

S.B. NO. 2318

JAN 25 2006

A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 39A, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . ASSISTING PRIVATE ORGANIZATIONS, PUBLIC**
5 **INSTRUMENTALITIES AND THEIR QUALIFIED AFFILIATES IN THE**
6 **DEVELOPMENT OF LOW AND MODERATE INCOME HOUSING.**

7 **§39A-A Definitions.** Whenever used in this part, unless a
8 different meaning clearly appears from the context:

9 "Department" means the department of budget and finance.

10 "Project" means the acquisition, purchase, design,
11 development, construction, reconstruction, rehabilitation,
12 improvement, betterment, extension, financing, or refinancing of
13 low and moderate income housing.

14 "Project agreement" means any agreement entered into under
15 this part by the department with a project party providing for
16 the issuance of special purpose revenue bonds to finance the
17 development of low and moderate income housing, or to loan the
18 proceeds of such bonds to assist private organizations and

1 public instrumentalities in the development of low and moderate
2 income housing, including, without limitation, any loan
3 agreement.

4 "Project party" means a private organization, public
5 instrumentality, or qualified affiliate engaged in the
6 development of low and moderate income housing.

7 "Qualified affiliate" means a corporation, partnership,
8 limited liability company, or trust in which each shareholder,
9 partner, member, or beneficiary is a private organization or a
10 public instrumentality.

11 "Refinancing of outstanding obligations" or "refinancing"
12 means the liquidation, the retirement, or the provision for
13 retirement through the proceeds of bonds issued by the State of
14 any indebtedness of a project party incurred to finance or help
15 finance a lawful purpose of the project party not financed
16 pursuant to this part which constitutes low and moderate income
17 housing, or the consolidation of such indebtedness with
18 indebtedness of the State incurred by the project party related
19 to the purpose for which the indebtedness of the project party
20 was initially incurred.

21 "Special purpose revenue bonds" or "bonds" means bonds,
22 notes, or other evidence of indebtedness of the State issued
23 pursuant to this part.

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1 **§39A-B Department powers as to private organizations,**
2 **public instrumentalities and their qualified affiliates in the**
3 **development of low and moderate income housing.** In addition to
4 powers that it may now have, the department shall have all
5 powers necessary or convenient to accomplish the purposes of
6 this part. The powers of the department include but are not
7 limited to the following:

8 (1) Notwithstanding and without compliance with section
9 103-7, but with the approval of the governor, to enter
10 into and carry out a project agreement, or an
11 amendment or supplement to an existing project
12 agreement, with a project party, and to enter into and
13 carry out any agreement whereby the obligation of a
14 project party under a project agreement will be
15 unconditionally guaranteed by a person other than a
16 project party;

17 (2) To issue special purpose revenue bonds pursuant to and
18 in accordance with this part;

19 (3) To lend the proceeds of the special purpose revenue
20 bonds issued for a project to the project party for
21 use and application by the project party for the
22 project;

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- 1 (4) As security for the payment of the principal, premium,
2 if any, and interest of the special purpose revenue
3 bonds issued for this project, to pledge, assign,
4 hypothecate, or otherwise encumber all or any part of
5 the revenues and receipts derived or to be derived by
6 the department under the project agreement for the
7 project for which such bonds are issued; to pledge and
8 assign the interest and rights of the department under
9 the project agreement or other agreement with respect
10 to the project or the special purpose revenue bonds;
11 and to pledge and assign any bond, debenture, note, or
12 other evidence of indebtedness received by the
13 department with respect to the project; or any
14 combination of the foregoing;
- 15 (5) To extend or renew any project agreement or any other
16 agreement related to the project agreement; provided
17 that any such renewal or extension shall be subject to
18 the approval of the governor unless made in accordance
19 with provisions for such extension or renewal
20 contained in a project agreement or related agreement
21 theretofore approved by the governor; and

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1 (6) To do any and all things necessary or convenient to
2 carry out its purposes and exercise the powers given
3 and granted in this part.

4
5 When the department finances or refines a project by the
6 issuance of special purpose revenue bonds as contemplated by
7 this part, the State shall not exercise the power of eminent
8 domain to acquire a project or any part of the project for lease
9 or transfer to a project party.

10 **§39A-C Compliance with state and local law.** The
11 issuance of special purpose revenue bonds with respect to any
12 project under this part shall not relieve any project party or
13 other user of the project from the laws, ordinances, and rules
14 of the State or any of its political subdivisions, or any
15 departments or boards thereof, with respect to the construction,
16 operation, and maintenance of projects; compliance with zoning
17 laws or regulations; obtaining of building permits; and
18 compliance with building codes, health codes, and other laws,
19 ordinances, or rules of a similar nature pertaining to the
20 project. Such laws shall apply to the party or another user to
21 the same extent that it would be if the costs of the project
22 were directly financed by the project party.

