

**"CHAPTER 39A
SPECIAL PURPOSE REVENUE BONDS**

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"PART I. GENERAL PROVISIONS

§39A-1 Statement on special purpose revenue bonds. The governor shall transmit to the legislature on or before November 30 of each year a report on special purpose revenue bonds, defined in section 12 of Article VII of the Constitution, as of July 1 of the then current fiscal year. The report shall state the purpose for which such bonds were authorized, the person or persons with whom the State, or a department thereof, has contracted and who is obligated to make payments to the State, the amount of special purpose revenue bonds authorized and issued, and other such information as may be deemed necessary. [L 1979, c 57, §11]

Revision Note

Section was renumbered from §39-101 pursuant to §23G-15.

" **[§39A-2] Public work project; issuance of special purpose revenue bonds; report to department of labor and industrial relations required.** Any issuance of special purpose revenue bonds pursuant to this chapter for a public work project that is subject to chapter 104, but not directly caused by a governmental contracting agency, shall be promptly reported by the director of finance to the department of labor and industrial relations so that the department of labor and industrial relations may expeditiously carry out its duties under chapter 104. The report shall be in a form and contain such information as the director of labor and industrial relations may prescribe. [L 2007, c 61, §1]

"PART II. ASSISTING NOT-FOR-PROFIT CORPORATIONS THAT PROVIDE HEALTH CARE FACILITIES TO THE GENERAL PUBLIC

§39A-31 Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Department" means the department of budget and finance.

"Health care facility", "facility", or "project" means any facility for each single project or multiproject program of a project party and includes any structure or building suitable for use as a hospital, clinic, nursing home, home for the aged or infirm, or other health care facility; laboratory; laundry; nurses' or [interns'] residences; administration building; research facility; maintenance, storage, or utility facility; auditorium; dining hall; food service and preparation facility;

mental or physical health care facility; dental care facility; nursing school; medical or dental school or teaching facility; mental or physical health facilities related to any such structure or facility; equipment; software; or any other structure, facility, equipment, or software required or useful for the operation of a health care facility, including, but not limited to, offices, parking lots and garages, and other supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and including the acquisition, preparation, and development of all real and personal property necessary or convenient as a site or sites for any such structure or facility, and including the refinancing of outstanding obligations of a project party relating to any of the foregoing. "Health care facility", "facility", or "project" does not include any property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship or any property used or to be used primarily in connection with any part of a program of a school or department of divinity of any religious denomination.

"Project agreement" means any agreement entered into under this part by the department with a project party providing for the issuance of special purpose revenue bonds to finance facilities of a project party or for a project party or to loan the proceeds of the bonds to assist not-for-profit corporations that provide health care facilities to the general public, including without limitation any loan agreement, lease, sublease, conditional sale agreement, or other similar financing contract or agreement, or any combination thereof, entered into by the department with a project party and, where necessary or appropriate, with a lender, lessor, or other third party.

"Project party" means a not-for-profit corporation that provides health care facilities to the general public.

"Refinancing of outstanding obligations" or "refinancing" means the liquidation, retirement, or provision for retirement with the proceeds of bonds issued by the State, of any indebtedness of a project party incurred to finance or aid in financing a lawful purpose of such project party not financed pursuant to this part which constitutes a health care facility or consolidation of such indebtedness with indebtedness of the State incurred for a health care facility related to the purpose for which the indebtedness of the project party was initially incurred.

"Special purpose revenue bonds" or "bonds" means bonds, notes, or other evidences of indebtedness of the State issued pursuant to this part. [L 1980, c 255, pt of §2; am L 2005, c 77, §1]

Revision Note

Numeric designations deleted.

" **§39A-32 Department powers as to health care facilities.**

In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or refinancing of outstanding obligations related to a project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for this project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal

or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and

- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party. [L 1980, c 255, pt of §2; am L Sp 1993, c 8, §55; am L 2004, c 216, §8; am L 2006, c 292, §2]

" **§39A-33 Compliance with state and local law.** The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of such project from the laws, ordinances, and rules and regulations of the State or any political subdivision thereof, or any departments or boards thereof with respect to the construction, operation, and maintenance of projects, compliance with health care planning laws or regulations, or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project, and such laws shall be applicable to such party or such other user to the same extent it would be if the costs of the project were directly financed by the project party. [L 1980, c 255, pt of §2]

" **§39A-34 Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with any project party, shall require that the project party shall agree to pay all fees, costs, and expenses (direct or indirect) assessed by the department in implementing and administering this part, as determined by the department, even though a project agreement may not be entered into and may further require the deposit of moneys with the department to pay for fees, costs, and expenses. Any amount of the deposit in excess of the amount required to pay the State shall be returned by the department to the party that made the

deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the department shall determine that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise. [L 1980, c 255, pt of §2; am L 2007, c 44, §1]

" §39A-35 **Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing or refinancing of which the revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, the sum or sums, at the time or times, and in the amounts that shall be sufficient:
 - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as the bonds become due, including any premium payable upon any required redemption of the bonds;
 - (B) To establish or maintain a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) assessed in connection with the special purpose revenue bonds; and
 - (D) To pay the fees, costs, and expenses (direct or indirect) assessed by the department in administering the bonds or in carrying out the project agreement; and

- (2) To operate, maintain, and repair the project as long as it is used in the provision of health care to the general public, and to pay all costs of the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the project and shall be paid into the general fund of the State. [L 1980, c 255, pt of §2; am L 2007, c 44, §2]

" **§39A-36 Issuance of special purpose revenue bonds to finance projects.** In addition to the other powers which it may otherwise have, the department may issue special purpose revenue bonds to finance or refinance, the costs of facilities of, or for, or to loan the proceeds of such bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

The department in determining the cost of any project, may also include the following: financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of such project; interest on such bonds and the expenses of the State in connection with such bonds and the project to be financed or refinanced from the proceeds of such bonds accruing or incurred prior to and during the period of construction and for not exceeding twelve months thereafter; amounts necessary to establish or increase reserves for the special purpose revenue bonds; the cost of plans, specifications, studies, surveys, and estimates of costs and of revenues; other expenses incidental to determining the feasibility or practicability of the project; administration expenses; interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; fees and expenses incurred in connection with the refinancing of outstanding obligations; and such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, or extension of the project, the financing or refinancing thereof, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to not-for-profit corporations serving the general

public and that the issuance of special purpose revenue bonds to finance or to refinance facilities of, or for, or to loan the proceeds of such bonds to assist, project parties, is in the public interest. [L 1980, c 255, pt of §2]

" **§39A-37 Authorization of special purpose revenue bonds.**

(a) Special purpose revenue bonds for each single project or multiproject program for health care facilities provided to the general public by not-for-profit corporations shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for

definitive bonds when such bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of such mutilated bond or coupon, or in lieu of and in substitution for such lost, stolen, or destroyed bond or coupon. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has (1) paid the reasonable expense and charges in connection therewith, (2) in the case of a lost, stolen, or destroyed bond or coupon, has filed with the department or its fiduciary evidence satisfactory to such department or its fiduciary that such bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof, and (3) has furnished indemnity satisfactory to the department.

(d) The department in its discretion may provide that CUSIP identification numbers shall be printed on such bonds. 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 bond upon which it is imprinted, and (2) no liability shall attach to the department or any officer or agent 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 department, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The department in its discretion may require that all costs of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds. For the purposes of this subsection, 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 1980, c 255, pt of §2; am L 2001, c 148, §2]

" **§39A-38 Special purpose revenue bond anticipation notes.** Whenever the department shall have authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of such notes shall not exceed the

authorized principal amount of such bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such 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 notes paid in such manner. The authorization, issuance, and the details of such notes shall be governed by the provisions of this part with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note. [L 1980, c 255, pt of §2]

" **§39A-39 Powers with respect to and security for special purpose revenue bonds.** In order to secure the payment of any of the special purpose revenue bonds issued pursuant to this part, and interest thereon, or in connection with such bonds, the department shall have the power as to such bonds:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed or refinanced from proceeds thereof, and interest thereon, and to covenant against thereafter pledging any such revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues.
- (2) To pledge and assign the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder.
- (3) To covenant as to the use and disposition of the proceeds from the sale of such bonds.
- (4) To covenant to set aside or pay over reserves and sinking funds for such bonds and as to the disposition thereof.

- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.
- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, conditions, or obligation.
- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with such trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the same to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply such revenues to the payment of the principal and interest on such bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering such bonds or in carrying out the project agreement. In the event that such trustee shall be appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable in order to secure such bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation the holding of the special purpose revenue bonds and

coupons which have been paid and the supervision of the destruction thereof in accordance with law.

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties.
- (9) To make such covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure such bonds, notwithstanding that such covenants, acts, or things may not be enumerated herein; it being the purpose hereof to give the department power to do all things in the issuance of such bonds and for their security that may be consistent with the Constitution of the State of Hawaii. [L 1980, c 255, pt of §2]

" **§39A-40 Security for special purpose revenue bonds.**

Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other supplemental agreements entered into with respect to the project, and shall be secured solely by such revenues and by the pledges and assignments authorized by this part. All special purpose revenue bonds of the same issue, subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the project, for which the bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable from the revenues which may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the right and privilege may be reserved by the department in the trust indenture securing an issue of special purpose revenue bonds to subsequently issue additional special purpose revenue bonds, subject to legislative authorization of the issue as provided in section 39A-37, or to permit the project party or another party on its behalf to incur debt, from time to time, payable from the revenues derived from such project agreement on a parity with the first issue of the special purpose revenue bonds and any subsequent issue of special purpose revenue bonds and other debt issued or incurred in accordance with the provisions of the trust indenture shall be secured equally and ratably with the first issue of the special purpose revenue bond without priority by reason of the date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with this part.

Notwithstanding any other provisions herein, all or part of the property constituting the project and all interest of the project party in the project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds, and the rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage. [L 1980, c 255, pt of §2; am L 1982, c 153, §2]

" **§39A-41 Special purpose revenue bonds not a general obligation of State.** No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of taxing power of the State to pay such bonds or the interest thereon and no moneys other than the revenues pledged to such bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this part shall recite in substance that such bond, including interest thereon, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that such bond is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the revenues specifically pledged thereto. [L 1980, c 255, pt of §2]

" **§39A-42 Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the department. The special purpose revenue 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 1980, c 255, pt of §2]

" **§39A-43 Use of revenues derived from project agreement.** The department shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premium, if any, and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefor; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operation, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State. [L 1980, c 255, pt of §2]

" **§39A-44 Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state, county, and municipal taxation except inheritance, transfer, and estate taxes. [L 1980, c 255, pt of §2]

" **[§39A-44.5] Federal tax exempt status.** Special purpose 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 the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes. [L 1996, c 142, §1]

" **§39A-45 Exemption from taxation of department property.** All revenues derived by the department from any project or under the project agreement pertaining thereto shall be exempt from all state, county, and municipal taxation. Any right, title, and interest of the department in any project shall also be exempt from all state, county, and municipal taxation. Except as otherwise provided by law, the interest of the project party or user of such project in a project or under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project

were directly financed by the project party or other user. [L 1980, c 255, pt of §2]

" **§39A-46 Refunding special purpose revenue bonds.** The legislature, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under the provisions of this part, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. The legislature is further authorized to provide, by act finally enacted by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of (1) financing or refinancing the cost of a project or improvement or expansion thereof, and (2) refunding special purpose revenue bonds which shall theretofore have been issued under the provisions of this part and shall then be outstanding, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. Nothing in this section shall require or be deemed to require the legislature to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded which were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any law authorizing the issuance thereof, or, in the event the department elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such special purpose revenue bonds, the maturities and other details thereof, and the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable. [L 1980, c 255, pt of §2]

" **§39A-47 Status of special purpose revenue bonds under Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all such special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration. [L 1980, c 255, pt of §2]

" **§39A-48 Special purpose revenue bonds as legal investments and lawful security.** The special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. Such special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and such bonds shall be lawful and sufficient security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto. [L 1980, c 255, pt of §2; am L 1990, c 59, §3]

" **§39A-49 Access to and public disclosure of financial records of project party.** (a) Each project party with a project agreement with the department shall allow the department full access to its financial records. Upon the request of the department for the examination of any such financial records, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records which pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purpose of this section. [L 1980, c 255, pt of §2]

" **§39A-50 Estimate of benefits.** (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on a comparison between the use of the proceeds of the special purpose revenue bonds instead of other means of financing and shall be in terms of dollars projected to be or actually saved by consumers of the services of the project party. The format

of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing less costly services by a project party to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 1980, c 255, pt of §2]

" **§39A-51 Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall be controlling. [L 1980, c 255, pt of §2]

" **§39A-52 REPEALED.** L 2002, c 100, §1.

"PART III. ASSISTING MANUFACTURING ENTERPRISES

§39A-71 Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Department" means the department of budget and finance.

"Project" means any combination of land, buildings, and other improvements thereon, for use as a manufacturing enterprise, including, without limiting the generality of the foregoing, machinery, equipment, furnishings, and apparatus which shall be deemed necessary, suitable, or useful to such enterprise.

"Project agreement" means any agreement entered into under this part by the department with a project party to financially assist a manufacturing enterprise from the proceeds of special purpose revenue bonds, including without limitation any loan agreement.

"Project party" means a person, firm, or corporation qualified to do business in this State and conducting or proposing to conduct a manufacturing enterprise in this State.

"Special purpose revenue bonds" or "bonds" means bonds, notes, or other evidences of indebtedness of the State issued pursuant to this part. [L 1981, c 120, pt of §2]

Revision Note

Numeric designations deleted.

