

ACT 221

H. B. 871.

A Bill for an Act Relating to Honolulu Harbor; Authorizing the Acquisition of Private Properties and Facilities with General Obligation Bond and Revenue Bond Funds, the Issuance of General Obligation and Revenue Bonds, and Expenditures from the Harbor Special Fund for the Fiscal Year Beginning July 1, 1967; and Amending the Revised Laws of Hawaii 1955, to Facilitate the Revenue Bond Financing of the Acquisition.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the best interest of the public that all maritime-related facilities in the Honolulu Harbor complex should be vested in the single ownership of the State in order to insure the orderly and efficient development of the Harbor for maritime purposes.

SECTION 2. The sum of \$18,500,000 to finance the acquisition of 85.56 acres of private properties at Honolulu Harbor is authorized to be expended for such purposes from general obligation bond funds and harbor revenue bond funds as the first of five yearly incremental payments to be applied against the total acquisition cost of either (1) \$40,228,486, or (2) the fair market value of the 85.56 acres as of the date of approval of this Act, whichever is lower; provided that liability by the State for the further incremental payments shall be incurred only when authorized by subsequent enactments of the legislature.

SECTION 3. General obligation bonds may be issued to yield an amount up to \$10,500,000 of general obligation bond funds for the purposes of section 2 of this Act. All general obligation bond funds shall have the bond principal and interest reimbursed from the harbor special fund. Reimbursement may be made on actual interest payments for the first three years and for principal and interest in equal annual amounts for a period not to exceed twenty-seven years thereafter, even though the general obligation

bonds so issued may commence maturing within three years after their issuance and may have a shorter final maturity than thirty years. The harbor special fund shall be liable to the general fund for interest on the difference between (1) the payments made by the harbor special fund to the general fund and (2) the amounts paid by the general fund on the general obligation bonds issued hereunder. Both the reimbursement and the interest on the difference shall constitute bond requirements on general obligation bonds within the meaning of the paragraph beginning with the word "Fourth" of section 112-20 of the Revised Laws of Hawaii 1955, as amended, and shall be paid pursuant to that paragraph.

SECTION 4. The department of transportation may issue harbor revenue bonds pursuant to part III, chapter 137, Revised Laws of Hawaii 1955, as amended, to yield an amount up to \$10,500,000 of harbor revenue bond funds for the purposes of section 2 of this Act, plus, if so determined by the department and approved by the governor, any additional amounts as may be deemed necessary by the department to pay interest on the harbor revenue bonds for a period not to exceed two years from the date of their issuance, to establish, maintain or increase reserves for the bonds and to pay the expenses of the issuance of the bonds. The expenses of the issuance of the harbor revenue bonds are payable out of the harbor special fund or from the proceeds of the sale of the bonds. The principal and interest on the harbor revenue bonds are payable or provided for out of the harbor special fund.

SECTION 5. Section 112-18, Revised Laws of Hawaii 1955, as amended, is further amended to read as follows:

"Sec. 112-18. Rates, how fixed. The department shall adjust and fix and enforce the rates assessable and chargeable by it in respect to dockage, wharfage, demurrage and other rates and fees pertaining to harbors, wharves and properties managed and operated by it so as to produce from the rates and fees:

(1) In respect to all such harbors, wharves and other properties, except such as are principally used for recreation or the landing of fish, revenues sufficient to: (A) pay when due the principal of and interest on all bonds and other obligations for the payment of which the revenue is or shall have been pledged, charged or otherwise encumbered, or which are otherwise payable from the revenue or from a special fund maintained or to be maintained from the revenue, including reserves therefor, and to maintain the special fund in an amount at least sufficient to pay when due all bonds or other revenue obligations and interest thereon, which are payable from the special fund, including reserves therefor; (B) provide for all expenses of operation and maintenance of the properties, including reserves therefor, and the expenses of the department in connection with operation and maintenance; and (C) reimburse the general fund of the State for all bond requirements for general obligation bonds which are or shall have been issued for harbor or wharf improvements, or to refund any of the improvement bonds, exclud-

ing bonds, the proceeds of which were or are to be expended for improvements which are or will be neither revenue producing nor connected in their use directly with revenue producing properties.