1 **§39A-D Conditions precedent to negotiating and entering**
2 **into a project agreement.** Prior to entering into negotiations
3 with any project party, the department shall require that the
4 State be reimbursed for any and all costs and expenses (direct
5 or indirect) incurred by it in implementing and administering
6 this part, as determined by the department, even though a
7 project agreement may not be entered into and may further
8 require the deposit of moneys with the department for such
9 reimbursement. The department shall return any amount of the
10 deposit exceeding the amount required to reimburse the State to
11 the party that made the deposit. The State shall not be
12 required to pay to the project party any interest or earnings on
13 the deposit.

14 The department shall not enter into any project agreement
15 with respect to any project unless the department shall first
16 find and determine either that the project party is a
17 responsible party, whether by reason of economic assets or
18 experience in the type of enterprise to be undertaken through
19 the project or some other reason, or that the obligations of the
20 project party under the project agreement will be
21 unconditionally guaranteed by a person who is a responsible
22 party, whether by reason of economic assets or experience in the

1 type of enterprise to be undertaken through the project or some
2 other reason.

3 **§39A-E Project agreement.** No special purpose revenue
4 bonds shall be issued unless, at the time of issuance, the
5 department shall have entered into a project agreement with
6 respect to the project for the financing or refinancing of which
7 such revenue bonds are to be issued. Any project agreement
8 entered into by the department shall contain provisions
9 unconditionally obligating the project party to:

10 (1) Pay to the department during the period or term of the
11 project agreement, exclusive of any renewal or
12 extension thereof and whether or not the project is
13 used or occupied by the project party, such sum at
14 such time in such amount that will be at least
15 sufficient to: (A) Pay the principal and interest on
16 all special purpose revenue bonds issued with respect
17 to the project as and when they become due, including
18 any premium payable upon any required redemption of
19 such bonds; (B) Establish or maintain such reserve, if
20 any, as may be required by the instrument authorizing
21 or securing the special purpose revenue bonds; (C) Pay
22 all fees and expenses, including the fees and expenses
23 of the paying agents and trustees, incurred in

1 connection with such special purpose revenue bonds;
2 and (D) Pay the expenses (direct or indirect) incurred
3 by the State, as determined by the department, in
4 administering such bonds or in carrying out the
5 project agreement; and

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

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

13 **§39A-F Issuance of special purpose revenue bonds to**
14 **finance projects.** In addition to the other powers that it may
15 otherwise have, the department may issue special purpose revenue
16 bonds to finance or refinance the costs of developing of low and
17 moderate income housing or to loan the proceeds of such bonds to
18 assist project parties in the development of low and moderate
19 income housing. All revenue bonds issued under this part are
20 special purpose revenue bonds and the provisions of part III of
21 chapter 39 shall not apply. All special purpose revenue bonds
22 shall be issued in the name of the department and not in the
23 name of the State.

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1 In determining the cost of any project, the department may
2 also include the following: financing charges, fees, the
3 expenses of trustees, and the cost of paying agents to issue
4 special purpose revenue bonds to fund the project; interest on
5 the bonds and the expenses of the State in connection with the
6 bonds and the project to be financed or refinanced from the
7 proceeds of the bonds accruing or incurred prior to and during
8 the period of construction, not to exceed twelve months
9 thereafter; amounts necessary to establish or increase reserves
10 for the special purpose revenue bonds; the cost of plans,
11 specifications, studies, surveys, and estimates of costs and of
12 revenues; other expenses incidental to determining the
13 feasibility or practicability of the project; administration
14 expenses; the cost of interest incurred by the project party
15 with respect to the project prior to the issuance of the special
16 purpose revenue bonds; fees and expenses incurred in connection
17 with the refinancing of outstanding obligations; other costs,
18 commissions, and expenses incidental to the project; the
19 financing or refinancing of the project and placing the project
20 in operation; and the issuance of the special purpose revenue
21 bonds, whether incurred prior to or after the issuance of such
22 bonds.

1 The legislature finds and determines that the exercise of
2 the powers vested in the department by this part constitutes
3 assistance to private organizations and public instrumentalities
4 in the development of low and moderate income housing, and that
5 the issuance of special purpose revenue bonds to finance or
6 refinance projects of or for project parties or to loan the
7 proceeds of the bonds to assist project parties in the
8 development of low and moderate income housing is in the public
9 interest.

