

ACT 146

H.B. NO. 899

A Bill for an Act Relating to the Office of Hawaiian Affairs.

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

SECTION 1. In 1994, the legislature passed Act 283, Session Laws of Hawaii 1994, to improve the administration of the office of Hawaiian affairs by giving the office of Hawaiian affairs the authority to issue revenue bonds secured by the moneys received by the office of Hawaiian affairs from the twenty per cent share of the revenue from the public land trust. Act 283 accomplished this purpose through amendments to chapter 10, Hawaii Revised Statutes, that primarily added a new part entitled "Revenue Bonds."

Section 1 of Act 283 noted that the office of Hawaiian affairs was established as a body corporate and as a separate entity independent of the executive branch. Further, section 1 noted that the 1978 constitutional convention intended that the office of Hawaiian affairs have maximum control over its budget, assets, and personnel. The Act also enabled the office of Hawaiian affairs to maximize the trust funds without eroding the trust corpus by providing another alternative to

leverage the trust funds. Act 283 required that the revenue bonds authorized by the office of Hawaiian affairs be issued by, and on behalf of, the agency's board of trustees and not by, or on behalf of, the State. The Act provided that these revenue bonds would be excluded from the State's debt ceiling and that issuance of office of Hawaiian affairs revenue bonds would have no effect on the State's power to issue general obligation bonds or the funded debt of any political subdivision under article VII, section 12, of the Hawaii Constitution.

The legislature finds that although the office of Hawaiian affairs has never issued revenue bonds, the Hawaii and national economies are now creating a renewed impetus for the office of Hawaiian affairs to seek alternative sources of funding for its projects. In addition, the legislature finds that the revenue bond provisions of chapter 10, Hawaii Revised Statutes, which have not been amended since their enactment, need updating to better reflect current government bond practices and to ensure that the office of Hawaiian affairs has maximum independence in issuing bonds.

The purpose of this Act is to clarify and strengthen the office of Hawaiian affairs' bond authority. The Act contains, among other things, provisions clarifying the ability of the office of Hawaiian affairs to meet the requirement that an office project be self-supporting by using office of Hawaiian affairs revenues that consist of rates, rentals, fees, and charges for the use and services of a public undertaking, improvement, or system, or user taxes.

SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§10- 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 or with a right of holders to tender the revenue bonds for purchase, or both, the board may contract for a support facility or facilities and remarketing arrangements as are required to market the revenue bonds to the greatest advantage of the board and the office upon such terms and conditions as the board deems necessary and proper.

The board may enter into contracts or agreements with the 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 office; 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 at such time as either:

- (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 3. Section 10-21, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Revenues of the office” or “office’s revenue” means all rates, rentals, fees and charges, and user taxes, received by the office of Hawaiian affairs, and all money and revenue derived from the operations of the office of Hawaiian affairs, other than:

- (1) General appropriations; and

- (2) Funds, the terms of which preclude their being used for payment of the costs of construction or costs of maintenance of an office project or the payment of principal or interest of revenue bonds.

For purposes of the issuance of revenue bonds, the office of Hawaiian affairs or any office project or projects shall constitute a public undertaking, improvement, or system.”

SECTION 4. Section 10-4, Hawaii Revised Statutes, is amended to read as follows:

“§10-4 Office of Hawaiian affairs; established; general powers. There shall be an office of Hawaiian affairs constituted as a body corporate which shall be a separate entity independent of the executive branch. The office, under the direction of the board of trustees, shall have the following general powers:

