

**"CHAPTER 10
OFFICE OF HAWAIIAN AFFAIRS**

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Kakaako makai; conveyance of certain parcels to office of Hawaiian affairs. L 2012, c 15.

Public land trust information system. L 2011, c 54; L 2013, c 110.

Use of lands in public land trust; payments and accounting requirements. L 2006, c 178.

Cross References

Allowance of indigenous Hawaiian architecture by county ordinances, see §46-1.55.

Successor determination program, see §171-100.

Attorney General Opinions

Office of Hawaiian affairs constitutionally valid. Att. Gen. Op. 80-8.

Legislature may not authorize office of Hawaiian affairs to use funds derived from public land trust to better the conditions of "Hawaiians", as defined in §10-2, distinguishing from "native Hawaiians" as defined in §5(f) of the Admission Act. Att. Gen. Op. 83-2.

Law Journals and Reviews

The Constitutionality of the Office of Hawaiian Affairs. 7 UH L. Rev. 63.

The Office of Hawaiian Affairs and the Issue of Sovereign Immunity. 7 UH L. Rev. 95.

The Native Hawaiian Trusts Judicial Relief Act: The First Step in an Attempt to Provide Relief. 14 UH L. Rev. 889.

Native Hawaiian Entitlement to Sovereignty: An Overview. 17 UH L. Rev. 427.

Courts in the "Age of Reconciliation": Office of Hawaiian Affairs v. HCDCH. 33 UH L. Rev. 503 (2011).

Case Notes

Does not violate §5 of the Admission Act. 921 F.2d 950.

Appellant who contended, among other things, injury by the provisions of article XII of the state constitution and this chapter personally subjecting appellant to racial classification, lacked standing as appellant did not suffer an injury in fact. 342 F.3d 934.

Plaintiff challenging constitutionality of article XII, §§5 and 6 of state constitution and this chapter, lacked standing, where plaintiff had not suffered any injury-in-fact. 188 F. Supp. 2d 1233.

"PART I. GENERAL PROVISIONS

Note

Sections 10-1 to 10-16 designated as Part I by L 1994, c 283, §2(1).

[\$10-1] Declaration of purpose. (a) The people of the State of Hawaii and the United States of America as set forth and approved in the Admission Act, established a public trust which includes among other responsibilities, betterment of conditions for native Hawaiians. The people of the State of Hawaii reaffirmed their solemn trust obligation and responsibility to native Hawaiians and furthermore declared in the state constitution that there be an office of Hawaiian affairs to address the needs of the aboriginal class of people of Hawaii.

(b) It shall be the duty and responsibility of all state departments and instrumentalities of state government providing services and programs which affect native Hawaiians and Hawaiians to actively work toward the goals of this chapter and to cooperate with and assist wherever possible the office of Hawaiian affairs. [L 1979, c 196, pt of §2]

" **§10-2 Definitions.** In this chapter, if not inconsistent with the context:

"Administrator" means the administrator of the office of Hawaiian affairs.

"Beneficiary of the public trust entrusted upon the office" means native Hawaiians and Hawaiians.

"Board" means the board of trustees.

"Grant" means an award of funds by the office to a specified recipient to support the activities of the recipient for activities that are consistent with the purposes of this chapter.

"Hawaiian" means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.

"Native Hawaiian" means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands

previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii.

"Office" means the office of Hawaiian affairs.

"Recipient" means any organization or person receiving a grant. [L 1979, c 196, pt of §2; am L 1990, c 304, §§3, 16; am L 1992, c 318, §2; am L 1997, c 350, §§14, 15; am L 2002, c 182, §2]

Law Journals and Reviews

The Lum Court and Native Hawaiian Rights. 14 UH L. Rev. 377.

Case Notes

Definition of "Hawaiian" does not violate equal protection. 631 F. Supp. 1153.

Act 304, L 1990, was invalidated by its own severability clause when amendment to this section by Act 304 was found to conflict with the federal Forgiveness Act (Pub. L. No. 105-66, §340, 111 Stat. at 1448), leaving court with no judicially manageable standards to determine whether office of Hawaiian affairs was entitled to the specific revenues sought in the suit. 96 H. 388, 31 P.3d 901.

" **§10-3 Purpose of the office.** The purposes of the office of Hawaiian affairs include:

- (1) The betterment of conditions of native Hawaiians. A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or

disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e);

- (2) The betterment of conditions of Hawaiians;
- (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations. [L 1979, c 196, pt of §2; am L 1990, c 304, §§4, 16]

Law Journals and Reviews

Ensuring Our Future by Protecting Our Past: An Indigenous Reconciliation Approach to Improving Native Hawaiian Burial Protection. 33 UH L. Rev. 321 (2010).

Case Notes

Trustees of the office of Hawaiian affairs established as a matter of law that each of the challenged expenditures constituted a "use" "for one or more of the [§5(f)] purposes" and that was sufficient to defeat plaintiffs' 42 U.S.C. §1983 claim under federal law for breach of the [Admission Act] §5(f) trust; district court's summary judgment in favor of the trustees, affirmed. 616 F.3d 918 (2010).

Determination of whether damages received by State from illegal sand mining operation was funds derived from a public land trust was a nonjudicial discretion; whether income from sales, leases, or other dispositions of lands surrounding harbors on all major islands, of land on Sand Island, of land on Airport, fell within section was a nonjudicial discretion. 69 H. 154, 737 P.2d 446.

Act 304, L 1990, was invalidated by its own severability clause when amendments made to §§10-2 and 10-13.5 by Act 304 were found to conflict with the federal Forgiveness Act (Pub. L. No. 105-66, §340, 111 Stat. at 1448), leaving court with no judicially manageable standards to determine whether office of Hawaiian affairs was entitled to the specific revenues sought in the suit. 96 H. 388, 31 P.3d 901.

Plaintiffs' complaint failed to state a breach of fiduciary duty claim under §10-16(c) where the complaint: (1) did not allege that the office of Hawaiian affairs trustees' spending decisions were made for any purpose other than benefiting native Hawaiians; (2) did not allege that the expenditures were in conflict with or adverse to the interests of native Hawaiians; and (3) lacked factual allegations that the expenditures were in furtherance of programs that do not benefit native Hawaiians. 131 H. 62, 315 P.3d 213 (2013).