" **§39A-72 Department powers as to manufacturing enterprises.**

In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project

agreement or related agreement theretofore approved by the governor; and

- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part. [L 1981, c 120, pt of §2; am L Sp 1993, c 8, §55; am L 2004, c 216, §9; am L 2006, c 292, §3]

" **§39A-73 Compliance with state and local law.** The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of such project from the laws, ordinances, and rules and regulations of the State or any political subdivision thereof, or any departments or boards thereof with respect to the construction, operation, and maintenance of projects, or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project, and such laws shall be applicable to such party or such other user to the same extent they would be if the costs of the project were directly financed by the project party. [L 1981, c 120, pt of §2]

" **§39A-74 Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with respect to a project agreement or at any time during the negotiations, shall require that as a condition to the negotiations or the continuation thereof the project party shall agree to pay all fees, costs, and expenses (direct or indirect) assessed by the department even though a project agreement may not be entered into and may further require the deposit of moneys with the department to pay for fees, costs, and expenses. Any amount of the deposit in excess of the amount required to reimburse the State shall be returned by the department to the party that made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance the project pursuant to section 39A-77 and the department has determined that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of

enterprise to be undertaken through the project, or otherwise; or

- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise. [L 1981, c 120, pt of §2; am L 2007, c 44, §3]

" **§39A-75 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing of which the revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, the sum or sums, at the time or times, and in the amounts that shall be sufficient:
 - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as the bonds become due, including any premium payable upon any required redemption of the bonds;
 - (B) To establish or maintain a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) assessed in connection with the special purpose revenue bonds; and
 - (D) To pay the fees, costs, and expenses (direct or indirect) assessed by the department in administering the bonds or in carrying out the project agreement; and
- (2) To operate, maintain, and repair the project as long as it is used as provided in the project agreement and to pay all costs of the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, or be deemed to be, revenues of the project and

shall be paid into the general fund of the State. [L 1981, c 120, pt of §2; am L 2007, c 44, §4]

" **§39A-76 Issuance of special purpose revenue bonds to finance projects.** In addition to the other powers which it may otherwise have, the department may issue special purpose revenue bonds to finance, in whole or in part, the costs of facilities of, or for, or to loan the proceeds of such bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

The department, in determining the cost of any project, may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of such project;
- (2) Interest on such bonds and the expenses of the State in connection with such bonds and the project to be financed from the proceeds of such bonds accruing or incurred prior to and during the estimated period of construction and not exceeding twelve months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the project;
- (6) Administration expenses;
- (7) Legal, accounting, consulting, and other special service fees;
- (8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and
- (9) Such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, maintenance, or extension of the project, the financing, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to a manufacturing enterprise and that the issuance

of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of such bonds to assist, project parties, is in the public interest. [L 1981, c 120, pt of §2]

" **§39A-77 Authorization of special purpose revenue bonds.**

(a) Special purpose revenue bonds for each project or multiproject program shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty years from their respective date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for and upon the cancellation of such mutilated bond or coupon, or in lieu of and in substitution for such lost, stolen, or destroyed bond or coupon. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has (1) paid the reasonable expense and charges in connection therewith, (2) in the case of a lost, stolen, or destroyed bond or coupon, has filed with the department or its fiduciary evidence satisfactory to such department or its fiduciary that such bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof, and (3) has furnished indemnity satisfactory to the department.

(d) The department may provide that CUSIP identification numbers shall be printed on such bonds. 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 bond upon which it is imprinted, and (2) no liability shall attach to the department or any officer or agent 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 department, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The department may require that all costs of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds. For the purpose of this subsection, 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 1981, c 120, pt of §2; am L 2001, c 148, §3]

" **§39A-78 Special purpose revenue bond anticipation notes.** Whenever the department has authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of such notes shall not exceed the authorized principal amount of such bonds. The notes shall be payable solely from and secured solely by the proceeds of sale

of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such 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 notes paid in such manner. The authorization, issuance, and the details of such notes shall be governed by the provisions of this part with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note. [L 1981, c 120, pt of §2]

" **§39A-79 Powers with respect to and security for special purpose revenue bonds.** In order to secure the payment of any of the special purpose revenue bonds issued pursuant to this part, and interest thereon, or in connection with such bonds, the department shall have the power as to such bonds:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed from proceeds thereof, and interest thereon, and to covenant against thereafter pledging any such revenues or receipts to any other bonds or any other obligations of the department for any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues.
- (2) To pledge and assign the interest and right of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder.
- (3) To covenant as to the use and disposition of the proceeds from the sale of such bonds.
- (4) To covenant to set aside or pay over reserves and sinking funds for such bonds and as to the disposition thereof.
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and

the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.
- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with such trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply such revenues to the payment of the principal and interest on such bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering such bonds or in carrying out the project agreement. In the event that such trustee shall be appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable in order to secure such bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation the holding of the special purpose revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with law.

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties.
- (9) To make such covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure such bonds, notwithstanding that such covenants, acts, or things may not be enumerated herein; it being the purpose thereof to give the department power to do all things in the issuance of such bonds and for their security that may be consistent with the Constitution of the State of Hawaii. [L 1981, c 120, pt of §2]

" **§39A-80 Security for special purpose revenue bonds.**

Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other agreements entered into with respect to the project, and shall be secured solely by such revenues and by the pledges and assignments authorized by this part. All special purpose revenue bonds of the same issue, subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanics' and materialmen's liens, shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the project, for which such bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable from the revenues which may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the department may reserve the right and privilege to subsequently issue additional series of special purpose revenue bonds, from time to time, payable from the revenues derived from such project agreement on a parity with the special purpose revenue bonds theretofore issued, and the subsequently issued series of special purpose revenue bonds may be secured, without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this part. [L 1981, c 120, pt of §2]

" **§39A-81 Special purpose revenue bonds not a general obligation of State.** No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of taxing power of the State to pay such bonds or the interest thereon and no moneys other than the revenues pledged to such bonds shall be applied to the payment

thereof. Each special purpose revenue bond issued under this part shall recite in substance that such bond, including interest thereon, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that such bond is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the revenues specifically pledged thereto. [L 1981, c 120, pt of §2]

" **§39A-82 Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the department. Special purpose revenue 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 1981, c 120, pt of §2]

" **§39A-83 Use of revenues derived from project agreement.** The department shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premiums if any, and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefore; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operations, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State. [L 1981, c 120, pt of §2]

" **§39A-84 Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all

state and county taxation except inheritance, transfer, and estate taxes. [L 1981, c 120, pt of §2]

" **[§39A-84.5] Federal tax exempt status.** Special purpose 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 the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes. [L 1996, c 142, §2]

" **§39A-85 Exemption from taxation of department property.** All revenues derived by the department from any project or under the project agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the department in any project shall also be exempt from all state and county taxation. Except as otherwise provided by law, the interest of the project party or user of such project in a project or under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by the project party or other user. [L 1981, c 120, pt of §2]

" **§39A-86 Refunding special purpose revenue bonds.** The legislature, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. The legislature may provide, by act enacted by the affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of (1) financing the cost of a project or improvement or expansion thereof, and (2) refunding special purpose revenue bonds which shall theretofore have been issued under this part and shall then be outstanding, whether or not such outstanding special

purpose revenue bonds have matured or are then subject to redemption. Nothing in this section shall require or be deemed to require the department to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded which were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any instruments providing for the issuance thereof, or, in the event the department elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such special purpose revenue bonds, the maturities and other details thereof, the right and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable. [L 1981, c 120, pt of §2]

" **§39A-87 Status of special purpose revenue bonds under Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all such special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration. [L 1981, c 120, pt of §2]

" **§39A-88 Special purpose revenue bonds as legal investments and lawful security.** The special purpose revenue bonds issued pursuant to this part shall be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. Such special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and such bonds shall be lawful and sufficient security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto. [L 1981, c 120, pt of §2; am L 1990, c 59, §4]

" **§39A-89 Access to and public disclosure of financial records of project party.** (a) Each project party with a project agreement with the department shall allow the department

full access to the project party's financial records. Upon the request of the department for the examination of any such financial records, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records which pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 1981, c 120, pt of §2]

" **§39A-90 Estimate of benefits.** (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on the creation of new jobs and potential effect on tax receipts. The format of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing benefits to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 1981, c 120, pt of §2]

" **§39A-91 Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall be controlling. [L 1981, c 120, pt of §2]

"PART IV. ASSISTING PROCESSING ENTERPRISES

§39A-111 Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Department" means the department of budget and finance.

"Project" means any combination of land, buildings, and other improvements thereon, for use as a processing enterprise, including, without limiting the generality of the foregoing, machinery, equipment, furnishings, and apparatus which shall be deemed necessary, suitable, or useful to such enterprise.

"Project agreement" means any agreement entered into under this part by the department with a project party to financially assist a processing enterprise from the proceeds of special purpose revenue bonds, including without limitation any loan agreement.

"Project party" means a person, firm, or corporation qualified to do business in this State and conducting or proposing to conduct a processing enterprise in this State.

"Special purpose revenue bonds" or "bonds" means bonds, notes, or other evidences of indebtedness of the State issued pursuant to this part. [L 1981, c 121, pt of §2]

Revision Note

Numeric designations deleted.

" **§39A-112 Department powers as to processing enterprises.**

In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project;

- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part. [L 1981, c 121, pt of §2; am L Sp 1993, c 8, §55; am L 2004, c 216, §10; am L 2006, c 292, §4]

" **§39A-113 Compliance with state and local law.** The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of such project from the laws, ordinances, and rules and regulations of the State or any political subdivision thereof, or any departments or boards thereof with respect to the construction, operation, and maintenance of projects, or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project, and such laws shall be applicable to such party or such other user to the same extent they would be if the costs of the project were directly financed by the project party. [L 1981, c 121, pt of §2]

" **§39A-114 Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with respect to a project agreement or at any time during negotiations, shall require that as a condition to the negotiations or the continuation thereof, the project party shall agree to pay all fees, costs, and expenses (direct or indirect) assessed by the department even though a project agreement may not be entered into and may further require the deposit of moneys with the department to pay for fees, costs, and expenses. Any amount of the deposit in excess of the amount required to reimburse the State shall be returned by the department to the party that made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance such project pursuant to section 39A-117 and the department has determined that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise. [L 1981, c 121, pt of §2; am L 2007, c 44, §5]

" **§39A-115 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing of which the revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, the sum or sums, at the time or times, and in the amounts that shall be sufficient:
 - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the

project as the bonds become due, including any premium payable upon any required redemption of the bonds;

- (B) To establish or maintain a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) assessed in connection with the special purpose revenue bonds; and
 - (D) To pay the fees, costs, and expenses (direct or indirect) assessed by the department in administering the bonds or in carrying out the project agreement; and
- (2) To operate, maintain, and repair the project as long as it is used as provided in the project agreement and to pay all costs of the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, or be deemed to be, revenues of the project and shall be paid into the general fund of the State. [L 1981, c 121, pt of §2; am L 2007, c 44, §6]

" **§39A-116 Issuance of special purpose revenue bonds to finance projects.** (a) In addition to the other powers which it may otherwise have, the department may issue special purpose revenue bonds to finance, in whole or in part, the costs of facilities of, or for, or to loan the proceeds of such bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

(b) The department, in determining the cost of any project, may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of such project;
- (2) Interest on such bonds and the expenses of the State in connection with such bonds and the project to be financed from the proceeds of such bonds accruing or incurred prior to and during the estimated period of construction and not exceeding twelve months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;

- (4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the project;
- (6) Administration expenses;
- (7) Legal, accounting, consulting, and other special service fees;
- (8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and
- (9) Such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, maintenance, or extension of the project, the financing, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

(c) The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to a processing enterprise and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of such bonds to assist, project parties, is in the public interest. [L 1981, c 121, pt of §2; am L 1982, c 147, §3]

" **§39A-117 Authorization of special purpose revenue bonds.**

(a) Special purpose revenue bonds for each project or multiproject program shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty years from their respective date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the

special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for and upon the cancellation of such mutilated bond or coupon, or in lieu of and in substitution for such lost, stolen, or destroyed bond or coupon. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has (1) paid the reasonable expense and charges in connection therewith, (2) in the case of a lost, stolen, or destroyed bond or coupon, has filed with the department or its fiduciary evidence satisfactory to such department or its fiduciary that such bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof, and (3) has furnished indemnity satisfactory to the department.

(d) The department may provide that CUSIP identification numbers shall be printed on such bonds. 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 bond upon which it is imprinted, and (2) no liability shall attach to the department or any officer or agent 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 department, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The

department may require that all costs of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds. For the purpose of this subsection, 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 1981, c 121, pt of §2; am L 2001, c 148, §4]

" **§39A-118 Special purpose revenue bond anticipation notes.** Whenever the department has authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of such notes shall not exceed the authorized principal amount of such bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such 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 notes paid in such manner. The authorization, issuance, and the details of such notes shall be governed by the provisions of this part with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note. [L 1981, c 121, pt of §2]

" **§39A-119 Powers with respect to and security for special purpose revenue bonds.** In order to secure the payment of any of the special purpose revenue bonds issued pursuant to this part, and interest thereon, or in connection with such bonds, the department shall have the power as to such bonds:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed from proceeds thereof, and interest thereon, and to

covenant against thereafter pledging any such revenues or receipts to any other bonds or any other obligations of the department for any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues.

- (2) To pledge and assign the interest and right of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder.
- (3) To covenant as to the use and disposition of the proceeds from the sale of such bonds.
- (4) To covenant to set aside or pay over reserves and sinking funds for such bonds and as to the disposition thereof.
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.
- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.
- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with such trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply such revenues to the payment of the principal and interest on such bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering such bonds or in carrying out the project agreement. In the event that such trustee shall be appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the

trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable in order to secure such bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation the holding of the special purpose revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with law.

