

S.B. NO. 1370

JAN 22 2007

A BILL FOR AN ACT

RELATING TO SPECIAL PURPOSE REVENUE BONDS.

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

1 SECTION 1. Section 39A-34, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "§39A-34 Conditions precedent to negotiating and entering
4 into a project agreement. The department prior to entering into
5 negotiations with any project party shall require that the
6 ~~[State shall be reimbursed for any and]~~ project party agree to
7 pay all fees, costs, and expenses (direct or indirect)
8 ~~[incurred]~~ assessed by ~~[it]~~ the department in implementing and
9 administering this part, as determined by the department, even
10 though a project agreement may not be entered into and may
11 further require the deposit of moneys with the department ~~[for~~
12 ~~such reimbursement.]~~ to pay for such fees, costs, and expenses.
13 Any amount of such deposit in excess of the amount required to
14 ~~[reimburse]~~ pay the State shall be returned by the department to
15 the party which has made such deposit. The State shall not be

1 required to pay the project party any interest or earnings on
2 such deposit.

3 The department shall not enter into any project agreement
4 with respect to any project unless the department shall first
5 find and determine either that the project party is a
6 responsible party, whether by reason of economic assets or
7 experience in the type of enterprise to be undertaken through
8 such project, or otherwise, or that the obligations of the
9 project party under the project agreement will be
10 unconditionally guaranteed by a person who is a responsible
11 party, whether by reason of economic assets or experience in the
12 type of enterprise to be undertaken through such project or
13 otherwise."

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

16 "**§39A-35 Project agreement.** No special purpose revenue
17 bonds shall be issued unless at the time of issuance the
18 department shall have entered into a project agreement with
19 respect to the project for the financing or refinancing of which
20 such revenue bonds are to be issued. Any project agreement
21 entered into by the department shall contain provisions
22 unconditionally obligating the project party:

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1 (1) To pay to the department during the period or term of
2 the project agreement, exclusive of any renewal or
3 extension thereof and whether or not the project is
4 used or occupied by the project party, such sum or
5 sums, at such time or times and in such amounts that
6 will be at least sufficient:

7 (A) To pay the principal and interest on all special
8 purpose revenue bonds issued with respect to the
9 project as and when the same become due,
10 including any premium payable upon any required
11 redemption of such bonds;

12 (B) To establish or maintain such reserve, if any, as
13 may be required by the instrument authorizing or
14 securing the special purpose revenue bonds;

15 (C) To pay all fees and expenses (including the fees
16 and expenses of the paying agents and trustees)
17 incurred in connection with such special purpose
18 revenue bonds; and

19 (D) To pay the fees, costs, and expenses (direct or
20 indirect) [~~incurred~~] assessed by the [~~State, as~~
21 ~~determined by the~~] department[~~7~~] in administering

1 such bonds or in carrying out the project

2 agreement[-]; and

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

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

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

13 "**§39A-74 Conditions precedent to negotiating and entering**
14 **into a project agreement.** The department prior to entering into
15 negotiations with respect to a project agreement or at any time
16 during such negotiations shall require that as a condition to
17 such negotiations or the continuation thereof the [~~State shall~~
18 ~~be reimbursed for any and~~] project party shall agree to pay all
19 fees, costs, and expenses [~~incurred~~] (direct or indirect)
20 assessed by [~~it~~] the department even though a project agreement
21 may not be entered into and may further require the deposit of
22 moneys with the department [~~as security for such reimbursement.~~]

1 to pay for such fees, costs, and expenses. Any amount of such
2 deposit in excess of the amount required to reimburse the State
3 shall be returned by the department to the party which has made
4 such deposit. The State shall not be required to pay to the
5 project party any interest or earnings on such deposit.

