

TESTIMONY BY KALBERT K. YOUNG  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE HOUSE COMMITTEE ON FINANCE  
ON  
SENATE BILL NO. 403, S.D.2, H.D.1

March 27, 2013  
4:45 p.m.

RELATING TO BONDS.

Senate Bill No. 403, S.D.2, H.D.1, authorizes the Office of Hawaiian Affairs to issue revenue bonds to fund loan programs.

The Department offers comments on this bill. Chapter 10, Hawaii Revised Statutes (HRS), authorizes the Office of Hawaiian Affairs (OHA) to issue revenue bonds that is independent of the executive branch. As such, the revenues pledged towards the repayment of the bonds issued by OHA must be explicitly excluded from the general revenues of the State, and general appropriations of the Legislature are to be excluded as a repayment source for the bonds.

The Department of Budget and Finance oversees revenue bond issuances by all State departments and agencies and the amount of internal infrastructure required to administer a revenue bond program is quite substantial. While the Department would not be involved with the issuance of OHA revenue bonds, the Department would suggest that OHA carefully consider its resources and financial requirements as it contemplates the issuance of such bonds.

Thank you for the opportunity to provide testimony on this measure.



**SB403 SD2 HD1**  
**RELATING TO BONDS**  
House Committee on Finance

March 27, 2013

4:45 p.m.

Room 308

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS WITH AMENDMENTS** SB403 SD2 HD1, which is a part of OHA's 2013 Legislative Package. We set forth our proposed amendment on page 4 of this testimony.

This bill proposes to amend OHA's revenue bond statute to provide greater flexibility in the following key areas:

1. The types of projects and project costs that can be funded with bond proceeds
2. The issuance of bonds to fund loan programs
3. The ability to refund outstanding bonds without further legislative authorization

The bill also addresses the federal tax-exempt status of the interest on OHA revenue bonds.

This testimony focuses on the flexibility provisions.

**1. Types of Projects and Project Costs**

*A. Definition of Project.*

Under Section 10-21 of OHA's existing bond statute, the term "project" is defined to include four different classes of projects:

1. The acquisition of property pursuant to Section 10-4(2), Hawaii Revised Statutes;
2. Capital improvement on such property;
3. Pilot projects or demonstrations pursuant to Section 10-5(7); and
4. Other projects determined by rules adopted pursuant to Chapter 91, Hawaii Revised Statutes, to be for the betterment of native Hawaiians and consistent with Chapter 10.

Although this definition covers a fairly broad range of projects, it is not possible to predict whether and to what extent there may be opportunities in the future to pursue new (and as yet unidentified) types of projects that do not fit neatly into the existing categories of projects. The flexibility to pursue new types of projects may become more important, as OHA moves forward with the development of its Kaka‘ako properties, for example. For this reason, the bill recommends two amendments to the project definition:

- First, as noted above, part 4 of the existing definition includes projects determined by rules adopted pursuant to Chapter 91. While this would authorize OHA to consider new types of projects, it would require OHA to undertake the rulemaking process in order to do so. OHA does not operate by rulemaking and it seems unnecessary to require that it do so solely for bond issues. Therefore, the bill proposes that part 4 of the definition be amended to allow, in addition to projects determined by rule, those which are “otherwise authorized by the Board in accordance with applicable law.”
- In addition, the existing definition of “project” is silent as to whether OHA may issue bonds for projects partnered with others. In order to make it clear that OHA has the flexibility to do so in appropriate cases, the bill proposes that the definition of projects be amended to include an express statement that bond-financed projects may include those “that are undertaken by the office in cooperation with other governmental entities or private individuals or organizations.”

#### *B. Project Costs.*

OHA’s bond statute currently authorizes the use of bond proceeds to pay the costs of “construction or maintenance, or both,” of a project. The reference to construction does not expressly include project activities such as renovations and equipment acquisitions. In contrast, Chapter 39, Hawaii Revised Statutes, specifically provides that executive branch departments may issue revenue bonds to fund the costs of “acquisition, purchase, construction, reconstruction, improvement, betterment or extension” of their projects. In order to provide OHA with comparable flexibility in this regard, the bill proposes that the references to construction be replaced with the language used in Chapter 39. This language would appear in numerous places in Chapter 10.