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties.
- (9) To make such covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure such bonds, notwithstanding that such covenants, acts, or things may not be enumerated herein; it being the purpose thereof to give the department power to do all things in the issuance of such bonds and for their security that may be consistent with the Constitution of the State of Hawaii. [L 1981, c 121, pt of §2]

" **§39A-120 Security for special purpose revenue bonds.**

Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other agreements entered into with respect to the project, and shall be secured solely by such revenues and by the pledges and assignments authorized by this part. All special purpose revenue bonds of the same issue, subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanics' and materialmen's liens, shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the project, for which such bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable

from the revenues which may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the department may reserve the right and privilege to subsequently issue additional series of special purpose revenue bonds, from time to time, payable from the revenues derived from such project agreement on a parity with the special purpose revenue bonds theretofore issued, and the subsequently issued series of special purpose revenue bonds may be secured, without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this part. [L 1981, c 121, pt of §2]

" **§39A-121 Special purpose revenue bonds not a general obligation of State.** No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of taxing power of the State to pay such bonds or the interest thereon and no moneys other than the revenues pledged to such bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this part shall recite in substance that such bond, including interest thereon, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that such bond is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the revenues specifically pledged thereto. [L 1981, c 121, pt of §2]

" **§39A-122 Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the department. Special purpose revenue 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 1981, c 121, pt of §2]

" **§39A-123 Use of revenues derived from project agreement.** The department shall have the right to appropriate, apply, or

expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premiums if any, and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefore; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operations, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State. [L 1981, c 121, pt of §2]

" **§39A-124 Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state and county taxation except inheritance, transfer, and estate taxes. [L 1981, c 121, pt of §2]

" **[§39A-124.5] Federal tax exempt status.** Special purpose 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 the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes. [L 1996, c 142, §3]

" **§39A-125 Exemption from taxation of department property.** All revenues derived by the department from any project or under the project agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the department in any project shall also be exempt from all state and county taxation. Except as otherwise provided by law, the interest of the project party or user of such project in a project or under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it

would be if the costs of the project were directly financed by the project party or other user. [L 1981, c 121, pt of §2]

" **§39A-126 Refunding special purpose revenue bonds.** The legislature, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. The legislature may provide, by act enacted by the affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of (1) financing the cost of a project or improvement or expansion thereof, and (2) refunding special purpose revenue bonds which shall theretofore have been issued under this part and shall then be outstanding, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. Nothing in this section shall require or be deemed to require the department to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded which were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any instruments providing for the issuance thereof, or, in the event the department elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such special purpose revenue bonds, the maturities and other details thereof, the right and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable. [L 1981, c 121, pt of §2]

" **§39A-127 Status of special purpose revenue bonds under Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all such special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration. [L 1981, c 121, pt of §2]

" **§39A-128 Special purpose revenue bonds as legal investments and lawful security.** The special purpose revenue bonds issued pursuant to this part shall be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. Such special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and such bonds shall be lawful and sufficient security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto. [L 1981, c 121, pt of §2; am L 1990, c 59, §5]

" **§39A-129 Access to and public disclosure of financial records of project party.** (a) Each project party with a project agreement with the department shall allow the department full access to the project party's financial records. Upon the request of the department for the examination of any such financial records, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records which pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 1981, c 121, pt of §2]

" **§39A-130 Estimate of benefits.** (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on the creation of new jobs and potential effect on tax receipts. The format of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing benefits to the

general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 1981, c 121, pt of §2]

" **§39A-131 Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall be controlling. [L 1981, c 121, pt of §2]

"PART V. ASSISTING INDUSTRIAL ENTERPRISES

§39A-151 Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Department" means the department of budget and finance.

"Project" means any combination of land, buildings, and other improvements thereon, including without limitation parking facilities, for use of, or for, or to assist an industrial enterprise, including, without limiting the generality of the foregoing, machinery, equipment, furnishings, and apparatus which shall be deemed necessary, suitable, or useful to such enterprise.

"Project agreement" means any agreement entered into under this part by the department with a project party to finance, construct, operate, or maintain a project from the proceeds of special purpose revenue bonds, or to lend the proceeds of special purpose revenue bonds to assist an industrial enterprise, including without limitation any loan agreement.

"Project party" means a person, firm, or corporation qualified to do business in this State and conducting or proposing to conduct an industrial enterprise in this State.

"Special purpose revenue bonds" or "bonds" means bonds, notes, or other evidences of indebtedness of the State issued pursuant to this part. [L 1981, c 122, pt of §2; am L 1985, c 43, §1; am L 1999, c 105, §6]

Revision Note

Numeric designations deleted.

" **§39A-152 Department powers as to industrial enterprises.** In addition to powers that it may now have, the department shall

have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given

and granted in this part. [L 1981, c 122, pt of §2; am L Sp 1993, c 8, §55; am L 2004, c 216, §11; am L 2006, c 292, §5]

" **§39A-153 Compliance with state and local law.** The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of such project from the laws, ordinances, and rules and regulations of the State or any political subdivision thereof, or any departments or boards thereof with respect to the construction, operation, and maintenance of projects, or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project, and such laws shall be applicable to such party or such other user to the same extent they would be if the costs of the project were directly financed by the project party. [L 1981, c 122, pt of §2]

" **§39A-154 Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with respect to a project agreement or at any time during negotiations, shall require that as a condition to the negotiations or the continuation thereof, the project party shall agree to pay all fees, costs, and expenses (direct or indirect) assessed by the department even though a project agreement may not be entered into and may further require the deposit of moneys with the department to pay for fees, costs, and expenses. Any amount of the deposit in excess of the amount required to reimburse the State shall be returned by the department to the party that made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance the project pursuant to section 39A-157 and the department has determined that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason

of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise. [L 1981, c 122, pt of §2; am L 2007, c 44, §7]

" **§39A-155 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing of which the revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof, and whether or not the project is used or occupied by the project party, the sum or sums, at the time or times, and in the amounts that shall be sufficient:
 - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as the bonds become due, including any premium payable upon any required redemption of the bonds;
 - (B) To establish or maintain a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) assessed in connection with the special purpose revenue bonds; and
 - (D) To pay the fees, costs, and expenses (direct or indirect) assessed by the department in administering the bonds or in carrying out the project agreement; and
- (2) To operate, maintain, and repair the project as long as it is used as provided in the project agreement and to pay all costs of the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, or be deemed to be, revenues of the project and shall be paid into the general fund of the State. [L 1981, c 122, pt of §2; am L 2007, c 44, §8]

" **§39A-156 Issuance of special purpose revenue bonds to finance projects.** In addition to the other powers which it may

otherwise have, the department may issue special purpose revenue bonds to finance, in whole or in part, the costs of facilities of, or for, or to loan the proceeds of such bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

The department in determining the cost of any project, may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of such project;
- (2) Interest on such bonds and the expenses of the State in connection with such bonds and the project to be financed from the proceeds of such bonds accruing or incurred prior to and during the estimated period of construction and for not exceeding twelve months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the project;
- (6) Administration expenses;
- (7) Legal, accounting, consulting, and other special service fees;
- (8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and
- (9) Such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, maintenance, or extension of the project, the financing, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to an industrial enterprise and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of such bonds to assist, project parties, is in the public interest. [L 1981, c 122, pt of §2]

" **§39A-157 Authorization of special purpose revenue bonds.**

(a) Special purpose revenue bonds for each project or multiproject program shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of such mutilated bond or coupon, or in lieu of and in substitution for

such lost, stolen, or destroyed bond or coupon. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has (1) paid the reasonable expense and charges in connection therewith, (2) in the case of a lost, stolen, or destroyed bond or coupon, has filed with the department or its fiduciary evidence satisfactory to such department or its fiduciary that such bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof, and (3) has furnished indemnity satisfactory to the department.

(d) The department may provide that CUSIP identification numbers shall be printed on such bonds. 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 bond upon which it is imprinted, and (2) no liability shall attach to the department or any officer or agent 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 department, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The department may require that all costs of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds. For the purpose of this subsection, 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 1981, c 122, pt of §2; am L 2001, c 148, §5]

" **§39A-158 Special purpose revenue bond anticipation notes.** Whenever the department has authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of such notes shall not exceed the authorized principal amount of such bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such 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 notes paid in such manner. The authorization, issuance, and the details of such notes shall be governed by the provisions of this part with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note. [L 1981, c 122, pt of §2]

" **§39A-159 Powers with respect to and security for special purpose revenue bonds.** In order to secure the payment of any of the special purpose revenue bonds issued pursuant to this part, and interest thereon, or in connection with such bonds, the department shall have the power as to such bonds:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed from proceeds thereof, and interest thereon, and to covenant against thereafter pledging any such revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues.
- (2) To pledge and assign the interest and right of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder.
- (3) To covenant as to the use and disposition of the proceeds from the sale of such bonds.
- (4) To covenant to set aside or pay over reserves and sinking funds for such bonds and as to the disposition thereof.
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.
- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.

- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with such trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply such revenues to the payment of the principal and interest on such bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering such bonds or in carrying out the project agreement. In the event that such trustee shall be appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable in order to secure such bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation the holding of the special purpose revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with law.
- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties.
- (9) To make such covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure such bonds, notwithstanding that such covenants, acts, or things may not be enumerated

herein; it being the purpose thereof to give the department power to do all things in the issuance of such bonds and for their security that may be consistent with the Constitution of the State of Hawaii. [L 1981, c 122, pt of §2]

" **§39A-160 Security for special purpose revenue bonds.**

Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other agreements entered into with respect to the project, and shall be secured solely by such revenues and by the pledges and assignments authorized by this part. All special purpose revenue bonds of the same issue, subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the project, for which such bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable from the revenues which may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the department may reserve the right and privilege to subsequently issue additional series of special purpose revenue bonds, from time to time, payable from the revenues derived from such project agreement on a parity with the special purpose revenue bonds theretofore issued, and the subsequently issued series of special purpose revenue bonds may be secured, without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this part. [L 1981, c 122, pt of §2]

" **§39A-161 Special purpose revenue bonds not a general obligation of State.**

No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of taxing power of the State to pay such bonds or the interest thereon and no moneys other than the revenues pledged to such bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this part shall recite in substance that such bond, including interest thereon, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that such bond is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than

the revenues specifically pledged thereto. [L 1981, c 122, pt of §2]

" **§39A-162 Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the department. Special purpose revenue 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 1981, c 122, pt of §2]

" **§39A-163 Use of revenues derived from project agreement.** The department shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premiums if any, and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefore; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operations, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State. [L 1981, c 122, pt of §2]

" **§39A-164 Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state and county taxation except inheritance, transfer, and estate taxes. [L 1981, c 122, pt of §2]

" **[§39A-164.5] Federal tax exempt status.** Special purpose 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 the

special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes. [L 1996, c 142, §4]

" **§39A-165 Exemption from taxation of department property.** All revenues derived by the department from any project or under the project agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the department in any project shall also be exempt from all state and county taxation. Except as otherwise provided by law, the interest of the project party or user of such project in a project or under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by the project party or other user. [L 1981, c 122, pt of §2]

" **§39A-166 Refunding special purpose revenue bonds.** The legislature, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. The legislature may provide, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of: (1) financing the cost of a project or improvement or expansion thereof, and (2) refunding special purpose revenue bonds which shall theretofore have been issued under this part and shall then be outstanding, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. Nothing in this section shall require or be deemed to require the department to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded which were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any instruments providing for the issuance thereof, or, in the event

the department elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such special purpose revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable. [L 1981, c 122, pt of §2]

" **§39A-167 Status of special purpose revenue bonds under the Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all such special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration. [L 1981, c 122, pt of §2]

" **§39A-168 Special purpose revenue bonds as legal investments and lawful security.** The special purpose revenue bonds issued pursuant to this part shall be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. Such special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and such bonds shall be lawful and sufficient security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto. [L 1981, c 122, pt of §2; am L 1990, c 59, §6]

" **§39A-169 Access to and public disclosure of financial records of project party.** (a) Each project party with a project agreement with the department shall allow the department full access to the project party's financial records. Upon the request of the department for the examination of any such financial records, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records which pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 1981, c 122, pt of §2]

" **§39A-170 Estimate of benefits.** (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on the creation of new jobs and potential effect on tax receipts. The format of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing benefits to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 1981, c 122, pt of §2]

" **§39A-171 Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall be controlling. [L 1981, c 122, pt of §2]

**"PART VI. ASSISTING UTILITIES SERVING THE GENERAL
PUBLIC IN PROVIDING ELECTRIC ENERGY, GAS,
OR TELECOMMUNICATIONS**

Note

Part heading amended by L 2012, c 242, §1.

§39A-191 Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Department" means the department of budget and finance.

"Energy project" means any facilities for each single project or multiproject program of a project party, including a publicly owned energy cooperative, which is certified by the public utilities commission as being for the local furnishing of electric energy or gas; provided that any new generating unit for the production or generation of electric energy from fossil fuels shall not be considered an energy project for purposes of this part unless specifically authorized in any act providing for the authorization of the issuance of bonds pursuant to this part.

"Local furnishing of electric energy or gas" means providing property or land that is or will be:

- (1) Depreciable property or land;
- (2) Used to produce, collect, generate, transmit, store, distribute, or convey electric energy or gas, including without limitation, air or water pollution control facilities;
- (3) Used in the trade or business of furnishing electric energy or gas; and
- (4) Part of a system providing service to the general public of not more than two contiguous counties in the State.

"Project" means any energy project or telecommunications project.

"Project agreement" means any agreement entered into under this part by the department with the project party for the financing from the proceeds of special purpose revenue bonds of a telecommunications project or an energy project, including without limitation any loan agreement.

"Project party" means an electric or gas utility, including a publicly owned energy cooperative, serving the general public and that is regulated by the public utilities commission under chapter 269, or a telecommunications carrier or telecommunications common carrier, whether or not subject to regulation by the public utilities commission under chapter 269.

"Special purpose revenue bonds" or "bonds" mean bonds, notes, or other evidences of indebtedness issued pursuant to this part.

"Telecommunications carrier" or "telecommunications common carrier" has the meaning defined by section 269-1.

"Telecommunications project" means any facilities for each single project or multiproject program for the provision of telecommunications service of a project party that is a telecommunications carrier or a telecommunications common carrier.

"Telecommunications service" has the meaning defined by section 269-1. [L 1981, c 151, pt of §2; am L 2012, c 242, §2; am L 2016, c 98, §2]

Revision Note

Definitions rearranged.

" **§39A-192 Department powers as to projects.** In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of a project;
- (4) As security for the payment of the principal of and interest on the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or

- (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party. [L 1981, c 151, pt of §2; am L Sp 1993, c 8, §55; am L 2004, c 216, §12; am L 2006, c 292, §6; am L 2012, c 242, §3]

" **§39A-193 Compliance with state and local law.** The financing of any project under this part shall not relieve any project party or other user of such project from the laws, ordinances, rules, and regulations of the State and county or any departments or boards thereof with respect to the construction, operation, and maintenance of projects, compliance with master plans or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project, and such laws shall be applicable to such party or such other user to the same extent they would be if the costs of the project were directly financed by the project party. [L 1981, c 151, pt of §2; am L 2012, c 242, §4]

" **§39A-194 Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with any project party, shall require that the project party shall agree to pay all fees, costs, and expenses (direct or indirect) assessed by the department in implementing and administering this part, as determined by the department, even though a project agreement may not be entered into and may further require the deposit of moneys with the department to pay for fees, costs, and expenses. Any amount of the deposit in excess of the amount required to pay the State

shall be returned by the department to the project party that made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the department shall determine that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise. [L 1981, c 151, pt of §2; am L 2007, c 44, §9; am L 2012, c 242, §5]

" **§39A-195 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have already entered into a project agreement with respect to the project for the financing of which the bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, the sum or sums, at the time or times, and in the amount or amounts that shall be sufficient:
 - (A) To pay the principal and interest on all special purpose revenue bonds issued to finance the project as the bonds become due, including any premium payable upon any required redemption of the bonds;
 - (B) To establish or maintain a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) assessed in connection with the special purpose revenue bonds; and
 - (D) To pay the fees, costs, and expenses (direct or indirect) assessed by the department in administering the bonds or in carrying out the

project agreement, as determined by the department; and

- (2) To operate, maintain, and repair the project as long as it is used in the business of local furnishing of electric energy or gas, or in the business of providing telecommunications service, and to pay all costs of the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the project and shall be paid into the general fund of the State. [L 1981, c 151, pt of §2; am L 2007, c 44, §10; am L 2012, c 242, §6]

" **§39A-196 Issuance of special purpose revenue bonds to finance projects.** In addition to the other powers that it may otherwise have, the department may issue special purpose revenue bonds to finance, in whole or in part, the costs of a project. All bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds issued pursuant to this part shall be issued in the name of the department and not in the name of the State.