10 **§39A-G Authorization of special purpose revenue bonds.**

11 (a) The department, with the approval of the governor, may
12 issue special purpose revenue bonds for each single project or
13 multi-project program for private organizations, public
14 instrumentalities, and qualified affiliates engaged in the
15 development of low and moderate income housing that has been
16 authorized by a separate act of the legislature, by an
17 affirmative vote of two-thirds of the members to which each
18 house is entitled; provided that the legislature shall find that
19 the issuance of the special purpose revenue bonds is in the
20 public interest; and provided further that no authorization
21 shall be made for a period exceeding five years of its
22 enactment. Any such special purpose revenue bond authorization,
23 or any portion of such special purpose revenue bond

1 authorization, which has not been issued at the close of the
2 fiscal year for the period for which the authorization is made,
3 shall lapse. Special purpose revenue bonds issued pursuant to
4 this part may be in one or more series for a single project,
5 multiple projects, a single-project party, or multiple-project
6 parties pursuant to the authority of one, or the combined
7 authority of more than one, separate act of the legislature.

8 The department may combine into a single issue of special
9 purpose revenue bonds two or more proposed issues of special
10 purpose revenue bonds to assist private organizations and public
11 instrumentalities in the development of low and moderate income
12 housing, separately authorized and approved by the governor as
13 aforesaid, in the total amount not exceeding the aggregate of
14 the proposed separate issues of special purpose revenue bonds.
15 The special purpose revenue bonds of each issue shall be dated,
16 shall bear interest at such rate or rates, shall mature at such
17 time or times (not to exceed forty years from their date or
18 dates), shall have such rank or priority, and may be made
19 redeemable before maturity at the option of the department, at
20 such price or prices and under such terms and conditions, all as
21 may be determined by the department. The department shall
22 determine the form of the special purpose revenue bonds,
23 including any interest coupons to be attached, and the manner of

1 execution of the special purpose revenue bonds. The department
2 shall also fix the denomination or denominations of the special
3 purpose revenue bonds and the place or places of payment of
4 principal and interest, which may be at any bank or trust
5 company approved by the director of finance within or without
6 the State. The special purpose revenue bonds may be issued in
7 coupon or in registered form, or both, as the department may
8 determine. Provisions may be made for the registration of any
9 coupon bonds as to principal alone and also as to both principal
10 and interest and for the reconversion into coupon bonds of any
11 bonds registered as to both principal and interest. The
12 department may sell special purpose revenue bonds in such
13 manner, either at public or private sale, and for such price as
14 it may determine.

15 (b) Prior to the preparation of definitive special purpose
16 revenue bonds, the department may issue interim receipts or
17 temporary bonds, with or without coupons, exchangeable for
18 definitive bonds when such bonds have been executed and are
19 available for delivery.

20 (c) Should any bond issued under this part or any coupon
21 pertaining to such a bond become mutilated or be lost, stolen,
22 or destroyed, the department may cause a new bond or coupon of
23 like date, number, and tenor to be executed and delivered in

1 exchange and substitution for and upon the cancellation of the
2 mutilated bond or coupon, or in lieu of and in substitution for
3 the lost, stolen, or destroyed bond or coupon.

4 The new bond or coupon shall not be executed or delivered
5 until the holder of the mutilated, lost, stolen, or destroyed
6 bond or coupon has: (1) paid the reasonable expense and charges
7 in connection therewith; (2) filed with the department or its
8 fiduciary evidence satisfactory to the department or its
9 fiduciary that such bond or coupon was lost, stolen, or
10 destroyed, if such was the case, and that the holder was the
11 owner; and (3) has furnished indemnity satisfactory to the
12 department.

13 (d) In its discretion, the department may direct that
14 CUSIP identification numbers shall be printed on the bonds. In
15 the event that the numbers are imprinted on the bonds: (1) no
16 such number shall constitute a part of the contract evidenced by
17 the particular bond upon which it is imprinted; and (2) no
18 liability shall attach to the department or any of its officers
19 or agents, including any fiscal agent, paying agent, or
20 registrar for the bonds, because of the numbers or their use,
21 including any use made by the department or any of its officers
22 or agents, or because of any inaccuracy, error, or omission with
23 respect thereto or in such use. In its discretion, the

1 department may require that all costs of obtaining and
2 imprinting such numbers shall be paid by the purchaser of such
3 bonds. For the purposes of this subsection, "CUSIP
4 identification numbers" means the numbering system adopted by
5 the Committee for Uniform Security Identification Procedures
6 formed by the Securities Industry Association.