- (1) To adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law;
- (2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate the same; and to sell, lease, or otherwise dispose of the same at such time, in such manner and to the extent necessary or appropriate to carry out its purpose;
- (3) To determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to the office of Hawaiian affairs;
- (4) To enter into and perform such contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, or with the State, or with any political subdivision thereof, or with any person, firm, association, or corporation, as may be necessary in the conduct of its business and on such terms as it may deem appropriate;
- (5) To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers;
- (6) To issue revenue bonds pursuant to this chapter ~~[in such principal amounts as may be authorized from time to time by law]~~ to finance the cost of an office project ~~[as authorized by law]~~ and to provide for the security thereof ~~[as permitted by this chapter]~~, in the manner and pursuant to the procedure prescribed in part II;
- (7) To lend or otherwise apply the proceeds of the bonds issued for an office project either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of an office project, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;
- (8) With or without terminating a project agreement, to exercise any and all rights provided by law for entry and re-entry upon or to take possession of an office project at any time or from time to time upon breach or default by a qualified person under a project agreement, including any action at law or in equity for the purpose of effecting its rights of entry or re-entry or obtaining possession of the project or for the payments of rentals, user taxes, or charges, or any other

sum due and payable by the qualified person to the office pursuant to the project agreement; and

- (9) To take such actions as may be necessary or appropriate to carry out the powers conferred upon it by law.”

SECTION 5. Section 10-22, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§10-22]]~~ **Powers of the board.** In addition to the powers which it now possesses, the board shall have power to:

- (1) Prescribe and collect rents, fees, and charges for the use of or services furnished by any office project or the facilities thereof;
- (2) Issue revenue bonds under this chapter, in such principal amounts as may be authorized by the legislature from time to time, to finance in whole or in part the cost of construction or maintenance, or both, of any office project[;], including reserves therefor;
- (3) Pledge to the punctual payment of such revenue bonds and interest thereon, the revenue of the office project or projects for the construction or maintenance of which the bonds have been issued, or the ~~[office's revenue]~~ revenues of the office, or both, in an amount sufficient to pay such bonds and interest as the same become due and to create and maintain reasonable reserves therefor; and
- (4) Advance such moneys of the office, not otherwise required, as are necessary to pay the expenses incurred in making the preparations for the initial issuance of revenue bonds under this part, and to take any other action necessary or proper for carrying into execution and administering this part, including providing for the full ~~[utilization]~~ use of office projects in every way conducive to the furtherance of any or all purposes of the office.”

SECTION 6. Section 10-25, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§10-25]]~~ **Revenue bonds.** (a) Revenue bonds shall be issued in the name of the board, may be in one or more series, may be in the denomination or denominations, may bear ~~[such]~~ the date or dates, may mature at ~~[such]~~ the time or times not exceeding fifty years from their respective dates, may ~~[be]~~ bear interest at the rate or rates payable at ~~[such]~~ the time or times at the place or places within or without the State, may carry ~~[such]~~ the registration privileges as to principal alone or as to both principal and interest, may be subject to ~~[such]~~ the terms or redemption with or without premium, may be executed in ~~[such]~~ the manner, may contain ~~[such]~~ the terms, covenants, and conditions, and may be in such form~~[- either coupon or registered with privilege of exchange from one form to another.]~~ as 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 publication of a notice of such sale at least once, the date of publication to be at least five days prior to the date of the sale, and the publication shall be made in a newspaper published and of general circulation in the State and in a financial newspaper published in either 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 such form and containing such provisions as 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 part.]

(b) The board may acquire policies of insurance and enter into banking arrangements upon terms and conditions as the board may deem 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 interest of the office, including contracting for a support facility or facilities as permitted in section 10- , and contracting for interest rate swaps, swaptions, 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 as may be necessary or proper for the sale of each issue of revenue bonds or part thereof as are issued pursuant to this chapter, including arranging for the preparation and printing of the revenue bonds, the official statement, and any other documents or instruments deemed 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 interest of the State and the office. 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 United States, or any board, agency, instrumentality, or corporation thereof, to the employees' retirement system of the State, to any political subdivision of the State, or to any board, agency, instrumentality, public corporation, or other governmental organization of the State or of any political subdivision thereof.

The sale of the revenue bonds by the board by negotiation shall be at a price or prices, and upon terms and conditions, and the revenue bonds shall bear interest at a 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 a price or prices and upon terms and conditions, and the revenue bonds shall bear interest at a rate or rates or 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 such other determinations or actions as may be provided by resolution of the board, to the chairperson of the board, the administrator, or another 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, or trust funds, and funds held on deposit, for the purchase of any revenue bonds issued under this chapter."