6 The department shall not enter into any project agreement
7 with respect to any project unless the legislature shall have
8 first authorized the issuance of special purpose revenue bonds
9 to finance such project pursuant to section 39A-77 and the
10 department has thereafter found and determined either that the
11 project party is a responsible party, whether by reason of
12 economic assets or experience in the type of enterprise to be
13 undertaken through such project, or otherwise, or that the
14 obligations of the project party under the project agreement
15 will be unconditionally guaranteed by a person who is a
16 responsible party, whether by reason of economic assets or
17 experience in the type of enterprise to be undertaken through
18 such project or otherwise."

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

21 "§39A-75 **Project agreement.** No special purpose revenue
22 bonds shall be issued unless at the time of issuance the

1 department shall have entered into a project agreement with
2 respect to the project for the financing of which such revenue
3 bonds are to be issued. Any project agreement entered into by
4 the department shall contain provisions unconditionally
5 obligating the project party:

6 (1) To pay to the department during the period or term of
7 the project agreement, exclusive of any renewal or
8 extension thereof and whether or not the project is
9 used or occupied by the project party, such sum or
10 sums, at such time or times, and in such amounts that
11 will be at least sufficient:

12 (A) To pay the principal and interest on all special
13 purpose revenue bonds issued with respect to the
14 project as and when the same become due,
15 including any premium payable upon any required
16 redemption of such bonds;

17 (B) To establish or maintain such reserve, if any, as
18 may be required by the instrument authorizing or
19 securing the special purpose revenue bonds;

20 (C) To pay all fees and expenses (including the fees
21 and expenses of the paying agents and trustees)

1 incurred in connection with such special purpose
2 revenue bonds; and

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

8 (2) To operate, maintain, and repair the project as long
9 as the same is used as provided in the project
10 agreement and to pay all costs of such operation,
11 maintenance, and repair.

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

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

17 "**§39A-114 Conditions precedent to negotiating and entering**
18 **into a project agreement.** The department prior to entering into
19 negotiations with respect to a project agreement or at any time
20 during such negotiations shall require that as a condition to
21 such negotiations or the continuation thereof the [~~State shall~~
22 ~~be reimbursed for any and~~] project party shall agree to pay all

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1 fees, costs, and expenses [incurred] (direct or indirect)
2 assessed by [it] the department even though a project agreement
3 may not be entered into and may further require the deposit of
4 moneys with the department [~~as security for such reimbursement.~~]
5 to pay for such fees, costs, and expenses. Any amount of such
6 deposit in excess of the amount required to reimburse the State
7 shall be returned by the department to the party which has made
8 such deposit. The State shall not be required to pay to the
9 project party any interest or earnings on such deposit.

10 The department shall not enter into any project agreement
11 with respect to any project unless the legislature shall have
12 first authorized the issuance of special purpose revenue bonds
13 to finance such project pursuant to section 39A-117 and the
14 department has thereafter found and determined either that the
15 project party is a responsible party, whether by reason of
16 economic assets or experience in the type of enterprise to be
17 undertaken through such project, or otherwise, or that the
18 obligations of the project party under the project agreement
19 will be unconditionally guaranteed by a person who is a
20 responsible party, whether by reason of economic assets or
21 experience in the type of enterprise to be undertaken through
22 such project or otherwise."

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

3 "§39A-115 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 of which such revenue
7 bonds are to be issued. Any project agreement entered into by
8 the department shall contain provisions unconditionally
9 obligating the project party:

10 (1) To pay to the department during the period or term of
11 the 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 or
14 sums, at such time or times, and in such amounts that
15 will be at least sufficient:

16 (A) To pay the principal and interest on all special
17 purpose revenue bonds issued with respect to the
18 project as and when the same become due,
19 including any premium payable upon any required
20 redemption of such bonds;

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- 1 (B) To establish or maintain such reserve, if any, as
- 2 may be required by the instrument authorizing or
- 3 securing the special purpose revenue bonds;
- 4 (C) To pay all fees and expenses (including the fees
- 5 and expenses of the paying agents and trustees)
- 6 incurred in connection with such special purpose
- 7 revenue bonds; and
- 8 (D) To pay the fees, costs, and expenses (direct or
- 9 indirect) [~~incurred~~] assessed by the [~~State, as~~
- 10 ~~determined by the~~] department[~~7~~] in administering
- 11 such bonds or in carrying out the project
- 12 agreement[~~-~~]; and
- 13 (2) To operate, maintain, and repair the project as long
- 14 as the same is used as provided in the project
- 15 agreement and to pay all costs of such operation,
- 16 maintenance, and repair.