7 **§39A-H Special purpose revenue bond anticipation notes.**

8 Whenever the department shall have authorized the issuance of
9 special purpose revenue bonds under this part, special purpose
10 revenue bond anticipation notes of the department may be issued
11 in anticipation of the issuance of the bonds and of the receipt
12 of the proceeds of sale thereof, for the purpose for which the
13 bonds have been authorized. All special purpose revenue bond
14 anticipation notes shall be authorized by the department, and
15 the maximum principal amount of the notes shall not exceed the
16 authorized principal amount of the bonds. The notes shall be
17 payable solely from and secured solely by the proceeds of the
18 sale of the special purpose revenue bonds in anticipation of
19 which the notes are issued and the revenues from which would be
20 payable and by which the bonds would be secured; provided that
21 to the extent that the principal of the notes shall be paid from
22 moneys other than the proceeds of sale of the bonds, the maximum
23 amount of bonds in anticipation of which the notes are issued

1 that has been authorized shall be reduced by the amount of notes
2 paid in such manner. The authorization, issuance, and details
3 of the notes shall be governed by the provision of this part
4 with respect to special purpose revenue bonds insofar as the
5 same may apply; provided that each note, together with all
6 renewals and extensions of the note, or refundings of the note,
7 by other notes issued under this section, shall mature within
8 five years from the date of the original note.

9 **§39A-I Powers with respect to and security for special**
10 **purpose revenue bonds.** To secure the payment of any of the
11 special purpose revenue bonds issued pursuant to this part,
12 including interest on the bonds, or in connection with the
13 bonds, the department shall have the power to:

14 (1) Pledge all or any part of the revenues derived by the
15 department from the project agreement to the punctual
16 payment of special purpose revenue bonds issued with
17 respect to the project financed or refinanced from
18 bond proceeds, including interest on the bonds, and to
19 covenant against pledging any such revenues or
20 receipts to any other bonds or any other obligations
21 of the department for any other purpose, except as
22 otherwise stated in the law providing for the issuance
23 of additional special purpose revenue bonds to be

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- 1 equally and ratably secured by a lien upon such
2 revenues;
- 3 (2) Pledge and assign the interest of the department under
4 the project agreement and other related agreements and
5 the rights, duties, and obligations of the department
6 thereunder, including the right to receive revenues;
- 7
- 8 (3) Covenant as to the use and disposition of the proceeds
9 from the sale of the bonds;
- 10 (4) Covenant to set aside or pay over reserves and sinking
11 funds for the bonds and as to the disposition thereof;
- 12 (5) Covenant and prescribe as to what occurrences shall
13 constitute "events of default" and the terms and
14 conditions upon which any or all of the bonds shall
15 become or may be declared due before maturity and as
16 to the terms and conditions upon which such
17 declaration and its consequences may be waived;
- 18 (6) Covenant as to the rights, liabilities, powers, and
19 duties arising upon the breach by the department of
20 any covenant, condition, or obligation;
- 21 (7) Designate a national or state bank or trust company
22 within or without the State, incorporated in the
23 United States, to serve as trustee for the holders of

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1 the special purpose revenue bonds and to enter into a
2 trust indenture or trust agreement or indenture of
3 mortgage with the trustee. The trustee may be
4 authorized by the department to receive and receipt
5 for, hold, and administer the proceeds of the special
6 purpose revenue bonds issued for the project and to
7 apply the proceeds to the purposes for which the bonds
8 are issued, or to receive and receipt for, hold, and
9 administer the revenues derived by the department
10 under the project agreement and to apply the revenues
11 to the payment of the principal and interest on the
12 bonds, or both, and any excess revenues to the payment
13 of expenses incurred by the State in administering the
14 bonds or in carrying out the project agreement. If a
15 trustee is appointed, any trust indenture or trust
16 agreement or indenture of mortgage entered into by the
17 department with the trustee may contain whatever
18 covenants and provisions as may be necessary,
19 convenient, or desirable to secure the bonds. The
20 department may pledge and assign to the trustee the
21 interest of the department under the project agreement
22 and other related agreements as well as the rights,
23 duties, and obligations of the department thereunder,

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1 including the right to receive revenues thereunder.
2 The department may appoint the trustee to serve as
3 fiscal agent for the payment of the principal and
4 interest and for the purchase, registration, transfer,
5 exchange, and redemption of the special purpose
6 revenue bonds. The department may also authorize and
7 empower the trustee to perform such functions with
8 respect to payment, purchase, registration, transfer,
9 exchange, and redemption as the department may deem
10 necessary, advisable, or expedient, including, without
11 limitation, the holding of the special purpose revenue
12 bonds and coupons that have been paid and the
13 supervision of the destruction of the bonds and
14 coupons according to the law;

15 (8) Execute all instruments necessary or convenient in the
16 exercise of the powers herein granted or in the
17 performance of its covenants and duties; and

18 (9) Make such covenants and perform any acts as may be
19 necessary, convenient, or desirable to secure the
20 bonds, although such covenants, acts, or items may not
21 be enumerated here.