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

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

- (5) To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers;
- (6) To issue revenue bonds pursuant to this chapter to finance the cost of an office project or to fund a loan program, and to provide for the security thereof, in the manner and pursuant to the procedure prescribed in part II;
- (7) To lend or otherwise apply the proceeds of the bonds issued for an office project or a loan program either directly or through a trustee or a qualified person for use and application in the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of an office project or the establishment, funding, and administration of a loan program, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;
- (8) With or without terminating a project agreement or loan agreement, as applicable, to exercise any and all rights provided by law for entry and re-entry upon or to take possession of an office project or enforce a loan agreement at any time or from time to time upon breach or default by a qualified person under a project agreement or loan agreement, including any action at law or in equity for the purpose of effecting its rights of entry or re-entry or obtaining possession of the project or enforcing the loan agreement or for the payments of rentals, user taxes, or charges, or any other sum due and payable by the qualified person to the office pursuant to the project agreement or loan agreement; and
- (9) To take such actions as may be necessary or appropriate to carry out the powers conferred upon it by law. [L 1979, c 196, pt of §2; am L 1994, c 283, §3; am L 2009, c 146, §4; am L 2013, c 171, §2]

" **[\$10-4.5] Authority over disbursements.** (a) Except as provided in subsection (b), and notwithstanding any other law to the contrary, the office shall have and exercise the power to make all necessary and appropriate disbursements of its moneys by issuing checks in its own name and by any other means.

(b) The office shall have and exercise the power to deposit any of its moneys in any banking institution within or

outside the State, to the extent necessary to implement subsection (a).

(c) The department of accounting and general services, with the approval of the office of Hawaiian affairs, may continue to perform the payroll function of the office, including the issuance of salary checks for the office's employees. [L 2005, c 107, §1]

" **§10-5 Board of trustees; powers and duties.** The board shall have the power in accordance with law to:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 10-3;
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians;
- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
- (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution;
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
- (7) Provide grants to individuals, and public or private organizations to better the conditions of native Hawaiians and Hawaiians consistent with the standards set forth in section 10-17;
- (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
- (9) Adopt and use a common seal by which all official acts shall be authenticated. [L 1979, c 196, pt of §2; am L

1990, c 304, §§5, 16; am L 1996, c 240, §1; am L 2002, c 182, §3]

Case Notes

Act 304, L 1990, was invalidated by its own severability clause when amendments made to §§10-2 and 10-13.5 by Act 304 were found to conflict with the federal Forgiveness Act (Pub. L. No. 105-66, §340, 111 Stat. at 1448), leaving court with no judicially manageable standards to determine whether office of Hawaiian affairs was entitled to the specific revenues sought in the suit. 96 H. 388, 31 P.3d 901.

" **§10-6 General duties of the board.** (a) The general duties of the board shall be:

- (1) To develop and continually update a strategic plan for the office that shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians;
 - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;
 - (C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians;
 - (D) Establishment of priorities and alternatives for the office's program and service implementation; and
 - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel;
- (2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;
- (3) To maintain an inventory of federal, state, county, and private programs and services for Hawaiians and native Hawaiians and act as a clearinghouse and referral agency;
- (4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians;
- (5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians;

- (6) To develop and review models for comprehensive native Hawaiian and Hawaiian programs;
- (7) To act as a clearinghouse for applications for federal or state assistance to carry out native Hawaiian or Hawaiian programs or projects;
- (8) To apply for, accept and administer any federal funds made available or allotted under any federal act for native Hawaiians or Hawaiians; and
- (9) To promote and assist the establishment of agencies to serve native Hawaiians and Hawaiians.

(b) The board shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed by this chapter, and which may be necessary to fully and completely effectuate the purposes of this chapter. [L 1979, c 196, pt of §2; am L 2006, c 2, §1]

" **§10-7 Board of trustees.** The office of Hawaiian affairs shall be governed by a board to be officially known as the board of trustees, office of Hawaiian affairs. Members of the board shall be elected in accordance with chapter 13D, with reference to sections 11-15, 11-25, 12-5, 12-6, and vacancies shall be filled in accordance with section 17-7. [L 1979, c 196, pt of §2]

" **§10-8 Organization; quorum; meeting.** The board, at its first meeting after an election, shall elect from its own membership a chairperson and a vice-chairperson who shall serve at the pleasure of the board. Their election shall be immediately certified by the board to the lieutenant governor.

A majority of all members to which the board is entitled shall constitute a quorum to do business. The concurrence of a majority of all members to which the board is entitled shall be necessary to make any action of the board valid; provided that due notice shall be given to all members.

Meetings shall be called and held at the call of the chair or by a quorum, as often as may be necessary for transaction of the board's business. The board shall meet at least once annually on each of the islands of Hawaii, Maui, Molokai, Lanai, Kauai, and Oahu. [L 1979, c 196, pt of §2; am L 1985, c 158, §1]

" **§10-9 Salaries; benefit; expenses.** Members of the board:

- (1) Shall receive an annual salary which shall be paid:
 - (A) Exclusively from revenue under section 10-13.5;and

(B) In equal amounts, beginning with the first pay period for state employees in November of the year the member of the board is elected. Effective July 1, 1993, and until the salary commission makes recommendations for salary, the salary of the chairperson of the board shall be \$37,000 a year and the salary of other members of the board shall be \$32,000 a year. Any provision of law to the contrary notwithstanding, all members of the board shall be included in any benefit program generally applicable to officers and employees of the State;

- (2) Shall be allowed transportation fares between islands and abroad;
- (3) Shall be allowed personal expenses at the rates specified by the board while attending board meetings or while on official business as authorized by the chairperson, when those board meetings or official business shall require a member to leave the island upon which the member resides; and
- (4) Shall be allowed a protocol allowance to cover expenses incurred in the course of a member's duties and responsibilities. [L 1979, c 196, pt of §2; am L 1981, c 148, §1; am L 1989, c 290, §1; am L 1993, c 358, §3; am L 2002, c 148, §1 and c 183, §3]

" **§10-9.5 Salary commission; established.** (a) There is established a salary commission for the members of the board of trustees for the office of Hawaiian affairs. The salary commission shall consist of seven members appointed by the governor on or before August 31, 1999, and every four years thereafter. The members of the salary commission shall be selected from nominations submitted by native Hawaiian organizations as defined in section 673-2(c). The members shall serve without compensation, but shall be entitled to reimbursement for necessary expenses while in the discharge of their duties and responsibilities.