(2) In respect to properties under its control and management which are principally used for recreation or the landing of fish, revenues may be collected based on the expenses of operation and maintenance and the cost to the State of the improvements used; provided, that rates established under this paragraph shall be reasonable and shall be fixed with due regard to the primary purposes of providing public recreational facilities and promoting the fishing industry. All revenues shall be deposited with the director of finance to the credit of the general fund."

SECTION 6. Section 112-20, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 112-20. Harbor special fund; harbor reserve fund. There is created in the treasury of the State the harbor special fund into which funds collected by the department under paragraph (1) of section 112-18 shall be deposited.

The harbor special fund shall be applied, used and disposed of as follows, and in the following order of priority:

First, for the payment when due of all bonds and interest thereon, for the payment of which the revenues are or shall have been pledged, charged or otherwise encumbered, including reserves therefor;

Second, for the expenses of operation and maintenance of the properties designated in paragraph (1) of section 112-18, including reserves therefor and the expenses of the operation of the department in connection with those properties, the general administrative overhead to be prorated between those properties and the properties designated in paragraph (2) of section 112-18;

Third, for the purposes, within the jurisdiction, powers, duties and functions of the department, including the creation and maintenance of reserves, as have been covenanted in any resolution or resolutions of the department or certificate or certificates of the head of the department providing for the issuance of revenue bonds or creating other revenue obligations;

Fourth, to reimburse the general fund of the State for all bond requirements for general obligation bonds which are or have been issued for harbor or wharf improvements with respect to properties designated in paragraph (1) of section 112-18, excluding bonds, the proceeds of which were or are to be expended for improvements which are or will be neither revenue producing nor connected in their use directly with revenue producing properties, or to refund any of the bonds, except insofar as the obligation or reimbursement has been or is canceled by the legislature. Unless otherwise provided by the legislature, bond requirements are the interest on term and serial bonds, sinking fund for term bonds, and principal of serial bonds maturing the following year;

Fifth, for any purpose within the jurisdiction, powers, duties, and functions of the department (excluding properties principally used for recreation

or the landing of fish, except the properties located at Kewalo Basin, ewa of Ala Moana Park, Honolulu), including acquisitions, constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation and planning, all or any of which in the judgment of the department are necessary to the performance of its duties or functions. There is created in the treasury of the State a second separate harbor special fund, into which shall be deposited all moneys to be applied to the foregoing purposes of this paragraph. In anticipation of the payments into and accumulations in the second separate special fund, the department may issue revenue bonds or other revenue obligations of the State, in such sums only as may be authorized by specific act or acts of the legislature and repayable solely out of the second separate special fund, to finance in whole or in part the cost of any acquisition, construction, addition, expansion, improvement, renewal, replacement, or reconstruction. If any revenue bonds or other revenue obligations payable from the second separate special fund are issued, then while any such revenue bonds or other revenue obligations are outstanding: (1) the amount deposited and to be deposited in the second separate special fund from the moneys in the harbor special fund shall never be less than the amount necessary to pay when due the principal of and interest on the bonds and other obligations, including reserves therefor; (2) the department may create any accounts within the second separate special fund as it may deem necessary or desirable; and (3) the moneys in the harbor special fund and in the second separate special fund, in lieu of being appropriated, applied or expended for the purposes and in the order of priority set forth in section 137-59, shall be appropriated, applied or expended as provided in this section, subject to the modifications hereinafter set forth in this paragraph. While any revenue bonds of the State payable directly from the harbor special fund are outstanding, the payments into the second separate special fund to provide for the payment of principal of and interest on the revenue bonds or other revenue obligations payable solely out of the second separate special fund, including reserves therefor, shall be made after the application of moneys in the harbor special fund for first, second and third priority items of this section but prior to the application thereof for the purposes of the remaining paragraphs of this section. After all revenue bonds of the State payable directly from the harbor special fund have been paid or sufficient funds for their payment have been set aside in trust for that purpose, the payments into the second separate special fund to provide for the payment of the principal of and interest on the revenue bonds or other revenue obligations payable solely from the second separate special fund, including reserves therefor, shall be made prior to the use and application of the moneys in the harbor special fund for any other purposes of this section, including without limitation, the second through ninth priority items. Any moneys in the second separate special fund not required for the payment when due of the principal of and interest on any revenue bonds or other revenue obligations payable from the second separate special fund, including reserves therefor, shall be applied to the payment of the costs of acquisitions,