1 The department shall have the power to do all things in the
2 issuance of the bonds and for their security that are consistent
3 with the Constitution of the State of Hawaii.

4 **§39A-J Security for special purpose revenue bonds.**

5 Special purpose revenue bonds shall be payable solely from the
6 revenues derived by the department from payments made to the
7 department under the project agreement, project agreements, or
8 other supplemental agreements entered into with respect to the
9 project or projects for the financing of which the special
10 purpose revenue bonds were issued. The special purpose revenue
11 bonds shall be secured solely by such revenues and by the
12 pledges and assignments authorized by this part. Subject to the
13 prior and superior rights of outstanding bonds, claims,
14 obligations, or mechanic's and materialman's liens, all special
15 purpose revenue bonds of the same issue shall have a prior and
16 paramount lien on the revenue derived from the project agreement
17 or agreements with respect to the project or projects for which
18 the bonds were issued. The lien shall be over and ahead of all
19 special purpose revenue bonds of any issue payable from the
20 revenues that may be subsequently issued and over and ahead of
21 any claims or obligations of any nature against the revenues
22 subsequently arising or subsequently incurred; provided that the
23 right and privilege may be reserved by the department in the

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1 trust indenture securing an issue of special purpose revenue
2 bonds to subsequently issue additional special purpose revenue
3 bonds, subject to legislative authorization of the issue as
4 provided in section 39A- . The department may also permit the
5 project party or another party on its behalf to incur debt, from
6 time to time, payable from the revenues derived from the project
7 agreement on a parity with the first issue of the special
8 purpose revenue bonds. Any subsequent issue of special purpose
9 revenue bonds and other debt issued or incurred in accordance
10 with the provisions of the trust indenture shall be secured
11 equally and ratably with the first issue of the special purpose
12 revenue bond by a lien on the revenues in accordance with this
13 part and without priority based on the date of sale, date of
14 execution, or date of delivery.

15 Notwithstanding any other provisions herein, all or part of
16 the property constituting the project and all interest of the
17 project party in the project and the revenues of the project
18 party therefrom may be subjected to the present and future lien
19 of any mortgage of the project party securing the project
20 party's bonds. The rights of the department and any trustee for
21 the holders of the special purpose revenue bonds and the holders
22 of the special purpose revenue bonds in the project and the

1 revenues therefrom may be made subject to the prior lien of the
2 project party's mortgage.

3 **§39A-K Special purpose revenue bonds not a general**
4 **obligation of the State.** No holder or holders of any special
5 purpose revenue bonds issued under this part shall ever have the
6 right to compel any exercise of the taxing power of the State to
7 pay such bonds or the interest on the bonds, and no moneys other
8 than the revenues pledged to such bonds shall be applied toward
9 their payment. Each special purpose revenue bond issued under
10 this part shall recite in substance that such bond, including
11 interest on the bond, is not a general obligation of the State
12 and is payable solely from the revenues pledged to the payment
13 thereof and that such bond is not secured directly or indirectly
14 by the full faith and credit of the State, by the general credit
15 of the State, or by any revenue or taxes of the State other than
16 the revenues specifically pledged thereto.

17 **§39A-L Validity of special purpose revenue bonds.** The
18 special purpose revenue bonds bearing the signature or facsimile
19 signature of officers on the date of the signing of the bonds
20 shall be valid and sufficient for all purposes, notwithstanding
21 that before the delivery of and payment for the bonds, all the
22 persons whose signatures appear on the bonds shall have ceased
23 to be officers of the department. The special purpose revenue

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1 bonds shall contain a recital that they are issued pursuant to
2 this part, and the recital shall be conclusive evidence of their
3 validity and of the regularity of their issuance.

