into and may further require the deposit of moneys with the department ~~[as security for such reimbursement:]~~ to pay for fees, costs, and expenses. Any amount of ~~[such]~~ the deposit in excess of the amount required to reimburse the State shall be returned by the department to the party ~~[which has]~~ that made ~~[such]~~ the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance ~~[such]~~ the project pursuant to section 39A-157 and the department has ~~[thereafter found and]~~ determined ~~[either]~~ that ~~[the]~~:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through ~~[such]~~ the project, or otherwise~~;~~ or ~~[that the]~~
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through ~~[such]~~ the project, or otherwise.”

SECTION 8. Section 39A-155, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-155 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing of which ~~[such]~~ the revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof, and whether or not the project is used or occupied by the project party, ~~[such]~~ the sum or sums, at ~~[such]~~ the time or times, and in ~~[such]~~ the amounts that ~~[will]~~ shall be ~~[at least]~~ sufficient:
  - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as ~~[and when the same]~~ the bonds become due, including any premium payable upon any required redemption of ~~[such]~~ the bonds;
  - (B) To establish or maintain ~~[such]~~ a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
  - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) ~~[incurred]~~ assessed in connection with ~~[such]~~ the special purpose revenue bonds; and
  - (D) To pay the fees, costs, and expenses (direct or indirect) ~~[incurred]~~ assessed by the ~~[State, as determined by the]~~ department~~;~~ in administering ~~[such]~~ the bonds or in carrying out the project agreement~~[-]; and~~
- (2) To operate, maintain, and repair the project as long as ~~[the same]~~ it is used as provided in the project agreement and to pay all costs of ~~[such]~~ the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, or be deemed to be, revenues of the project and shall be paid into the general fund of the State.”

SECTION 9. Section 39A-194, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-194 Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with any project party, shall require that the ~~[State shall be reimbursed for any and]~~ project party shall agree to pay all fees, costs, and expenses (direct or indirect) ~~[incurred]~~ assessed by [it] the department in implementing and administering this part, as determined by the department, even though a project agreement may not be entered into and may further require the deposit of moneys with the department ~~[as security for such reimbursement.]~~ to pay for fees, costs, and expenses. Any amount of ~~[such]~~ the deposit in excess of the amount required to ~~[reimburse]~~ pay the State shall be returned by the department to the project party ~~[which has]~~ that made ~~[such]~~ the deposit. The State shall not be required to pay to the project party any interest or earnings on ~~[such]~~ the deposit.

(b) The department shall not enter into any project agreement with respect to any energy project unless the department shall ~~[first find and]~~ determine ~~[either]~~ that [the]:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through [such] the project, or otherwise[;]; or [that the]
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through [such] the energy project, or otherwise."

SECTION 10. Section 39A-195, Hawaii Revised Statutes, is amended to read as follows:

**"§39A-195 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have already entered into a project agreement with respect to the energy project for the financing of which [such] the bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the energy project is used or occupied by the project party, [such] the sum or sums, at [such] the time or times, and in [such] the amount or amounts that [will] shall be [at least] sufficient:
  - (A) To pay the principal and interest on all special purpose revenue bonds issued to finance the energy project as [and when] the bonds become due, including any premium payable upon any required redemption of [such] the bonds;
  - (B) To establish or maintain [such] a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
  - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) [incurred] assessed in connection with [such] the special purpose revenue bonds; and
  - (D) To pay the fees, costs, and expenses (direct or indirect) [incurred] assessed by the [State,] department in administering [such] the bonds or in carrying out the project agreement, as determined by the department[-]; and
- (2) To operate, maintain, and repair the energy project as long as [the same] it is used in the business of local furnishing of electric energy or gas, and to pay all costs of [such] the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the energy project and shall be paid into the general fund of the State."