## **2. Funding of Loan Programs**

Under its existing bond statute, OHA is not authorized to issue bonds for purposes other than the funding of project costs. In contrast, executive branch departments are authorized by Chapter 39 to issue bonds to fund loan programs as well as project costs. Where bonds are issued to fund a department’s loan program, the bond proceeds are used to create a pool of money that is available for loans by the

department, and the loan repayments are used, in turn, to pay debt service on the bonds.

Although OHA does not have current plans to establish a bond-financed loan program, the bill proposes that OHA's bond statute be amended to allow the flexibility for OHA to do so in the future. For this purpose, the bill proposes the addition of a new definition of "loan program" in Section 10-21. This definition is based on the precedent in Chapter 39, modified to authorize bond-financed loan programs that are consistent with OHA's mission and responsibilities under Chapter 10. The definition would read as follows:

"Loan program" means the activities and policies undertaken by the office to provide assistance to any department of the State or to any county or board, agency, or instrumentality thereof, or to private individuals or organizations, by making loans or causing loans to be made available to them or by buying, refinancing, or guaranteeing loans made to or other obligations incurred by them for the betterment of native Hawaiians.

Also, in order to implement this amendment, the bill proposes the addition of language specifically authorizing the use of bond proceeds for "the establishment, funding, and administration" of loan programs, along with language authorizing the pledge of loan program revenues to pay debt service on bonds issued to fund such programs. This additional language would appear in numerous places in Chapter 10.

### **3. Refunding Bonds**

Under its existing bond statute, OHA is authorized to issue bonds for the purpose of refunding outstanding bonds of a prior issue. This authorization is generally consistent with the refunding provisions of Chapter 39, except that Chapter 39 expressly authorizes executive branch departments to issue refunding bonds without further authorization by the legislature. In comparison, OHA's bond statute is silent on this point. Given this difference between the two statutes, it is possible that OHA's bond statute could be interpreted as requiring further legislative authorization for a refunding. If further legislative authorization is deemed necessary, the time required to obtain such an authorization delay could cause OHA to miss a market opportunity to achieve significant debt service savings. In order to preserve OHA's ability to pursue refundings in a timely manner, the bill proposes that Section 10-32 of OHA's bond statute be amended to state expressly that refundings may be undertaken without further legislative authorization.

## **Our Proposed Amendment to the Bill**

For internal consistency and accuracy within Section 9 of the bill, which seeks to amend section 10-29, Hawaii Revised Statutes, we request that the proposed new language underlined at page 17, lines 1 and 2 of the bill be amended by adding the word "or" before the words "of the office." With this amendment, the language would read:

or of such loan program or programs or of the office

In light of the above, OHA urges the committee to **PASS WITH AMENDMENTS** SB403 SD2 HD1.

Mahalo for the opportunity to testify on this important measure.

Center for Hawaiian Sovereignty Studies  
46-255 Kahuhipa St. Suite 1205 Kane'ohe, HI 96744  
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Unity, Equality, Aloha for All

To: House Committee on Finance

From: Kenneth R. Conklin, Ph.D., Center for Hawaiian Sovereignty Studies

Re: SB 403, SD2, HD1

RELATING TO BONDS.

Authorizes the Office of Hawaiian Affairs to issue revenue bonds to fund loan programs.

Date: March 25, 2013 for Hearing Wednesday March 27

#### TESTIMONY IN OPPOSITION

The House Committee on Finance will probably be the last committee which has the ability to defeat this bill.

Please kill SB 403.

Here are four reasons why.

(1) OHA has repeatedly refused to comply with State law requiring disclosure of its budget in general; and in particular its expenditures for political lobbying and the salaries it pays its employees. The State should not give OHA any additional powers on budgetary issues until OHA complies with State law on budgetary issues.