4 **§39A-M Use of revenues derived from project agreement.**

5 The department shall have the right to appropriate, apply, or
6 expend the revenues derived with respect to the project
7 agreement for a project for the following purposes:

8 (1) To pay when due all special purpose revenue bonds,
9 premium (if any), and interest on the bonds for the
10 payment of which the revenues are or have been
11 pledged, charged, or otherwise encumbered, including
12 reserves; and

13 (2) To the extent not paid by the project party to provide
14 for all expenses of administration, operation, and
15 maintenance of the project, including reserves.

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

20 **§39A-N Special purpose revenue bonds exempt from**

21 **taxation.** Special purpose revenue bonds and the income derived
22 from the bonds issued pursuant to this part shall be exempt from

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1 all state, county, and municipal taxation, except for
2 inheritance, transfer, and estate taxes.

3 **§39A-O Federal tax-exempt status.** To the extent
4 practicable, special purpose revenue bonds issued pursuant to
5 this part shall be issued to comply with requirements imposed by
6 applicable federal law providing that the interest on the
7 special purpose revenue bonds shall be excluded from gross
8 income for federal income-tax purposes (except as certain
9 minimum taxes or environmental taxes may apply). The department
10 may enter into agreements, establish funds or accounts, and take
11 any action required to comply with applicable federal law.
12 Nothing in this part shall be deemed to prohibit the issuance of
13 special purpose revenue bonds, the interest on which may be
14 included in gross income for federal income-tax purposes.

15 **§39A-P Exemption from taxation of department property.**
16 All revenues derived by the department from any project or under
17 the project agreement pertaining to it shall be exempt from all
18 state, county, and municipal taxation. Any right, title, and
19 interest of the department in any project shall also be exempt
20 from all state, county, and municipal taxation.

21 Except as otherwise provided by law, the interest of the
22 project party or user of such project under the project
23 agreement or related agreement shall not be exempt from taxation

1 to a greater extent than it would be if the costs of the project
2 were directly financed by the project party or other user.

3 **§39A-Q Refunding special purpose revenue bonds.** The
4 legislature, by an act passed by an affirmative vote of two-
5 thirds of the members to which each house is entitled, may
6 authorize the issuance of refunding special purpose revenue
7 bonds for the purpose of refunding any special purpose revenue
8 bonds then outstanding and issued under this part, whether or
9 not such outstanding special purpose revenue bonds have matured
10 or are then subject to redemption.

11 The legislature is further authorized to provide, by an act
12 passed by an affirmative vote of two-thirds of the members to
13 which each house is entitled, for the issuance of a single issue
14 of special purpose revenue bonds for the combined purposes of:
15 (1) financing or refinancing the cost of a project or
16 improvement or expansion of the project; and (2) refunding
17 special purpose revenue bonds that shall have been issued under
18 this part and shall then be outstanding, whether or not such
19 outstanding special purpose revenue bonds have matured or are
20 then subject to redemption.

21 Nothing in this section shall require or be deemed to
22 require the legislature to elect to redeem or prepay special
23 purpose revenue bonds being refunded. Moreover, nothing in this

1 section shall require or be deemed to require the legislature to
2 elect to redeem or prepay the special purpose revenue bonds
3 being refunded, which were issued in the form customarily known
4 as term bonds in accordance with any sinking fund installment
5 schedule specified in any law authorizing the issuance thereof,
6 or, in the event the department elects to redeem or prepay any
7 such bonds, to redeem or prepay as of any particular date or
8 dates. The issuance of such special purpose revenue bonds, the
9 maturities and other details regarding the bonds, the rights and
10 remedies of the bondholders, and the rights, powers, privileges,
11 duties, and obligations of the department with respect to the
12 bonds and bondholders, shall be governed by the foregoing
13 provisions of this part insofar as may be applicable.

14 **§39A-R Status of special purpose revenue bonds under**
15 **Uniform Commercial Code.** Notwithstanding any of the provisions
16 of this part or any recitals in any special purpose revenue
17 bonds issued under this part, all special purpose revenue bonds
18 shall be deemed to be investment securities under the Uniform
19 Commercial Code, chapter 490, subject only to the provisions of
20 the special purpose revenue bonds pertaining to registration.

21 **§39A-S Special purpose revenue bonds as legal investments**
22 **and lawful security.** The special purpose revenue bonds issued
23 pursuant to this part shall be and are declared to be legal and

1 authorized investments for banks, savings banks, trust
2 companies, savings and loan associations, insurance companies,
3 credit unions, fiduciaries, trustees, guardians, and for all
4 public funds of the State and its political corporations or
5 subdivisions. The special purpose revenue bonds shall be
6 eligible to secure the deposit of any and all public funds of
7 the State and of the counties or other political corporations or
8 subdivisions of the State. The bonds shall be lawful and
9 sufficient security for such deposits to the extent of their
10 value when accompanied by all unmatured coupons pertaining to
11 the bonds.

