
A BILL FOR AN ACT

RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

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

1 SECTION 1. In 1994, the legislature passed Act 283,
2 Session Laws of Hawaii 1994, to improve the administration of
3 the office of Hawaiian affairs (OHA) by giving OHA the authority
4 to issue revenue bonds secured by the moneys received by OHA
5 from the twenty per cent share of the revenue from the public
6 land trust. Act 283 accomplished this purpose through
7 amendments to chapter 10, Hawaii Revised Statutes, that
8 primarily added a new part entitled "Revenue Bonds".

9 Section 1 of Act 283 noted that OHA was established as a
10 body corporate and as a separate entity independent of the
11 executive branch. Further, section 1 noted that the 1978
12 constitutional convention intended that OHA have maximum control
13 over its budget, assets, and personnel. The Act also enabled
14 OHA to maximize the trust funds without eroding the trust corpus
15 by providing another alternative to leverage the trust funds.
16 Act 283 required that the revenue bonds authorized by OHA be
17 issued by, and on behalf of, OHA's board of trustees and not by,

1 or on behalf of, the State. The Act provided that these revenue
2 bonds would be excluded from the State's debt ceiling and that
3 issuance of OHA revenue bonds would have no effect on the
4 State's power to issue general obligation bonds or the funded
5 debt of any political subdivision under article VII, section 12,
6 of the Hawaii Constitution.

7 The legislature finds that although OHA has never issued
8 revenue bonds, the Hawaii and national economies are now
9 creating a renewed impetus for OHA to seek alternative sources
10 of funding for its projects. In addition, the legislature finds
11 that the revenue bond provisions of chapter 10, Hawaii Revised
12 Statutes, which have not been amended since their enactment,
13 need updating to better reflect current government bond
14 practices and to ensure that OHA has maximum independence in
15 issuing bonds.

16 The purpose of this Act is to clarify and strengthen OHA's
17 bond authority. This Act contains, among other things,
18 provisions clarifying the following:

19 (1) If OHA adheres to part II of chapter 10, Hawaii
20 Revised Statutes, no other law need be enacted to
21 authorize the principal amounts of an office of
22 Hawaiian affairs revenue bond issuance;

- 1 (2) OHA's board of trustees can issue revenue bonds
2 without further authorization or approval; and
- 3 (3) OHA can meet the requirement that a project financed
4 by revenue bonds is self-supporting not only by
5 imposing and collecting rates, rents, fees, and
6 charges for the use or enjoyment and services, but
7 also by using other office of Hawaiian affairs
8 revenues.

9 SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended
10 by adding a new section to be appropriately designated and to
11 read as follows:

12 **"§10- Support facility for variable rate revenue bonds.**

13 If revenue bonds issued pursuant to this chapter are issued
14 bearing interest at a rate or rates that vary from time to time
15 or with a right of holders to tender the revenue bonds for
16 purchase, or both, the board may contract for a support facility
17 or facilities and remarketing arrangements as are required to
18 market the revenue bonds to the greatest advantage of the board
19 and the office upon such terms and conditions as the board deems
20 necessary and proper.

21 The board may enter into contracts or agreements with the
22 entity or entities providing a support facility; provided that

1 any contract or agreement shall provide, in essence, that any
2 amount due and owing by the board under the contract or
3 agreement on an annual basis shall be payable from the revenue
4 of the office; provided further that any obligation issued or
5 arising pursuant to the terms of the contract or agreement in
6 the form of revenue bonds, notes, or other evidences of
7 indebtedness shall only arise at such time as either:

8 (1) Moneys or securities have been irrevocably set aside
9 for the full payment of a like principal amount of
10 revenue bonds issued pursuant to this chapter; or

11 (2) A like principal amount of the issue or series of
12 revenue bonds to which the support facility relates
13 are held in escrow by the entity or entities providing
14 the support facility."

15 SECTION 3. Section 10-4, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§10-4 Office of Hawaiian affairs; established; general**
18 **powers.** There shall be an office of Hawaiian affairs
19 constituted as a body corporate which shall be a separate entity
20 independent of the executive branch. The office, under the
21 direction of the board of trustees, shall have the following
22 general powers:

- 1 (1) To adopt, amend, and repeal bylaws governing the
2 conduct of its business and the performance of the
3 powers and duties granted to or imposed upon it by
4 law;
- 5 (2) To acquire in any lawful manner any property, real,
6 personal, or mixed, tangible or intangible, or any
7 interest therein; to hold, maintain, use, and operate
8 the same; and to sell, lease, or otherwise dispose of
9 the same at such time, in such manner and to the
10 extent necessary or appropriate to carry out its
11 purpose;
- 12 (3) To determine the character of and the necessity for
13 its obligations and expenditures, and the manner in
14 which they shall be incurred, allowed, and paid,
15 subject to provisions of law specifically applicable
16 to the office of Hawaiian affairs;
- 17 (4) To enter into and perform such contracts, leases,
18 cooperative agreements, or other transactions with any
19 agency or instrumentality of the United States, or
20 with the State, or with any political subdivision
21 thereof, or with any person, firm, association, or

