

## ACT 121

S.B. NO. 284

A Bill for an Act Relating to the Transient Accommodations Tax.

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

**SECTION 1.** The purpose of this Act is to establish a method to use transient accommodations tax revenues and moneys from the land conservation fund to reimburse the state general fund for the debt service on reimbursable general obligation bonds, the proceeds of which will be used to acquire a conservation easement and other real property interests in Turtle Bay, Oahu, for the protection, preservation, and enhancement of natural resources important to the State.

The legislature finds and deems that the transient accommodations tax revenues and moneys from the land conservation fund comprise user taxes. The source of funding for the Turtle Bay conservation easement will be reimbursable general obligation bonds issued by the department of budget and finance. The debt service on the reimbursable general obligation bonds will be reimbursed from the transient accommodations tax revenues and moneys from the land conservation fund. The proceeds from the reimbursable general obligation bonds, the transient accommodations tax revenues, and moneys from the land conservation fund will be deposited into the Turtle Bay conservation easement special fund. The role of the department of budget and finance is solely to facilitate the financing of this transaction with the department of land and natural resources purchasing the Turtle Bay conservation easement and other real property interests. The legislature finds that the financing of the Turtle Bay conservation easement and other real property interests is essential to the execution of the transaction and is for a public purpose.

The legislature also finds that the acquisition of the Turtle Bay conservation easement and other real property interests by the department of land and

natural resources is for the purpose of supporting, encouraging, and enhancing the natural beauty of Oahu's north shore, and is land having value as a resource to the State. The legislature further finds that the acquisition of the Turtle Bay conservation easement and other real property interests by the department of land and natural resources is crucial to the protection, preservation, and enhancement of the State's natural resources and to the State's economic well-being, and is for a public purpose.

Specifically, this Act:

- (1) Authorizes the department of budget and finance to issue \$35,000,000 in reimbursable general obligation bonds and to deposit the proceeds into the Turtle Bay conservation easement special fund;
- (2) Appropriates \$35,000,000 out of the Turtle Bay conservation easement special fund for the department of land and natural resources to acquire a conservation easement and other real property interests at Turtle Bay, Oahu;
- (3) Allocates transient accommodations tax revenues of \$1,500,000 annually to the Turtle Bay conservation easement special fund;
- (4) Provides that a nonprofit land conservation organization shall file an application annually with the board of land and natural resources requesting \$1,500,000 from the land conservation fund to be used for the reimbursement of debt service on the Turtle Bay reimbursable general obligation bonds;
- (5) Appropriates \$3,000,000 out of the Turtle Bay conservation easement special fund to reimburse the state general fund for payment of debt service on the reimbursable general obligation bonds; and
- (6) Appropriates \$500,000 from the transient accommodations tax revenues to the department of land and natural resources to pay for appraisal costs, due diligence costs, and closing costs relating to the acquisition of a conservation easement and other real property interests in Turtle Bay, Oahu.

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§171-A Reimbursable general obligation bonds for conservation easement and other real property interests in Turtle Bay, Oahu.** (a) The department of budget and finance shall issue reimbursable general obligation bonds for the department of land and natural resources to acquire a conservation easement and other real property interests in Turtle Bay, Oahu, for the protection, preservation, and enhancement of natural resources, while maintaining public access, as important to the State. The public shall have perpetual public access to said conservation easement. The conservation easement shall be in compliance with chapters 171 and 198. The other real property interests shall be in compliance with chapter 171.

(b) For the purpose of this section, the acquisition of the conservation easement and other real property interests shall be deemed an undertaking under chapter 39.

(c) The reimbursable general obligation bonds issued to acquire the conservation easement and other real property interests shall be payable from the transient accommodations tax revenues allocated to the Turtle Bay conservation easement special fund established by section 171-B and from moneys from the land conservation fund. The transient accommodations tax revenues and moneys from the land conservation fund are and shall be deemed user taxes.

The revenues allocated shall be deemed user taxes pursuant to chapter 39 for the undertaking.

(d) The reimbursable general obligation bonds shall be issued in accordance with chapter 39.

**§171-B Turtle Bay conservation easement special fund.** (a) There is established the Turtle Bay conservation easement special fund to be administered by the department of land and natural resources.

(b) Transient accommodations tax revenues allocated to the Turtle Bay conservation easement special fund pursuant to section 237D-6.5 and moneys from the land conservation fund shall be deposited into the special fund. All interest earned on the moneys in the special fund shall be credited to the special fund.

(c) Moneys in the Turtle Bay conservation easement special fund shall be expended to reimburse the state general fund for payment of debt service on reimbursable general obligation bonds issued to acquire the conservation easement and other real property interests in Turtle Bay, Oahu.

