

JAN 26 2009

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# 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 by giving the office of Hawaiian  
4 affairs the authority to issue revenue bonds secured by the  
5 moneys received by the office of Hawaiian affairs from the  
6 twenty per cent share of the revenue from the public land trust.  
7 Act 283 accomplished this purpose through amendments to chapter  
8 10, Hawaii Revised Statutes, that primarily added a new part  
9 entitled "Revenue Bonds".

10           Section 1 of Act 283 noted that the office of Hawaiian  
11 affairs was established as a body corporate and as a separate  
12 entity independent of the executive branch. Further, section 1  
13 noted that the 1978 constitutional convention intended that the  
14 office of Hawaiian affairs could have maximum control over its  
15 budget, assets, and personnel. The Act also enabled the office  
16 of Hawaiian affairs to maximize the trust funds without eroding  
17 the trust corpus by providing another alternative to leverage



1 the trust funds. Act 283 required that the revenue bonds  
2 authorized by the office of Hawaiian affairs be issued by, and  
3 on behalf of, the office of Hawaiian affairs' board of trustees  
4 and not by, or on behalf of, the State. The Act provided that  
5 these revenue bonds would be excluded from the State's debt  
6 ceiling and that issuance of the office of Hawaiian affairs'  
7 revenue bonds would have no effect on the State's power to issue  
8 general obligation bonds or the funded debt of any political  
9 subdivision under article VII, section 12, of the Hawaii  
10 Constitution.

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



1           The purpose of this Act is to clarify and strengthen the  
2 office of Hawaiian affairs' bond authority. The Act contains,  
3 among other things, provisions clarifying the following:

4           (1) If the office of Hawaiian affairs adheres to part II  
5 of chapter 10, Hawaii Revised Statutes, no other law  
6 need be enacted to authorize the principal amounts of  
7 an office of Hawaiian affairs revenue bond issuance;

8           (2) The office of Hawaiian affairs board of trustees can  
9 issue revenue bonds without further authorization or  
10 approval; and

11           (3) The office of Hawaiian affairs can meet the  
12 requirement that a project financed by revenue bonds  
13 is self-supporting not only by imposing and collecting  
14 rates, rents, fees, and charges for the use or  
15 enjoyment and services, but also by utilizing other  
16 office of Hawaiian affairs revenues.

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

20           "§10-     Support facility for variable rate revenue bonds.

21 If revenue bonds issued pursuant to this chapter are issued  
22 bearing interest at a rate or rates that vary from time to time



1 or with a right of holders to tender the revenue bonds for  
 2 purchase, or both, the board may contract for a support facility  
 3 or facilities and remarketing arrangements as are required to  
 4 market the revenue bonds to the greatest advantage of the board  
 5 and the office upon such terms and conditions as the board deems  
 6 necessary and proper.

7 The board may enter into contracts or agreements with the  
 8 entity or entities providing a support facility; provided that  
 9 any contract or agreement shall provide, in essence, that any  
 10 amount due and owing by the board under the contract or  
 11 agreement on an annual basis shall be payable from the revenue  
 12 of the office; provided further that any obligation issued or  
 13 arising pursuant to the terms of the contract or agreement in  
 14 the form of revenue bonds, notes, or other evidences of  
 15 indebtedness shall only arise at such time as either:

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

19 (2) A like principal amount of the issue or series of  
 20 revenue bonds to which the support facility relates  
 21 are held in escrow by the entity or entities providing  
 22 the support facility."



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

3 "§10-4 Office of Hawaiian affairs; established; general  
4 powers. There shall be an office of Hawaiian affairs  
5 constituted as a body corporate which shall be a separate entity  
6 independent of the executive branch. The office, under the  
7 direction of the board of trustees, shall have the following  
8 general powers:

- 9 (1) To adopt, amend, and repeal bylaws governing the  
10 conduct of its business and the performance of the  
11 powers and duties granted to or imposed upon it by  
12 law;
- 13 (2) To acquire in any lawful manner any property, real,  
14 personal, or mixed, tangible or intangible, or any  
15 interest therein; to hold, maintain, use, and operate  
16 the same; and to sell, lease, or otherwise dispose of  
17 the same at such time, in such manner and to the  
18 extent necessary or appropriate to carry out its  
19 purpose;
- 20 (3) To determine the character of and the necessity for  
21 its obligations and expenditures, and the manner in  
22 which they shall be incurred, allowed, and paid,