- 1 corporation, as may be necessary in the conduct of its
2 business and on such terms as it may deem appropriate;
- 3 (5) To execute, in accordance with its bylaws, all
4 instruments necessary or appropriate in the exercise
5 of any of its powers;
- 6 (6) To issue revenue bonds pursuant to this chapter [~~in~~
7 ~~such principal amounts as may be authorized from time~~
8 ~~to time by law~~] to finance the cost of an office
9 project [~~as authorized by law~~] and to provide for the
10 security thereof [~~as permitted by this chapter;~~] in
11 the manner of, and pursuant to, the procedure
12 prescribed in part II;
- 13 (7) To lend or otherwise apply the proceeds of the bonds
14 issued for an office project either directly or
15 through a trustee or a qualified person for use and
16 application in the acquisition, construction,
17 installation, or modification of an office project, or
18 agree with the qualified person whereby any of these
19 activities shall be undertaken or supervised by that
20 qualified person or by a person designated by the
21 qualified person;

- 1 (8) With or without terminating a project agreement, to
- 2 exercise any and all rights provided by law for entry
- 3 and re-entry upon or to take possession of an office
- 4 project at any time or from time to time upon breach
- 5 or default by a qualified person under a project
- 6 agreement, including any action at law or in equity
- 7 for the purpose of effecting its rights of entry or
- 8 re-entry or obtaining possession of the project or for
- 9 the payments of rentals, user taxes, or charges, or
- 10 any other sum due and payable by the qualified person
- 11 to the office pursuant to the project agreement; and
- 12 (9) To take such actions as may be necessary or
- 13 appropriate to carry out the powers conferred upon it
- 14 by law."

15 SECTION 4. Section 10-22, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 "~~§~~10-22~~§~~ **Powers of the board.** In addition to the
 18 powers which it now possesses, the board shall have power to:

- 19 (1) Prescribe and collect rents, fees, and charges for the
- 20 use of or services furnished by any office project or
- 21 the facilities thereof;

- 1 (2) ~~[Issue]~~ Without further authorization or approval,
2 issue and authorize revenue bonds under this chapter
3 in such principal amount as may be required to finance
4 in whole or in part the cost of construction or
5 maintenance, or both, of any office project~~[+]~~,
6 including reserves therefor;
- 7 (3) Pledge to the punctual payment of such revenue bonds
8 and interest thereon, the revenue of the office
9 project or projects for the construction or
10 maintenance of which the bonds have been issued, or
11 the ~~[office's revenue]~~ revenues of the office, or
12 both, in an amount sufficient to pay such bonds and
13 interest as the same become due and to create and
14 maintain reasonable reserves therefor; and
- 15 (4) Advance such moneys of the office, not otherwise
16 required, as are necessary to pay the expenses
17 incurred in making the preparations for the initial
18 issuance of revenue bonds under this part, and to take
19 any other action necessary or proper for carrying into
20 execution and administering this part, including
21 providing for the full utilization of office projects

1 in every way conducive to the furtherance of any or
2 all purposes of the office."

3 SECTION 5. Section 10-25, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~{}~~**\$10-25**~~{}~~ **Revenue bonds.** (a) Revenue bonds shall be
6 issued in the name of the board, may be in one or more series,
7 may be in the denomination or denominations, may bear ~~[such]~~ the
8 date or dates, may mature at ~~[such]~~ the time or times not
9 exceeding fifty years from their respective dates, may ~~[be]~~ bear
10 interest at the rate or rates payable at ~~[such]~~ the time or
11 times and at the place or places within or without the State,
12 may carry ~~[such]~~ the registration privileges as to principal
13 alone or as to both principal and interest, may be subject to
14 ~~[such]~~ the terms or redemption with or without premium, may be
15 executed in ~~[such]~~ the manner, may contain ~~[such]~~ the terms,
16 covenants, and conditions, and may be in such form~~[, either~~
17 ~~coupon or registered with privilege of exchange from one form to~~
18 ~~another,~~] as the resolution authorizing the issuance of the
19 bonds, or subsequent resolutions may provide.