The department, in determining the cost of any project, may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of such project;
- (2) Interest on such bonds and the expenses of the State in connection with such bonds and the project to be financed from the proceeds of such bonds accruing or incurred prior to and during the period of construction and for not exceeding six months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of cost and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the project;
- (6) Administration expenses;
- (7) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and
- (8) Such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, or extension of the project, the financing

thereof, placing of the project in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to utilities serving the general public and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of such bonds to assist, project parties, is in the public interest. [L 1981, c 151, pt of §2; am L 2012, c 242, §7]

" **§39A-197 Authorization of special purpose revenue bonds.**

(a) Special purpose revenue bonds for each single project or multiproject program for each type of utility serving the general public shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, that has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special

purpose revenue bonds in such manner, either at public or at private sale, and for such price as it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the department upon the cancellation of such mutilated bond or coupon, may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, in lieu of and in substitution for such lost, stolen, or destroyed bond or coupon. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has (1) paid the reasonable expense and charges in connection therewith, and (2) in the case of a lost, stolen, or destroyed bond or coupon, has filed with the department or its fiduciary, evidence satisfactory to such department or its fiduciary that such bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof, and (3) has furnished indemnity satisfactory to the department.

(d) The department may provide that CUSIP identification numbers shall be imprinted on any such bonds. 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 bond upon which it is imprinted, and (2) no liability shall attach to the department or any officer or agent 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 department, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The department may require that all costs of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds. For the purposes of this subsection, 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 1981, c 151, pt of §2; am L 2001, c 148, §6; am L 2012, c 242, §8]

" **§39A-198 Special purpose revenue bond anticipation notes.** Whenever the department authorizes the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in

anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of such notes shall not exceed the authorized principal amount of such bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such 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 notes paid in such manner. The authorization, issuance, and the details of such notes shall be governed by the provisions of this part with respect to special purpose revenue bonds insofar as the provisions may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note. [L 1981, c 151, pt of §2]

" **§39A-199 Powers with respect to and security for special purpose revenue bonds.** To secure the payment of any of the special purpose revenue bonds issued pursuant to this part, and interest thereon, or in connection with such bonds, the department shall have the power as to such bonds:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued for the project financed from proceeds thereof, and interest thereon, and to covenant against thereafter pledging any such revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues.
- (2) To pledge and assign the interest and rights of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder.
- (3) To covenant as to the use and disposition of the proceeds from the sale of such bonds.

- (4) To covenant to set aside or pay over reserves and sinking funds for such bonds and as to the disposition thereof.
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.
- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, conditions, or obligation.
- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with such trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply such revenues to the payment of the principal and interest on such bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering such bonds or in carrying out the project agreement. In the event that such trustee shall be appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable to secure such bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange,

and redemption, as the department may deem necessary, advisable, or expedient, including without limitation, the holding of the special purpose revenue bonds and coupons that have been paid and the supervision of the destruction thereof in accordance with law.

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties.
- (9) To make such covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure such bonds, notwithstanding that such covenants, acts, or things may not be enumerated herein; it being the purpose hereof to give the department power to do all things in the issuance of such bonds and for their security that may be consistent with the Constitution of the State of Hawaii. [L 1981, c 151, pt of §2; am L 2012, c 242, §9]

" **§39A-200 Security for special purpose revenue bonds.**

Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other supplemental agreements entered into with respect to the energy project, and shall be secured solely by such revenues and by the pledges and assignments authorized by this part. All special purpose revenue bonds of the same issue, subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanics' and materialmen's liens, shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the energy project for which such bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable from the revenues which may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the department may reserve the right and privilege to subsequently issue additional series of special purpose revenues bonds, from time to time, payable from the revenues derived from such project agreement on a parity with the special purpose revenue bonds theretofore issued and the subsequently issued series of special purpose revenue bonds, may be secured, without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this part.

Notwithstanding any other provision hereof, the property in the energy project and all interest of the project party in the energy project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds, and the rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the energy project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage. [L 1981, c 151, pt of §2]

" **§39A-201 Special purpose revenue bonds not a general obligation of the State.** No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of taxing power of the State to pay such bonds or the interest thereon and no moneys other than the revenues pledged to such bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this part shall recite in substance that such bond, including interest thereon, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that such bond is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the revenues specifically pledged thereto. [L 1981, c 151, pt of §2]

" **§39A-202 Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the department. The special purpose revenue 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 1981, c 151, pt of §2]

" **§39A-203 Use of revenues derived from project agreement.** The department shall have the right to appropriate, apply, or expend the revenues derived from the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefor; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operation, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State. [L 1981, c 151, pt of §2; am L 2012, c 242, §10]

" **§39A-204 Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state and county taxation except inheritance, transfer, and estate taxes. [L 1981, c 151, pt of §2]

" **[§39A-204.5] Federal tax exempt status.** Special purpose 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 the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes. [L 1996, c 142, §5]

" **§39A-205 Exemption from taxation of department property.** All revenues derived by the department from any project or under the project agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the department in any project shall also be exempt from all state and county taxation. Except as otherwise provided by law, the interest of the project party or user of such project in a project or under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by

the project party or other user. [L 1981, c 151, pt of §2; am L 2012, c 242, §11]

" **§39A-206 Refunding special purpose revenue bonds.** The legislature, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. The legislature may provide, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of:

- (1) Financing the cost of a project or improvement or expansion thereof; and
- (2) Refunding special purpose revenue bonds that shall theretofore have been issued under this part and shall then be outstanding, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption.

Nothing in this section shall require or be deemed to require the department to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded that were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any law authorizing the issuance thereof, or, in the event the department elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such special purpose revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the bonds, shall be governed by the foregoing provisions of this part insofar as the provisions may be applicable. [L 1981, c 151, pt of §2; am L 2012, c 242, §12]

" **§39A-207 Status of special purpose revenue bonds under Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all such special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the

provisions of the special purpose revenue bonds pertaining to registration. [L 1981, c 151, pt of §2]

" **§39A-208 Treatment of special purpose revenue bonds in regulatory proceedings.** (a) In the setting of rates to be paid by the consumers of utility services, the public utilities commission shall provide such consumers the maximum benefits derived by the utility from the use of such bonds.

(b) For the purpose of public disclosure, the public utilities commission, in every rate proceeding involving a public utility that is regulated by the public utilities commission under chapter 269 and which has utilized special purpose revenue bonds, shall make estimates of:

- (1) The probable amounts that would have been incurred by the utility as capital costs if financing by means other than special purpose revenue bonds were utilized;
- (2) The amount the utility pays for such bonds, including the principal and sinking fund requirements, the interest, and other expenses appropriately attributable to special purpose revenue bond financing; and
- (3) The difference between (1) and (2), or the estimated savings realized by the consumers of the utility services. [L 1981, c 151, pt of §2; am L 1982, c 147, §4; am L 2012, c 242, §13]

" **§39A-209 Special purpose revenue bonds as legal investments and lawful security.** The special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. Such special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and such bonds shall be lawful and sufficient security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto. [L 1981, c 151, pt of §2; am L 1990, c 59, §7]

" **§39A-210 Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall be controlling. [L 1981, c 151, pt of §2]

" **§39A-211 REPEALED.** L 1992, c 228, §6.

"[PART VII.] ASSISTING NOT-FOR-PROFIT CORPORATIONS
THAT PROVIDE EARLY CHILDHOOD EDUCATION
AND CARE FACILITIES SERVING THE GENERAL PUBLIC

[§39A-221] Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Department" means the department of budget and finance.

"Early childhood education and care facility" means any property used primarily for the care and instruction of children from birth to age five; provided that it shall not include any property to be used primarily for sectarian instruction or study, or as a place for devotional activities or religious worship, or any property used primarily in connection with any part of a program of a school or department of divinity of any religious denomination.

"Project agreement" means any agreement entered into under this part by the department with a project party providing for the issuance of special purpose revenue bonds to finance facilities of a project party or for a project party or to loan the proceeds of such bonds to assist not-for-profit corporations that provide early childhood education and care facilities that serve the general public, including without limitation any loan agreement.

"Project party" means a not-for-profit corporation that provides an early childhood education and care facility that serves the general public.

"Refinancing of outstanding obligations" or "refinancing" means the liquidation, retirement, or provision for retirement with the proceeds of bonds issued by the State, of any indebtedness of a project party incurred to finance or aid in financing a lawful purpose of such project party not financed pursuant to this part which constitutes an early childhood education and care facility or consolidation of such indebtedness with indebtedness of the State incurred for an early childhood education and care facility related to the purpose for which the indebtedness of the project party was initially incurred.

"Special purpose revenue bonds" or "bonds" means bonds, notes, or other evidences of indebtedness of the State issued pursuant to this part. [L 1994, c 280, pt of §6]

" **§39A-222 Department powers as to early childhood education and care facilities.** In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or refinancing of outstanding obligations related to a project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for this project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal

or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and

- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refines a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party. [L 1994, c 280, pt of §6; am L 2006, c 292, §7]

" **[§39A-223] Compliance with state and local law.** The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of such project from the laws, ordinances, and rules of the State or any political subdivision thereof, or any departments or boards thereof with respect to the construction, operation, and maintenance of projects, compliance with early childhood education and care laws or regulations, or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules of similar nature pertaining to the project, and such laws shall be applicable to such party or such other user to the same extent it would be if the costs of the project were directly financed by the project party. [L 1994, c 280, pt of §6]

" **§39A-224 Conditions precedent to negotiating and entering into a project agreement.** (a) The department, prior to entering into negotiations with any project party, shall require that the project party shall agree to pay all fees, costs, and expenses (direct or indirect) assessed by the department in implementing and administering this part, as determined by the department, even though a project agreement may not be entered into and may further require the deposit of moneys with the department to pay for fees, costs, and expenses. Any amount of the deposit in excess of the amount required to pay the State shall be returned by the department to the party that made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the department shall determine that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through such project, or otherwise; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise. [L 1994, c 280, pt of §6; am L 2007, c 44, §11]

" **§39A-225 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing or refinancing of which the revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, the sum or sums, at the time or times, and in the amounts that shall be sufficient:
 - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as the bonds become due, including any premium payable upon any required redemption of the bonds;
 - (B) To establish or maintain a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) assessed in connection with the special purpose revenue bonds; and
 - (D) To pay the fees, costs, and expenses (direct or indirect) assessed by the department in administering the bonds or in carrying out the project agreement; and
- (2) To operate, maintain, and repair the project as long as it is used in the provision of early childhood

education and care to the general public, and to pay all costs of the operation, maintenance, and repair. Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the project and shall be paid into the general fund of the State. [L 1994, c 280, pt of §6; am L 2007, c 44, §12]

" **[§39A-226] Issuance of special purpose revenue bonds to finance projects.** In addition to the other powers which it may otherwise have, the department may issue special purpose revenue bonds to finance or refinance, the costs of facilities of, or for, or to loan the proceeds of such bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

The department in determining the cost of any project, may also include the following: financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of such project; interest on such bonds and the expenses of the State in connection with such bonds and the project to be financed or refinanced from the proceeds of such bonds accruing or incurred prior to and during the period of construction and for not exceeding twelve months thereafter; amounts necessary to establish or increase reserves for the special purpose revenue bonds; the cost of plans, specifications, studies, surveys, and estimates of costs and of revenues; other expenses incidental to determining the feasibility or practicability of the project; administration expenses; interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; fees and expenses incurred in connection with the refinancing of outstanding obligations; and such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, or extension of the project, the financing or refinancing thereof, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to not-for-profit corporations serving the general public and that the issuance of special purpose revenue bonds to finance or to refinance facilities of, or for, or to loan the

proceeds of such bonds to assist, project parties, is in the public interest. [L 1994, c 280, pt of §6]

" **§39A-227 Authorization of special purpose revenue bonds.**

(a) Special purpose revenue bonds for each single project or multi-project program for early childhood education and care facilities serving the general public shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of such mutilated bond or coupon, or in lieu of and in substitution for such lost, stolen, or destroyed bond or coupon. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has (1) paid the reasonable expense and charges in connection therewith; (2) in the case of a lost, stolen, or destroyed bond or coupon, has filed with the department or its fiduciary evidence satisfactory to such department or its fiduciary that such bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof; and (3) has furnished indemnity satisfactory to the department.

(d) The department in its discretion may provide that CUSIP identification numbers shall be printed on such bonds. 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 bond upon which it is imprinted, and (2) no liability shall attach to the department or any officer or agent 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 department, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The department in its discretion may require that all costs of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds. For the purposes of this subsection, 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 280, pt of §6; am L 2001, c 148, §7]

" **[§39A-228] Special purpose revenue bond anticipation notes.** Whenever the department shall have authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of such notes shall not exceed the authorized principal amount of such bonds. The notes shall be payable solely from and

secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such 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 notes paid in such manner. The authorization, issuance, and the details of such notes shall be governed by the provisions of this part with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note. [L 1994, c 280, pt of §6]

" **[§39A-229] Powers with respect to and security for special purpose revenue bonds.** In order to secure the payment of any of the special purpose revenue bonds issued pursuant to this part, and interest thereon, or in connection with such bonds, the department shall have the power as to such bonds:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed or refinanced from proceeds thereof, and interest thereon, and to covenant against thereafter pledging any such revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues.
- (2) To pledge and assign the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder.
- (3) To covenant as to the use and disposition of the proceeds from the sale of such bonds.
- (4) To covenant to set aside or pay over reserves and sinking funds for such bonds and as to the disposition thereof.
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of such

bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, conditions, or obligation.
- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with such trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the same to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply such revenues to the payment of the principal and interest on such bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering such bonds or in carrying out the project agreement. In the event that such trustee shall be appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable in order to secure such bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation the holding of the special purpose revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with law.