17 Moneys received by the department pursuant to paragraph (1)(D)

18 shall not be, or be deemed to be, revenues of the project and

19 shall be paid into the general fund of the State."

20 SECTION 7. Section 39A-154, Hawaii Revised Statutes, is

21 amended to read as follows:

1 "§39A-154 Conditions precedent to negotiating and entering
2 into a project agreement. The department prior to entering into
3 negotiations with respect to a project agreement or at any time
4 during such negotiations shall require that as a condition to
5 such negotiations or the continuation thereof the [~~State shall~~
6 ~~be reimbursed for any and~~] project party shall agree to pay all
7 fees, costs, and expenses [incurred] (direct or indirect)
8 assessed by [it] the department even though a project agreement
9 may not be entered into and may further require the deposit of
10 moneys with the department [~~as security for such reimbursement.~~]
11 to pay for such fees, costs, and expenses. Any amount of such
12 deposit in excess of the amount required to reimburse the State
13 shall be returned by the department to the party which has made
14 such deposit. The State shall not be required to pay to the
15 project party any interest or earnings on such deposit.

16 The department shall not enter into any project agreement
17 with respect to any project unless the legislature shall have
18 first authorized the issuance of special purpose revenue bonds
19 to finance such project pursuant to section 39A-157 and the
20 department has thereafter found and determined either that the
21 project party is a responsible party, whether by reason of
22 economic assets or experience in the type of enterprise to be

1 undertaken through such project, or otherwise, or that the
2 obligations of the project party under the project agreement
3 will be unconditionally guaranteed by a person who is a
4 responsible party, whether by reason of economic assets or
5 experience in the type of enterprise to be undertaken through
6 such project, or otherwise."

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

9 "§39A-155 **Project agreement.** No special purpose revenue
10 bonds shall be issued unless at the time of issuance the
11 department shall have entered into a project agreement with
12 respect to the project for the financing of which such revenue
13 bonds are to be issued. Any project agreement entered into by
14 the department shall contain provisions unconditionally
15 obligating the project party:

16 (1) To pay to the department during the period or term of
17 the project agreement, exclusive of any renewal or
18 extension thereof and whether or not the project is
19 used or occupied by the project party, such sum or
20 sums, at such time or times, and in such amounts that
21 will be at least sufficient:

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1 (A) To pay the principal and interest on all special
2 purpose revenue bonds issued with respect to the
3 project as and when the same become due,
4 including any premium payable upon any required
5 redemption of such bonds;

6 (B) To establish or maintain such reserve, if any, as
7 may be required by the instrument authorizing or
8 securing the special purpose revenue bonds;

9 (C) To pay all fees and expenses (including the fees
10 and expenses of the paying agents and trustees)
11 incurred in connection with such special purpose
12 revenue bonds; and

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

18 (2) To operate, maintain, and repair the project as long
19 as the same is used as provided in the project
20 agreement and to pay all costs of such operation,
21 maintenance, and repair.

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

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

6 "**§39A-194 Conditions precedent to negotiating and entering**
7 **into a project agreement.** The department prior to entering into
8 negotiations with any project party shall require that the
9 ~~[State shall be reimbursed for any and]~~ project party agree to
10 pay all fees, costs, and expenses (direct or indirect)
11 ~~[incurred]~~ assessed by ~~[it]~~ the department in implementing and
12 administering this part, as determined by the department, even
13 though a project agreement may not be entered into and may
14 further require the deposit of moneys with the department ~~[for~~
15 ~~such reimbursement.]~~ to pay for such fees, costs, and expenses.
16 Any amount of such deposit in excess of the amount required to
17 ~~[reimburse]~~ pay the State shall be returned by the department to
18 the party which has made such deposit. The State shall not be
19 required to pay the project party any interest or earnings on
20 such deposit.