SECTION 11. Section 39A-224, Hawaii Revised Statutes, is amended to read as follows:

**"[§]§39A-224[§] Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with any project party, shall require that the ~~[State shall be reimbursed for any and]~~ project party shall agree to pay all fees, costs, and expenses (direct or indirect) [incurred] assessed by [it] the department in implementing and administering this part, as determined by the department, even though a project agreement may not be entered into and may further require the deposit of moneys with the department [for such

~~reimbursement.] to pay for fees, costs, and expenses. Any amount of [such] the~~ deposit in excess of the amount required to ~~[reimburse] pay~~ the State shall be returned by the department to the party ~~[which has] that~~ made ~~[such] the~~ deposit. The State shall not be required to pay to the project party any interest or earnings on ~~[such] the~~ deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the department shall ~~[first find and]~~ determine ~~[either] that [the]:~~

- (1) ~~The~~ project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through such project, or otherwise~~[-]; or [that the]~~
- (2) ~~The~~ obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through ~~[such] the~~ project, or otherwise.”

SECTION 12. Section 39A-225, Hawaii Revised Statutes, is amended to read as follows:

“~~[§39A-225]~~ **Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing or refinancing of which ~~[such] the~~ revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, ~~[such] the~~ sum or sums, at ~~[such] the~~ time or times, and in ~~[such] the~~ amounts that ~~[will] shall~~ be ~~[at least]~~ sufficient:
  - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as ~~[and when the same] the bonds~~ become due, including any premium payable upon any required redemption of ~~[such] the~~ bonds;
  - (B) To establish or maintain ~~[such] a~~ reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
  - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) ~~[incurred] assessed~~ in connection with ~~[such] the~~ special purpose revenue bonds; and
  - (D) To pay the ~~fees, costs, and expenses~~ (direct or indirect) ~~[incurred] assessed~~ by the ~~[State, as determined by the] department[-]; in~~ administering ~~[such] the~~ bonds or in carrying out the project agreement~~[-]; and~~
- (2) To operate, maintain, and repair the project as long as ~~[the same] it~~ is used in the provision of early childhood education and care to the general public, and to pay all costs of ~~[such] the~~ operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the project and shall be paid into the general fund of the State.”

SECTION 13. Section 39A-254, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§39A-254]]~~ **Conditions precedent to negotiating and entering into a project agreement.** (a) Prior to entering into negotiations with any project party, the department shall require that the ~~[State be reimbursed for any]~~ project party shall agree to pay all fees, costs, and expenses (direct or indirect) [incurred] assessed by [it] the department in implementing and administering this part, as determined by the department, even though a project agreement may not be entered into. The department may further require the deposit of moneys with it ~~[for such reimbursement.]~~ to pay for fees, costs, and expenses. The department shall return any amount of the deposit exceeding the amount required to reimburse the State to the party that made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the department shall ~~[first find and]~~ determine ~~[either]~~ that ~~[the]~~:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or some other reason[.]; or [that the]
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or some other reason.”

SECTION 14. Section 39A-255, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§39A-255]]~~ **Project agreement.** No special purpose revenue bonds shall be issued unless, at the time of issuance, the department shall have entered into a project agreement with respect to the project for the financing or refinancing of which ~~[such]~~ the revenue bonds are to be issued.

Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party to:

- (1) Pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, ~~[such]~~ the sum at ~~[such]~~ the time in ~~[such]~~ the amount that ~~[will]~~ shall be ~~[at least]~~ sufficient to:
  - (A) Pay the principal and interest on all special purpose revenue bonds issued with respect to the project as ~~[and when]~~ they become due, including any premium payable upon any required redemption of ~~[such]~~ the bonds;
  - (B) Establish or maintain ~~[such]~~ a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
  - (C) Pay all fees and expenses, including the fees and expenses of the paying agents and trustees, ~~[incurred]~~ assessed in connection with ~~[such]~~ the special purpose revenue bonds; and
  - (D) Pay the fees, costs, and expenses (direct or indirect) ~~[incurred]~~ assessed by the ~~[State, as determined by the]~~ department[;] in administering ~~[such]~~ the bonds or in carrying out the project agreement; and
- (2) Operate, maintain, and repair the project as long as it is used in the provision of not-for-profit private nonsectarian and sectarian elementary, secondary, college-level, and university-level education to the general public, and to pay all costs of its operation, maintenance, and repair.



Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the project and shall be paid into the general fund of the State.”

SECTION 15. Section 39A-284, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~39A-284] **Conditions precedent to negotiating and entering into a project agreement.** (a) Prior to entering into negotiations with any project party, the department shall require that the project party ~~[reimburse the State for any and]~~ shall agree to pay all fees, costs, and expenses, ~~[direct or indirect, incurred]~~ (direct or indirect) assessed by the [State] department in implementing and administering this part, as determined by the department, even though a project agreement may not be entered into ~~[and]~~. The department may further require the deposit of moneys with the department ~~[for reimbursement]~~ to pay for fees, costs, and expenses. The department shall return any amount of the deposit exceeding the amount required to reimburse the State to the party that made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the department shall ~~[first find and]~~ determine ~~[either]~~ that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project or some other reason; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project or some other reason.”

SECTION 16. Section 39A-285, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~39A-285] **Project agreement.** No special purpose revenue bonds shall be issued unless, at the time of issuance, the department shall have entered into a project agreement with respect to the project for the financing or refinancing of which the bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party to:

- (1) Pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, a sum, at a time, and in an amount that shall be ~~[at least]~~ sufficient to:
  - (A) Pay the principal and interest on all special purpose revenue bonds issued with respect to the project as ~~[and when]~~ they become due, including any premium payable upon any required redemption of the bonds;
  - (B) Establish or maintain a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
  - (C) Pay all fees and expenses, including the fees and expenses of the paying agents and trustees, ~~[incurred]~~ assessed in connection with the special purpose revenue bonds; and
  - (D) Pay the fees, costs, and expenses~~[, direct or indirect, incurred]~~ (direct or indirect) assessed by the [State, ~~as determined by the~~] department~~[,]~~ in administering the bonds or in carrying out the project agreement; and

- (2) Operate, maintain, and repair the project as long as it is used to provide low- and moderate-income housing, and to pay all costs of operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the project and shall be paid into the general fund of the State.”

SECTION 17. Section 39A-314, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-314 Conditions precedent to negotiating and entering into a project agreement.** (a) Prior to entering into negotiations with respect to a project agreement or at any time during the negotiations, the department shall require that as a condition to the negotiations or the continuation thereof, the ~~[State shall be reimbursed for any and]~~ project party shall agree to pay all fees, costs, and expenses ~~[incurred]~~ assessed by ~~[it]~~ the department even though a project agreement may not be entered into ~~[and]~~. The department may further require the deposit of moneys with the department as security ~~[for the reimbursement.]~~ to pay for fees, costs, and expenses. Any amount of the deposit in excess of the amount required to ~~[reimburse]~~ pay the State shall be returned by the department to the party that has made the deposit. The State shall not be required to pay to the project party any interest or earnings on ~~[such]~~ the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance the project pursuant to section 39A-317 and the department has ~~[thereafter found and]~~ determined ~~[either]~~ that ~~[the]~~:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise~~;~~; or ~~[that the]~~
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise.”

SECTION 18. Section 39A-315, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-315 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing of which the special purpose revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, the sum or sums, at the time or times, and in the amounts that ~~[will]~~ shall be ~~[at least]~~ sufficient:
  - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as ~~[and when the same]~~ the bonds become due, including any premium payable upon any required redemption of the bonds;
  - (B) To establish or maintain a reserve, if any, that may be required by the instrument authorizing or securing the special purpose revenue bonds;

- (C) To pay all fees and expenses, including the fees and expenses of the paying agents and trustees, [incurred] assessed in connection with the special purpose revenue bonds; and
- (D) To pay the fees, costs, and expenses~~[- direct or indirect, incurred]~~ (direct or indirect) assessed by the ~~[State, as determined by the]~~ department~~[-]~~ in administering the bonds or in carrying out the project agreement; and
- (2) To operate, maintain, and repair the project as long as [the same] it is used, as provided in the project agreement, and to pay all costs of the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, or be deemed to be, revenues of the project and shall be paid into the general fund of the State.”

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

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

(Approved April 26, 2007.)