

A Bill for an Act Relating to Information Technology.

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

PART I

SECTION 1. Chapter 39A, part VI, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“PART VI. ASSISTING UTILITIES SERVING THE GENERAL PUBLIC  
IN PROVIDING ELECTRIC ENERGY [OR], GAS, OR  
TELECOMMUNICATIONS”**

SECTION 2. Section 39A-191, Hawaii Revised Statutes, is amended as follows:

1. By adding four new definitions to read:

““Project” means any energy project or telecommunications project.

“Telecommunications carrier” or “telecommunications common carrier” has the meaning defined by section 269-1.

“Telecommunications project” means any facilities for each single project or multiproject program for the provision of telecommunications service of a project party that is a telecommunications carrier or a telecommunications common carrier.

“Telecommunications service” has the meaning defined by section 269-1.”

2. By amending the definitions of “project agreement” and “project party” to read:

““Project agreement” means any agreement entered into under this part by the department with the project party for the financing from the proceeds of special purpose revenue bonds of a telecommunications project or an energy project, including without limitation any loan agreement.

“Project party” means an electric or gas utility serving the general public and [which] that is regulated by the public utilities commission under chapter 269[-], or a telecommunications carrier or telecommunications common carrier, whether or not subject to regulation by the public utilities commission under chapter 269.”

SECTION 3. Section 39A-192, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-192 Department powers as to [energy] projects.** In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

(1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to:

(A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and

(B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;

- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for an [energy] project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of [an energy] a project;
- (4) As security for the payment of the principal of and interest on the special purpose revenue bonds issued for [an energy] a project, to:
  - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the [energy] project for which the special purpose revenue bonds are issued;
  - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
  - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the [energy] project; or
  - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances [an energy] a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire [an energy] a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.”

SECTION 4. Section 39A-193, Hawaii Revised Statutes, is amended to read as follows:

“§39A-193 **Compliance with state and local law.** The financing of any [energy] project under this part shall not relieve any project party or other user of such [energy] project from the laws, ordinances, [and] rules, and regulations of the State and county or any departments or boards thereof with respect to the construction, operation, and maintenance of [energy] projects, compliance with master plans or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the [energy] project, and such laws shall be applicable to such party or such other user to the same extent they would be if the costs of the [energy] project were directly financed by the project party.”

SECTION 5. Section 39A-194, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department shall not enter into any project agreement with respect to any [energy] project unless the department shall determine 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 otherwise; 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 [energy] project, or otherwise.”

SECTION 6. 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 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, the sum or sums, at the time or times, and in the amount or amounts that shall be sufficient:
  - (A) To pay the principal and interest on all special purpose revenue bonds issued to finance the [energy] project as the bonds become due, including any premium payable upon any required redemption of the bonds;
  - (B) To establish or maintain 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) assessed in connection with the special purpose revenue bonds; and
  - (D) To pay the fees, costs, and expenses (direct or indirect) assessed by the department in administering 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 it is used in the business of local furnishing of electric energy or gas, or in the business of providing telecommunications service, and to pay all costs of 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 7. Section 39A-196, Hawaii Revised Statutes, is amended to read as follows:

“§39A-196 **Issuance of special purpose revenue bonds to finance [energy] projects.** In addition to the other powers [which] that it may otherwise have, the department may issue special purpose revenue bonds to finance, in whole or in part, the costs of [~~an energy~~] a project. All bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds issued pursuant to this part shall be issued in the name of the department and not in the name of the State.

The department,<sup>1</sup> in determining the cost of any [energy] project, may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of such [energy] project;
- (2) Interest on such bonds and the expenses of the State in connection with such bonds and the [energy] project to be financed from the proceeds of such bonds accruing or incurred prior to and during the period of construction and for not exceeding six months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of cost and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicality of the [energy] project;
- (6) Administration expenses;
- (7) Interest cost incurred by the project party with respect to the [energy] project prior to the issuance of the special purpose revenue bonds; and
- (8) Such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, or extension of the [energy] project, the financing thereof, placing of the [energy] project in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to utilities serving the general public and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of such bonds to assist, project parties, is in the public interest.”

SECTION 8. Section 39A-197, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Special purpose revenue bonds for each single project or multiproject program for each type of utility serving the general public shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, [which] that has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each [energy] project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the

State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or at private sale, and for such price as it may determine.”