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties.
- (9) To make such covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure such bonds, notwithstanding that such covenants, acts, or things may not be enumerated herein; it being the purpose hereof to give the department power to do all things in the issuance of such bonds and for their security that may be consistent with the Constitution of the State of Hawaii. [L 1994, c 280, pt of §6]

" **[\$39A-230] Security for special purpose revenue bonds.**

Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other supplemental agreements entered into with respect to the project, and shall be secured solely by such revenues and by the pledges and assignments authorized by this part. All special purpose revenue bonds of the same issue, subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the project, for which the bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable from the revenues which may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the right and privilege may be reserved by the department in the trust indenture securing an issue of special purpose revenue bonds to subsequently issue additional special purpose revenue bonds, subject to legislative authorization of the issue as provided in section 39A-227, or to permit the project party or another party on its behalf to incur debt, from time to time, payable from the revenues derived from such project agreement on a parity with the first issue of the special purpose revenue bonds and any subsequent issue of special purpose revenue bonds and other debt issued or incurred in accordance with the provisions of the trust indenture shall be secured equally and ratably with the first issue of the special purpose revenue bond without priority by reason of the date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with this part.

Notwithstanding any other provisions herein, all or part of the property constituting the project and all interest of the

project party in the project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds, and the rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage. [L 1994, c 280, pt of §6]

" **[\$39A-231] Special purpose revenue bonds not a general obligation of the State.** No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of taxing power of the State to pay such bonds or the interest thereon and no moneys other than the revenues pledged to such bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this part shall recite in substance that such bond, including interest thereon, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that such bond is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the revenues specifically pledged thereto. [L 1994, c 280, pt of §6]

" **[\$39A-232] Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor all the persons whose signatures appear thereon shall have ceased to be officers of the department. The special purpose revenue 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 280, pt of §6]

" **[\$39A-233] Use of revenues derived from project agreement.** The department shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premium, if any, and interest thereon, for the payment of which the revenues are or have been pledged,

charged, or otherwise encumbered, including reserves therefor; and

- (2) To the extent not paid by the project party to provide for all expenses of administration, operation, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State. [L 1994, c 280, pt of §6]

" **[\$39A-234] Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state, county, and municipal taxation except inheritance, transfer, and estate taxes. [L 1994, c 280, pt of §6]

" **[\$39A-235] Exemption from taxation of department property.** All revenues derived by the department from any project or under the project agreement pertaining thereto shall be exempt from all state, county, and municipal taxation. Any right, title, and interest of the department in any project shall also be exempt from all state, county, and municipal taxation. Except as otherwise provided by law, the interest of the project party or user of such project in a project or under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by the project party or other user. [L 1994, c 280, pt of §6]

" **[\$39A-236] Refunding special purpose revenue bonds.** The legislature, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. The legislature is further authorized to provide, by act finally enacted by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of (1) financing or refinancing the cost of a project or improvement or expansion thereof, and (2) refunding special purpose revenue bonds which

shall theretofore have been issued under this part and shall then be outstanding, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. Nothing in this section shall require or be deemed to require the legislature to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded which were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any law authorizing the issuance thereof, or, in the event the department elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such special purpose revenue bonds, the maturities and other details thereof, and the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable. [L 1994, c 280, pt of §6]

" **[§39A-237] Status of special purpose revenue bonds under Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all such special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration. [L 1994, c 280, pt of §6]

" **[§39A-238] Special purpose revenue bonds as legal investments and lawful security.** The special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. Such special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and such bonds shall be lawful and sufficient security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto. [L 1994, c 280, pt of §6]

" **[\$39A-239] Access to and public disclosure of financial records of project party.** (a) Each project party with a project agreement with the department shall allow the department full access to its financial records. Upon the request of the department for the examination of any such financial records, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records which pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purpose of this section. [L 1994, c 280, pt of §6]

" **[\$39A-240] Estimate of benefits.** (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on a comparison between the use of the proceeds of the special purpose revenue bonds instead of other means of financing and shall be in terms of dollars projected to be or actually saved by consumers of the services of the project party. The format of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing less costly services by a project party to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 1994, c 280, pt of §6]

" **[\$39A-241] Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall be controlling. [L 1994, c 280, pt of §6]

" **[§39A-242] Sunset provision.** After June 30, 2015, no new special purpose revenue bonds shall be issued under this part. [L 1994, c 280, pt of §6]

"[PART VIII.] ASSISTING NOT-FOR-PROFIT PRIVATE NONSECTARIAN AND SECTARIAN ELEMENTARY SCHOOLS, SECONDARY SCHOOLS, COLLEGES, AND UNIVERSITIES SERVING THE GENERAL PUBLIC

[§39A-251] Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Department" means the department of budget and finance.

"Project agreement" means any agreement entered into under this part by the department with a project party providing for the issuance of special purpose revenue bonds to finance facilities of the project party or for the project party or to loan the proceeds of such bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public, including, without limitation, on any loan agreement.

"Project party" means a not-for-profit private nonsectarian and sectarian elementary school, secondary school, college, and university that serves the general public.

"Refinancing of outstanding obligations" or "refinancing" means the liquidation; the retirement; the provision for retirement through the proceeds of bonds issued by the State of any indebtedness of a project party incurred to finance or help finance a lawful purpose of the project party not financed pursuant to this part; or the consolidation of such indebtedness with indebtedness of the State incurred by the project party related to the purpose for which the indebtedness of the project party was initially incurred.

"Special purpose revenue bonds" or "bonds" means bonds, notes, or other evidence of indebtedness of the State issued pursuant to this part. [L 2002, c 257, pt of §1]

" **§39A-252 Department powers as to private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities.** In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to:

- (A) Enter into and carry out a project agreement or an amendment or supplement to an existing project agreement with a project party; and
- (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or refinancing of outstanding obligations related to a project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for this project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related to the project agreement; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part of the project for lease or transfer to a project party, nor shall the State operate a

project on behalf of a project party. [L 2002, c 257, pt of §1; am L 2006, c 292, §8]

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" **[§39A-253] Compliance with state and local law.** The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of the project from the laws, ordinances, and rules of the State or any of its political subdivisions, or any departments or boards thereof, with respect to: the construction, operation, and maintenance of projects; compliance with education or zoning laws or regulations; obtaining of building permits; and compliance with building codes, health codes, and other laws, ordinances, or rules of a similar nature pertaining to the project. Such laws shall apply to the party or another user to the same extent that it would be if the costs of the project were directly financed by the project party. [L 2002, c 257, pt of §1]

" **§39A-254 Conditions precedent to negotiating and entering into a project agreement.** (a) Prior to entering into negotiations with any project party, the department shall require that the project party shall agree to pay all fees, costs, and expenses (direct or indirect) assessed by the department in implementing and administering this part, as determined by the department, even though a project agreement may not be entered into. The department may further require the deposit of moneys with it to pay for fees, costs, and expenses. The department shall return any amount of the deposit exceeding the amount required to reimburse the State to the party that made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the department shall determine that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or some other reason; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or some other reason. [L 2002, c 257, pt of §1; am L 2007, c 44, §13]

" **§39A-255 Project agreement.** No special purpose revenue bonds shall be issued unless, at the time of issuance, the department shall have entered into a project agreement with respect to the project for the financing or refinancing of which the revenue bonds are to be issued.

Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party to:

- (1) Pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, the sum at the time in the amount that shall be sufficient to:
 - (A) Pay the principal and interest on all special purpose revenue bonds issued with respect to the project as they become due, including any premium payable upon any required redemption of the bonds;
 - (B) Establish or maintain a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) Pay all fees and expenses, including the fees and expenses of the paying agents and trustees, assessed in connection with the special purpose revenue bonds; and
 - (D) Pay the fees, costs, and expenses (direct or indirect) assessed by the department in administering the bonds or in carrying out the project agreement; and
- (2) Operate, maintain, and repair the project as long as it is used in the provision of not-for-profit private nonsectarian and sectarian elementary, secondary, college-level, and university-level education to the general public, and to pay all costs of its operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the project and shall be paid into the general fund of the State. [L 2002, c 257, pt of §1; am L 2007, c 44, §14]

" **§39A-256 Issuance of special purpose revenue bonds to finance projects.** In addition to the other powers that it may otherwise have, the department may issue special purpose revenue bonds to finance or refinance the costs of facilities of or for project parties or to loan the proceeds of such bonds to assist

project parties. All revenue bonds issued under this part are special purpose revenue bonds, and the provisions of part III of chapter 39 shall not apply. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

In determining the cost of any project, the department may also include the following: financing charges, fees, the expenses of trustees, and the cost of paying agents to issue special purpose revenue bonds to fund the project; interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed or refinanced from the proceeds of the bonds accruing or incurred prior to and during the period of construction, not to exceed twelve months thereafter; amounts necessary to establish or increase reserves for the special purpose revenue bonds; the cost of plans, specifications, studies, surveys, and estimates of costs and of revenues; other expenses incidental to determining the feasibility or practicability of the project; administration expenses; the cost of interest incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; fees and expenses incurred in connection with the refinancing of outstanding obligations; other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, or extension of the project; the financing or refinancing of the project and placing the project in operation; and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities serving the general public and that the issuance of special purpose revenue bonds to finance or refinance facilities of or for project parties or to loan the proceeds of the bonds to assist project parties is in the public interest. The legislature also finds and determines that the exercise of the powers vested in the department by this part are pursuant to separate acts of the legislature, each of which shall be enacted in a nondiscriminatory manner on the basis of neutral, secular criteria and will not in any manner violate the First Amendment of the Constitution of the United States or article I, section 4, of the Constitution of the State of Hawaii. [L 2002, c 257, pt of §1; am L 2004, c 10, §1]

" **[§39A-257] Authorization of special purpose revenue bonds.**

(a) Special purpose revenue bonds for each single project or multi-project program for not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities serving the general public shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of one, or the combined authority of more than one, separate act of the legislature.

The State may combine into a single issue of special purpose revenue bonds two or more proposed issues of special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities, separately authorized as aforesaid, in the total amount of not exceeding the aggregate of the proposed separate issues of special purpose revenue bonds.

The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times (not to exceed forty years from their date or dates), shall have such rank or priority, and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached, and the manner of execution of the special purpose revenue bonds. The department shall also fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine. Provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special

purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon pertaining to such a bond become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for and upon the cancellation of the mutilated bond or coupon, or in lieu of and in substitution for the lost, stolen, or destroyed bond or coupon.

The new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has:

- (1) Paid the reasonable expense and charges in connection therewith;
- (2) In the case of a lost, stolen, or destroyed bond or coupon, has filed with the department or its fiduciary evidence satisfactory to the department or its fiduciary that such bond or coupon was lost, stolen, or destroyed and that the holder was the owner; and
- (3) Has furnished indemnity satisfactory to the department.

(d) In its discretion, the department may direct that CUSIP identification numbers shall be printed on the bonds. In the event that the numbers are imprinted on the bonds:

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

In its discretion, the department may require that all costs of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds.

For the purposes of this subsection, "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association. [L 2002, c 257, pt of §1]

" **[§39A-258] Special purpose revenue bond anticipation notes.** Whenever the department shall have authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of the bonds and of the receipt of the proceeds of sale thereof, for the purpose for which the bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of the notes 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 special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which the bonds would be secured; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of 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 notes paid in such manner. The authorization, issuance, and details of the notes shall be governed by the provision of this part with respect to special purpose revenue bonds insofar as the same may apply; provided that each note, together with all renewals and extensions of the note, or refundings of the note by other notes issued under this section, shall mature within five years from the date of the original note. [L 2002, c 257, pt of §1]

" **[§39A-259] Powers with respect to and security for special purpose revenue bonds.** To secure the payment of any of the special purpose revenue bonds issued pursuant to this part, including interest on the bonds, or in connection with the bonds, the department shall have the power to:

- (1) Pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed or refinanced from bond proceeds, including interest on the bonds, and to covenant against pledging any such revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues;

- (2) Pledge and assign the interest of the department under the project agreement and other related agreements and the rights, duties, and obligations of the department thereunder, including the right to receive revenues;
- (3) Covenant as to the use and disposition of the proceeds from the sale of the bonds;
- (4) Covenant to set aside or pay over reserves and sinking funds for the bonds and as to the disposition thereof;
- (5) Covenant and prescribe as to what occurrences shall constitute "events of default" and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;
- (6) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by the department of any covenant, condition, or obligation;
- (7) Designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with the trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which the bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply the revenues to the payment of the principal and interest on the bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering the bonds or in carrying out the project agreement. If a trustee is appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary, convenient, or desirable to secure the bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other related agreements as well as the rights, duties, and obligations of the department thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest and for the purchase, registration, transfer, exchange, and redemption of the special purpose

revenue bonds. The department may also authorize and empower the trustee to perform such functions with respect to payment, purchase, registration, transfer, exchange, and redemption as the department may deem necessary, advisable, or expedient, including, without limitation, the holding of the special purpose revenue bonds and coupons that have been paid and the supervision of the destruction of the bonds and coupons according to the law;

- (8) Execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties; and
- (9) Make such covenants and perform any acts as may be necessary, convenient, or desirable to secure the bonds, although such covenants, acts, or items may not be enumerated here.

The department shall have the power to do all things in the issuance of the bonds and for their security that are consistent with the Constitution of the State of Hawaii. [L 2002, c 257, pt of §1]

" **[§39A-260] Security for special purpose revenue bonds.**

Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement, project agreements, or other supplemental agreements entered into with respect to the project or projects for the financing of which the special purpose revenue bonds were issued. The special purpose revenue bonds shall be secured solely by such revenues and by the pledges and assignments authorized by this part. Subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, all special purpose revenue bonds of the same issue shall have a prior and paramount lien on the revenue derived from the project agreement or agreements with respect to the project or projects for which the bonds were issued. The lien shall be over and ahead of all special purpose revenue bonds of any issue payable from the revenues that may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the right and privilege may be reserved by the department in the trust indenture securing an issue of special purpose revenue bonds to issue subsequently additional special purpose revenue bonds, subject to legislative authorization of the issue as provided in section 39A-257. The department may also permit the project party or another party on its behalf to incur debt, from

time to time, payable from the revenues derived from the project agreement on a parity with the first issue of the special purpose revenue bonds. Any subsequent issue of special purpose revenue bonds and other debt issued or incurred in accordance with the provisions of the trust indenture shall be secured equally and ratably with the first issue of the special purpose revenue bond by a lien on the revenues in accordance with this part and without priority based on the date of sale, date of execution, or date of delivery.