12 **§39A-T Access to and public disclosure of financial**
13 **records of project party.** (a) Each project party with a
14 project agreement with the department shall allow the department
15 full access to its financial records. Upon the request of the
16 department for the examination of the financial records, the
17 project party shall allow the department to examine the
18 requested records within a reasonably prompt time from the date
19 of the request. If the department requests copies of the
20 records, the project party shall provide the copies.

21 (b) To provide the public with full knowledge of the use
22 of the proceeds and benefits derived from special purpose
23 revenue bonds issued under this part, the department shall

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1 require each project party with a project agreement with the
2 department to make available to the public all relevant
3 financial records that pertain to the use of or savings
4 resulting from the use of special purpose revenue bonds.

5 (c) The department shall adopt rules under chapter 91 for
6 the purpose of this section.

7 **§39A-U Estimate of benefits.** (a) Each project party
8 with a project agreement with the department shall estimate the
9 benefits derived from the use of the proceeds of special purpose
10 revenue bonds. The benefits estimated shall be based on a
11 comparison between the use of the proceeds of the special
12 purpose revenue bonds instead of other means of financing and
13 shall be in terms of dollars projected to be or actually saved
14 by consumers of the services of the project party. The format
15 of and method for determining the estimates shall be established
16 by the department and shall be uniform for each project party.

17 (b) To promote public understanding of the role played by
18 special purpose revenue bonds in providing less costly services
19 by a project party to the general public, the department shall
20 take appropriate steps to ensure public access to and scrutiny
21 of the estimates determined under subsection (a).

22 (c) The department shall adopt rules under chapter 91 for
23 the purposes of this section.

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1 **§39A-V Construction of this part.** The powers conferred
2 by this part shall be in addition and supplemental to the powers
3 conferred by any other law. Insofar as the provisions of this
4 part are inconsistent with the provisions of any other law, this
5 part shall control."

6 SECTION 2. Section 201G-121, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) In any county, the corporation may develop or may
9 enter into agreements for housing projects with an eligible
10 developer if in the corporation's reasonable judgment a project
11 ~~[is primarily designed for lower income housing.]~~ provides a
12 reasonable number of lower income housing units. The agreement
13 may provide for the housing to be placed under the control of
14 the corporation, or to be sold by the corporation, or to be sold
15 to the corporation as soon as the units are completed and shall
16 contain terms, conditions, and covenants as the corporation, by
17 rules, deems appropriate. Every agreement shall provide for the
18 developer to furnish a performance bond, in favor of the
19 corporation, assuring the timely and complete performance of the
20 housing project. Sureties on the bond must be satisfactory to
21 the corporation."

22 SECTION 3. Section 201G-432, Hawaii Revised Statutes, is
23 amended by amending subsection (e) to read as follows:

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1 " (e) Moneys available in the fund shall be used for the
2 purpose of providing, in whole or in part, loans or grants for
3 rental housing projects [~~in the following order of priority:~~

4 ~~(1) Projects or units in projects that are allocated~~
5 ~~low income housing credits pursuant to the state~~
6 ~~housing credit ceiling under section 42(h) of the~~
7 ~~Internal Revenue Code of 1986, as amended, or projects~~
8 ~~or units in projects that are funded by programs of~~
9 ~~the United States Department of Housing and Urban~~
10 ~~Development and United States Department of~~
11 ~~Agriculture Rural Development wherein:~~

12 ~~(A) At least fifty per cent of the available units~~
13 ~~are for persons and families with incomes at or~~
14 ~~below eighty per cent of the median family income~~
15 ~~of which at least five per cent of the available~~
16 ~~units are for persons and families with incomes~~
17 ~~at or below thirty per cent of the median family~~
18 ~~income; and~~

19 ~~(B) The remaining units are for persons and families~~
20 ~~with incomes at or below one hundred per cent of~~
21 ~~the median family income; provided that the~~
22 ~~corporation may establish rules to ensure full~~
23 ~~occupancy of fund projects; and~~

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1 ~~(2) Mixed income rental projects or units in a mixed-~~
2 ~~income rental project wherein all of the available~~
3 ~~units are for persons and families with incomes at or~~
4 ~~below one hundred forty per cent of the median family~~
5 ~~income.]~~ that provide affordable rental units for
6 families earning up to one-hundred forty per cent of
7 the area median income as determined by the United
8 States Department of Housing and Urban Development."