(b) Before the twentieth legislative day of the regular session of 2000 and every four years thereafter, the salary commission shall study and make recommendations for the salary of the members of the board of trustees for the office of Hawaiian affairs, and then shall be dissolved. The recommended salary shall be effective as of the date of the recommendations unless the legislature disapproves the recommendation by adoption of a concurrent resolution prior to adjournment sine die of the legislative session in which the recommendation is submitted. [L 1993, c 358, pt of §2; am L 1999, c 191, §2]

" **[§10-10] Administrator; appointment, tenure, removal.** The board by a majority vote, shall appoint an administrator who shall serve without regard to the provisions of chapter 76 for a term to be determined by the board. The board, by a two-thirds vote of all members to which it is entitled, may remove the administrator for cause at any time. [L 1979, c 196, pt of §2; am L 2000, c 253, §150]

" **§10-11 Salary of the administrator.** The salary of the administrator shall be established by the board; provided that such salary shall not exceed the salary of department heads or executive officers established by law. The administrator shall be included in any benefit program generally applicable to officers and employees of the State. [L 1979, c 196, pt of §2; am L 1981, c 130, §2]

" **§10-12 Assistant; staff.** The administrator may employ and retain such officers and employees as may be necessary to carry out the functions of the office. Such officers and employees may be hired without regard to chapter 76, and shall serve at the pleasure of the administrator. Officers and employees of the office of Hawaiian affairs shall be included in any benefit program generally applicable to officers and employees of the State. [L 1979, c 196, pt of §2; am L 1990, c 231, §1; am L 2000, c 253, §150]

Case Notes

Where plaintiff, terminated OHA chief financial officer, claimed that defendants, OHA administrator and trustee, in individual capacities, unlawfully deprived plaintiff of plaintiff's property and liberty without due process of law, in violation of 42 U.S.C. §1983, defendants' motion for summary judgment granted with prejudice as to these claims. 120 F. Supp. 2d 1244.

" **§10-13 Appropriations; accounts; reports.** Moneys appropriated by the legislature for the office shall be payable by the director of finance, upon vouchers approved by the board, or by any officer elected or appointed by the board and authorized by the board to approve such vouchers on behalf of the board. All moneys received by or on behalf of the board

shall be deposited with the director of finance and kept separate from moneys in the state treasury; except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the agencies or persons from whom the moneys are received; and except that with the concurrence of the director of finance, moneys received from the federal government for research, training, and other related purposes of a transitory nature, and moneys in trust or revolving funds administered by the office, shall be deposited in depositories other than the state treasury and shall be reported on to the state comptroller under section 40-81, and rules prescribed thereunder.

Income derived from the sale of goods or services and income from lands and property as described in section 10-3, shall be credited to special or other funds; provided that upon the recommendation of the office, the comptroller shall establish such other separate accounts or special funds for other designated revenues as may be directed by the board or its authorized representative. [L 1979, c 196, pt of §2; am L 1981, c 37, §2; am L 1990, c 304, §§6, 16]

Law Journals and Reviews

Ensuring Our Future by Protecting Our Past: An Indigenous Reconciliation Approach to Improving Native Hawaiian Burial Protection. 33 UH L. Rev. 321 (2010).

Case Notes

Act 304, L 1990, was invalidated by its own severability clause when amendments made to §§10-2 and 10-13.5 by Act 304 were found to conflict with the federal Forgiveness Act (Pub. L. No. 105-66, §340, 111 Stat. at 1448), leaving court with no judicially manageable standards to determine whether office of Hawaiian affairs was entitled to the specific revenues sought in the suit. 96 H. 388, 31 P.3d 901.

" **[\$10-13.3] Interim revenue.** Notwithstanding the definition of revenue contained in this chapter and the provisions of section 10-13.5, and notwithstanding any claimed invalidity of Act 304, Session Laws of Hawaii 1990, the income and proceeds from the pro rata portion of the public land trust under article XII, section 6 of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each of fiscal year

1997-1998 and fiscal year 1998-1999 shall be \$15,100,000. [L 1997, c 329, §2]

Law Journals and Reviews

Demolition of Native Rights and Self Determination: Act 55's Devastating Impact through the Development of Hawaii's Public Lands. 35 UH L. Rev. 297 (2013).

" **§10-13.5 Use of public land trust proceeds.** Twenty per cent of all funds derived from the public land trust, described in section 10-3, shall be expended by the office, as defined in section 10-2, for the purposes of this chapter. [L 1980, c 273, §1; am L 1990, c 304, §§7, 16]

Attorney General Opinions

Legislature must again determine which income and proceeds from the public land trust lands are to go to the office of Hawaiian affairs (OHA). Until legislature reestablishes a funding mechanism for OHA, Executive Order No. 03-03 is the only mechanism in place for transferring receipts from the use of ceded lands to OHA; receipts from the sale or transfer of biogenetic resources do not qualify for transfer under the order. Att. Gen. Op. 03-3.

Receipts derived from ceded lands apportioned for native Hawaiians pursuant to article XII, §6 of the state constitution and this section may be transmitted directly to office of Hawaiian affairs by agencies that collect them, without legislative appropriation. Att. Gen. Op. 03-4.

Law Journals and Reviews

The Lum Court and Native Hawaiian Rights. 14 UH L. Rev. 377.

Native Hawaiians, Self-Determination, and the Inadequacy of the State Land Trusts. 14 UH L. Rev. 519.

Hawai'i's Justiciability Doctrine. 26 UH L. Rev. 537.

Biopiracy in Paradise?: Fulfilling the Legal Duty to Regulate Bioprospecting in Hawai'i. 28 UH L. Rev. 387.

Case Notes

Section contained no judicially discoverable or manageable standards that could be employed to resolve OHA's claims to twenty per cent of revenues. 69 H. 154, 737 P.2d 446.

Act 304, L 1990, was invalidated by its own severability clause when amendment to this section by Act 304 was found to conflict with the federal Forgiveness Act (Pub. L. No. 105-66, §340, 111 Stat. at 1448), leaving court with no judicially manageable standards to determine whether office of Hawaiian affairs was entitled to the specific revenues sought in the suit. 96 H. 388, 31 P.3d 901.

" **§10-13.6 Public land trust conveyed for the development of housing projects.**

(a) This section applies to the revenue derived from land of the public land trust as designated in subsection (e) that is conveyed by the department of land and natural resources to the Hawaii housing finance and development corporation for the development of housing projects as defined under section 201H-1. The amount due to the office shall be determined by multiplying the fair market value of the land by twenty per cent. For the purpose of this section:

"Fair market value" means the amount of money that a purchaser willing but not obliged to buy the land would pay to an owner willing but not obliged to sell it, taking into consideration the highest and best use of the land.

"Highest and best use" means the most profitable, probable, and legal use to which the land can be put.

(b) Fair market value shall be determined on a per acre basis pursuant to appraisals performed in conformance with the uniform standards of professional appraisal practice as adopted by the department of commerce and consumer affairs, not more than ninety days before the conveyance of the land to the Hawaii housing finance and development corporation. The appraisals shall be performed by two disinterested appraisers each of whose services shall be contracted by the department of land and natural resources and the office, respectively. If the land is of the public land trust and sugarcane lands, as defined by article XII, section 1 of the state constitution, the office and the department of Hawaiian home lands shall contract the services of one appraiser. The parties shall contract the services of the appraisers within thirty business days after the department of land and natural resources gives written notice to the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, of the proposed conveyance of the land to the Hawaii housing finance and development corporation.