Notwithstanding any other provisions herein, all or part of the property constituting the project and all interest of the project party in the project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds. The rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage. [L 2002, c 257, pt of §1]

" **[\$39A-261] Special purpose revenue bonds not a general obligation of the State.** No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of the taxing power of the State to pay such bonds or the interest on the bonds, and no moneys other than the revenues pledged to such bonds shall be applied toward their payment. Each special purpose revenue bond issued under this part shall recite in substance that such bond, including interest on the bond, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof and that such bond is not secured directly or indirectly by the full faith and credit of the State, by the general credit of the State, or by any revenue or taxes of the State other than the revenues specifically pledged thereto. [L 2002, c 257, pt of §1]

" **[\$39A-262] Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers on the date of the signing of the bonds shall be valid and sufficient for all purposes, notwithstanding that before the delivery of and payment for the bonds, all the persons whose signatures appear on the bonds shall have ceased to be officers of the department. The special purpose revenue bonds shall contain a recital that they are issued pursuant to this part, and the recital shall be conclusive evidence of their

validity and of the regularity of their issuance. [L 2002, c 257, pt of §1]

" **[\$39A-263] Use of revenues derived from project agreement.**

The department shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premium (if any), and interest on the bonds for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operation, and maintenance of the project, including reserves.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State. [L 2002, c 257, pt of §1]

" **[\$39A-264] Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income derived from the bonds issued pursuant to this part shall be exempt from all state, county, and municipal taxation, except for inheritance, transfer, and estate taxes. [L 2002, c 257, pt of §1]

" **[\$39A-265] Federal tax-exempt status.** To the extent practicable, special purpose revenue bonds issued pursuant to this part shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income-tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income-tax purposes. [L 2002, c 257, pt of §1]

" **[\$39A-266] Exemption from taxation of department property.** All revenues derived by the department from any project or under

the project agreement pertaining to it shall be exempt from all state, county, and municipal taxation. Any right, title, and interest of the department in any project shall also be exempt from all state, county, and municipal taxation.

Except as otherwise provided by law, the interest of the project party or user of such project under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by the project party or other user. [L 2002, c 257, pt of §1]

" **[§39A-267] Refunding special purpose revenue bonds.** The legislature, by an act passed by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption.

The legislature is further authorized to provide, by an act passed by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of:

- (1) Financing or refinancing the cost of a project or improvement or expansion of the project; and
- (2) Refunding special purpose revenue bonds that shall have been issued under this part and shall then be outstanding, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption.

Nothing in this section shall require or be deemed to require the legislature to elect to redeem or prepay special purpose revenue bonds being refunded. Moreover, nothing in this section shall require or be deemed to require the legislature to elect to redeem or prepay the special purpose revenue bonds being refunded, which were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any law authorizing the issuance thereof, or, in the event the department elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such special purpose revenue bonds, the maturities and other details regarding the bonds, the rights and remedies of the bondholders, and the rights, powers, privileges, duties, and obligations of the department with respect to the bonds and bondholders, shall be governed by the foregoing

provisions of this part insofar as may be applicable. [L 2002, c 257, pt of §1]

" **[\$39A-268] Status of special purpose revenue bonds under Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration. [L 2002, c 257, pt of §1]

" **[\$39A-269] Special purpose revenue bonds as legal investments and lawful security.** The special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State and its political corporations or subdivisions. The special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and of the counties or other political corporations or subdivisions of the State. The bonds shall be lawful and sufficient security for such deposits to the extent of their value when accompanied by all unmatured coupons pertaining to the bonds. [L 2002, c 257, pt of §1]

" **[\$39A-270] Access to and public disclosure of financial records of project party.** (a) Each project party with a project agreement with the department shall allow the department full access to its financial records. Upon the request of the department for the examination of the financial records, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records that pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purpose of this section. [L 2002, c 257, pt of §1]

" **[\$39A-271] Estimate of benefits.** (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on a comparison between the use of the proceeds of the special purpose revenue bonds instead of other means of financing and shall be in terms of dollars projected to be or actually saved by consumers of the services of the project party. The format of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing less costly services by a project party to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 2002, c 257, pt of §1]

" **[\$39A-272] Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall control. [L 2002, c 257, pt of §1]

"[PART IX.] ASSISTING NOT-FOR-PROFIT PRIVATE ORGANIZATIONS, FOR-PROFIT PRIVATE ORGANIZATIONS, AND PUBLIC INSTRUMENTALITIES AND THEIR QUALIFIED AFFILIATES IN THE DEVELOPMENT OF LOW- AND MODERATE-INCOME HOUSING

[\$39A-281] Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Department" means the department of budget and finance.

"Low- and moderate-income housing project" means any housing project where:

(1) All project units are offered for rent, of which at least:

(A) Twenty per cent of the units are rented to households with an income of up to fifty per cent of the area median income as determined by the

United States Department of Housing and Urban Development;

- (B) Forty per cent of the housing units in the project are rented to households with an income of up to eighty per cent of the area median income as determined by the United States Department of Housing and Urban Development; or
 - (C) Sixty per cent of the housing units in the project are rented to households with an income of up to one hundred forty per cent of the area median income as determined by the United States Department of Housing and Urban Development;
- (2) All project units are offered for sale through the conveyance of individual units by deed or share, of which at least fifty per cent of the units are sold to households with an income of up to one hundred forty per cent of the area median income as determined by the United States Department of Housing and Urban Development; or
- (3) The project qualifies for federal tax exempt status pursuant to 26 U.S.C. §142(a)(7) and (d);

provided that if there is an insufficient number of persons or families who meet the income qualifying criteria, the developer of the housing project may make units available to households with higher incomes to ensure full occupancy of the housing project.

"Project" means the acquisition, purchase, design, development, construction, reconstruction, rehabilitation, improvement, betterment, extension, financing, or refinancing of low- and moderate-income housing.

"Project agreement" means any agreement entered into under this part by the department with a project party providing for the issuance of special purpose revenue bonds to finance the development of low- and moderate-income housing, or to loan the proceeds of the special purpose revenue bonds to assist a project party in the development of low- and moderate-income housing, including without limitation any loan agreement.

"Project party" means an entity engaged in the development of a low- and moderate-income housing project, including a not-for-profit private organization, for-profit private organization, or public instrumentalities and their qualified affiliates.

"Qualified affiliate" means a not-for-profit private organization that assists a public instrumentality or a for-profit private organization that may be a corporation, partnership, limited liability company, or trust in which each

shareholder, partner, member, or beneficiary assists a public instrumentality.

"Refinancing of outstanding obligations" or "refinancing" means the liquidation, the retirement, or the provision for retirement through the proceeds of bonds issued by the State of any indebtedness of a project party incurred to finance, in whole or in part, a low- and moderate-income housing project of the project party not financed pursuant to this part; or the consolidation of such indebtedness with indebtedness of the State related to the purpose for which the indebtedness of the project party was initially incurred.

"Special purpose revenue bonds" or "bonds" means bonds, notes, or other evidence of indebtedness of the State issued pursuant to this part. [L 2006, c 102, pt of §2]

" **[§39A-282] Department powers in the development of low- and moderate-income housing.** In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for this project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other

- agreement with respect to the project or the special purpose revenue bonds;
- (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related to the project agreement; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part of the project for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party. [L 2006, c 102, pt of §2]

" **§39A-283 Compliance with state and local law.** The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of the project from the laws, ordinances, and rules of the State or any of its political subdivisions, or any departments or boards thereof, with respect to the construction, operation, and maintenance of projects; compliance with zoning laws or regulations; obtaining of building permits; and compliance with building codes, health codes, and other laws, ordinances, or rules of a similar nature pertaining to the project. These laws shall apply to the party or another user to the same extent that it would be if the costs of the project were directly financed by the project party. [L 2006, c 102, pt of §2]

" **§39A-284 Conditions precedent to negotiating and entering into a project agreement.** (a) Prior to entering into negotiations with any project party, the department shall require that the project party shall agree to pay all fees, costs, and expenses, (direct or indirect) assessed by the department in implementing and administering this part, as determined by the department, even though a project agreement

may not be entered into. The department may further require the deposit of moneys with the department to pay for fees, costs, and expenses. The department shall return any amount of the deposit exceeding the amount required to reimburse the State to the party that made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the department shall determine that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project or some other reason; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project or some other reason. [L 2006, c 102, pt of §2; am L 2007, c 44, §15]

" **§39A-285 Project agreement.** No special purpose revenue bonds shall be issued unless, at the time of issuance, the department shall have entered into a project agreement with respect to the project for the financing or refinancing of which the bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party to:

- (1) Pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, a sum, at a time, and in an amount that shall be sufficient to:
 - (A) Pay the principal and interest on all special purpose revenue bonds issued with respect to the project as they become due, including any premium payable upon any required redemption of the bonds;
 - (B) Establish or maintain a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) Pay all fees and expenses, including the fees and expenses of the paying agents and trustees, assessed in connection with the special purpose revenue bonds; and

- (D) Pay the fees, costs, and expenses (direct or indirect) assessed by the department in administering the bonds or in carrying out the project agreement; and
- (2) Operate, maintain, and repair the project as long as it is used to provide low- and moderate-income housing, and to pay all costs of operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the project and shall be paid into the general fund of the State. [L 2006, c 102, pt of §2; am L 2007, c 44, §16]

" **[§39A-286] Issuance of special purpose revenue bonds to finance projects.** In addition to the other powers that it may otherwise have, the department may issue special purpose revenue bonds to finance or refinance the costs of developing low- and moderate-income housing or to loan the proceeds of bonds to assist project parties in the development of low- and moderate-income housing. All bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

In determining the cost of any project, the department may also include:

- (1) Financing charges, fees, the expenses of trustees, and the cost of paying agents to issue special purpose revenue bonds to fund the project;
- (2) Interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed or refinanced from the proceeds of the bonds accruing or incurred prior to and during the period of construction, not to exceed twelve months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the project;
- (6) Administration expenses;
- (7) The cost of interest incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds;
- (8) Fees and expenses incurred in connection with the refinancing of outstanding obligations;

- (9) Other costs, commissions, and expenses incidental to the project;
- (10) The financing or refinancing of the project and placing the project in operation; and
- (11) The issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of the bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to not-for-profit private organizations, for-profit private organizations, and public instrumentalities and their qualified affiliates in the development of low- and moderate-income housing, and that the issuance of special purpose revenue bonds to finance or refinance projects of or for project parties or to loan the proceeds of the bonds to assist project parties in the development of low- and moderate-income housing is in the public interest. The legislature further finds that this governmental assistance to not-for-profit private organizations, for-profit private organizations, and public instrumentalities and their qualified affiliates is necessary to encourage public-private partnerships to develop affordable housing for low- and moderate-income families in the State. [L 2006, c 102, pt of §2]

" **[\$39A-287] Authorization of special purpose revenue bonds.**

(a) The department, with the approval of the governor, may issue special purpose revenue bonds for each single project or multi-project program for not-for-profit private organizations, for-profit private organizations, and public instrumentalities and their qualified affiliates engaged in the development of low- and moderate-income housing that has been authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of the special purpose revenue bonds is in the public interest; and provided further that no authorization shall be made for a period exceeding five years of its enactment. Any special purpose revenue bond authorization, or any portion of a special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of one, or the combined authority of more than one, separate act of the legislature.

The department may combine into a single issue of special purpose revenue bonds two or more proposed issues of special purpose revenue bonds to assist not-for-profit private organizations, for-profit private organizations, and public instrumentalities and their qualified affiliates in the development of low- and moderate-income housing, separately authorized and approved by the governor as aforesaid, in the total amount not exceeding the aggregate of the proposed separate issues of special purpose revenue bonds. The special purpose revenue bonds of each issue:

- (1) Shall be dated;
- (2) Shall bear interest at a rate or rates;
- (3) Shall mature at a time or times, not to exceed forty years from their date or dates;
- (4) Shall have a rank or priority; and
- (5) May be made redeemable before maturity at the option of the department, at a price or prices and under terms and conditions,

all as may be determined by the department.

The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached, and the manner of execution of the special purpose revenue bonds. The department shall also fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company approved by the director of finance within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine. Provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in a manner, either at public or private sale, and for a price as it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon pertaining to such a bond become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for and upon the cancellation of the mutilated bond or coupon, or in lieu of and in substitution for the lost, stolen, or destroyed bond or coupon.

The new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has:

- (1) Paid the reasonable expense and charges in connection therewith;
 - (2) Filed with the department or its fiduciary evidence satisfactory to the department or its fiduciary that the bond or coupon was lost, stolen, or destroyed, if such was the case, and that the holder was the owner; and
 - (3) Has furnished indemnity satisfactory to the department.
- (d) In its discretion, the department may direct that CUSIP identification numbers shall be printed on the bonds. If CUSIP identification numbers are imprinted on the bonds:
- (1) No such number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted; and
 - (2) No liability shall attach to the department or any of its officers or agents, including any fiscal agent, paying agent, or registrar for the bonds, because of the numbers or their use, including any use made by the department or any of its officers or agents, or because of any inaccuracy, error, or omission with respect thereto or in the numbers' use.

In its discretion, the department may require that all costs of obtaining and imprinting the CUSIP identification numbers shall be paid by the purchaser of the bonds.

For the purposes of this subsection, "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association. [L 2006, c 102, pt of §2]

" **[§39A-288] Special purpose revenue bond anticipation notes.** Whenever the department shall have authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of the bonds and of the receipt of the proceeds of sale thereof, for the purpose for which the bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of the notes 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 special purpose revenue bonds in anticipation of which the notes are issued and

the revenues from which would be payable and by which the bonds would be secured; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of 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 notes paid in that manner. The authorization, issuance, and details of the notes shall be governed by the provision of this part with respect to special purpose revenue bonds insofar as the same may apply; provided that each note, together with all renewals and extensions of the note, or refundings of the note by other notes issued under this section, shall mature within five years from the date of the original note. [L 2006, c 102, pt of §2]

" **[§39A-289] Powers with respect to and security for special purpose revenue bonds.** To secure the payment of any of the special purpose revenue bonds issued pursuant to this part, including interest on the bonds, or in connection with the bonds, the department shall have the power to:

- (1) Pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed or refinanced from bond proceeds, including interest on the bonds, and to covenant against pledging any revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon the revenues;
- (2) Pledge and assign the interest of the department under the project agreement and other related agreements and the rights, duties, and obligations of the department thereunder, including the right to receive revenues;
- (3) Covenant as to the use and disposition of the proceeds from the sale of the bonds;
- (4) Covenant to set aside or pay over reserves and sinking funds for the bonds and as to the disposition thereof;
- (5) Covenant and prescribe as to what occurrences shall constitute "events of default" and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;

- (6) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by the department of any covenant, condition, or obligation;
- (7) Designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with the trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which the bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply the revenues to the payment of the principal and interest on the bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering the bonds or in carrying out the project agreement. If a trustee is appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary, convenient, or desirable to secure the bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other related agreements as well as the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds. The department may also authorize and empower the trustee to perform functions with respect to payment, purchase, registration, transfer, exchange, and redemption as the department may deem necessary, advisable, or expedient, including, without limitation, the holding of the special purpose revenue bonds and coupons that have been paid and the supervision of the destruction of the bonds and coupons according to the law;
- (8) Execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties; and

- (9) Make covenants and perform any acts as may be necessary, convenient, or desirable to secure the bonds, although such covenants, acts, or items may not be enumerated here.