SECTION 9. Section 39A-199, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-199 Powers with respect to and security for special purpose revenue bonds.** ~~[In order to]~~ To secure the payment of any of the special purpose revenue bonds issued pursuant to this part, and interest thereon, or in connection with such bonds, the department shall have the power as to such bonds:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued for the [energy] project financed from proceeds thereof, and interest thereon, and to covenant against thereafter pledging any such revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues.
- (2) To pledge and assign the interest and rights of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder.
- (3) To covenant as to the use and disposition of the proceeds from the sale of such bonds.
- (4) To covenant to set aside or pay over reserves and sinking funds for such bonds and as to the disposition thereof.
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute “events of default” and the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.
- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, conditions, or obligation.
- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with such trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the [energy] project and to apply the proceeds to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply such revenues to the payment of the principal and interest on such bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering such bonds or in carrying out the project agreement. In the event that such trustee shall be appointed, any trust indenture or trust agreement

or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable [~~in order~~] to secure such bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation, the holding of the special purpose revenue bonds and coupons [~~which~~] that have been paid and the supervision of the destruction thereof in accordance with law.

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties.
- (9) To make such covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure such bonds, notwithstanding that such covenants, acts, or things may not be enumerated herein; it being the purpose hereof to give the department power to do all things in the issuance of such bonds and for their security that may be consistent with the Constitution of the State of Hawaii.”

SECTION 10. Section 39A-203, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-203 Use of revenues derived from project agreement.** The department shall have the right to appropriate, apply, or expend the revenues derived from the project agreement for [~~an energy~~] a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefor; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operation, and maintenance of the [~~energy~~] project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State.”

SECTION 11. Section 39A-205, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-205 Exemption from taxation of department property.** All revenues derived by the department from any [~~energy~~] project or under the project agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the department in any [~~energy~~] project shall also be exempt from all state and county taxation. Except as otherwise provided by law, the interest of the project party or user of such project in [~~an energy~~] a proj-

ect or under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the [energy] project were directly financed by the project party or other user.”

SECTION 12. Section 39A-206, Hawaii Revised Statutes, is amended to read as follows:

**“§39A-206 Refunding special purpose revenue bonds.** The legislature, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. The legislature may provide, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of [financing]<sup>2</sup>:

- (1) Financing the cost of [~~an energy~~] a project or improvement or expansion thereof<sup>1</sup>; and
- (2) [~~refunding~~] Refunding special purpose revenue bonds [~~which~~] that shall theretofore have been issued under this part and shall then be outstanding, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption.

Nothing in this section shall require or be deemed to require the department to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded [~~which~~] that were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any law authorizing the issuance thereof, or, in the event the department elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such special purpose revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the bonds, shall be governed by the foregoing provisions of this part insofar as the provisions may be applicable.”

SECTION 13. Section 39A-208, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For the purpose of public disclosure, the public utilities commission, in every rate proceeding involving a public utility that is regulated by the public utilities commission under chapter 269 and which has utilized special purpose revenue bonds, shall make estimates of [~~the (A)~~]:

- (1) The probable amounts [~~which~~] that would have been incurred by the utility as capital costs if financing by means other than special purpose revenue bonds were utilized<sup>1</sup>, [~~(B) the~~];
- (2) The amount the utility pays for such bonds, including the principal and sinking fund requirements, the interest, and other expenses appropriately attributable to special purpose revenue bond financing<sup>2</sup>; and [~~(C) the~~]
- (3) The difference between [~~(A)~~] (1) and [~~(B)~~] (2), or the estimated savings realized by the consumers of the utility services.”

## PART II

SECTION 14. The legislature finds that the development of broadband infrastructure to enable access to affordable ultra high-speed internet is essential to build a vibrant and sustainable economy and workforce in Hawaii and improve the quality of life for residents. The legislature further finds that the utilization of abandoned water mains in conjunction with Act 151, Session Laws of Hawaii 2011, provides a unique opportunity to achieve the State's Hawaii broadband initiative goals in a timely and cost effective manner. Underground cables are protected from weather-related risks and accident damage, and preserve Hawaii's uncluttered environment. The use of abandoned water mains is a proven way to facilitate cost efficient and rapid deployment of buried fiber optic infrastructure, while minimizing the unavoidable traffic impacts that plague traditional underground construction methods, especially in the urban core. For these reasons, the legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 15. Pursuant to part VI, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$100,000,000, in one or more series, for the purpose of assisting Clearcom, Inc., or a partnership headed by Clearcom, Inc., with the planning, permitting, designing, constructing, equipping, and operating of broadband infrastructure at locations throughout the State.

SECTION 16. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VI, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist utilities serving the general public in providing electric energy, gas, or telecommunications.

SECTION 17. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2017, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 15 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 15. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 18. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VI, chapter 39A, Hawaii Revised Statutes, and the department of budget and finance may combine a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VI, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to



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exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 19. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2017.

### **PART III**

SECTION 20. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 21. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

#### **Notes**

1. Comma should be underscored.
2. So in original.