If any party fails or refuses to contract the services of an appraiser, then the other party may petition the circuit court in the county where the land is located to appoint the other of the two appraisers. If the two appraisers are unable

to agree on a fair market value, then within thirty days thereafter, the department of land and natural resources and the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, shall contract for the services of a mutually agreed upon third appraiser and the decision of the majority of the appraisers shall be final with respect to determination of the fair market value of the land. If the department of land and natural resources and the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, are unable to agree on the selection of the third appraiser, any party may petition the circuit court in the county where the land is located to appoint the third appraiser.

(c) The amount due to the office shall be due and payable by the State on the date of conveyance of the land to the Hawaii housing finance and development corporation. Payment to the office may be in the form of public lands or moneys. If payment is to be in the form of public lands, the lands shall be mutually agreed upon by the department of land and natural resources and the office, and shall be of value comparable to the amount due to the office. Any monetary payment shall be an obligation of the Hawaii housing finance and development corporation. Any portion of that amount that is not paid on the date of conveyance shall be subject to simple interest annually, established pursuant to the fifteen year treasury rate at the time of the conveyance and payable annually by the State to the office.

(d) Twenty per cent of the revenue received by the Hawaii housing finance and development corporation from commercial, industrial, or other nonresidential use of the land shall be paid annually to the office; provided that:

- (1) The office shall not receive payment under this subsection until the Hawaii housing finance and development corporation recovers all moneys previously paid to the office for that portion of land used for commercial, industrial, or other nonresidential purposes;
- (2) If borrowed moneys are used to finance the development of land for commercial, industrial, or other nonresidential purposes, annual payments due to the office under this subsection shall be made pursuant to the following order of priority:
 - (A) The Hawaii housing finance and development corporation satisfies as a first priority the amount computed annually on the pro rata portion (not the total debt service over the life of the

debt) of its total debt service on the borrowed moneys;

- (B) The Hawaii housing finance and development corporation satisfies as a second priority its operating expense obligations directly incurred from the development and operation of land used for commercial, industrial, or other nonresidential purposes in an amount not exceeding one per cent of the revenues for the project; and
- (C) After the first and second priorities are satisfied, the Hawaii housing finance and development corporation shall make annual payments due to the office under this subsection from any remaining revenues; and

- (3) In the event of a sale of land used for commercial, industrial, or other nonresidential purposes, the office shall receive twenty per cent of the revenue received by the Hawaii housing finance and development corporation.

(e) This section shall only apply to the Hawaii housing finance and development corporation's developments known as the villages of Leali'i, Maui, and villages of La'i'opua, Hawaii. [L 1992, c 318, §1; am L 1997, c 350, §§14, 15; am L 2005, c 196, §26(b); am L 2006, c 180, §16; am L 2007, c 249, §2]

" **§10-14 REPEALED.** L 1990, c 221, §4.

" **[\$10-14.5] Budget preparation and submission; auditing.**

(a) The budget, six-year program and financial plan, and the variance report of the office of Hawaiian affairs shall be submitted by the board to the legislature and to each member thereof in accordance with the budget submission schedule specified for the governor in chapter 37 and shall contain the program information specified in that chapter that is applicable to the office of Hawaiian affairs. Not less than twenty days prior to the convening of each regular session of the legislature, the office of Hawaiian affairs shall submit to the legislature an accounting of the expenditures made in the prior fiscal year, by account code and budget program. By November 1 of each year preceding a legislative session in which a budget is to be submitted, the board shall provide written notification to the governor of the proposed total expenditures, by cost categories and sources of funding, and estimated revenues of the

office of Hawaiian affairs for each fiscal year of the next fiscal biennium.

(b) The board shall provide opportunities for beneficiaries in every county to participate in the preparation of each biennial and supplemental budget of the office of Hawaiian affairs. These opportunities shall include an accounting by trustees of the funds expended and of the effectiveness of programs undertaken.

(c) The office shall be subject to governmental audit. [L 1990, c 221, pt of §2]

" **[\$10-14.55] Audit and report.** The auditor shall conduct an audit of the office at least once every four years and shall submit a report on findings and recommendations to the governor and the legislature on or before the convening of the next immediate legislative session. The first audit report shall be submitted no later than January 15, 1996. [L 1993, c 358, pt of §2]

" **[\$10-14.6] Legislative review.** The legislature shall consider the board's proposed program and financial plan; evaluate alternatives to the board's recommendations; and appropriate any general fund portion of the budget and any matching special fund appropriations. [L 1990, c 221, pt of §2]

" **§10-15 Annual report.** The board shall prepare and make public their annual report which shall include an enumeration of their activities, income, and expenditures during the year. The annual report for the previous fiscal year shall be submitted to the governor and the legislature ten days prior to the convening of each regular session of the legislature. The board shall prepare and submit special reports as may be required by the legislature. [L 1979, c 196, pt of §2; am L 1990, c 221, §3]

" **§10-15.5 REPEALED.** L 1990, c 304, §§14, 16.

Note

Act 304, Session Laws of Hawaii 1990, was invalidated by its own severability clause because amendments made to §§10-2 and 10-13.5 by Act 304 were found to conflict with the federal Forgiveness Act (Pub. L. No. 105-66, §340, 111 Stat. at 1448); thus, §14 of Act 304, codified as §10-15.5, is repealed.

" **[\$10-16] Suits.** (a) The office may sue and be sued in its corporate name. The State shall not be liable for any acts or omissions of the office, its officers, employees, and the members of the board of trustees, except as provided under subsection (b).

(b) In matters of tort, the office, its officers and employees, and the members of the board shall be subject to suit only in the manner provided for suits against the State under chapter 662.

(c) In matters of misapplication of funds and resources in breach of fiduciary duty, board members shall be subject to suit brought by any beneficiary of the public trust entrusted upon the office, either through the office of the attorney general or through private counsel.

(d) In matters involving other forms of remedies, the office, its officers and employees, and the members of the board shall be subject to suit as provided by any other provision of law and by the common law. [L 1979, c 196, pt of §2]

Case Notes

Where plaintiff office of Hawaiian affairs brought suit in its own corporate name under this section, rather than as an agency of the State on behalf of the people of the State, §657-1.5 did not exempt plaintiff from the statute of limitations for bringing a suit under §673-10. 110 H. 338, 133 P.3d 767.

Plaintiffs' complaint failed to state a breach of fiduciary duty claim under subsection (c), where the complaint: (1) did not allege that the office of Hawaiian affairs trustees' spending decisions were made for any purpose other than benefiting native Hawaiians; (2) did not allege that the expenditures were in conflict with or adverse to the interests of native Hawaiians; and (3) lacked factual allegations that the expenditures were in furtherance of programs that do not benefit native Hawaiians. The conclusory allegations in the amended complaint, without more, were insufficient to state a claim. 131 H. 62, 315 P.3d 213 (2013).

