

# H.B. NO. 1056

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## A BILL FOR AN ACT

RELATING TO EXEMPTIONS FROM HAWAII PUBLIC PROCUREMENT CODE.

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

1           SECTION 1. Section 39A-282, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§~~**39A-282**~~§~~ **Department powers in the development of**  
4 **low- and moderate-income housing.** In addition to powers that it  
5 may now have, the department shall have all powers necessary or  
6 convenient to accomplish the purposes of this part. The powers  
7 of the department include but are not limited to the following:

8           (1) Notwithstanding and without compliance with section  
9           103-7~~7~~ and chapter 103D, but with the approval of  
10           the governor, to:

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

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

H.B. NO. 1056

- 1           (2) To issue special purpose revenue bonds pursuant to and  
2           in accordance with this part;
- 3           (3) To lend the proceeds of the special purpose revenue  
4           bonds issued for a project to the project party for  
5           use and application by the project party for the  
6           project;
- 7           (4) As security for the payment of the principal, premium,  
8           if any, and interest [øf] on the special purpose  
9           revenue bonds issued for this project, to:
- 10          (A) Pledge, assign, hypothecate, or otherwise  
11           encumber all or any part of the revenues and  
12           receipts derived or to be derived by the  
13           department under the project agreement for the  
14           project for which the bonds are issued;
- 15          (B) Pledge and assign the interest and rights of the  
16           department under the project agreement or other  
17           agreement with respect to the project or the  
18           special purpose revenue bonds;
- 19          (C) Pledge and assign any bond, debenture, note, or  
20           other evidence of indebtedness received by the  
21           department with respect to the project; or
- 22          (D) Any combination of the foregoing;

1           (5) To extend or renew any project agreement or any other  
2           agreement related to the project agreement; provided  
3           that any renewal or extension shall be subject to the  
4           approval of the governor unless made in accordance  
5           with provisions for the extension or renewal contained  
6           in a project agreement or related agreement  
7           theretofore approved by the governor; and

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

11 When the department finances or refines a project by the  
12 issuance of special purpose revenue bonds as contemplated by  
13 this part, the State shall not exercise the power of eminent  
14 domain to acquire a project or any part of the project for lease  
15 or transfer to a project party, nor shall the State operate a  
16 project on behalf of a project party."

17           **SECTION 2.** Section 39A-312, Hawaii Revised Statutes, is  
18 amended to read as follows:

19           "~~§~~**39A-312**~~§~~   **Department powers as to agricultural**  
20 **enterprises serving important agricultural lands.** In addition  
21 to powers that it may now have, the department shall have all  
22 powers necessary or convenient to accomplish the purposes of

1 this part. The powers of the department include but are not  
2 limited to the following:

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

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

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

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

15 (3) To lend the proceeds of the special purpose revenue  
16 bonds issued for a project to the project party for use  
17 and application by the project party for the  
18 acquisition, purchase, construction, reconstruction,  
19 improvement, betterment, extension, maintenance of a  
20 project, or refinancing of outstanding obligations  
21 related to a project;

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

H.B. NO. 1056

1 agreement or related agreement previously approved by  
2 the governor; and

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

6 When the department finances or refines a project by the  
7 issuance of special purpose revenue bonds as contemplated by  
8 this part, the State shall not exercise the power of eminent  
9 domain to acquire a project or any part thereof for lease or  
10 transfer to a project party, nor shall the State operate a  
11 project on behalf of a project party."

12 SECTION 3. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.

15  
16 INTRODUCED BY: Calvin K. Day

17 BY REQUEST

JAN 26 2009

**Report Title:**

Hawaii Public Procurement Code; Exemptions From

**Description:**

Facilitates the preservation of important agricultural lands and development of low- and moderate-income housing by exempting Special Purpose Revenue Bonds issued for these projects from the procurement code.

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO EXEMPTIONS FROM HAWAII PUBLIC PROCUREMENT CODE.

PURPOSE: To exempt from the Hawaii Public Procurement Code special purpose revenue bonds issued for not-for-profit private organizations, for-profit private organizations, and public instrumentalities and their qualified affiliates in the development of low- and moderate-income housing and for agricultural enterprises serving important agricultural lands.

MEANS: Amend sections 39A-282 and 39A-312, Hawaii Revised Statutes.

JUSTIFICATION: Special purpose revenue bonds issued to assist not-for-profit health care facilities providing health care to the general public, manufacturing, processing and industrial enterprises, utilities serving the general public, early childhood education and care facilities providing services to the general public, and not-for-profit sectarian and nonsectarian elementary and secondary schools, and colleges and universities serving the general public, are currently exempt from the State's procurement code. The exemption from the procurement code is warranted since the issuance of special purpose revenue bonds does not involve the expenditure of public funds.

Special purpose revenue bonds issued to assist in the development of low- and moderate-income housing programs and to assist agricultural enterprises serving important agricultural lands also do not involve the expenditure of public funds. The financing of such programs with special purpose revenue bonds should not be subject to the State's procurement code.



Impact on the public: The exemption from the procurement code may encourage the private sector to develop affordable housing and to assist agricultural enterprises serving important agricultural lands.

Impact on the department and other agencies: The exemption from the procurement code will reduce administrative oversight for the procurement of contractors and expedite the process of issuing bonds, the fees and costs for which do not involve the expenditure of public funds.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BUF-115.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.