

ACT 27

S. B. 349.

A Bill for an Act to Amend Part I of Chapter 137 of the Revised Laws of Hawaii 1955, as Amended, Relating to General and Refunding Bonds.

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

SECTION 1. This Act hereby declared to be an urgency measure deemed necessary in the public interest within the meaning of section 11 of Article III of the Constitution of the State of Hawaii.

The following is a statement of the facts constituting such urgency:

Existing statutes do not permit the offering of a redemption premium in the sale of general obligation bonds of the State. In view of rapid changes in the bond market and since it may be necessary for the State to sell its bonds at a relatively high rate, it is deemed urgent that the State be permitted to make its general obligation bonds callable at a premium which will then enable the State to refund those bonds some time in the future at a savings.

The airports division of the department of transportation has an extensive and urgently needed capital improvements program the financing for which is proposed to be done by airport revenue bonds. It is incumbent on the department to sell these airport revenue bonds at the lowest possible interest rate. To accomplish this, the State must be permitted to refund, immediately, the outstanding Series A aviation revenue bonds. In order to avoid drawing from the general funds of the State for the payment of the refunding bonds, it is necessary to pledge the revenues from the aviation fuel tax for the payment of the principal thereof and interest thereon.

SECTION 2. Part I of chapter 137 of the Revised Laws of Hawaii

1955, as amended, is hereby further amended so as to read in its entirety as follows:

"PART I. GENERAL OBLIGATION AND REFUNDING BONDS.

§ 137-1. Authorization to issue; amount. The director of finance of the State may, with the approval of the governor, issue from time to time general obligation bonds of the State, to an amount not exceeding the total amount of such bonds authorized to be issued by acts of the legislature and any amendments thereto in effect at the date of issue of such bonds, and not exceeding the debt limitations prescribed by the Constitution of the State. Except as otherwise specifically provided in the act or acts authorizing the issuance thereof, such bonds shall be issued in the manner and upon the terms as are in this part stated.

§ 137-2. Application of proceeds. The proceeds of bonds so issued shall be exclusively devoted to the purpose or purposes defined and expressed in the acts of the legislature authorizing the issuance of bonds, and such proceeds shall be devoted to such purposes in such order as the governor may determine. The governor may allot the proceeds of any issue of bonds to a particular purpose, or to several purposes, and the proceeds of any issue of bonds may be allotted to various purposes irrespective of whether or not the purposes have all been provided for by the same legislative act, and an allotment may be made of only a portion of the proceeds authorized for a particular purpose. The governor may amend his allotments from time to time. The purpose or purposes of issuance need not be stated in any bond.

§ 137-3. Allotments; appropriations. Whenever the issuance of bonds has been authorized by an act of the legislature, such bonds may be issued, sold and delivered prior to or after any allotments have been made by the governor for the purposes to be financed by the issuance of such bonds. If any appropriation or appropriations, or any expenditure under an appropriation, made in an act of the legislature is conditioned, qualified or dependent, as to effectiveness or amount or otherwise, upon the performance, happening or existence of any act, occurrence or event, bonds authorized by an act or acts of the legislature to finance all or a portion of such appropriation may be issued prior to or after the time when all or any part of such appropriation becomes effective or such expenditure can be made and prior to or after the performance, happening or existence of such act, occurrence or event; provided, however, that the proceeds of such bonds may not be applied to any purpose or project requiring an allotment by operation of law, until such an allotment has been made, or be applied to any appropriation, or any expenditure under an appropriation, which has been so conditioned, qualified or made dependent, until such appropriation has become effective or until such expenditure can be made, or be applied in excess of the amount to which such an appropriation becomes effective, nor shall the provisions of this section permit the issuance of bonds to finance any appropriation which has theretofore lapsed by operation of law.

§ 137-4. Bonds tax exempt; first charge on revenues. All bonds

issued under this part and the income therefrom shall be exempt from all State, county and municipal taxation. Interest and principal payments of such bonds shall be a first charge on the general revenues of the State. The public faith and credit of the State shall be and they are hereby pledged to the punctual payment of the principal and interest thereof as the same shall become due, irrespective of whether or not such pledge be stated in such bonds, and sufficient revenues shall be raised or provided from time to time for the purpose of such payment.