" **§10-17 Grants; conditions and qualifications.** (a) Applications for grants shall be made to the office and contain such information as the office shall require. At a minimum, the applicant shall show:

- (1) The name of the requesting organization or individual;
- (2) The purpose for the grant;
- (3) The service to be supported by the grant;

- (4) The target group to be benefited;
 - (5) The cost of the grant; and
 - (6) That the grant shall be used for activities that are consistent with the purposes of this chapter.
- (b) Grants shall only be awarded if:
- (1) The applicant has applied for or received all applicable licenses and permits, when such is required to conduct the activities or provide the services for which a grant is awarded;
 - (2) The applicant agrees to comply with applicable federal, state, and county laws;
 - (3) The grant shall not be used for purposes of entertainment or perquisites;
 - (4) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules; and
 - (5) The applicant will indemnify and hold harmless the office, the State of Hawaii, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the office.
- (c) To receive a grant, an applicant shall:
- (1) Be:
 - (A) A for-profit subsidiary of a nonprofit organization incorporated under the law of the State;
 - (B) A nonprofit community-based organization determined to be exempt from federal income taxation by the Internal Revenue Service;
 - (C) A cooperative association; or
 - (D) An individual, who in the board's determination, is able to provide the services or activities proposed in the application for a grant;
 - (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies that describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and employ or contract with no two or more members of a family or kin of the first or second degree of consanguinity unless specifically permitted by the office;

- (3) Agree to make available to the office all records the applicant may have relating to the operation of the applicant's activity, business, or enterprise, to allow the office to monitor the applicant's compliance with the purpose of this chapter; and
- (4) Establish, to the satisfaction of the office, that sufficient funds are available for the effective operation of the activity, business, or enterprise for the purpose for which the grant is awarded.
- (d) Every grant shall be:
 - (1) Monitored by the office to ensure compliance with this chapter and the purposes and intent of the grant; and
 - (2) Evaluated annually to determine whether the grant attained the intended results in the manner contemplated.
- (e) Grants made by the office under this chapter may be made without regard to chapters 103D and 103F. [L 2002, c 182, §1; am L 2003, c 9, §2]

" **§10-18 Hui 'Imi advisory council.** (a) There is established a Hui 'Imi advisory council, to be placed within the office of Hawaiian affairs for administrative purposes only. The advisory council shall consist of representatives from the following:

- (1) Office of Hawaiian affairs;
- (2) Department of education;
- (3) Department of Hawaiian home lands;
- (4) Department of health;
- (5) Department of human services;
- (6) Department of business, economic development, and tourism;
- (7) Department of land and natural resources;
- (8) University of Hawaii;
- (9) House of representatives standing committee with primary jurisdiction over Hawaiian affairs;
- (10) Senate standing committee with primary jurisdiction over Hawaiian affairs;
- (11) Alu Like, Inc.;
- (12) The Association of Hawaiian Civic Clubs;
- (13) E Ola Mau;
- (14) The Kamehameha Schools;
- (15) The Lunalilo Home;
- (16) The Native Hawaiian Culture and Arts Program of the Bernice Pauahi Bishop Museum;
- (17) The Native Hawaiian Legal Corporation;
- (18) Papa Ola Lokahi;
- (19) The Queen Lili'uokalani Children's Center;

- (20) Council for Native Hawaiian Advancement; and
- (21) Any other agency, organization, or entity that expresses interest to participate in fulfilling the advisory council's mandate.

The advisory council shall make a good faith effort to include as members other public and private agencies, organizations, or entities that express interest in fulfilling the advisory council's mandate.

(b) Each member shall be appointed by the director or other chief executive of the member's organization within forty-five days following July 1, 2003. The advisory council members shall select a chairperson and establish procedural rules for its internal administration. The rules shall be exempt from the public notice and hearing provisions of chapter 91. Administrative expenses of the advisory council, such as photocopying, postage, stationery, and office supplies incidental to the performance of members' duties may be reimbursed out of appropriations made to the advisory council, but members of the advisory council shall otherwise serve without compensation and without reimbursement for travel expenses.

(c) The Hui 'Imi advisory council shall:

- (1) Serve as a liaison between public and private entities serving the Hawaiian community in the planning and development of collaborative public and private endeavors;
- (2) Investigate the issues described in the Hui 'Imi task force report volumes I and II and such other issues affecting Hawaiians as the advisory council shall designate; and
- (3) Submit a report of its findings and recommendations, which report shall include an action plan for the implementation of the Hui 'Imi task force report volumes I and II, with a view toward incorporating the action plan into the state general plan. The report shall be submitted to the governor and the legislature no later than twenty days prior to the convening of the regular session of 2005. [L 2003, c 42, §2]

Revision Note

"July 1, 2003" substituted for "the effective date of this Act".

" **[§10-19] Hawaiian registry.** The office shall establish and maintain a registry of all Hawaiians wherever such persons may reside. Inclusion of persons in the Hawaiian registry shall

be based upon genealogical records sufficient to establish the person's descent from the aboriginal peoples inhabiting the Hawaiian Islands in 1778. [L 2003, c 217, §1]

" **[\$10-20] Taro security; funding.** (a) The office may seek available federal, state, county, or private funding to restore taro and lo'i cultivation. The office shall cooperate with other public and private agencies, as appropriate, in applying for funds pursuant to this section.

(b) The office may use and distribute funds received pursuant to subsection (a) for projects that use taro for:

- (1) Flood control;
- (2) Wetland restoration and preservation;
- (3) Food security;
- (4) Community economic development;
- (5) Job creation;
- (6) Education; and
- (7) Water-quality protection. [L 2010, c 196, §2]

Cross References

Hand-pounded poi, see §321-4.7.

"PART II. REVENUE BONDS

§10-21 Definitions. Whenever used in this part:

"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.

"Office project" or "project" means:

- (1) The lawful acquisition of any property, real, personal, or mixed, tangible or intangible, or any interests therein, pursuant to section 10-4(2);
- (2) Any capital improvement projects on lands held by the office pursuant to section 10-4(2) or in the public land trust, including but not limited to the construction of buildings and other improvements; infrastructure development, and other enterprises which are acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by or on behalf of the office;

- (3) Pilot projects, demonstrations, or both, where those projects or demonstrations fulfill criteria established by the board, pursuant to section 10-5(7); and
- (4) Any other projects determined by rules adopted by the board pursuant to chapter 91 or otherwise authorized by the board in accordance with applicable law to be for the betterment of native Hawaiians and are consistent with the purposes of this chapter.

For purposes of this chapter, the term "office project" or "project" may include projects of the foregoing types that are undertaken by the office in cooperation with other governmental entities or private individuals or organizations.