The department may do all things in the issuance of the bonds and for their security that are consistent with the Constitution of the State of Hawaii. [L 2006, c 102, pt of §2]

" **[\$39A-290] Security for special purpose revenue bonds.** Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement, project agreements, or other supplemental agreements entered into with respect to the project or projects for the financing of which the special purpose revenue bonds were issued. The special purpose revenue bonds shall be secured solely by these revenues and by the pledges and assignments authorized by this part. Subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, all special purpose revenue bonds of the same issue shall have a prior and paramount lien on the revenue derived from the project agreement or agreements with respect to the project or projects for which the bonds were issued. The lien shall be over and ahead of all special purpose revenue bonds of any issue payable from the revenues that may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the right and privilege may be reserved by the department in the trust indenture securing an issue of special purpose revenue bonds to subsequently issue additional special purpose revenue bonds, subject to legislative authorization of the issue as provided in section 39A-287. The department may also permit the project party or another party on its behalf to incur debt, from time to time, payable from the revenues derived from the project agreement on a parity with the first issue of the special purpose revenue bonds. Any subsequent issue of special purpose revenue bonds and other debt issued or incurred in accordance with the provisions of the trust indenture shall be secured equally and ratably with the first issue of the special purpose revenue bond by a lien on the revenues in accordance with this part and without priority based on the date of sale, date of execution, or date of delivery.

Notwithstanding any other provisions of this part, all or part of the property constituting the project and all interest of the project party in the project and the revenues of the project party therefrom may be subjected to the present and

future lien of any mortgage of the project party securing the project party's bonds. The rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage. [L 2006, c 102, pt of §2]

" **[§39A-291] Special purpose revenue bonds not a general obligation of the State.** No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of the taxing power of the State to pay for the bonds or the interest on the bonds, and no moneys other than the revenues pledged to the bonds shall be applied toward their payment. Each special purpose revenue bond issued under this part shall recite in substance that the bond, including interest on the bond, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof and that the bond is not secured directly or indirectly by the full faith and credit of the State, by the general credit of the State, or by any revenue or taxes of the State other than the revenues specifically pledged thereto. [L 2006, c 102, pt of §2]

" **[§39A-292] Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers on the date of the signing of the bonds shall be valid and sufficient for all purposes, notwithstanding that before the delivery of and payment for the bonds, all the persons whose signatures appear on the bonds shall have ceased to be officers of the department. The special purpose revenue bonds shall contain a recital that they are issued pursuant to this part, and the recital shall be conclusive evidence of their validity and of the regularity of their issuance. [L 2006, c 102, pt of §2]

" **[§39A-293] Use of revenues derived from project agreement.** The department may appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premium, if any, and interest on the bonds for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves; and

(2) To the extent not paid by the project party to provide for all expenses of administration, operation, and maintenance of the project, including reserves. Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State. [L 2006, c 102, pt of §2]

" **[\$39A-294] Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income derived from the bonds issued pursuant to this part shall be exempt from all state, county, and municipal taxation, except for inheritance, transfer, and estate taxes. [L 2006, c 102, pt of §2]

" **[\$39A-295] Federal tax-exempt status.** To the extent practicable, special purpose revenue bonds issued pursuant to this part shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes, except as certain minimum taxes or environmental taxes may apply. The department may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes. [L 2006, c 102, pt of §2]

" **[\$39A-296] Exemption from taxation of department property.** All revenues derived by the department from any project or under the project agreement pertaining to it shall be exempt from all state, county, and municipal taxation. Any right, title, and interest of the department in any project shall also be exempt from all state, county, and municipal taxation.

Except as otherwise provided by law, the interest of the project party or user of a project under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by the project party or other user. [L 2006, c 102, pt of §2]

" **[\$39A-297] Refunding special purpose revenue bonds.** The legislature, by an act passed by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption.

The legislature may also provide, by an act passed by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of:

- (1) Financing or refinancing the cost of a project or improvement or expansion of the project; and
- (2) Refunding special purpose revenue bonds that shall have been issued under this part and shall then be outstanding, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption.

Nothing in this section shall require or be deemed to require the legislature to elect to redeem or prepay special purpose revenue bonds being refunded. Moreover, nothing in this section shall require or be deemed to require the legislature to elect to redeem or prepay the special purpose revenue bonds being refunded, which were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any law authorizing the issuance thereof, or, if the department elects to redeem or prepay any bonds, to redeem or prepay as of any particular date or dates. The issuance of the special purpose revenue bonds, the maturities and other details regarding the bonds, the rights and remedies of the bondholders, and the rights, powers, privileges, duties, and obligations of the department with respect to the bonds and bondholders, shall be governed by the foregoing provisions of this part insofar as may be applicable. [L 2006, c 102, pt of §2]

" **[\$39A-298] Status of special purpose revenue bonds under Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration. [L 2006, c 102, pt of §2]

" **[\$39A-299] Special purpose revenue bonds as legal investments and lawful security.** The special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State and its political corporations or subdivisions. The special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and of the counties or other political corporations or subdivisions of the State. The bonds shall be lawful and sufficient security for these deposits to the extent of their value when accompanied by all unmatured coupons pertaining to the bonds. [L 2006, c 102, pt of §2]

" **[\$39A-300] Access to and public disclosure of financial records of project party.** (a) Each project party with a project agreement with the department shall allow the department full access to its financial records. Upon the request of the department for the examination of the financial records, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records that pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purpose of this section. [L 2006, c 102, pt of §2]

" **[\$39A-301] Estimate of benefits.** (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on a comparison between the use of the proceeds of the special purpose revenue bonds instead of other means of financing and shall be in terms of dollars projected to be or actually saved by consumers of the services of the project party. The format of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing less costly services by a project party to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 2006, c 102, pt of §2]

" **[§39A-302] Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall control. [L 2006, c 102, pt of §2]

"PART X. ASSISTING AGRICULTURAL ENTERPRISES

Note

Part heading amended by L 2014, c 103, §1.

§39A-311 Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Department" means the department of budget and finance.

"Project" means any combination of land, buildings, and other improvements thereon, including without limitation irrigation systems and infrastructure, for use of, or for, or to assist an agricultural enterprise, including without limiting the generality of the foregoing, machinery, equipment, furnishings, and apparatus that are deemed necessary, suitable, or useful to the enterprise.

"Project agreement" means any agreement entered into under this part by the department with a project party to finance, construct, operate, or maintain a project from the proceeds of special purpose revenue bonds, or to lend the proceeds of special purpose revenue bonds to assist an agricultural enterprise, including without limitation any loan agreement.

"Project party" means a person, firm, or corporation qualified to do business in this State and conducting or proposing to conduct an agricultural enterprise.

"Special purpose revenue bonds" or "bonds" means bonds, notes, or other evidences of indebtedness of the State issued pursuant to this part. [L 2006, c 148, pt of §1; am L 2014, c 103, §2]

" **§39A-312 Department powers as to agricultural enterprises.**
In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, maintenance of a project, or refinancing of outstanding obligations related to a project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement previously approved by the governor; and

- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party. [L 2006, c 148, pt of §1]

Note

Section heading amended by L 2014, c 103, §3.

" **[§39A-313] Compliance with state and local law.** The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of the project from the laws, ordinances, and rules of the State or any political subdivision thereof, or any departments or boards thereof with respect to:

- (1) The construction, operation, and maintenance of projects;
- (2) Compliance with zoning laws or regulations;
- (3) Obtaining of building permits; and
- (4) Compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project.

These laws shall be applicable to the party or any other user to the same extent they would be if the costs of the project were directly financed by the project party. [L 2006, c 148, pt of §1]

" **§39A-314 Conditions precedent to negotiating and entering into a project agreement.** (a) Prior to entering into negotiations with respect to a project agreement or at any time during the negotiations, the department shall require that as a condition to the negotiations or the continuation thereof, the project party shall agree to pay all fees, costs, and expenses assessed by the department even though a project agreement may not be entered into. The department may further require the deposit of moneys with the department as security to pay for fees, costs, and expenses. Any amount of the deposit in excess of the amount required to pay the State shall be returned by the department to the party that has made the deposit. The State

shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance the project pursuant to section 39A-317 and the department has determined that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise. [L 2006, c 148, pt of §1; am L 2007, c 44, §17]

" **§39A-315 Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing of which the special purpose revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, the sum or sums, at the time or times, and in the amounts that shall be sufficient:
 - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as the bonds become due, including any premium payable upon any required redemption of the bonds;
 - (B) To establish or maintain a reserve, if any, that may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) To pay all fees and expenses, including the fees and expenses of the paying agents and trustees, assessed in connection with the special purpose revenue bonds; and
 - (D) To pay the fees, costs, and expenses (direct or indirect) assessed by the department in

administering the bonds or in carrying out the project agreement; and

- (2) To operate, maintain, and repair the project as long as it is used, as provided in the project agreement, and to pay all costs of the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, or be deemed to be, revenues of the project and shall be paid into the general fund of the State. [L 2006, c 148, pt of §1; am L 2007, c 44, §18]

" **§39A-316 Issuance of special purpose revenue bonds to finance projects.** In addition to the other powers that it may otherwise have, the department may issue special purpose revenue bonds to finance or refinance, in whole or in part, the costs of facilities of, or for, or to loan the proceeds of the bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

In determining the cost of any project, the department may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of the project;
- (2) Interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed from the proceeds of the bonds accruing or incurred prior to and during the estimated period of construction and for the period not exceeding twelve months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the project;
- (6) Administration expenses;
- (7) Legal, accounting, consulting, and other special service fees;
- (8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and
- (9) Other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction,

renovation, rehabilitation, improvement, betterment, operation, maintenance, or extension of the project, the financing or refinancing thereof, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of the bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to an agricultural enterprise and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of the bonds to assist project parties is in the public interest. [L 2006, c 148, pt of §1; am L 2014, c 103, §4]

" **[§39A-317] Authorization of special purpose revenue bonds.**

(a) Special purpose revenue bonds for each project or multi-project program shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of the bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any special purpose revenue bond authorization, or any portion of the special purpose revenue bond authorization that has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at a rate or rates, shall mature at a time or times not exceeding forty years from their date or dates, shall have a rank or priority and may be made redeemable before maturity at the option of the department, at a price or prices and under terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest that may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine. Provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and

interest. The department may sell special purpose revenue bonds either at public or private sale and for a price that it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of the mutilated bond or coupon, or in lieu of and in substitution for a lost, stolen, or destroyed bond or coupon. The new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has:

- (1) Paid the reasonable expense and related charges;
- (2) In the case of a lost, stolen, or destroyed bond or coupon, filed with the department or its fiduciary evidence satisfactory to the department or its fiduciary that the bond or coupon was lost, stolen, or destroyed and that the holder was the owner of the bond; and
- (3) Furnished indemnity satisfactory to the department.

(d) The department may provide that CUSIP identification numbers be printed on the special purpose revenue bonds. If numbers are imprinted on the bonds:

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

The department may require that all costs of obtaining and imprinting the numbers shall be paid by the purchaser of the bonds. For the purpose of this subsection, 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 2006, c 148, pt of §1]

" **[§39A-318] Special purpose revenue bond anticipation notes.** Whenever the department has authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of the bonds and of the receipt of the proceeds of sale of the bonds, for the purposes for which the bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of the notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which the bonds would be secured; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of 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 notes paid in such manner. The authorization, issuance, and the details of the notes shall be governed by this part with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note. [L 2006, c 148, pt of §1]

" **[§39A-319] Powers with respect to and security for special purpose revenue bonds.** To secure the payment of any of the special purpose revenue bonds issued pursuant to this part and interest thereon, or in connection with the bonds, the department shall have the power:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed from proceeds thereof and interest thereon, and to covenant against thereafter pledging any revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon the revenues;
- (2) To pledge and assign the interest and right of the department under the project agreement and other agreements related thereto and the rights, duties, and

- obligations of the department thereunder, including the right to receive revenues thereunder;
- (3) To covenant as to the use and disposition of the proceeds from the sale of the bonds;
 - (4) To covenant to set aside or pay over reserves and sinking funds for the bonds and as to the disposition thereof;
 - (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;
 - (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;
 - (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with the trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which the bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply the revenues to the payment of the principal and interest on the bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering the bonds or in carrying out the project agreement. If a trustee is appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable to secure the bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special

purpose revenue bonds. The department may also authorize and empower the trustee to perform these functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation the holding of the special purpose revenue bonds and coupons that have been paid and the supervision of the destruction thereof in accordance with law;

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties; and
- (9) To make covenants and do any and all acts as may be necessary, convenient, or desirable to secure the bonds, notwithstanding that the covenants, acts, or items may not be enumerated herein.

The department shall have the power to do all things in the issuance of the bonds and for their security that are consistent with the Constitution of the State of Hawaii. [L 2006, c 148, pt of §1]

" **[§39A-320] Security for special purpose revenue bonds.**

Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other supplemental agreements entered into with respect to the project and shall be secured solely by the bond revenues and by the pledges and assignments authorized by this part. Subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, all special purpose revenue bonds of the same issue shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the project, for which the bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable from the revenues that may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the department may reserve the right and privilege to subsequently issue additional series of special purpose revenue bonds, from time to time, payable from the revenues derived from the project agreement on a parity with the special purpose revenue bonds previously issued, and the subsequently issued series of special purpose revenue bonds may be secured, without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this part.