20 ~~[Revenue bonds may be sold at private sale to the United~~
21 ~~States, or any agency, instrumentality, or corporation thereof,~~
22 ~~to the State or any political subdivision, agency,~~

1 ~~instrumentality, or corporation thereof, or to any person or~~
2 ~~group of persons offering to purchase all or a major portion of~~
3 ~~a particular issue or series. Unless sold at private sale as~~
4 ~~herein provided, revenue bonds shall be sold at public sale~~
5 ~~after publication of a notice of such sale at least once, the~~
6 ~~date of publication to be at least five days prior to the date~~
7 ~~of the sale, and the publication shall be made in a newspaper~~
8 ~~published and of general circulation in the State and in a~~
9 ~~financial newspaper published in either of the cities of New~~
10 ~~York, Chicago, or San Francisco. The revenue bonds shall be~~
11 ~~sold for not less than ninety eight per cent of the principal~~
12 ~~amount thereof. Pending the preparation of definitive revenue~~
13 ~~bonds, interim receipts or temporary bonds may be issued and~~
14 ~~delivered to the purchasers of the bonds in such form and~~
15 ~~containing such provisions as the board may determine. Revenue~~
16 ~~bonds, interim receipts, and temporary bonds shall be fully~~
17 ~~negotiable within the meaning of and for all the purposes of the~~
18 ~~Uniform Commercial Code, chapter 490.~~

19 ~~It shall be legal for the State and any of its political~~
20 ~~subdivisions, or any political or public corporation, including~~
21 ~~the employees' retirement system of the State or any~~
22 ~~instrumentality of the State or any insurance company or~~

~~1 building and loan association, or any savings bank or trust
2 company, or any bank or other financial institution operating
3 under the laws of this State, or for any personal
4 representative, guardian, trustee, or other fiduciary, or any
5 educational, charitable, or eleemosynary institution, to invest
6 their funds, and moneys in their custody in revenue bonds issued
7 under this part.]~~

8 (b) The board may acquire policies of insurance and enter
9 into banking arrangements upon terms and conditions as the board
10 may deem necessary or desirable, at the time of delivery of an
11 issue of revenue bonds or a later date as the board deems in the
12 best interest of the office, including without limitation,
13 contracting for a support facility or facilities as permitted in
14 section 10- , and contracting for interest rate swaps,
15 swaptions, interest rate floors, and other similar contracts to
16 hedge or reduce the amount or duration of payment, rate, spread,
17 or similar risk or to reduce the cost of borrowing when used in
18 conjunction with revenue bonds issued pursuant to this chapter.

19 (c) The board may make arrangements as may be necessary or
20 proper for the sale of each issue of revenue bonds or part
21 thereof as are issued pursuant to this chapter, including,
22 without limitation, arranging for the preparation and printing

1 of the revenue bonds, the official statement, and any other
2 documents or instruments deemed required for the issuance and
3 sale of revenue bonds and retaining financial, accounting, and
4 legal consultants, all upon terms and conditions as the board
5 deems advisable and in the best interest of the State and the
6 office. The board may offer the revenue bonds at competitive
7 sale or may negotiate the sale of the revenue bonds to any
8 person or group of persons, to the United States, or any board,
9 agency, instrumentality, or corporation thereof, to the
10 employees' retirement system of the State, to any political
11 subdivision of the State, or to any board, agency,
12 instrumentality, public corporation, or other governmental
13 organization of the State or of any political subdivision
14 thereof.

15 The sale of the revenue bonds by the board by negotiation
16 shall be at a price or prices, and upon terms and conditions,
17 and the revenue bonds shall bear interest at a rate or rates or
18 varying rates determined from time to time, in the manner as the
19 board shall approve.

20 The sale of the revenue bonds by the board at competitive
21 sale shall be at a price or prices and upon terms and
22 conditions, and the revenue bonds shall bear interest at a rate

1 or rates or varying rates determined from time to time in the
2 manner as specified by the successful bidder. The revenue bonds
3 shall be sold in the manner provided in section 39-55.

4 (d) The board may delegate the responsibility for the sale
5 and the fixing of the terms and details of revenue bonds and
6 such other determinations or actions as may be provided by
7 resolution of the board, to the chairperson of the board, the
8 administrator, or another designated officer.

9 (e) All public officers and bodies of the State, all
10 political subdivisions, all insurance companies and
11 associations, all banks, savings banks, and savings
12 institutions, including building or savings and loan
13 associations, all credit unions, all trust companies, all
14 personal representatives, guardians, trustees, and all other
15 persons and fiduciaries in the state who are regulated by law as
16 to the character of their investment, may legally invest funds
17 within their control and available for investment in revenue
18 bonds issued under this chapter. The purpose of this subsection
19 is to authorize any person, firm, corporation, association,
20 political subdivision, body, or officer, public or private, to
21 use any funds owned or controlled by them, including, without
22 prejudice to the generality of the foregoing, sinking,

1 insurance, investment, retirement, compensation, pension, or
2 trust funds, and funds held on deposit, for the purchase of any
3 revenue bonds issued under this chapter."