21 The department shall not enter into any project agreement
22 with respect to any energy project unless the department shall

1 first find and determine either that the project party is a
2 responsible party, whether by reason of economic assets or
3 experience in the type of enterprise to be undertaken through
4 such project, or otherwise, or that the obligations of the
5 project party under the project agreement will be
6 unconditionally guaranteed by a person who is a responsible
7 party, whether by reason of economic assets or experience in the
8 type of enterprise to be undertaken through such energy project,
9 or otherwise."

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

12 "§39A-195 **Project agreement.** No special purpose revenue
13 bonds shall be issued unless at the time of issuance the
14 department shall have already entered into a project agreement
15 with respect to the energy project for the financing of which
16 such bonds are to be issued. Any project agreement entered into
17 by the department shall contain provisions unconditionally
18 obligating the project party:

19 (1) To pay to the department during the period or term of
20 the project agreement, exclusive of any renewal or
21 extension thereof and whether or not the energy
22 project is used or occupied by the project party, such

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1 sum or sums, at such time or times, and in such amount
2 or amounts that will be at least sufficient:

- 3 (A) To pay the principal and interest on all special
4 purpose revenue bonds issued to finance the
5 energy project as and when the bonds become due,
6 including any premium payable upon any required
7 redemption of such bonds;
- 8 (B) To establish or maintain such reserve, if any, as
9 may be required by the instrument authorizing or
10 securing the special purpose revenue bonds;
- 11 (C) To pay all fees and expenses (including the fees
12 and expenses of the paying agents and trustees)
13 incurred in connection with such special purpose
14 revenue bonds; and
- 15 (D) To pay the fees, costs, and expenses (direct or
16 indirect) [~~incurred~~] assessed by the [~~State, as~~
17 ~~determined by the~~] department[~~-~~] in administering
18 such bonds or in carrying out the project
19 agreement, as determined by the department[~~-~~];
20 and

21 (2) To operate, maintain, and repair the energy project as
22 long as the same is used in the business of local

1 furnishing of electric energy or gas, and to pay all
2 costs of such operation, maintenance, and repair.

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

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

8 "~~+~~§39A-224~~+~~ **Conditions precedent to negotiating and**
9 **entering into a project agreement.** The department prior to
10 entering into negotiations with any project party shall require
11 that the ~~[State shall be reimbursed for any and]~~ project party
12 agree to pay all fees, costs, and expenses (direct or indirect)
13 ~~[incurred]~~ assessed by ~~it~~ the department in implementing and
14 administering this part, as determined by the department, even
15 though a project agreement may not be entered into and may
16 further require the deposit of moneys with the department ~~[for~~
17 ~~such reimbursement.]~~ to pay for such fees, costs, and expenses.
18 Any amount of such deposit in excess of the amount required to
19 ~~reimburse]~~ pay the State shall be returned by the department to
20 the party which has made such deposit. The State shall not be
21 required to pay the project party any interest or earnings on
22 such deposit.

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1 The department shall not enter into any project agreement
2 with respect to any project unless the department shall first
3 find and determine either that the project party is a
4 responsible party, whether by reason of economic assets or
5 experience in the type of enterprise to be undertaken through
6 such project, or otherwise, or that the obligations of the
7 project party under the project agreement will be
8 unconditionally guaranteed by a person who is a responsible
9 party, whether by reason of economic assets or experience in the
10 type of enterprise to be undertaken through such project or
11 otherwise."