SECTION 7. Section 10-28, Hawaii Revised Statutes, is amended to read as follows:

“[H§10-28] Validity of bonds. Revenue bonds issued under this part shall bear the manual signatures of the chairperson of the board and the administrator, ~~[either of which signatures may be a lithographed or engraved facsimile of the signature provided that at least one of the signatures 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 of the board and the administrator.]~~ If the board designates a registrar other than itself for the revenue bonds, the resolution authorizing the revenue bonds may provide that none of the revenue bonds shall be valid or obligatory for any purpose unless authenticated by the registrar. If the resolution so provides, then all signatures of the board upon the revenue bonds may be facsimiles of the signatures, and the revenue bonds shall be valid and obligatory only if authenticated by the manual signature of an authorized officer or signatory of the registrar. 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 office project or projects 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 part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.”

SECTION 8. Section 10-30, Hawaii Revised Statutes, is amended to read as follows:

“[H§10-30] Payment and security of revenue bonds; revenue bonds not a debt of the State. Revenue bonds issued under this part shall be payable ~~[solely]~~ from and secured solely by the revenues of the office project or projects or revenues of the office pledged to the payment thereof, or both, and ~~[such]~~ those revenues shall be applied to ~~[such]~~ the payment in accordance with the provisions of this part and the resolution or resolutions authorizing the issuance of the revenue bonds. No holder or holders of any revenue bonds issued under this part shall have the right to compel any exercise of the taxing power of the State or the making of any appropriation to pay ~~[such]~~ the revenue bonds, or interest thereon. Each revenue bond shall recite in substance that the revenue bond, including interest thereon, is payable solely from and secured ~~[solely]~~ by the revenue pledged to the payment thereof, and that the bond does not constitute ~~[an]~~

a general or moral obligation or indebtedness of the State within the meaning of any [limitation of] law.”

SECTION 9. Section 10-31, Hawaii Revised Statutes, is amended to read as follows:

“[§10-31] Office of Hawaiian affairs projects to be self-supporting. The board shall impose and collect rates, rents, fees, and charges for the use or enjoyment and services of the facilities of each office project, and shall revise such rates, rents, fees, and charges ~~[from time to time]~~, whenever necessary, or direct all or any portion of the revenues of the office, so that ~~[all office projects shall be self-supporting. The rates, rents, fees, and charges prescribed]~~ in the aggregate, the revenues of the office project and the revenues of the office shall ~~[be such as will]~~ produce revenue at least sufficient to:

- (1) Pay the cost of maintenance of the office project or projects, including reserves therefor;
- (2) Pay when due all bonds and interest thereon, for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves therefor;
- (3) Reimburse the general fund of the State for any bond requirements on general obligation bonds issued for an office project or projects to the extent required by law; and
- (4) Carry out all covenants and provisions of the resolution or resolutions authorizing the issuance of revenue bonds.

Neither this section nor any other section of this part shall preclude the making of appropriations to the board, the acceptance of gifts by the board, or the use of revenues of the office or other funds derived from the sale of stocks, bonds, or other assets in the possession of the board to pay all or part of the costs of construction, of maintenance, or both, of any or all office projects.

All moneys received pursuant to this section shall be administered as trust funds, as provided by this chapter, and in separate accounts designated for each office project.”

SECTION 10. Any law to the contrary notwithstanding, nothing in this Act shall be construed to prohibit or otherwise limit the ability of the office of Hawaiian affairs to pledge to the punctual payment of revenue bonds issued under part II of chapter 10, Hawaii Revised Statutes, revenues of the office of Hawaiian affairs that are, or are deemed to be, income and proceeds from the public land trust under article XII, sections 4 and 6, of the Hawaii Constitution.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 12. This Act shall take effect upon its approval.

(Approved June 24, 2009.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.