(d) The Turtle Bay conservation easement special fund shall be exempt from the central service expenses of section 36-27 and departmental administrative expenses of section 36-30.

(e) Upon reimbursement to the state general fund of all debt service on reimbursable general obligation bonds issued to acquire the conservation easement in Turtle Bay, Oahu, any unencumbered and unexpended moneys in the Turtle Bay conservation easement special fund shall be transferred to the tourism special fund established under section 201B-11.

**§171-C Turtle Bay appraisal and due diligence.** Any appraisal and due diligence completed by the Hawaii tourism authority may be used by the department of land and natural resources for the acquisition of the Turtle Bay conservation easement and other real property interests.

**§171-D Lease of Turtle Bay lands.** Notwithstanding any law to the contrary, the board of land and natural resources may, without public auction, lease lands purchased in fee simple pursuant to section 171-A, to the grantor of the conservation easement or its successor in interest. The purpose of the lease shall be for the protection, preservation, and enhancement of natural resources, while maintaining public access. The lease rental shall be on a nominal basis, shall not exceed a term of sixty five years, and be upon such other terms and conditions as the board may determine.”

SECTION 3. Chapter 173A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§173A- Payment of debt service on the Turtle Bay reimbursable general obligation bonds.** Notwithstanding any laws to the contrary:

- (1) Beginning July 1, 2015, a nonprofit land conservation organization shall file an application annually with the board requesting \$1,500,000 from the land conservation fund to be used for the reimbursement of debt service on the Turtle Bay reimbursable general obligation bonds until the bonds are fully amortized;
- (2) The board shall not require the nonprofit land conservation organization that is the recipient of a grant for the payment of debt service on the Turtle Bay reimbursable general obligation bonds to provide any additional matching funds; and

- (3) Moneys awarded for the payment of debt service on the Turtle Bay reimbursable general obligation bonds shall be deposited into the Turtle Bay conservation easement special fund.”

SECTION 4. Section 87A-42, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In any fiscal year subsequent to the 2017-2018 fiscal year in which a county public employer’s contributions into the fund are less than the amount of the annual required contribution, the amount that represents the excess of the annual required contribution over the county public employer’s contributions shall be deposited into the fund from a portion of all transient accommodations tax revenues collected by the department of taxation under section ~~[237D-6.5(b)(3)] 237D-6.5(b)(4)~~. The director of finance shall deduct the amount necessary to meet the county public employer’s annual required contribution from the revenues derived under section ~~[237D-6.5(b)(3)] 237D-6.5(b)(4)~~ and transfer the amount to the board for deposit into the appropriate account of the separate trust fund.”

SECTION 5. Section 171-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created in the department a special fund to be designated as the “special land and development fund”. Subject to the Hawaiian Homes Commission Act of 1920, as amended, and section 5(f) of the Admission Act of 1959, all proceeds of sale of public lands, including interest on deferred payments; all moneys collected under section 171-58 for mineral and water rights; all rents from leases, licenses, and permits derived from public lands; all moneys collected from lessees of public lands within industrial parks; all fees, fines, and other administrative charges collected under this chapter and chapter 183C; a portion of the highway fuel tax collected under chapter 243; all moneys collected by the department for the commercial use of public trails and trail accesses under the jurisdiction of the department; transient accommodations tax revenues collected pursuant to section ~~[237D-6.5(b)(2)] 237D-6.5(b)(5)~~; and private contributions for the management, maintenance, and development of trails and accesses shall be set apart in the fund and shall be used only as authorized by the legislature for the following purposes:

- (1) To reimburse the general fund of the State for advances made that are required to be reimbursed from the proceeds derived from sales, leases, licenses, or permits of public lands;
- (2) For the planning, development, management, operations, or maintenance of all lands and improvements under the control and management of the board[, pursuant to title 12, including but not limited to permanent or temporary staff positions who may be appointed without regard to chapter 76; provided that transient accommodations tax revenues allocated to the fund shall be expended as provided in section 237D-6.5(b)(5)];
- (3) To repurchase any land, including improvements, in the exercise by the board of any right of repurchase specifically reserved in any patent, deed, lease, or other documents or as provided by law;
- (4) For the payment of all appraisal fees; provided that all fees reimbursed to the board shall be deposited in the fund;
- (5) For the payment of publication notices as required under this chapter; provided that all or a portion of the expenditures may be charged to the purchaser or lessee of public lands or any interest therein under rules adopted by the board;

- (6) For the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department;
- (7) For the payment to private land developers who have contracted with the board for development of public lands under section 171-60;
- (8) For the payment of debt service on revenue bonds issued by the department, and the establishment of debt service and other reserves deemed necessary by the board;
- (9) To reimburse the general fund for debt service on general obligation bonds issued to finance departmental projects, where the bonds are designated to be reimbursed from the special land and development fund;
- (10) For the protection, planning, management, and regulation of water resources under chapter 174C; and
- (11) For other purposes of this chapter.”