constructions, additions, expansions, improvements, renewals, replacements and reconstructions required by the legislature to be paid from either the harbor special fund or the second separate special fund. All revenue bonds or other revenue obligations for harbor acquisitions, constructions, additions, expansions, improvements, renewals, replacements, or reconstructions authorized by the legislature at the regular session of 1966, or thereafter, to be issued pursuant to part III, chapter 137, may be issued by the department, either payable as to principal and interest directly from the harbor special fund or from the second separate special fund pursuant to this paragraph;

Sixth, to make payments into the general fund as may be required under the provisions of section 132-18;

Seventh, to make any and all other outlays or expenditures not otherwise restricted in this section;

Eighth, to provide a reserve for betterments to harbor undertakings under the jurisdiction of the department;

Ninth, to provide funds for other special reserve funds and other special funds as are created by law.

Until adequate provision is otherwise made for the purposes of this section, no transfer shall be made of all or any part of the moneys in the harbor special fund or in any other special fund created in this section, to the general funds of the State nor shall the funds be applied for any other purposes.

There is created the harbor reserve fund into which the department may make transfers from the harbor special fund in the amounts and at the times as the department shall determine. The amount of the harbor reserve fund shall not at any time exceed \$750,000. The harbor reserve fund may be expended for any of the purposes of and in the same manner as the harbor special fund and shall be subject to the same limitations as are placed upon the harbor special fund. No amount held in or paid from the harbor reserve fund shall be used to reduce the rates assessable or chargeable by the department under paragraph (1) of section 112-18, but in computing its expense under paragraph (1) of section 112-18, the department shall not include any amount for the purpose of increasing or replenishing the reserve fund. The harbor reserve fund shall be maintained at the balances required by the resolutions or certificates providing for the issuance of all bonds payable from the harbor special fund and issued prior to January 1, 1967, or issued thereafter, payable on a parity with bonds issued prior to January 1, 1967, and when permitted by the resolutions or certificates, the moneys in the harbor reserve fund may be applied to the final payment or redemption of those bonds, and the harbor reserve fund shall thereupon be abolished."

SECTION 7. Section 132-18, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 132-18. Transfer from harbor special fund. Any other law to the contrary notwithstanding, there shall be deducted from time to time by the director of finance for the purpose of defraying the prorated estimate of central service expenses of government in relation to the harbor special

fund five per cent of all receipts and deposits in the harbor special fund after deducting therefrom any amounts pledged, charged or encumbered for the payment of bonds or interest thereon during the current year, from which receipts or deposits no deduction of five per cent has previously been made. The deductions shall be transferred to the general fund of the State and become general realizations of the State. For the purposes of this section, the term 'any amounts pledged, charged or encumbered for the payment of bonds or interest thereon during the current year' shall include: (1) the amounts which are so pledged, charged or encumbered; (2) amounts otherwise required to be applied to the payment of principal of and interest on revenue bonds or other revenue obligations; (3) amounts required to be paid into a separate special fund for the payment of principal of and interest on revenue bonds or other revenue obligations payable from the second separate special fund; and (4) amounts required by law to be paid from the harbor special fund into the general fund of the State to reimburse the general fund for bond requirements for general obligation bonds issued for harbor purposes. The second separate special fund maintained by deposits from the harbor special fund shall not be deemed to be a special fund within the meaning of section 132-16 or section 132-17. The director of transportation shall cooperate with the director of finance in effecting such transfer."