OHA has repeatedly asserted that OHA is not a state government agency and is therefore not required to comply with state laws requiring disclosure of its budget and expenditures, the salaries paid to its employees, etc. Honolulu Civil Beat online newspaper published the salaries of state employees, but OHA refused to provide that information. In 2010 Office of Information

Practices acting director Cathy Takase ruled that OHA is a state agency and must disclose such information on the same basis as any other state agency. But then Governor Abercrombie fired Takase over Takase's insistence that Abercrombie must disclose the names of nominees for a position on the Supreme Court (reminiscent of President Nixon's Saturday Night Massacre when he fired Watergate prosecutor Archibald Cox for demanding secret White House tapes). The new OIP director again ordered OHA to release the information, and again OHA refused. Previously, for many years, OHA refused to provide information to Hawaii Reporter and other media regarding OHA's expenses for travel, entertainment, and lobbying to push the Akaka bill. For further information on these and related topics, see

<http://www.angelfire.com/big09/OHAstateagency.html>

(2) Regardless of its claims to the contrary, OHA is indeed an agency of the State government, as the U.S. Supreme Court has stated in its rulings, and as commonsense and the State Constitution can confirm.

<http://www.angelfire.com/big09/OHAstateagency.html>

Therefore, if OHA issues bonds and then defaults on them, the State general fund would be responsible to pay the principal and interest on those bonds. OHA should not be allowed to issue bonds on its own authority without putting those bonds through the normal procedures and scrutiny exercised when the State issues bonds.

(3) According to its Annual Report for 2012, OHA has assets of about \$600,000,000.00. Apparently most of that money is invested in stocks, bonds, and other liquid assets outside the State of Hawaii.

[http://www.oha.org/sites/default/files/OHA\\_Annual\\_Report\\_2012.pdf](http://www.oha.org/sites/default/files/OHA_Annual_Report_2012.pdf)

If OHA wants to make loans for causes it deems worthy, OHA has plenty of money to do that by bringing home some of the money it has sucked out of the State's economy. If OHA thinks there's a worthy cause deserving its support, OHA can give a grant-in-aid. If OHA thinks there's an individual or business capable of generating sufficient excess revenue to pay back a loan, then OHA can issue the loan by drawing on its own assets, and OHA can take the risk of default. What are OHA's motives for trying to shift the burden of possible loan defaults to the State of Hawaii? In view of OHA's history of nepotism and cronyism, we should not let OHA issue bonds for the benefit of friends and relatives of the trustees, which might then default at the expense of the taxpayers.

(4) If OHA issues revenue bonds tied to the revenues OHA itself creates, how much revenue does OHA have, and from what sources? OHA's three biggest landholdings are Waimea Valley Park, the Waokele O Puna forest preserve, and its new holdings in Kaka'ako. Is the income generated from those landholdings sufficient to pay principal and interest on the bonds it might issue?

Just say NO to SB 403.





## **Association of Hawaiian Civic Clubs**

P. O. Box 1135  
Honolulu, Hawai`i 96807

### HOUSE COMMITTEE ON FINANCE

#### SB403, SD2, HD1 (HSCR1069) RELATING TO BONDS

Wednesday, March 27, 2013; 4:45pm; Room 308

Aloha Madam Chair Luke, vice chairs Nishimoto and Johanson and members of the House Finance committee.

The Association of Hawaiian Civic Clubs (AHCC) supports this Senate bill that will authorize the Office of Hawaiian Affairs (OHA) to issue revenue bonds that will allow OHA to fund loan programs.

The AHCC Board of Directors met on January 19, 2013 and voted to support the package of legislative measures offered by OHA. We look forward to working with OHA to bring their loan program to fruition.

Thank you for the opportunity to testify for this measure.

Contact: [jalna.keala2@hawaiiantel.net](mailto:jalna.keala2@hawaiiantel.net)

**SB403**

Submitted on: 3/25/2013

Testimony for FIN on Mar 27, 2013 16:45PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bianca Isaki	Individual	Support	No

Comments: I support authorizing OHA to implement more financial tools in order to meet its obligations to its Native Hawaiian beneficiaries.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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## **FINTestimony**

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### **SB403**

Submitted on: 3/25/2013

Testimony for FIN on Mar 27, 2013 16:45PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
godfrey Palacat	Individual	Support	No

Comments: strong supporter of SB403

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## **FINTestimony**

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### **SB403**

Submitted on: 3/25/2013

Testimony for FIN on Mar 27, 2013 16:45PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Junedale Palacat	Individual	Support	No

Comments: I strongly Support this bill SB403

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## **FINTestimony**

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### **SB403**

Submitted on: 3/25/2013

Testimony for FIN on Mar 27, 2013 16:45PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lea Palacat	Individual	Support	No

Comments: supporting Bill SB403

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