Notwithstanding any other provisions herein, all or part of the property constituting the project and all interest of the project party in the project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds, and the rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage. [L 2006, c 148, pt of §1]

" **[\$39A-321] Special purpose revenue bonds not a general obligation of the State.** No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of the taxing power of the State to pay the bonds or the interest thereon and no moneys other than the revenues pledged to the bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this part shall recite in substance that the bond, including interest thereon, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that the bond is not secured, directly or indirectly, by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the revenues specifically pledged thereto. [L 2006, c 148, pt of §1]

" **[\$39A-322] Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor, any or all the persons whose signatures appear thereon shall have ceased to be officers of the department. Special purpose revenue 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 2006, c 148, pt of §1]

" **[\$39A-323] Use of revenues derived from project agreement.** The department shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premiums if any, and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefor; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operations, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State. [L 2006, c 148, pt of §1]

" **[\$39A-324] Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state and county taxation except inheritance, transfer, and estate taxes. [L 2006, c 148, pt of §1]

" **[\$39A-325] Federal tax exempt status.** To the extent practicable, special purpose revenue bonds issued pursuant to this part shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes, except as certain minimum taxes or environmental taxes may apply. The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes. [L 2006, c 148, pt of §1]

" **[\$39A-326] Exemption from taxation of department property.** All revenues derived by the department from any project or under the project agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the department in any project shall also be exempt from all state and county taxation.

Except as otherwise provided by law, the interest of the project party or user of the project under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were

directly financed by the project party or other user. [L 2006, c 148, pt of §1]

" **[\$39A-327] Refunding special purpose revenue bonds.** By act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, the legislature may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption. By act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, the legislature may provide for the issuance of a single issue of special purpose revenue bonds for the combined purposes of:

- (1) Financing or refinancing the cost of a project or improvement or expansion thereof; and
- (2) Refunding special purpose revenue bonds that shall theretofore have been issued under this part and shall then be outstanding, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption.

Nothing in this section shall require or be deemed to require the department to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded that were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any instruments providing for the issuance thereof, or, if the department elects to redeem or prepay any bonds, to redeem or prepay as of any particular date or dates. The issuance of refunding special purpose revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable. [L 2006, c 148, pt of §1]

" **[\$39A-328] Status of special purpose revenue bonds under the Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the

provisions of the special purpose revenue bonds pertaining to registration. [L 2006, c 148, pt of §1]

" **[§39A-329] Special purpose revenue bonds as legal investments and lawful security.** Special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. The special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and the bonds shall be lawful and sufficient security for public fund deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto. [L 2006, c 148, pt of §1]

" **[§39A-330] Access to and public disclosure of financial records of project party.** (a) Each project party with a project agreement with the department shall allow the department full access to the project party's financial records. Upon the request of the department for the examination of any financial record, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records that pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 2006, c 148, pt of §1]

" **[§39A-331] Estimate of benefits.** (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on the creation of new jobs and potential effect on tax receipts. The format of and method for determining the estimates shall be

established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing benefits to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 2006, c 148, pt of §1]

" **[§39A-332] Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall control. [L 2006, c 148, pt of §1]

"[PART XII.] ASSISTING DAM AND RESERVOIR OWNERS

Note

This part was enacted by Act 147 (2012). Section 3 of Act 147 provides:

"SECTION 3. This Act shall take effect on July 1, 2012, and upon ratification of constitutional amendments [sic] authorizing the State to issue special purpose revenue bonds and use the proceeds from the bonds to assist dam and reservoir owners."

Although House Bill No. 2594 (2012) proposed an amendment to article VII, §12 of the state constitution to authorize the State to issue special purpose revenue bonds and use the proceeds from the bonds to assist dam and reservoir owners, that constitutional amendment was not ratified in the 2012 election. However, in 2014, Senate Bill No. 2876 proposed an amendment to the same article and section of the state constitution to similarly authorize the State to issue special purpose revenue bonds and use the proceeds from the bonds to assist dam and reservoir owners. That constitutional amendment was ratified in the 2014 election.

[§39A-341] Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Appurtenant works" shall have the same meaning in this part as it has in section 179D-3.

"Dam" shall have the same meaning in this part as it has in section 179D-3.

"Department" means the department of budget and finance.

"Owner" means any person subject to chapter 179D who has a right, title, or interest in or to the dam or reservoir or to the property upon which the dam, reservoir, or appurtenant works are located or proposed to be located.

"Person" or "persons" means an individual, firm, enterprise, partnership, corporation, association, cooperative or other legal entity, governmental body or agency, board, bureau or other instrumentality thereof, or any combination of the foregoing.

"Project" means any work on a dam, reservoir, or appurtenant works necessary to maintain or improve the dam, reservoir, or appurtenant works.

"Project agreement" means any agreement entered into under this part by the department with a project party to finance, construct, operate, or maintain a project from the proceeds of special purpose revenue bonds, or to lend the proceeds of special purpose revenue bonds to assist dam and reservoir owners, including without limitation any loan agreement.

"Project party" means a person or persons who are dam and reservoir owners.

"Reservoir" shall have the same meaning in this part as it has in section 179D-3.

"Special purpose revenue bonds" or "bonds" means bonds, notes, or other evidences of indebtedness of the State issued pursuant to this part. [L 2012, c 147, pt of §1]

" **[§39A-342] Department powers as to dam and reservoir owners.** In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department shall include the following:

- (1) Notwithstanding and without compliance with section 103-7, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the

acquisition, purchase, construction, reconstruction, improvement, betterment, extension, maintenance of a project, or refinancing of outstanding obligations related to a project;

- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement previously approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party. [L 2012, c 147, pt of §1]

" **[§39A-343] Compliance with state and local law.** The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of the project from the laws, ordinances, and rules of the State or any political subdivision thereof, or any departments or boards thereof with respect to:

- (1) The construction, operation, and maintenance of projects;
- (2) Compliance with zoning laws or regulations;

- (3) Obtaining of building permits; and
- (4) Compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project.

These laws shall be applicable to the party or any other user to the same extent they would be if the costs of the project were directly financed by the project party. [L 2012, c 147, pt of §1]

" **[\$39A-344] Conditions precedent to negotiating and entering into a project agreement.** (a) Prior to entering into negotiations with respect to a project agreement or at any time during the negotiations, the department shall require that as a condition to the negotiations or the continuation thereof, the State shall be reimbursed for any and all costs and expenses incurred by it even though a project agreement may not be entered into. The department may further require the deposit of moneys with the department as security for the reimbursement. Any amount of the deposit in excess of the amount required to reimburse the State shall be returned by the department to the party that has made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance the project pursuant to section 39A-347 and the department has thereafter found and determined either that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise. [L 2012, c 147, pt of §1]

" **[\$39A-345] Project agreement.** No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing of which the special purpose revenue bonds are to be issued. Any project agreement

entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, the sum or sums, at time or times, and in amounts that will be at least sufficient:
 - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as and when the same become due, including any premium payable upon any required redemption of the bonds;
 - (B) To establish or maintain a reserve, if any, that may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) To pay all fees and expenses, including the fees and expenses of the paying agents and trustees, incurred in connection with the special purpose revenue bonds; and
 - (D) To pay the expenses, direct or indirect, incurred by the State, as determined by the department, in administering the bonds or in carrying out the project agreement; and
- (2) To operate, maintain, and repair the project as long as it is used, as provided in the project agreement, and to pay all costs of the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, or be deemed to be, revenues of the project and shall be paid into the general fund of the State. [L 2012, c 147, pt of §1]

" **[§39A-346] Issuance of special purpose revenue bonds to finance projects.** In addition to the other powers that it may otherwise have, the department may issue special purpose revenue bonds to finance or refinance, in whole or in part, the costs of facilities of, or for, or to loan the proceeds of the bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

In determining the cost of any project, the department may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of the project;
- (2) Interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed from the proceeds of the bonds accruing or incurred prior to and during the estimated period of construction and for the period not exceeding twelve months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the project;
- (6) Administrative expenses;
- (7) Legal, accounting, consulting, and other special service fees;
- (8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and
- (9) Other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, maintenance, or extension of the project, the financing or refinancing thereof, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of the bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to dam and reservoir owners and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of the bonds to assist project parties is in the public interest. [L 2012, c 147, pt of §1]

" **[§39A-347] Authorization of special purpose revenue bonds.**

(a) Special purpose revenue bonds for each project or multi-project program shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of the bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any special purpose revenue bond authorization, or any portion of the special purpose revenue bond authorization that has not been

issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at a rate or rates, shall mature at a time or times not exceeding forty years from their date or dates, shall have a rank or priority and may be made redeemable before maturity at the option of the department, at a price or prices and under terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest that may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine. Provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds either at public or private sale and for a price that it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of the mutilated bond or coupon, or in lieu of and in substitution for a lost, stolen, or destroyed bond or coupon. The new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has:

- (1) Paid the reasonable expense and related charges;
- (2) In the case of a lost, stolen, or destroyed bond or coupon, filed with the department or its fiduciary evidence satisfactory to the department or its fiduciary that the bond or coupon was lost, stolen, or destroyed and that the holder was the owner of the bond; and
- (3) Furnished indemnity satisfactory to the department.

(d) The department may provide that CUSIP identification numbers be printed on the special purpose revenue bonds. If numbers are imprinted on the bonds:

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

The department may require that all costs of obtaining and imprinting the numbers shall be paid by the purchaser of the bonds. For the purpose of this subsection, 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 2012, c 147, pt of §1]

" **[§39A-348] Special purpose revenue bond anticipation notes.** Whenever the department has authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of the bonds and of the receipt of the proceeds of sale of the bonds, for the purposes for which the bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of the notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which the bonds would be secured; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of 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 notes paid in such manner. The authorization, issuance, and the details of the notes shall be governed by this part with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note. [L 2012, c 147, pt of §1]

" **[\$39A-349] Powers with respect to and security for special purpose revenue bonds.** To secure the payment of any of the special purpose revenue bonds issued pursuant to this part and interest thereon, or in connection with the bonds, the department shall have the power:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed from proceeds thereof and interest thereon, and to covenant against thereafter pledging any revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon the revenues;
- (2) To pledge and assign the interest and right of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder;
- (3) To covenant as to the use and disposition of the proceeds from the sale of the bonds;
- (4) To covenant to set aside or pay over reserves and sinking funds for the bonds and as to the disposition thereof;
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;
- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;
- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with the trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which the bonds

are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply the revenues to the payment of the principal and interest on the bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering the bonds or in carrying out the project agreement. If a trustee is appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable to secure the bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds. The department may also authorize and empower the trustee to perform these functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation the holding of the special purpose revenue bonds and coupons that have been paid and the supervision of the destruction thereof in accordance with law;

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties; and
- (9) To make covenants and do any and all acts as may be necessary, convenient, or desirable to secure the bonds, notwithstanding that the covenants, acts, or items may not be enumerated herein.

The department shall have the power to do all things in the issuance of the bonds and for their security that are consistent with the Constitution of the State of Hawaii. [L 2012, c 147, pt of §1]

" **[\$39A-350] Security for special purpose revenue bonds.** Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other supplemental

agreements entered into with respect to the project and shall be secured solely by the bond revenues and by the pledges and assignments authorized by this part. Subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, all special purpose revenue bonds of the same issue shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the project, for which the bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable from the revenues that may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the department may reserve the right and privilege to subsequently issue additional series of special purpose revenue bonds, from time to time, payable from the revenues derived from the project agreement on a parity with the special purpose revenue bonds previously issued, and the subsequently issued series of special purpose revenue bonds may be secured, without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this part.

Notwithstanding any other provisions herein, all or part of the property constituting the project and all interest of the project party in the project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds, and the rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage. [L 2012, c 147, pt of §1]

" **[§39A-351] Special purpose revenue bonds not a general obligation of the State.** No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of the taxing power of the State to pay the bonds or the interest thereon and no moneys other than the revenues pledged to the bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this part shall recite in substance that the bond, including interest thereon, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that the bond is not secured, directly or indirectly, by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than

the revenues specifically pledged thereto. [L 2012, c 147, pt of §1]

" **[\$39A-352] Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor, any or all the persons whose signatures appear thereon shall have ceased to be officers of the department. Special purpose revenue 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 2012, c 147, pt of §1]

" **[\$39A-353] Use of revenues derived from project agreement.** The department shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premiums if any, and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefor; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operations, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State. [L 2012, c 147, pt of §1]

" **[\$39A-354] Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state and county taxation except inheritance, transfer, and estate taxes. [L 2012, c 147, pt of §1]

" **[\$39A-355] Federal tax exempt status.** To the extent practicable, special purpose revenue bonds issued pursuant to this part shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the

special purpose revenue bonds shall be excluded from gross income for federal income tax purposes, except as certain minimum taxes or environmental taxes may apply. The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes. [L 2012, c 147, pt of §1]

" **[\$39A-356] Exemption from taxation of department property.** All revenues derived by the department from any project or under the project agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the department in any project shall also be exempt from all state and county taxation.

Except as otherwise provided by law, the interest of the project party or user of the project under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by the project party or other user. [L 2012, c 147, pt of §1]

" **[\$39A-357] Refunding special purpose revenue bonds.** By act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, the legislature may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption. By act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, the legislature may provide for the issuance of a single issue of special purpose revenue bonds for the combined purposes of:

- (1) Financing or refinancing the cost of a project or improvement or expansion thereof; and
- (2) Refunding special purpose revenue bonds that shall theretofore have been issued under this part and shall then be outstanding, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption.

Nothing in this section shall require or be deemed to require the department to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay

special purpose revenue bonds being refunded that were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any instruments providing for the issuance thereof, or, if the department elects to redeem or prepay any bonds, to redeem or prepay as of any particular date or dates. The issuance of refunding special purpose revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable. [L 2012, c 147, pt of §1]

" **[§39A-358] Status of special purpose revenue bonds under the Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration. [L 2012, c 147, pt of §1]

" **[§39A-359] Special purpose revenue bonds as legal investments and lawful security.** Special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. The special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and the bonds shall be lawful and sufficient security for public fund deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto. [L 2012, c 147, pt of §1]

" **[§39A-360] Access to and public disclosure of financial records of project party.** (a) Each project party with a project agreement with the department shall allow the department full access to the project party's financial records. Upon the request of the department for the examination of any financial record, the project party shall allow the department to examine

the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records that pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 2012, c 147, pt of §1]

" **[\$39A-361] Estimate of benefits.** (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on the creation of new jobs and potential effect on tax receipts. The format of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing benefits to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section. [L 2012, c 147, pt of §1]

" **[\$39A-362] Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall control. [L 2012, c 147, pt of §1]