"Reserves" means reserves required or permitted in the covenants in the resolution or resolutions of the board authorizing the obtaining of loans or issuance of revenue bonds under this part.

"Revenue bonds" means revenue bonds, interim certificates, notes, debentures, or other evidence of indebtedness of the board authorized by or issued under this part.

"Revenues of the office" or "office's revenue" means all rates, rentals, fees and charges, and user taxes, received by the office of Hawaiian affairs, and all money and revenue derived from the operations of the office, other than:

- (1) General appropriations; and
- (2) Funds, the terms of which preclude their being used for payment of the costs of acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of an office project or the costs of a loan program or the payment of principal or interest of revenue bonds.

For purposes of the issuance of revenue bonds, the office or any office project or projects shall constitute a public undertaking, improvement, or system. [L 1994, c 283, pt of §2(2); am L 2009, c 146, §3; am L 2013, c 171, §3]

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

- (1) Prescribe and collect rents, fees, and charges for the use of or services furnished by any office project or the facilities thereof or of any loan program;
- (2) Issue revenue bonds under this chapter, in such principal amounts as may be authorized by the legislature from time to time, to finance in whole or in part the cost of acquisition, purchase, construction, reconstruction, improvement, betterment,

- extension, or maintenance of any office project or the establishment, funding, or administration of any loan program, including reserves therefor;
- (3) Pledge to the punctual payment of such revenue bonds and interest thereon, the revenue of the office project or projects or loan program or programs for which the bonds have been issued, or the revenues of the office, or both, in an amount sufficient to pay such bonds and interest as the same become due and to create and maintain reasonable reserves therefor; and
 - (4) Advance such moneys of the office, not otherwise required, as are necessary to pay the expenses incurred in making the preparations for the initial issuance of revenue bonds under this part, and to take any other action necessary or proper for carrying into execution and administering this part, including providing for the full use of office projects or the establishment, funding, and administration of any loan program in every way conducive to the furtherance of any or all purposes of the office. [L 1994, c 283, pt of §2(2); am L 2009, c 146, §5; am L 2013, c 171, §4]

" **§10-23 Authorization of office projects and loan programs; issuance of revenue bonds.** Authorization of acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of an office project or projects or the establishment, funding, and administration of any loan program, and authorization for issuance of revenue bonds under this part shall be by resolution or resolutions of the board. The resolution may be adopted at the same meeting at which it is introduced by a majority of all the members of the board then in office and shall take effect immediately upon adoption. [L 1994, c 283, pt of §2(2); am L 2013, c 171, §5]

" **[§10-24] Revenue bond anticipation notes.** In anticipation of the issuance under this part of revenue bonds authorized by the board and of the receipt of the proceeds of sale of the bonds, the board shall have power to issue and sell bond anticipation notes for the purposes for which the bonds have been authorized, the maximum principal amount of which shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of the sale of the bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which would be secured the bonds; provided that to the extent the

principal of the notes is paid from moneys other than the proceeds of the sale of the bonds, the maximum amount of bonds in anticipation of which the notes are issued that has been authorized shall be reduced by the amount of the notes so paid. The issuance of the notes and the details thereof shall be governed by this part with respect to bonds as applicable; provided that:

- (1) Each note, together with all renewals and extensions, or refundings by other notes issued under this section, shall mature within five years from the date of the original note; and
- (2) The notes may be sold at public or private sale, as the board may determine. [L 1994, c 283, pt of §2(2)]

" **§10-25 Revenue bonds.** (a) Revenue bonds shall be issued in the name of the board, may be in one or more series, may be in the denomination or denominations, may bear the date or dates, may mature at the time or times not exceeding fifty years from their respective dates, may bear interest at the rate or rates payable at the time or times at the place or places within or without the State, may carry the registration privileges as to principal alone or as to both principal and interest, may be subject to the terms or redemption with or without premium, may be executed in the manner, may contain the terms, covenants, and conditions, and may be in such form as the resolution authorizing the issuance of the bonds, or subsequent resolutions may provide.

(b) The board may acquire policies of insurance and enter into banking arrangements upon terms and conditions as the board may deem necessary or desirable, at the time of delivery of an issue of revenue bonds or a later date as the board deems in the best interest of the office, including contracting for a support facility or facilities as permitted in section 10-25.5, and contracting for interest rate swaps, swaptions, interest rate floors, and other similar contracts to hedge or reduce the amount or duration of payment, rate, spread, or similar risk, or to reduce the cost of borrowing when used in conjunction with revenue bonds issued pursuant to this chapter.

(c) The board may make arrangements as may be necessary or proper for the sale of each issue of revenue bonds or part thereof as are issued pursuant to this chapter, including arranging for the preparation and printing of the revenue bonds, the official statement, and any other documents or instruments deemed required for the issuance and sale of revenue bonds and retaining financial, accounting, and legal consultants, all upon terms and conditions as the board deems advisable and in the best interest of the State and the office. The board may offer

the revenue bonds at competitive sale or may negotiate the sale of the revenue bonds to any person or group of persons, to the United States, or any board, agency, instrumentality, or corporation thereof, to the employees' retirement system of the State, to any political subdivision of the State, or to any board, agency, instrumentality, public corporation, or other governmental organization of the State or of any political subdivision thereof.

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

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

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

(e) All public officers and bodies of the State, all political subdivisions, all insurance companies and associations, all banks, savings banks, and savings institutions, including building or savings and loan associations, all credit unions, all trust companies, all personal representatives, guardians, trustees, and all other persons and fiduciaries in the State who are regulated by law as to the character of their investment, may legally invest funds within their control and available for investment in revenue bonds issued under this chapter. The purpose of this subsection is to authorize any person, firm, corporation, association, political subdivision, body, or officer, public or private, to use any funds owned or controlled by them, including, without prejudice to the generality of the foregoing, sinking, insurance, investment, retirement, compensation, pension, or trust funds, and funds held on deposit, for the purchase of any revenue bonds issued under this chapter. [L 1994, c 283, pt of §2(2); am L 2009, c 146, §6]

" **[§10-25.1] Federal tax-exempt status; preference; protection.** (a) Revenue bonds issued pursuant to this part, to the extent practicable, shall be issued to comply with

requirements imposed by applicable federal law providing that the interest on revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The board is authorized to enter into agreements, establish funds or accounts, and take any action required in order to comply with applicable federal law. Nothing in this part or this chapter shall be deemed to prohibit the issuance of revenue bonds, the interest on which may be included in gross income for federal income tax purposes.