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

14 "~~§~~39A-225~~§~~ **Project agreement.** No special purpose
15 revenue bonds shall be issued unless at the time of issuance the
16 department shall have entered into a project agreement with
17 respect to the project for the financing or refinancing of which
18 such revenue bonds are to be issued. Any project agreement
19 entered into by the department shall contain provisions
20 unconditionally obligating the project party:

21 (1) To pay to the department during the period or term of
22 the project agreement, exclusive of any renewal or

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1 extension thereof and whether or not the project is
2 used or occupied by the project party, such sum or
3 sums, at such time or times and in such amounts that
4 will be at least sufficient:

5 (A) To pay the principal and interest on all special
6 purpose revenue bonds issued with respect to the
7 project as and when the same become due,
8 including any premium payable upon any required
9 redemption of such bonds;

10 (B) To establish or maintain such reserve, if any, as
11 may be required by the instrument authorizing or
12 securing the special purpose revenue bonds;

13 (C) To pay all fees and expenses (including the fees
14 and expenses of the paying agents and trustees)
15 incurred in connection with such special purpose
16 revenue bonds; and

17 (D) To pay the fees, costs, and expenses (direct or
18 indirect) [~~incurred~~] assessed by the [~~State, as~~
19 ~~determined by the~~] department[~~7~~] in administering
20 such bonds or in carrying out the project
21 agreement[~~-~~]; and

1 (2) To operate, maintain, and repair the project as long
2 as the same is used in the provision of early
3 childhood education and care to the general public,
4 and to pay all costs of such operation, maintenance,
5 and repair.

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

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

11 "~~[+]§39A-254[+]~~ **Conditions precedent to negotiating and**
12 **entering into a project agreement.** Prior to entering into
13 negotiations with any project party, the department shall
14 require that the ~~[State be reimbursed for any]~~ project party
15 agree to pay all fees, costs, and expenses (direct or indirect)
16 ~~[incurred]~~ assessed by [it] the department in implementing and
17 administering this part, as determined by the department, even
18 though a project agreement may not be entered into. The
19 department may further require the deposit of moneys with it
20 ~~[for such reimbursement.]~~ to pay for such fees, costs, and
21 expenses. The department shall return any amount of the deposit
22 exceeding the amount required to reimburse the State to the

1 party that made the deposit. The State shall not be required to
2 pay the project party any interest or earnings on the deposit.

3 The department shall not enter into any project agreement
4 with respect to any project unless the department shall first
5 find and determine either that the project party is a
6 responsible party, whether by reason of economic assets or
7 experience in the type of enterprise to be undertaken through
8 the project, or some other reason, or that the obligations of
9 the project party under the project agreement will be
10 unconditionally guaranteed by a person who is a responsible
11 party, whether by reason of economic assets or experience in the
12 type of enterprise to be undertaken through the project, or some
13 other reason."

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

16 "[+]§39A-255[+] **Project agreement.** No special purpose
17 revenue bonds shall be issued unless, at the time of issuance,
18 the department shall have entered into a project agreement with
19 respect to the project for the financing or refinancing of which
20 such revenue bonds are to be issued.

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

4 (1) Pay to the department during the period or term of the
5 project agreement, exclusive of any renewal or
6 extension thereof and whether or not the project is
7 used or occupied by the project party, such sum at
8 such time in such amount that will be at least
9 sufficient to:

10 (A) Pay the principal and interest on all special
11 purpose revenue bonds issued with respect to the
12 project as and when they become due, including
13 any premium payable upon any required redemption
14 of such bonds;

15 (B) Establish or maintain such reserve, if any, as
16 may be required by the instrument authorizing or
17 securing the special purpose revenue bonds;

18 (C) Pay all fees and expenses, including the fees and
19 expenses of the paying agents and trustees,
20 incurred in connection with such special purpose
21 revenue bonds; and

1 (D) Pay the fees, costs, and expenses (direct or
2 indirect) [~~incurred~~] assessed by the [~~State, as~~
3 ~~determined by the~~] department[+] in administering
4 such bonds or in carrying out the project
5 agreement; and

6 (2) Operate, maintain, and repair the project as long as
7 it is used in the provision of not-for-profit private
8 nonsectarian and sectarian elementary, secondary,
9 college-level, and university-level education to the
10 general public, and to pay all costs of its operation,
11 maintenance, and repair.