SECTION 8. Section 137-50, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 137-50. Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

'Bonds' means bonds, certificates, notes or other obligations or evidences of indebtedness.

'Undertaking' means any public works and properties of the State, or combination thereof.

'Department' means any state department, board, commission, officer, authority or agency (other than a 'municipality' defined by section 140-1) which is charged by law with the administration of an undertaking.

'Governing body' means any board, commission or other body consisting of more than one person, having charge of a department.

'Department head' means any officer having charge of a department for which there is no 'governing body.'"

SECTION 9. Section 137-52, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 137-52. Additional powers of departments. In addition to the powers which it may otherwise have, any department shall have power under this part: (1) to construct, acquire by gift, purchase or the exercise of the right of eminent domain, reconstruct, improve, better or extend any undertaking within its jurisdiction, and to acquire by gift, purchase or the exercise of the right of eminent domain, lands or rights in land or water rights in connection therewith; (2) to operate; and maintain any undertaking within its jurisdiction and furnish the services, facilities and commodities

thereof for its own use and for the use of public and private consumers; (3) to issue revenue bonds of the State in the amounts authorized by specific act or acts of the legislature of the State to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking; (4) to prescribe and collect rates, fees and charges for the services, facilities and commodities furnished by the undertaking; and (5) to pledge the punctual payment of the bonds and interest thereon, or to covenant to pay into any special fund from which any of the bonds may be payable, the revenues of the undertaking, (including improvements, betterments or extensions thereto thereafter constructed or acquired) or of any part of the undertaking sufficient to pay the bonds and interest as they shall become due and to create and maintain reasonable reserves to pay the principal and interest. The amount so pledged or covenanted to be paid may consist of all or any part or portion of the revenues. The department, in determining the cost, may include all costs and estimated costs of the issuance of the bonds, all engineering, inspection, fiscal and legal expenses, and interest which it is estimated will accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this part."

SECTION 10. Section 137-57, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 137-57. Bonds not a general obligation of State. No holder or holders of any 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. Each bond issued under this part shall recite in substance that the bond, including interest thereon, is payable from the revenues of the undertaking pledged to its payment or is otherwise payable from the revenues or from a special fund to be maintained from the revenues, and that the bond does not constitute a debt of the State within the meaning of any limitation of law."

SECTION 11. Section 137-58, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 137-58. Undertakings to be self-supporting. The department issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees or charges for the services, facilities and commodities of the undertaking, and shall revise the rates, fees or charges from time to time whenever necessary so that the undertaking shall be and always remain self-supporting. The rates, fees or charges prescribed shall produce revenues at least sufficient: (1) to pay, when due all bonds and interest thereon, for the payment of which the revenues are or shall have been pledged, charged or otherwise encumbered, or which are otherwise payable from the revenues or payable from a special fund maintained or to be maintained from the revenues, including reserves therefor, and to maintain the special fund in an amount at least sufficient to pay when due all bonds and interest thereon which are payable from the special fund, including reserves therefor; and (2) to pro-

vide for all expenses of operation and maintenance of the undertaking, including reserves therefor.”

SECTION 12. In addition to the sum authorized under section 2 of this Act, the department of transportation may expend from the harbor special fund the following sums, or so much thereof as may be necessary to accomplish the purposes or programs of the fund for the fiscal year beginning July 1, 1967:

Harbors

Administration (Including debt service)	\$1,100,000 (10)
Operation and Maintenance	312,516 (29)

SECTION 13. The amounts authorized in section 12 of this Act and the number of positions indicated by the number enclosed in parentheses immediately thereafter shall be in addition to the amounts and the number of positions authorized for the purposes and programs of the harbors division of the department of transportation by any other act for the fiscal year beginning July 1, 1967.

SECTION 14. If any section, paragraph, sentence, clause, phrase, authorization or appropriation contained in this Act is for any reason held to be unconstitutional or invalid, that holding shall not affect the validity of the remaining portions of this Act.

SECTION 15. This Act shall take effect upon its approval.

(Approved June 5, 1967.)