SECTION 6. Section 201B-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Moneys in the convention center enterprise special fund shall be used by the authority for the payment of any and all of the following:

- (1) Debt owed to the department of budget and finance relating to the convention center[; ~~provided that, after the restructuring required by section 5 of Act 81, Session Laws of Hawaii 2014, the annual debt service payment owed to the department shall not exceed \$16,500,000 from fiscal year 2014-2015 until fully retired~~]; and
- (2) Expenses arising from any and all use, operation, maintenance, alteration, improvement, or any unforeseen or unplanned repairs of the convention center, including without limitation the food and beverage service and parking service provided at the convention center facility, the sale of souvenirs, logo items, or other items, for any future major repair, maintenance, and improvement of the convention center facility as a commercial enterprise or as a world class facility for conventions, entertainment, or public events, and for marketing the facility pursuant to section 201B-7(a)(7).”

SECTION 7. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Revenues collected under this chapter shall be distributed ~~[as follows,]~~ in the following priority, with the excess revenues to be deposited into the general fund:

- (1) \$1,500,000 shall be allocated to the Turtle Bay conservation easement special fund beginning July 1, 2015, for the reimbursement to the state general fund of debt service on reimbursable general obligation bonds, including ongoing expenses related to the issuance of the bonds, the proceeds of which were used to acquire the conservation easement and other real property interests in Turtle Bay, Oahu, for the protection, preservation, and enhancement of natural resources important to the State, until the bonds are fully amortized;
- ~~(4)~~ (2) \$26,500,000 shall be allocated to the convention center enterprise special fund established under section 201B-8;
- ~~(2)~~ (3) \$82,000,000 shall be allocated to the tourism special fund established under section 201B-11; provided that:

- (A) Beginning on July 1, 2012, and ending on June 30, 2015, \$2,000,000 shall be expended from the tourism special fund for development and implementation of initiatives to take advantage of expanded visa programs and increased travel opportunities for international visitors to Hawaii;
  - (B) Of the \$82,000,000 allocated:
    - (i) \$1,000,000 shall be allocated for the operation of a Hawaiian center and the museum of Hawaiian music and dance at the Hawaii convention center; and
    - (ii) 0.5 per cent of the \$82,000,000 shall be transferred to a sub-account in the tourism special fund to provide funding for a safety and security budget, in accordance with the Hawaii tourism strategic plan 2005-2015; and
  - (C) Of the revenues remaining in the tourism special fund after revenues have been deposited as provided in this paragraph and except for any sum authorized by the legislature for expenditure from revenues subject to this paragraph, beginning July 1, 2007, funds shall be deposited into the tourism emergency trust fund, established in section 201B-10, in a manner sufficient to maintain a fund balance of \$5,000,000 in the tourism emergency trust fund;
- [~~(3)~~] (4) \$103,000,000 for fiscal year 2014-2015, \$103,000,000 for fiscal year 2015-2016, and \$93,000,000 for each fiscal year thereafter shall be allocated as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent; provided that commencing with fiscal year 2018-2019, a sum that represents the difference between a county public employer's annual required contribution for the separate trust fund established under section 87A-42 and the amount of the county public employer's contributions into that trust fund shall be retained by the state director of finance and deposited to the credit of the county public employer's annual required contribution into that trust fund in each fiscal year, as provided in section 87A-42, if the respective county fails to remit the total amount of the county's required annual contributions, as required under section 87A-43; and
- [~~(4)~~] ~~\$3,000,000 shall be allocated to the Turtle Bay conservation easement special fund established under section 201B-8.6 for the payment of debt service on revenue bonds, the proceeds of which were used to acquire the conservation easement in Turtle Bay, Oahu, until the bonds are fully amortized; and]~~
- (5) Of the excess revenues deposited into the general fund pursuant to this subsection, \$3,000,000 shall be allocated subject to the mutual agreement of the board of land and natural resources and the board of directors of the Hawaii tourism authority in accordance with the Hawaii tourism authority strategic plan for:
    - (A) The protection, preservation, and enhancement of natural resources important to the visitor industry;
    - (B) Planning, construction, and repair of facilities; and
    - (C) Operation and maintenance costs of public lands connected with enhancing the visitor experience.

All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.