(b) For the purpose of ensuring that interest on revenue bonds issued pursuant to this part which is excluded from gross income for federal income tax purposes (except as provided in subsection (a)) on the date of issuance shall continue to be so excluded, no state officer or employee, or user of an undertaking or loan program shall authorize or allow any change, amendment, or modification to an undertaking or loan program financed or refinanced with the proceeds of revenue bonds which change, amendment, or modification thereto would affect the exclusion of interest on those revenue bonds from gross income for federal income tax purposes unless the change, amendment, or modification shall have received the prior approval of the board. Failure to receive the approval of the board shall render any change, amendment, or modification void. [L 2013, c 171, §1]

" **§10-25.5 Support facility for variable rate revenue bonds.**

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

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

- (1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of revenue bonds issued pursuant to this chapter; or
- (2) A like principal amount of the issue or series of revenue bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility. [L 2009, c 146, §2; am L 2013, c 171, §6]

" **[\$10-26] CUSIP numbers.** The board in its discretion may provide that CUSIP identification numbers shall be imprinted on revenue bonds issued under this part. In the event such numbers are imprinted on any such bonds:

- (1) No such number shall constitute a part of the contract evidenced by the particular bonds upon which it is imprinted; and
- (2) No liability shall attach to the board or any officer or agent thereof or the State or any officer thereof, including any fiscal agent, paying agent, or registrar for such bonds, by reason of such numbers or any use made thereof, including any use thereof made by the board, the State, any such officer or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use.

The board in its discretion may require that all cost of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds. For the purposes of this section, the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association. [L 1994, c 283, pt of §2(2)]

" **§10-27 Covenants in resolution authorizing revenue bonds.** Any resolution or resolutions authorizing the issuance of revenue bonds under this part may contain covenants as to:

- (1) The purpose or purposes to which the proceeds of the sale of revenue bonds may be applied; the use and disposition of such proceeds; the investment thereof pending such use and disposition; and the use and disposition of the income from such investment;
- (2) The use and disposition of the revenue of the office project or projects or the loan program or programs for which the revenue bonds are issued are to be included; the use and disposition of the revenue of all office projects and loan programs, and of the

revenues of the office, including the creation and maintenance of reserves; the investment of such revenues and of the moneys in such reserves; and the use and disposition of the income from such investments;

- (3) The minimum amount of revenues to be produced by the office projects, the loan programs, or the office, over and above the amount required to be produced by the first sentence and paragraphs (1) to (3) of section 10-31;
- (4) The use and disposition of the proceeds of the sale of any office project, or part thereof;
- (5) The acquisition, purchase, construction, reconstruction, improvement, betterment, extension, and maintenance of any office project other than the office project or projects for the construction or maintenance of which revenue bonds are issued;
- (6) The issuance of other or additional revenue bonds payable either from the revenue of the office project or projects or the loan program or programs for which the revenue bonds are issued or from the revenue of the office or payable from the revenue of other office projects or loan programs;
- (7) The maintenance of the office project and administration of the loan program, including the creation by the board of such supervisory positions, which shall not be subject to chapter 76, as are necessary to facilitate the issuance of revenue bonds by ensuring the adequacy of revenues;
- (8) The insurance to be carried on office projects or for loan programs and the use and disposition of insurance moneys;
- (9) Books of account and inspection and audit thereof;
- (10) A procedure by which the terms and conditions of the bond resolution or indenture may be subsequently amended or modified with the consent of the board, the vote or written assent of the holders of bonds or any proportion of the holders, or any trustee thereof; and
- (11) The terms and conditions upon which the holders of revenue bonds, or any proportion of the holders, or any trustee thereof, shall be entitled to the appointment of a receiver by any court of competent jurisdiction, which court shall have jurisdiction in such proceedings, and which receiver may enter and take possession of the office project or projects, maintain them, prescribe rents, fees, and charges therefrom, enforce or foreclose loans, and collect,

receive, and apply all revenue thereafter arising therefrom in the same manner as the board itself might do, but the receiver shall have no power, nor be granted any power, to utilize, or permit the utilization of, any office project or to enforce any loan agreement other than in a manner consistent with and in furtherance of the purposes of the office.

This part and any such resolution or resolutions shall be a contract with the holders of bonds issued under this part, and the duties of the board and any such resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction. [L 1994, c 283, pt of §2(2); am L 2000, c 253, §150; am L 2008, c 16, §1; am L 2013, c 171, §7]

" **§10-28 Validity of bonds.** Revenue bonds issued under this part shall bear the manual signatures of the chairperson of the board and the administrator, and shall be sealed with the seal of the board or in lieu thereof shall bear a lithographed or engraved facsimile of the seal. If the board designates a registrar other than itself for the revenue bonds, the resolution authorizing the revenue bonds may provide that none of the revenue bonds shall be valid or obligatory for any purpose unless authenticated by the registrar. If the resolution so provides, then all signatures of the board upon the revenue bonds may be facsimiles of the signatures, and the revenue bonds shall be valid and obligatory only if authenticated by the manual signature of an authorized officer or signatory of the registrar. Revenue bonds bearing the signature of officers in office at the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of the office project or projects or the establishment, funding, or administration of the loan program or programs for which the bonds were issued. The resolution authorizing the issuance of revenue bonds may provide that the bonds shall contain a recital that they are issued pursuant to this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. [L 1994, c 283, pt of §2(2); am L 2009, c 146, §7; am L 2013, c 171, §8]

" **§10-29 Bonds.** The resolution or resolutions authorizing the issuance of revenue bonds may pledge to the payment thereof all or any part of the revenue of an office project or projects, of a loan program or programs, or of the office, and the pledge shall constitute a lien on the revenue of such project or projects, of such loan program or programs, or of the office to the extent and in the manner in the resolution or resolutions provided prior and paramount to any claim or other obligation of any nature against the revenue so pledged subsequently arising or subsequently incurred. The board may provide in the resolution or resolutions that all revenue bonds of the same issue shall be equally and ratably secured without priority by reason of number, date, or maturity of the bonds, date of sale, execution, or delivery thereof. Any pledge of revenues contained in any resolution or resolutions adopted under this part shall be valid and binding from and after the adoption of the resolution or resolutions without physical delivery of the revenues therein pledged or the necessity of any further action by the State or the board, or any officer or agent of either the State or board. [L 1994, c 283, pt of §2(2); am L 2013, c 171, §9]

" **§10-30 Payment and security of revenue bonds; revenue bonds not a debt of the State.** Revenue bonds issued under this part shall be payable from and secured solely by the revenues of the office project or projects, the revenues of the loan program or programs, or revenues of the office pledged to the payment thereof, or both, and those revenues shall be applied to the payment in accordance with the provisions of this part and the resolution or resolutions authorizing the issuance of the revenue bonds. No holder or holders of any revenue bonds issued under this part shall have the right to compel any exercise of the taxing power of the State or the making of any appropriation to pay the revenue bonds, or interest thereon. Each revenue bond shall recite in substance that the revenue bond, including interest thereon, is payable solely from and secured by the revenue pledged to the payment thereof, and that the bond does not constitute a general or moral obligation or indebtedness of the State within the meaning of any law. [L 1994, c 283, pt of §2(2); am L 2009, c 146, §8; am L 2013, c 171, §10]