§ 137-5. Interest rate, denominations, maturities, place payable, medium of payment, registration, redemption and other details of bonds. All bonds issued under this part shall bear interest, payable annually or semi-annually, at a rate or rates not exceeding six per centum per annum; shall mature and be payable at such time or times from the date of the issue thereof as will comply with the provisions of the Constitution of the State; may be made payable as to both principal and interest at places within and without the State; may be issued in coupon form without privilege of registration or registrable as to principal only or as to both principal and interest or issued in fully registrable form; may be made registrable at places within and without the State; and may be made redeemable at any time or times prior to their stated maturities at prices not to exceed one hundred four per cent of the par value thereof. The director of finance shall determine the date, denomination or denominations, interest payment dates, maturities, places of payment, registration privileges and places of registration, redemption prices and time or times and method of redemption, and all other details of bonds issued under this part. The principal and interest of all bonds issued under this part shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

§ 137-6. Sale of bonds. The director of finance may make such arrangements as may be necessary or proper for the sale of each issue of bonds or part thereof as are issued under this part. With the approval of the governor, the bonds may be sold for not less than the par value thereof at private sale to the United States of America, or any board, agency, instrumentality or corporation thereof, to the Employees' Retirement System of the State, to any political subdivision of the State, or to any board, agency, instrumentality, corporation or other governmental organization of the State or of any political subdivision of the State. Unless so sold at private sale such arrangements shall provide for the sale of the bonds by the director of finance, after public advertisement for tenders, either with the interest rate to be borne by such bonds having heretofore been fixed by the director with the approval of the governor, in which event the bonds shall be sold to the bidder offering the highest price therefor, or at not less than the par value thereof with the interest rate or rates to be borne by the bonds to be specified by the bidders therefor, in which event if bidders are permitted to specify more than one rate, the bonds shall be sold to the bidder offering the lowest interest cost to the State after allowing for any premium tendered, and if bidders are permitted to

specify only a single rate, the bonds shall be awarded to the bidder offering the lowest rate and the highest price for such lowest rate; provided, the right shall be reserved to reject any and all bids or to waive any irregularity or informality in any bid. Bonds offered for sale without a specified rate or rates of interest shall, without further action, bear interest at the rate or rates specified by the successful bidder therefor. The advertisement for tenders required by this section shall be published at least once and at least five days prior to the date of such sale in a newspaper published and of general circulation in the State and in a financial newspaper or newspapers published in any of the cities of New York, Chicago or San Francisco.

§ 137-7. Premiums to general fund. The premiums received from the sale of any bond issue shall be a realization of the general fund of the State.

§ 137-8. Form and execution of bonds. Bonds issued under this part shall be in such form as the director of finance may determine, shall be lithographed or engraved, shall be signed by the director of finance, shall bear a lithographed or engraved facsimile of the signature of the comptroller of the State, and shall be sealed with the seal or a lithographed or engraved facsimile of the seal of the department of budget and finance of the State; provided, however, that the director of finance, with the approval of the governor, may provide that bonds issued under this part may be typewritten, printed or otherwise reproduced, and that the signature of the comptroller upon such bonds may be his manual signature. Interest coupons shall bear a lithographed or engraved facsimile of the signature of the director of finance. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the director of finance may decide upon may be issued to the purchaser or purchasers of bonds sold pursuant to this part.

§ 137-9. Same, signatures. When bonds of the State are prepared and signed by the director of finance of the State and by the comptroller of the State in office at the time of such signing, the signatures of such director and comptroller shall be valid and sufficient for all purposes, and shall have the same effect as if the persons so officially signing such bonds had remained in office until the delivery of the same to the purchasers although the term of office of such persons or either of them may have expired or they may otherwise have ceased to be such officers before such delivery.

§ 137-10. Bonds negotiable, incontestable. This part, without reference to any other law, shall be full authority to issue, exchange or sell bonds of the State, and such bonds and all interim receipts or certificates shall have all the qualities of negotiable paper under the law merchant. Such bonds shall not be invalid for any irregularity or defect in the proceedings for the issue, sale or exchange thereof. Such bonds shall contain a recital that they have been authorized and issued pursuant to the laws of the State, which recital shall be conclusive evidence of their validity and the regularity of their issuance. No proceedings in respect of the issuance of any such bonds shall be necessary except such proceedings as are required by this part.

§ 137-11. Payment, principal and interest. When bonds issued under this part and the several interest amounts mature, the director of finance shall pay the same. If the bonds or interest are made payable elsewhere than at the office of the director of finance, he shall make arrangements to provide sufficient funds at the designated place or places of payment to meet and pay all such obligations at maturity in accordance with the terms thereof.

There is hereby appropriated out of the general revenues of the State all amounts necessary for the payment from time to time of the principal of the bonds and the several interest amounts as they mature, and this appropriation shall be a paramount appropriation upon the general revenues of the State.

§ 137-12. Fiscal and paying agents and registrars. The director of finance may appoint, with the approval of the governor, such fiscal agents, paying agents and registrars, within and without the State, as may be necessary and expedient to facilitate the sale, purchase, registration, transfer, exchange and redemption of the bonds of the State and the payment of the principal and interest thereon. The director may authorize and empower such fiscal agents and paying agents, for and on behalf of the State, to receive and receipt for moneys realized from the sale of such bonds and to pay out moneys for the payment, redemption or purchase thereof and for the payment of interest thereon, and to receive receipts for all moneys so paid out. Moneys received by the fiscal agents and paying agents from the sale of bonds on behalf of the State shall not, for a period of fifteen days after the sale of bonds, be considered as deposits within the meaning of chapter 133, and moneys placed with the fiscal agents and paying agents for the purpose of purchase or payment or redemption of bonds and coupons shall not be considered as deposits within the meaning of chapter 133. All appointments made under this section may be revoked by the director at any time.