1 subject to provisions of law specifically applicable  
2 to the office of Hawaiian affairs;

3 (4) To enter into and perform such contracts, leases,  
4 cooperative agreements, or other transactions with any  
5 agency or instrumentality of the United States, or  
6 with the State, or with any political subdivision  
7 thereof, or with any person, firm, association, or  
8 corporation, as may be necessary in the conduct of its  
9 business and on such terms as it may deem appropriate;

10 (5) To execute, in accordance with its bylaws, all  
11 instruments necessary or appropriate in the exercise  
12 of any of its powers;

13 (6) To issue revenue bonds pursuant to this chapter [~~in~~  
14 ~~such principal amounts as may be authorized from time~~  
15 ~~to time by law]~~ to finance the cost of an office  
16 project [~~as authorized by law]~~ and to provide for the  
17 security thereof [~~as permitted by this chapter,~~] in  
18 the manner and pursuant to the procedure prescribed in  
19 part II;

20 (7) To lend or otherwise apply the proceeds of the bonds  
21 issued for an office project either directly or  
22 through a trustee or a qualified person for use and



1 application in the acquisition, construction,  
2 installation, or modification of an office project, or  
3 agree with the qualified person whereby any of these  
4 activities shall be undertaken or supervised by that  
5 qualified person or by a person designated by the  
6 qualified person;

7 (8) With or without terminating a project agreement, to  
8 exercise any and all rights provided by law for entry  
9 and re-entry upon or to take possession of an office  
10 project at any time or from time to time upon breach  
11 or default by a qualified person under a project  
12 agreement, including any action at law or in equity  
13 for the purpose of effecting its rights of entry or  
14 re-entry or obtaining possession of the project or for  
15 the payments of rentals, user taxes, or charges, or  
16 any other sum due and payable by the qualified person  
17 to the office pursuant to the project agreement; and

18 (9) To take such actions as may be necessary or  
19 appropriate to carry out the powers conferred upon it  
20 by law. "

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



1 " [†] §10-22 [†] Powers of the board. In addition to the  
2 powers which it now possesses, the board shall have power to:

3 (1) Prescribe and collect rents, fees, and charges for the  
4 use of or services furnished by any office project or  
5 the facilities thereof;

6 (2) [~~Issue~~] Without further authorization or approval,  
7 issue and authorize revenue bonds under this chapter  
8 in such principal amount as may be required to finance  
9 in whole or in part the cost of construction or  
10 maintenance, or both, of any office project [†],  
11 including reserves therefor;

12 (3) Pledge to the punctual payment of such revenue bonds  
13 and interest thereon, the revenue of the office  
14 project or projects for the construction or  
15 maintenance of which the bonds have been issued, or  
16 the [~~office's revenue~~] revenues of the office, or  
17 both, in an amount sufficient to pay such bonds and  
18 interest as the same become due and to create and  
19 maintain reasonable reserves therefor; and

20 (4) Advance such moneys of the office, not otherwise  
21 required, as are necessary to pay the expenses  
22 incurred in making the preparations for the initial





1 issuance of revenue bonds under this part, and to take  
 2 any other action necessary or proper for carrying into  
 3 execution and administering this part, including  
 4 providing for the full utilization of office projects  
 5 in every way conducive to the furtherance of any or  
 6 all purposes of the office."

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

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



1 authorizing the issuance of the bonds, or subsequent resolutions  
2 may provide.

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



1 ~~negotiable within the meaning of and for all the purposes of the~~  
2 ~~Uniform Commercial Code, chapter 490.~~

3 ~~It shall be legal for the State and any of its political~~  
4 ~~subdivisions, or any political or public corporation, including~~  
5 ~~the employees' retirement system of the State or any~~  
6 ~~instrumentality of the State or any insurance company or~~  
7 ~~building and loan association, or any savings bank or trust~~  
8 ~~company, or any bank or other financial institution operating~~  
9 ~~under the laws of this State, or for any personal~~  
10 ~~representative, guardian, trustee, or other fiduciary, or any~~  
11 ~~educational, charitable, or eleemosynary institution, to invest~~  
12 ~~their funds, and moneys in their custody in revenue bonds issued~~  
13 ~~under this part.~~