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

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

17 "[+]§39A-284[+] Conditions precedent to negotiating and
18 entering into a project agreement. Prior to entering into
19 negotiations with any project party, the department shall
20 require that the project party [~~reimburse the State for any and~~
21 agree to pay all fees, costs, and expenses, direct or indirect,
22 [~~incurred~~] assessed by the [~~State~~] department in implementing

1 and administering this part, as determined by the department,
2 even though a project agreement may not be entered into ~~[and]~~.
3 The department may further require the deposit of moneys with
4 the department ~~[for reimbursement.]~~ to pay for such fees, costs,
5 and expenses. The department shall return any amount of the
6 deposit exceeding the amount required to reimburse the State to
7 the party that made the deposit. The State shall not be
8 required to pay to the project party any interest or earnings on
9 the deposit.

10 The department shall not enter into any project agreement
11 with respect to any project unless the department shall first
12 find and determine either that:

- 13 (1) The project party is a responsible party, whether by
14 reason of economic assets or experience in the type of
15 enterprise to be undertaken through the project or
16 some other reason; or
- 17 (2) The obligations of the project party under the project
18 agreement will be unconditionally guaranteed by a
19 person who is a responsible party, whether by reason
20 of economic assets or experience in the type of
21 enterprise to be undertaken through the project or
22 some other reason."

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

3 "[~~f~~]~~§~~39A-285[~~f~~] **Project agreement.** No special purpose
4 revenue bonds shall be issued unless, at the time of issuance,
5 the department shall have entered into a project agreement with
6 respect to the project for the financing or refinancing of which
7 the bonds are to be issued. Any project agreement entered into
8 by the department shall contain provisions unconditionally
9 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, a sum at a time
14 and in an amount that shall be at least sufficient to:

15 (A) Pay the principal and interest on all special
16 purpose revenue bonds issued with respect to the
17 project as and when they become due, including any
18 premium payable upon any required redemption of
19 the bonds;

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1 (B) Establish or maintain a reserve, if any, as may be
2 required by the instrument authorizing or securing
3 the special purpose revenue bonds;

4 (C) Pay all fees and expenses, including the fees and
5 expenses of the paying agents and trustees,
6 incurred in connection with the special purpose
7 revenue bonds; and

8 (D) Pay the fees, costs, and expenses[7] (direct or
9 indirect[7]) [incurred] assessed by the [~~State, as~~
10 ~~determined by the~~] department[7] in administering
11 the bonds or in carrying out the project
12 agreement; and

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

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

20 SECTION 17. Act 148, Session Laws of Hawaii 2006, section
21 1, is amended by amending section 39A-D, Hawaii Revised
22 Statutes, to read as follows:

1 **"§39A-D Conditions precedent to negotiating and entering**
2 **into a project agreement.** Prior to entering into negotiations
3 with respect to a project agreement or at any time during the
4 negotiations, the department shall require that as a condition
5 to the negotiations or the continuation thereof, the ~~[State]~~
6 department shall be reimbursed for any and all costs and
7 expenses incurred by it even though a project agreement may not
8 be entered into ~~[and]~~. The department may further require the
9 deposit of moneys with the department as security ~~[for the~~
10 ~~reimbursement.]~~ to pay for such fees, costs, and expenses. Any
11 amount of the deposit in excess of the amount required to
12 ~~[reimburse]~~ pay the State shall be returned by the department to
13 the party that has made the deposit. The State shall not be
14 required to pay to the project party any interest or earnings on
15 such deposit.

16 The department shall not enter into any project agreement
17 with respect to any project unless the legislature shall have
18 first authorized the issuance of special purpose revenue bonds
19 to finance the project pursuant to section 39A-G and the
20 department has thereafter found and determined either that the
21 project party is a responsible party, whether by reason of
22 economic assets or experience in the type of enterprise to be

1 undertaken through the project, or otherwise, or that the
2 obligations of the project party under the project agreement
3 will be unconditionally guaranteed by a person who is a
4 responsible party, whether by reason of economic assets or
5 experience in the type of enterprise to be undertaken through
6 the project, or otherwise."