9 SECTION 4. Act 196, Session Laws of Hawaii 2005, is
10 amended by amending section 41 to read as follows:

11 "SECTION 41. This Act shall take effect on July 1, 2005;
12 provided that:

13 (1) Sections 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and
14 30 shall take effect on July 1, 2006;

15 (2) Section 37 shall take effect upon the date specified
16 by the governor pursuant to the notice provided under
17 section 36 of this Act if, prior to July 1, 2007, the
18 United States Department of Housing and Urban Development
19 declares the housing and community development corporation
20 of Hawaii to be in substantial default of the Memorandum of
21 Understanding dated September 30, 2004; and

22 (3) Sections 36 and 37 shall be repealed on July 1, 2007+
23 and

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1 ~~(4) Section 5 shall be repealed on June 30, 2010, and~~
2 ~~section 201G 432, Hawaii Revised Statutes, shall be~~
3 ~~reenacted in the form in which it read on the day prior to~~
4 ~~the effective date of this Act."~~

5 SECTION 5. In codifying the new sections added by section
6 1 of this Act, the revisor of statutes shall substitute
7 appropriate section numbers for the letters used in designating
8 the new sections in this Act.

9 SECTION 6. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect on July 1, 2006.

12
13 INTRODUCED BY:

14 BY REQUEST

JUSTIFICATION SHEET

SB. NO 2318

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO HOUSING.

PURPOSE: To allow funds from the rental housing trust fund to be used for projects for families who earn below 140 percent of the area median income, broaden the requirements on developers to provide low income units, and to allow special purpose revenue bonds to be issued for the development of affordable housing.

MEANS: Add a new part to chapter 39A, Hawaii Revised Statutes, amend sections 201G-121(a) and 201G-432(e), Hawaii Revised Statutes; and amend section 41 of Act 196, Session Laws of Hawaii, 2005.

JUSTIFICATION: Current law requires monies in the rental-housing trust fund to be administered in such a manner that gives priority to projects that utilize the low income housing credit, or United States Department of Housing and Urban Development or United States Department of Agriculture Rural Development funding, wherein 50 percent of the units are for families earning 80 percent of the area median income (AMI) or below, of which 5 percent of these units are for families earning up to 30 percent AMI, and the remaining units are for families earning up to 100 percent of the area median income. The second priority use for monies in the rental-housing trust fund is for projects wherein 100 percent of the units are for families earning up to 140 percent of the AMI. These restrictions on the use of funding from the RHTF, and the small balance of funds available in the RHTF contribute to the lack of available housing for our workforce. The USHUD area median incomes for 2005 (family of four) are listed below:

Honolulu	\$67,750
Hawaii County	\$52,500
Kauai County	\$57,900
Maui County	\$62,350

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Broadening the use of funds from the RHTF will allow more developers to utilize these funds, encourage and support the development of affordable housing, and allow more working families the opportunity to find affordable rental housing.

This measure also addresses the standard for an affordable housing project. The Affordable Housing Task Force of 2004 concluded that government agencies have interpreted "primarily designed for lower income" to mean that 60 percent or more of the units in an affordable housing development must be low-income units. This has made it difficult for developers to make projects economically viable. Changing this language would allow builders to vary the mix of lower-income, middle income, and market housing. In Act 198, Session Laws of Hawaii 2005, the legislature recognized the importance of this flexibility and granted the housing and community development corporation of Hawaii the ability to amend existing housing development contracts that were executed by its predecessor, the housing and finance development corporation. The same flexibility should be available for current development projects the HCDCH is engaged in, as well as all future projects.

The Hawaii State Constitution currently authorizes the issuance of special purpose revenue bonds (SPRBs) for six purposes:

- (1) Manufacturing, processing or industrial enterprises;
- (2) Utilities serving the general public;
- (3) Healthcare facilities provided to the general public by not-for-profit corporations;
- (4) Early childhood education and care facilities provided to the general public by not-for-profit corporations;
- (5) Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities; or
- (6) Low and moderate-income government housing programs.

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However, chapter 39A, HRS, currently authorizes the department of budget and finance to issue SPRBs for the first five purposes only. Amending chapter 39A to allow the issuance of SPRBs for the sixth purpose will provide another financing tool for the development of low and moderate income government housing programs. The measure will also provide a definition for government housing programs to include those developed by private and nonprofit entities meeting affordability standards.

Impact on the public: More rental housing opportunities.

Impact on the department and other agencies: None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2006.