14 (b) The board may acquire such policies of insurance and  
15 enter into such banking arrangements upon such terms and  
16 conditions as the board may deem necessary or desirable, at the  
17 time of delivery of an issue of revenue bonds or such later date  
18 as the board deems in the best interest of the office, including  
19 without limitation, contracting for a support facility or  
20 facilities as permitted in section 10- , and contracting for  
21 interest rate swaps, swaptions, interest rate floors, and other  
22 similar contracts to hedge or reduce the amount or duration of



1 payment, rate, spread, or similar risk or to reduce the cost of  
2 borrowing when used in conjunction with revenue bonds issued  
3 pursuant to this chapter.

4 (c) The board may make such arrangements as may be  
5 necessary or proper for the sale of each issue of revenue bonds  
6 or part thereof as are issued pursuant to this chapter,  
7 including, without limitation, arranging for the preparation and  
8 printing of the revenue bonds, the official statement, and any  
9 other documents or instruments deemed required for the issuance  
10 and sale of revenue bonds and retaining such financial,  
11 accounting, and legal consultants, all upon such terms and  
12 conditions as the board deems advisable and in the best interest  
13 of the State and the office. The board may offer the revenue  
14 bonds at competitive sale or may negotiate the sale of the  
15 revenue bonds to any person or group of persons, to the United  
16 States, or any board, agency, instrumentality, or corporation  
17 thereof, to the employees' retirement system of the State, to  
18 any political subdivision of the State, or to any board, agency,  
19 instrumentality, public corporation, or other governmental  
20 organization of the State or of any political subdivision  
21 thereof.



1       The sale of the revenue bonds by the board by negotiation  
2 shall be at such price or prices, and upon such terms and  
3 conditions, and the revenue bonds shall bear interest at such  
4 rate or rates or such varying rates determined from time to time  
5 in the manner, as the board shall approve.

6       The sale of the revenue bonds by the board at competitive  
7 sale shall be at such price or prices and upon such terms and  
8 conditions, and the revenue bonds shall bear interest at such  
9 rate or rates or such varying rates determined from time to time  
10 in the manner as specified by the successful bidder. The  
11 revenue bonds shall be sold in the manner provided in section  
12 39-55.

13       (d) The board may delegate the responsibility for the sale  
14 and the fixing of the terms and details of revenue bonds and  
15 such other determinations or actions as may be provided by  
16 resolution of the board, to the chairperson of the board, the  
17 administrator, or another designated officer.

18       (e) All public officers and bodies of the State, all  
19 political subdivisions, all insurance companies and  
20 associations, all banks, savings banks, and savings  
21 institutions, including building or savings and loan  
22 associations, all credit unions, all trust companies, all



1 personal representatives, guardians, trustees, and all other  
2 persons and fiduciaries in the State who are regulated by law as  
3 to the character of their investment, may legally invest funds  
4 within their control and available for investment in revenue  
5 bonds issued under this chapter. The purpose of this subsection  
6 is to authorize any person, firm, corporation, association,  
7 political subdivision, body, or officer, public or private, to  
8 use any funds owned or controlled by them, including, without  
9 prejudice to the generality of the foregoing, sinking,  
10 insurance, investment, retirement, compensation, pension, trust  
11 funds, and funds held on deposit, for the purchase of any  
12 revenue bonds issued under this chapter."

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

15 "[+]§10-28[+] **Validity of bonds.** Revenue bonds issued  
16 under this part shall bear the manual signatures of the  
17 chairperson of the board and the administrator, [~~either of which~~  
18 ~~signatures may be a lithographed or engraved facsimile of the~~  
19 ~~signature provided that at least one of the signatures is a~~  
20 ~~manual signature,~~] and shall be sealed with the seal of the  
21 board or in lieu thereof shall bear a lithographed or engraved  
22 facsimile of such seal. [~~The coupons pertaining to the revenue~~



