



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

H.B. NO. 899, RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 4, 2009 **TIME:** 10:30 AM

LOCATION: State Capitol, Room 308

TESTIFIER(S): Mark J. Bennett, Attorney General,
or Brian P. Aburano, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General has legal concerns with this bill.

This bill seeks to clarify and strengthen the bond authority of the Office of Hawaiian Affairs (OHA) by amending various statutes in chapter 10 of the Hawaii Revised Statutes (HRS). Among the changes are amendments that authorize or empower the OHA Board of Trustees ("OHA board") to: (1) issue and authorize revenue bonds without further legislative authorization and approval; (2) allocate and use OHA revenues, including appropriations, to pay interest and principal of revenue bonds and secure such bonds; and (3) acquire policies of insurance and contract for interest rate swaps, swaptions, and similar agreements.

First, article VII, section 12, of the Hawaii Constitution provides that the State Legislature, by majority vote of the members to which each house is entitled, shall authorize the issuance of all revenue bonds issued by or on behalf of the State. The proposed amendments at page 6, lines 13-15, and page 8, lines 6-7, of the bill are inconsistent with this constitutional requirement as they delete the current statutory requirement of legislative authorization and

empower the OHA board to issue revenue bonds "[w]ithout further authorization or approval" The only entities that may issue revenue bonds without further authorization or approval of the State Legislature are political subdivisions that the Legislature has authorized by general law to issue such bonds. The constitutional history of article VII, section 2, shows that such political subdivisions are limited to the counties. In the 1950 Constitutional Convention, the word "political subdivision" was substituted for the word "county" in order to prevent the County of Kalawao, which was not a true county, from issuing general obligation and revenue bonds. The discussion of the delegates showed that they intended only the four counties to be able to issue general obligation and revenue bonds. See Proceedings of the Constitutional Convention of Hawaii 1950, Volume II, page 462 (discussion of Delegates Tavares, Heen, and White). In the 1978 Constitutional Convention, the delegates took wording out of a proposal that would have allowed the State legislature by general law to authorize boards or agencies of political subdivisions to issue revenue bonds without further legislative approval. The discussion of the delegates showed that they did not want to open the gate for all kinds of boards and agencies to issue bonds, but to keep the then current simple debt structure that included general obligation and revenue bonds being issued just by the State and the four political subdivisions. See Proceedings of the Constitutional Convention 1978, Volume I, pages 321-322 (discussion of Delegates Izu, Lewis, and Ishikawa).

Second, article VII, sections 12 and 13, of the Hawaii Constitution and their history show that revenue bonds are not to be supported by general appropriations of the State Legislature, but rather are meant to be supported solely by the rates, revenues, charges, or user taxes of the public undertaking, improvement, system, or loan program financed by such bonds. See Proceedings of the Constitutional Convention 1968, Volume II, pages 383-384 and 386 (Delegate Hitch noting that the only security for a revenue bond is the

fees and tariffs of that undertaking and that, by definition, revenue bonds stand on their own feet in terms of being supported by the revenues of that undertaking.) Article VII, section 12, defines revenue bonds as bonds "payable from the revenues, or user taxes, or any combination of both, of a public undertaking, improvement, system or loan program . . ." Article VII, section 13, of the Hawaii Constitution ("article VII, section 13") provides that for a revenue bond to be excludable from the State's debt limit, the issuer must be obligated by law to impose rates, rentals, and charges for the use and services of the public undertaking, improvement, or system or the benefits of the loan program, or user taxes, or a combination of both, sufficient to pay: (a) the cost of the public undertaking, improvement, system, or loan program; and (b) the principal and interest of all revenue bonds issued for the public undertaking, improvement, system, or loan program.

The amendments to section 10-31, HRS, at page 17, lines 6-11, and to section 10-30, HRS, at page 16, lines 7 and 17, of the bill appear to be inconsistent with the foregoing definitions and restrictions applicable to revenue bonds. The amendments do away with wording requiring office projects financed by revenue bonds to be self-supporting through rates, rents, fees, and charges. Compare HRS § 49-11 (undertakings and loan programs under county revenue bonds to be self-sustaining). The amendments to section 10-31 also provide that "revenues of the office" may be used to pay the costs of office projects and all bonds and interest thereon. There is no definition in HRS chapter 10 of "revenues of the office." Revenues of the office could, therefore, include general fund appropriations as well as other funds that may not constitute the types of funds that may be used under article VII, sections 12 and 13, of the Hawaii Constitution to pay and secure revenue bonds, i.e., rates, rentals, charges or user taxes. Compare HRS § 304A-2680 (no holder of a revenue bond issued by the University of Hawaii may compel the making of any appropriation to pay revenue bonds or interest thereon) and HRS § 304A-2688 (nothing in

University of Hawaii revenue bond statutes shall be construed to authorize board of regents to incur any indebtedness contrary to the State Constitution or that would be required to be included in the calculation of the State's indebtedness).

Third, as a typographical matter, the word "swapations" on page 11, line 21, of the bill should be "swaptions".

Thank you for the opportunity to provide these comments to the committee.



HB 899
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS

House Committee on Finance

March 4, 2009

10:30 a.m.

Room 308

Aloha Chair Oshiro, Vice Chair Lee, and Members. **OHA strongly supports House Bill No. 899** Relating to the Office of Hawaiian Affairs.

The purpose of this bill is to clarify and strengthen OHA's existing authority to issue revenue bonds. OHA already has authority to issue its own revenue bonds, under Chapter 10, Hawaii Revised Statutes. This bill makes it clear that no other law need be enacted to authorize the principle amounts of a particular OHA revenue bond issuance, and that the OHA Board of Trustees can issue revenue bonds without further authorization or approval.

The bill also clarifies the variety of revenue sources that OHA can draw upon to meet the requirement that a project financed by OHA bonds be self-supporting. In addition, the bill makes a number of technical changes in OHA's existing bond statutes to make them consistent, where appropriate, with other State of Hawaii bond statutes and current government-bond practice.

This bill represents a gradual evolution of existing law, largely in technical areas, and not a substantial departure from existing law. The bill simply updates and clarifies OHA's bond statute, which was enacted in 1994. The changes are designed to put OHA in the best possible position to enter the bond market on a solid footing at a time when the Hawaii and national economies are creating a new impetus for OHA to seek alternative sources of funding for its projects.

We are aware that in its testimony to the House Committee on Hawaiian Affairs, the Department of the Attorney General expressed legal concerns with the bill. In particular, that Department argued that certain elements of the bill are or appear to be inconsistent with provisions of the Hawaii Constitution. At issue are constitutional provisions dealing with (1) legislative authorization of the issuance of revenue bonds and (2) acceptable sources of financial support for the bonds.

However, we believe that the revenue bond provisions in the constitution are subject to interpretation. We also note that the Attorney General's testimony to the Hawaiian Affairs committee did not oppose the bill. In this light, we respectfully request that this bill be allowed to move forward.

We have had constructive communications with a representative of the Department of the Attorney General concerning this bill and we appreciate his input and suggestions.

We urge your Committee to respond favorably to this bill.

Mahalo for the opportunity to testify.

FINTestimony

From: mailinglist@capitol.hawaii.gov
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Conference room: 308
Testifier position: support
Testifier will be present: No
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Comments:
Aloha kakou,

I am in strong support of this bill. In light of our economic situation, increasing OHA's bond authority would provide them the needed opportunity to diversify their revenues and continue to provide services for their beneficiaries.

Thank you for this opportunity to testify.