7 SECTION 18. Act 148, Session Laws of Hawaii 2006, section
8 1, is amended by amending section 39A-E, Hawaii Revised
9 Statutes, to read as follows:

10 **"§39A-E Project agreement.** No special purpose revenue
11 bonds shall be issued unless at the time of issuance the
12 department shall have entered into a project agreement with
13 respect to the project for the financing of which the special
14 purpose revenue bonds are to be issued. Any project agreement
15 entered into by the department shall contain provisions
16 unconditionally obligating the project party:

17 (1) To pay to the department during the period or term of
18 the project agreement, exclusive of any renewal or
19 extension thereof and whether or not the project is
20 used or occupied by the project party, the sum or sums,
21 at time or times, and in amounts that will be at least
22 sufficient:

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- 1 (A) To pay the principal and interest on all special
2 purpose revenue bonds issued with respect to the
3 project as and when the same become due,
4 including any premium payable upon any required
5 redemption of the bonds;
- 6 (B) To establish or maintain a reserve, if any, that
7 may be required by the instrument authorizing or
8 securing the special purpose revenue bonds;
- 9 (C) To pay all fees and expenses, including the fees
10 and expenses of the paying agents and trustees,
11 incurred in connection with the special purpose
12 revenue bonds; and
- 13 (D) To pay the fees, costs, and expenses~~[7]~~ (fees,
14 costs, and direct or indirect[7]) ~~[incurred]~~
15 assessed by the ~~[State, as determined by the]~~
16 department~~[7]~~ in administering the bonds or in
17 carrying out the project agreement; and
- 18 (2) To operate, maintain, and repair the project as long as
19 the same is used, as provided in the project agreement,
20 and to pay all costs of the operation, maintenance, and
21 repair.

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

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

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

7

8

9

INTRODUCED BY: _____

~~_____~~
BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS.

PURPOSE: To amend various sections of the Hawaii Revised Statutes (HRS) relating to special purpose revenue bonds to allow the Department of Budget and Finance ("Department") to assess a fee established pursuant to chapter 91, HRS, for the administration of special purpose revenue bonds issued by the Department.

MEANS: Amend sections 39A-34, 39A-35, 39A-74, 39A-75, 39A-114, 39A-115, 39A-154, 39A-155, 39A-194, 39A-195, 39A-224, 39A-225, 39A-254, 39A-255, 39A-284, and 39A-285, HRS, and sections 39A-D and 39A-E, HRS, of section 1 of Act 148, Session Laws of Hawaii 2006.

JUSTIFICATION: The Department is authorized to issue special purpose revenue bonds to assist not-for-profit health care facilities providing health care to the general public; manufacturing, processing and industrial enterprises, and utilities serving the general public; early childhood education and care facilities providing services to the general public; not-for-profit private sectarian and nonsectarian elementary and secondary schools, colleges and universities serving the general public; not-for-profit and for-profit private organizations, and public instrumentalities and their qualified affiliates in the development of low and moderate income housing; and agricultural enterprises serving important agricultural lands.

Chapter 39A, HRS, currently provides for the reimbursement of actual expenses incurred by the Department for the issuance of special purpose revenue bonds. The proposed

amendments will allow the Department to assess a fixed fee for the administration of issuing these bonds for project parties. This fixed fee will be determined through the administrative rule making process pursuant to chapter 91, HRS. The Department is presently authorized to charge fees to reimburse the Department for actual expenses incurred during the bond issuance process.

Impact on the public: The bill will provide project parties with a known, fixed fee upfront as opposed to an uncertain charge upon completion of the bond sale with which they may not agree.

Impact on the department and other agencies: This bill will reduce time spent on the administrative monitoring regarding the issuance of special purpose revenue bonds. Other agencies are not affected.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BUF-115.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.