1 ~~bonds shall be executed with the lithographed or engraved~~  
2 ~~facsimile signatures of the chairperson of the board and the~~  
3 ~~administrator.] If the board designates a registrar other than~~  
4 ~~itself for the revenue bonds, the resolution authorizing the~~  
5 ~~revenue bonds may provide that none of the revenue bonds shall~~  
6 ~~be valid or obligatory for any purpose unless authenticated by~~  
7 ~~the registrar. If the resolution so provides, then all~~  
8 ~~signatures of the board upon the revenue bonds may be facsimiles~~  
9 ~~of the signatures, and the revenue bonds shall be valid and~~  
10 ~~obligatory only if authenticated by the manual signature of an~~  
11 ~~authorized officer or signatory of the registrar. Revenue bonds~~  
12 bearing the signature of officers in office at the date of the  
13 signing thereof shall be valid and binding obligations,  
14 notwithstanding that before the delivery thereof and payment  
15 therefor any or all of the persons whose signatures appear  
16 thereon shall have ceased to be officers. The validity of the  
17 bonds shall not be dependent on nor affected by the validity or  
18 regularity of any proceedings relating to the construction or  
19 maintenance of the office project or projects for which the  
20 bonds were issued. The resolution authorizing the issuance of  
21 revenue bonds may provide that the bonds shall contain a recital  
22 that they are issued pursuant to this part, which recital shall



1 be conclusive evidence of their validity and of the regularity  
2 of their issuance."

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

5 " [H] §10-30 [H] **Payment and security of revenue bonds;**  
6 **revenue bonds not a debt of the State.** Revenue bonds issued  
7 under this part shall be payable [~~solely~~] from and secured  
8 solely by the revenues of the office project or projects or  
9 office pledged to the payment thereof, or both, and such  
10 revenues shall be applied to such payment in accordance with the  
11 provisions of this part and the resolution or resolutions  
12 authorizing the issuance of the revenue bonds. No holder or  
13 holders of any revenue bonds issued under this part shall have  
14 the right to compel any exercise of the taxing power of the  
15 State to pay such bonds, or interest thereon. Each revenue bond  
16 shall recite in substance that the revenue bond, including  
17 interest thereon, is payable [~~solely~~] from and secured [~~solely~~]  
18 by the revenue pledged to the payment thereof, and that the bond  
19 does not constitute [~~an~~] a general or moral obligation or  
20 indebtedness of the State within the meaning of any limitation  
21 of law."





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

3 " ~~[†]~~ §10-31 ~~[†]~~ Office of Hawaiian affairs projects to be  
4 self-supporting. The board shall impose and collect rates,  
5 rents, fees, and charges for the use or enjoyment and services  
6 ~~[of the facilities of each office project]~~, or direct the  
7 allocation of the revenues of the office, and shall revise such  
8 rates, rents, fees, and charges from time to time whenever  
9 necessary, so that ~~[all office projects shall be self-~~  
10 ~~supporting. The rates, rents, fees, and charges prescribed]~~ in  
11 aggregate, the revenue of the office project and the office  
12 shall be such as will produce revenue at least sufficient to:

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

15 (2) Pay when due all bonds and interest thereon, for the  
16 payment of which the revenue is or has been pledged,  
17 charged, or otherwise encumbered, including reserves  
18 therefor;

19 (3) Reimburse the general fund of the State for any bond  
20 requirements on general obligation bonds issued for an  
21 office project or projects to the extent required by  
22 law; and



1 (4) Carry out all covenants and provisions of the  
 2 resolution or resolutions authorizing the issuance of  
 3 revenue bonds.

4 Neither this section nor any other section of this part  
 5 shall preclude the making of appropriations to the board, the  
 6 acceptance of gifts by the board, or the use of revenues of the  
 7 office or other funds derived from the sale of stocks, bonds, or  
 8 other assets in the possession of the board to pay all or part  
 9 of the costs of construction, of maintenance, or both, of any or  
 10 all office projects.

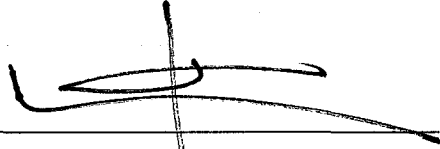
11 All moneys received pursuant to this section shall be  
 12 administered as trust funds, as provided by this chapter, and in  
 13 separate accounts designated for each office project."

14 SECTION 9. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect upon its approval.

17

INTRODUCED BY:



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By Request



**Report Title:**

Office of Hawaiian Affairs; Revenue Bonds

**Description:**

Clarifies and strengthens the Office of Hawaiian Affairs' bond authority.