4 SECTION 6. Section 10-28, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~§~~§10-28~~§~~] **Validity of bonds.** Revenue bonds issued
7 under this part shall bear the manual signatures of the
8 chairperson of the board and the administrator, [~~either of which~~
9 ~~signatures may be a lithographed or engraved facsimile of the~~
10 ~~signature provided that at least one of the signatures is a~~
11 ~~manual signature,~~] and shall be sealed with the seal of the
12 board or in lieu thereof shall bear a lithographed or engraved
13 facsimile of such seal. [~~The coupons pertaining to the revenue~~
14 ~~bonds shall be executed with the lithographed or engraved~~
15 ~~facsimile signatures of the chairperson of the board and the~~
16 ~~administrator.~~] If the board designates a registrar other than
17 itself for the revenue bonds, the resolution authorizing the
18 revenue bonds may provide that none of the revenue bonds shall
19 be valid or obligatory for any purpose unless authenticated by
20 the registrar. If the resolution so provides, then all
21 signatures of the board upon the revenue bonds may be facsimiles
22 of the signatures, and the revenue bonds shall be valid and

1 obligatory only if authenticated by the manual signature of an
2 authorized officer or signatory of the registrar. Revenue bonds
3 bearing the signature of officers in office at the date of the
4 signing thereof shall be valid and binding obligations,
5 notwithstanding that before the delivery thereof and payment
6 therefor any or all of the persons whose signatures appear
7 thereon shall have ceased to be officers. The validity of the
8 bonds shall not be dependent on nor affected by the validity or
9 regularity of any proceedings relating to the construction or
10 maintenance of the office project or projects for which the
11 bonds were issued. The resolution authorizing the issuance of
12 revenue bonds may provide that the bonds shall contain a recital
13 that they are issued pursuant to this part, which recital shall
14 be conclusive evidence of their validity and of the regularity
15 of their issuance."

16 SECTION 7. Section 10-30, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[~~§~~10-30~~§~~] **Payment and security of revenue bonds;**
19 **revenue bonds not a debt of the State.** Revenue bonds issued
20 under this part shall be payable [~~solely~~] from and secured
21 solely by the revenues of the office project or projects or
22 office pledged to the payment thereof, or both, and [~~such~~] those

1 revenues shall be applied to [~~such~~] the payment in accordance
 2 with the provisions of this part and the resolution or
 3 resolutions authorizing the issuance of the revenue bonds. No
 4 holder or holders of any revenue bonds issued under this part
 5 shall have the right to compel any exercise of the taxing power
 6 of the State to pay such bonds, or interest thereon. Each
 7 revenue bond shall recite in substance that the revenue bond,
 8 including interest thereon, is payable [~~solely~~] from and secured
 9 [~~solely~~] by the revenue pledged to the payment thereof, and that
 10 the bond does not constitute [~~an~~] a general or moral obligation
 11 or indebtedness of the State within the meaning of any
 12 limitation of law."

13 SECTION 8. Section 10-31, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 "~~[§]§10-31[§]~~ **Office of Hawaiian affairs projects to be**
 16 **self-supporting.** The board shall impose and collect rates,
 17 rents, fees, and charges for the use or enjoyment and services
 18 [~~of the facilities of each office project~~], or direct the
 19 allocation of the revenues of the office, and shall revise such
 20 rates, rents, fees, and charges from time to time whenever
 21 necessary, so that [~~all office projects shall be self-~~
 22 ~~supporting.~~ The rates, rents, fees, and charges prescribed] in

1 aggregate, the revenue of the office project and the office

2 shall be such as will produce revenue at least sufficient to:

3 (1) Pay the cost of maintenance of the office project or
4 projects, including reserves therefor;

5 (2) Pay when due all bonds and interest thereon, for the
6 payment of which the revenue is or has been pledged,
7 charged, or otherwise encumbered, including reserves
8 therefor;

9 (3) Reimburse the general fund of the State for any bond
10 requirements on general obligation bonds issued for an
11 office project or projects to the extent required by
12 law; and

13 (4) Carry out all covenants and provisions of the
14 resolution or resolutions authorizing the issuance of
15 revenue bonds.

16 Neither this section nor any other section of this part
17 shall preclude the making of appropriations to the board, the
18 acceptance of gifts by the board, or the use of revenues of the
19 office or other funds derived from the sale of stocks, bonds, or
20 other assets in the possession of the board to pay all or part
21 of the costs of construction, of maintenance, or both, of any or
22 all office projects.

1 All moneys received pursuant to this section shall be
2 administered as trust funds, as provided by this chapter, and in
3 separate accounts designated for each office project."

4 SECTION 9. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 10. This Act shall take effect on July 1, 2020.

Report Title:

Office of Hawaiian Affairs; Revenue Bonds

Description:

Clarifies and strengthens the Office of Hawaiian Affairs' bond authority. Effective 07/01/2020. (SD1)