§ 137-13. Refunding bonds authorized. For the purpose of refunding the present and future bonded indebtedness of the State, or bonds issued by any department, board, agency, instrumentality, commission or corporation of the State, the director of finance, with the approval of the governor but without further authorization of the legislature, may from time to time issue general obligation refunding bonds of the State with which to pay, call and redeem all or any part of the outstanding bonds of the State or bonds issued by any department, board, agency, instrumentality, commission or corporation of the State, at or before the maturity or the redemption date thereof, and may include various series and issues of such outstanding bonds in a single issue of refunding bonds and may include refunding bonds and bonds otherwise to be issued under this part in a single issue of bonds. Refunding bonds may be issued to pay principal, any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded. The interest rate or rates of the refunding bonds shall not be limited by the interest rate or rates borne by any of the bonds to be refunded thereby. The refunding bonds may be issued and delivered at or at any time before the

maturity or redemption date of the bonds to be refunded that the director of finance, with the approval of the governor, determines to be in the best interest of the State. The refunding bonds shall be issued in accordance with the provisions of sections 137-4 to 137-6, both inclusive, and sections 137-8 to 137-13, both inclusive, of this part, and all of the provisions of said sections shall be applicable to such refunding bonds; provided that, notwithstanding the provisions of section 137-6 as to the sale of bonds issued under this part, in the discretion of the governor and director of finance, refunding bonds may be exchanged at not less than the par value of such refunding bonds for an equal amount of the bonds to be refunded under the provisions of this part at not more than the par value of the bonds to be refunded. In the event of the sale of refunding bonds, the proceeds therefor shall be applied solely to the payment of the bonds to be refunded under the provisions of this part. Pending the time the proceeds derived from the sale of refunding bonds issued hereunder are required for the purposes for which they were issued, the director may, upon authorization or approval of the governor, invest such proceeds in obligations of, or obligations unconditionally guaranteed by, the United States of America or in savings accounts, time deposits or certificates of deposit of any bank or trust company within or without the State, to the extent that such savings accounts, time deposits or certificates of deposits are collaterally secured by a pledge of obligations of, or obligations unconditionally guaranteed by, the United States of America, and to further secure such refunding bonds the State may, through the director of finance, enter into a contract with any bank or trust company, within or without the State, with respect to the safekeeping and application of the proceeds of such refunding bonds, and the safekeeping and application of the earnings of such investment. All bonds so refunded and redeemed by the issue and sale or issue and exchange of refunding bonds shall be cancelled.

The bonds which may be refunded under the provisions of this section include bonds issued under this part, any bonds payable or secured in whole or in part from the general revenues of the State, bonds payable or secured in whole or in part by any taxes or by the taxing power of the State, and any bonds which must be included when determining the power of the legislature to authorize the issuance of bonds and other evidences of indebtedness of the State. Without express authorization by the legislature, no bonds shall be issued under this part to refund bonds or other indebtedness incurred by a public enterprise of the State or by a public corporation when the only source of payment of or the only security for such bonds or other indebtedness is the revenues of such enterprise or public corporation.

§ 137-14. Validation of proceedings. All proceedings heretofore taken under this part with respect to the contracting of bonded indebtedness and the issuance, sale, execution and delivery of bonds by or on behalf of this State, are hereby validated, ratified, approved and confirmed, notwithstanding any defects or irregularities in any such proceedings or in such issuance, execution, sale or delivery, and such bonds so issued or to be issued are and shall be binding, legal, valid and enforceable obligations of the State.

§ 137-15. Aviation fuel tax, pledge. If at any time the director of finance, with the approval of the governor, shall issue general obligation bonds for the purpose of refunding aviation revenue bonds, then so long as any general obligation refunding bonds are outstanding, the State covenants with the holders of such bonds that it will levy and collect an aviation fuel tax in an amount at least sufficient to provide for the payment of the principal and interest thereof, which amounts are hereby pledged to the payment of such principal and interest. The State reserves the right to issue subsequent bonds, whether general obligation or revenue bonds, equally secured by a pledge of the revenues of such aviation fuel tax.”

SECTION 3. This Act shall take effect upon its approval, except that if any bill purporting to amend part I of chapter 137, Revised Laws of Hawaii 1955, is enacted by this session of the Legislature, this Act shall take effect immediately after the effective date of that bill unless it is otherwise specifically provided therein.

(Approved May 7, 1968.)