As used in this subsection, "fiscal year" means the twelve-month period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year."

SECTION 8. Section 201B-8.5, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 201B-8.6, Hawaii Revised Statutes, is repealed.

SECTION 10. Act 81, Session Laws of Hawaii 2014, is amended by repealing sections 5 through 8.

~~["SECTION 5. (a) The executive director of the Hawaii tourism authority and the director of finance shall enter into negotiations to restructure the debt owed to the department of budget and finance for the convention center so that the annual amount payable on the debt service is not more than \$16,500,000 until fully retired.~~

~~(b) If the debt is not restructured as required under subsection (a), no state funds, including revenue bond funds, shall be expended to acquire any conservation easement or other real property interest in Turtle Bay, Oahu, notwithstanding the authorization under section 201B-A, Hawaii Revised Statutes, and sections 6 and 7 of this Act.~~

~~SECTION 6. (a) The board of directors of the Hawaii tourism authority, with the approval of the governor, is authorized to issue revenue bonds in the sum of \$40,000,000 or so much thereof as may be necessary for fiscal year 2014-2015 for the purpose of acquiring a conservation easement in Turtle Bay, Oahu, as authorized under section 201B-A, Hawaii Revised Statutes.~~

~~(b) The board of directors, with the approval of the governor, shall issue the revenue bonds under such terms, conditions, and maturity dates that do not require any debt service payment to exceed \$3,000,000 in any fiscal year.~~

~~(c) If the board of directors cannot issue revenue bonds in accordance with the conditions of this section or section 201B-A or chapter 39, part III, Hawaii Revised Statutes, no state funds shall be expended to acquire any conservation easement or other real property interest in Turtle Bay, Oahu.~~

~~SECTION 7. There is appropriated out of the revenue bond proceeds authorized by section 6 of this Act the sum of \$40,000,000 or so much thereof as may be necessary for fiscal year 2014-2015 to carry out the purpose of section 6; provided that any unexpended or unencumbered balance of the appropriation shall not lapse at the end of fiscal year 2014-2015 and shall lapse instead on June 30, 2016.~~

~~The sum appropriated shall be expended by the Hawaii tourism authority for the purpose of this Act.~~

~~SECTION 8. This Act shall not be severable. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, then the entire Act shall be invalid." ]~~

SECTION 11. (a) The department of budget and finance, with the approval of the governor, is authorized to issue reimbursable general obligation bonds in the sum of \$35,000,000 or so much thereof as may be necessary for fiscal year 2015-2016 for the purpose of acquiring a conservation easement and other real property interests in Turtle Bay, Oahu, and the same sum shall be deposited into the Turtle Bay conservation easement special fund.

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(b) The department of budget and finance, with the approval of the governor, shall issue the reimbursable general obligation bonds in such aggregate principal amount and under such terms, conditions, and maturity dates such that the required payments of principal and interest on the reimbursable general obligation bonds shall not exceed \$3,000,000 in any fiscal year.

SECTION 12. There is appropriated out of the Turtle Bay conservation easement special fund the sum of \$35,000,000 or so much thereof as may be necessary for fiscal year 2015-2016 to finance the acquisition of a conservation easement and other real property interests in Turtle Bay, Oahu.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 13. There is appropriated out of the Turtle Bay conservation easement special fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2015-2016 for the reimbursement of the state general fund for the payment of debt service on the reimbursable general obligation bonds.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 14. Of the excess revenues deposited into the general fund pursuant to section 237D-6.5(b), Hawaii Revised Statutes, \$500,000, or so much thereof as may be necessary for fiscal year 2015-2016 shall be appropriated to the department of land and natural resources to pay for appraisal costs, due diligence costs, and closing costs relating to the acquisition of the Turtle Bay conservation easement and other real property interests.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 15. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 17. This Act shall take effect upon approval; provided that:

- (1) If a contract to acquire the Turtle Bay Conservation easement has not been entered into by December 31, 2015, part I of the Act shall be repealed on January 1, 2016;<sup>2</sup>
- (2) The amendments made to section 36-27(a), Hawaii Revised Statutes, by Section 2 of this Act shall not be repealed when that section is reenacted on June 30, 2015, pursuant to Act 79, Session Laws of Hawaii 2009; and<sup>2</sup>
- (3) The amendments made to section 36-30(a), Hawaii Revised Statutes, by Section 2 of this Act shall not be repealed when that section is reenacted on June 30, 2015, pursuant to Act 79, Session Laws of Hawaii 2009.<sup>2</sup>

(Approved June 12, 2015.)

### Notes

1. Edited pursuant to HRS §23G-16.5.

2. So in original.