



**SB403 SD1**  
**RELATING TO BONDS**  
Senate Committee on Ways and Means

February 28, 2013

9:35 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** SB403 SD1, which is an amended version of a bill that was in OHA's 2013 Legislative Package. 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.

In light of the above, OHA urges the committee to **PASS** SB403 SD1. Mahalo for the opportunity to testify on this important measure.