" **§10-31 Office of Hawaiian affairs projects and loan programs to be self-supporting.** The board shall impose and collect rates, rents, fees, and charges for the use or enjoyment

and services of the facilities of each office project or for each loan program, as applicable, and shall revise such rates, rents, fees, and charges, whenever necessary, or direct all or any portion of the revenues of the office, so that in the aggregate, the revenues of the office project or the loan program, and the revenues of the office shall produce revenue at least sufficient to:

- (1) Pay the cost of maintenance of the office project or projects or administering the loan program or programs, including reserves therefor;
- (2) Pay when due all bonds and interest thereon, for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves therefor;
- (3) Reimburse the general fund of the State for any bond requirements on general obligation bonds issued for an office project or projects or for a loan program or programs to the extent required by law; and
- (4) Carry out all covenants and provisions of the resolution or resolutions authorizing the issuance of revenue bonds.

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

All moneys received pursuant to this section shall be administered as trust funds, as provided by this chapter, and in separate accounts designated for each office project or loan program. [L 1994, c 283, pt of §2(2); am L 2009, c 146, §9; am L 2013, c 171, §11]

" **§10-32 Office of Hawaiian affairs projects, loan programs, and bonds exempt from taxation.** The property and revenue of any office project or loan program shall be exempt from all state, county, and municipal taxation and assessments. Revenue bonds issued under this part, and all income therefrom shall be exempt from all state, county, and municipal taxation except inheritance, transfer, and estate taxes. [L 1994, c 283, pt of §2(2); am L 2013, c 171, §12]

" **[§10-33] Powers herein, additional to other powers.** The powers conferred by this part shall be in addition and

supplemental to the powers conferred by any other general, special, or local law. Insofar as this part is inconsistent with any other general, special, or local law this part shall be controlling. [L 1994, c 283, pt of §2(2)]

" **§10-34 Funding and refunding bonds; authorization and purpose.** The board, without further authorization from the legislature, may provide for the issuance of revenue bonds (herein referred to as refunding bonds) for the purpose of refunding, redeeming, or retiring at or at any time before maturity or at any time before the first date upon which the outstanding bonds to be refunded may be called for redemption, any bonds issued under this part, including any bonds which the holders may consent to be paid or refunded even though the bonds are not matured or are not callable or redeemable, and for the purpose of funding indebtedness not evidenced by revenue bonds but which was incurred for purposes for which revenue bonds may be issued pursuant to this part. The rate or rates of interest borne by the refunding bonds shall not be affected or limited by the rate or rates of interest borne by the bonds to be refunded or the indebtedness to be funded. All provisions of this part applicable to the issuance of revenue bonds shall be complied with in the issuance of refunding bonds. Refunding bonds shall be sold as provided in section 10-25, or the board may, in its discretion, provide for the exchange of refunding bonds for a like principal amount of outstanding bonds for the refunding of which the issuance of such refunding bonds has been authorized, whether or not the interest rate on the refunding bonds is higher than the interest rate on the bonds refunded thereby. [L 1994, c 283, pt of §2(2); am L 2013, c 171, §13]

" **[§10-35] Funding and refunding bonds; principal amount.** Refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds or indebtedness to be funded or refunded thereby, and for the payment of all expenses paid or incurred in connection with the calling, redeeming, retiring, or paying of such indebtedness or outstanding bonds, and the issuance of such refunding bonds. The expenses may include the amount necessary for the payment of interest upon the indebtedness to be funded or the bonds to be refunded to the maturity or redemption date thereof, the amount necessary for the payment of interest upon the refunding bonds from the date of delivery thereof to the date upon which the principal of the outstanding bonds to be refunded will be paid whether at maturity or pursuant to a call for redemption thereof, or pursuant to agreement with the holders thereof, plus

in any case the amount of the premium, if any, required to be paid in order to call or retire the bonds to be required. [L 1994, c 283, pt of §2(2)]

" **[§10-36] Limitation of authority.** Notwithstanding any other provision to the contrary, nothing in this part shall be construed to authorize the board to incur any indebtedness contrary to Article VII, sections 12 and 13, of the Constitution of the State or to incur any indebtedness which would not qualify for exclusion from the total indebtedness of the State under section 13(2), Article VII. [L 1994, c 283, pt of §2(2)]

**"[PART III.] TRAINING; CERTAIN BOARDS, COMMISSIONS,
AND COUNCILS; NATIVE HAWAIIAN AND HAWAIIAN TRADITIONAL
AND CUSTOMARY RIGHTS, NATURAL RESOURCE PROTECTION AND
ACCESS RIGHTS, AND THE PUBLIC TRUST**

[§10-41] Training; applicability. (a) The training required by this part shall apply to members of the land use commission, board of land and natural resources, commission on water resource management, environmental council, board of directors of the agribusiness development corporation, board of agriculture, legacy land conservation commission, natural area reserves system commission, Hawaii historic places review board, and board of health.

(b) Members of any state council, board, or commission, and any officer, representative, or employee of the State or counties not subject to the training required in subsection (a) may request to enroll in the training course administered by the office of Hawaiian affairs pursuant to section 10-42. [L 2015, c 169, pt of §2]

" **[§10-42] Training relating to native Hawaiian and Hawaiian traditional and customary rights, natural resources and access rights, and the public trust.** (a) All council, board, and commission members identified in section 10-41(a) shall complete the training course administered by the office of Hawaiian affairs pursuant to this section within twelve months of the date of the member's initial appointment.

(b) The office of Hawaiian affairs, at its own expense, shall establish, design, and administer a training course relating to native Hawaiian and Hawaiian traditional and customary rights, native Hawaiian and Hawaiian natural resource protection and access rights, and the public trust, including

the State's trust responsibility. The training course shall include:

- (1) Historical information, explanations, and discussions of key state laws, state constitutional provisions, and court rulings that reaffirm and provide for the protection of native Hawaiian and Hawaiian rights; and
- (2) A discussion of the importance of public trust resources and various programs to native Hawaiian and Hawaiian rights.

(c) The office of Hawaiian affairs, at its own expense, shall develop the methods and prepare any materials necessary to implement the training course, administer the training course, and notify each council, board, and commission identified in section 10-41(a) that attendance in a training course is mandatory.

(d) The office of Hawaiian affairs shall offer the training course at least twice per year.

(e) The governor shall provide to the office of Hawaiian affairs the names of persons required to take the training course pursuant to this part within thirty calendar days of their initial appointment by the governor. [L 2015, c 169, pt of §2]