

A Bill for an Act Pertaining to Revenue Producing Undertakings for Educational Institutions.

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

SECTION 1. Chapter 306, Hawaii Revised Statutes, is amended in the following respects:

a. By amending SECTION 306-1 to arrange the definitions in alphabetical order and to read:

**“SEC. 306-1. Definitions.** Whenever used in this chapter:

‘Board’ or ‘board of regents’ means the board of regents of the University of Hawaii, which, for the purposes of this chapter, is declared to be a political corporation within the meaning of that term as used in section 562(d) of title 48 of the United States Code.

‘Construction’ includes acquisition, purchase, construction, reconstruction, remodeling, renovation, improvement, betterment, and extension; ‘con-

struct' includes acquire, purchase, construct, reconstruct, remodel, renovate, improve, better and extend.

'Cost of construction' includes all costs and estimated costs of the preparation and issuance of revenue bonds and the obtaining of a loan, and all costs and estimated costs of construction of a university project, and without limiting the foregoing, includes engineering, architectural, supervisory, inspectional, fiscal, and legal expenses; interest which it is estimated will accrue during the construction period and for six months thereafter on money obtained by loan or through the issuance of revenue bonds, or both; amounts necessary to establish or increase reserves; costs of utilities, equipment, fixtures and apparatus necessary or convenient for the use and occupancy of the university project and, if so determined by the board, the initial furnishings of the university project.

'Cost of maintenance' includes all costs and estimated costs of the maintenance of a university project or university system, and without limiting the foregoing, includes all salaries, wages, and fees of officers, employees, and contractors of the board engaged in the maintenance of a university project or university system, the cost of all supplies and equipment, and all operational and administrative expenses.

'Maintenance' includes repairs, upkeep, replacement, renewals, maintenance, operation and administration; 'maintain' includes repair, keep up, replace, renew, maintain, operate and administer.

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

'Revenue bonds' mean revenue bonds, interim certificates, notes, debentures, or other evidence of indebtedness of the board authorized by or issued under this chapter.

'Revenue of the university' means all revenues of whatever nature received by the university, or which it is entitled to receive, other than (1) general appropriations, (2) taxes, (3) tuition fees, and (4) gifts the terms of which preclude their being used for payment of the cost of construction, cost of maintenance, or both, of a university project or university system.

'Revenue of the university project or university system' means all revenues derived from the rentals, fees and charges imposed for the use or enjoyment of or the services furnished by a particular university project or university system, as the case may be.

'University' means and includes the University of Hawaii, each community college established and governed by the board pursuant to chapter 305, Hawaii Revised Statutes, and any and every other educational institution now or hereafter under the control of or governed by the board.

'University athletic unit' means athletic facilities of every nature devoted either exclusively to use by the university, including its students, faculties, guests, employees, and their families, or both to university and non-university uses, for the enjoyment or utilization of, or for the privilege of observance of athletic contests or exhibitions conducted in or by means of, which facilities a fee is imposed or a charge made. A university athletic unit includes, but is not limited to, gymnasium, field house, stadium,

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playing field, baseball diamond, courts suitable for tennis, volleyball, and basketball, swimming and diving pools.

'University dining unit' means a structure or facility suitable for the feeding and boarding of students enrolled in the university, members of the faculties of the university, guests, employees of the university, and members of the families of any such persons, for the use and services of which a fee is imposed or charge made. A university dining unit may be a separate structure or structures or included in another university project.

'University health unit' means a facility for the treatment, diagnosing or prevention of illness of students enrolled in the university, members of the faculties of the university, persons temporarily visiting the university, employees of the university, and members of the families of any such persons, for the use and services of which a fee is imposed or charge made. A university health center includes, but is not limited to, health centers, infirmaries and clinics, and may be a separate structure or structures or included in another university project.

'University housing unit' means a structure or structures suitable for the housing of and use and occupancy as a dwelling by students enrolled in the university, members of the faculties of the university, persons temporarily visiting the university at the invitation or request of the board, employees of the university, and members of the families of any such persons, for the use and occupancy of which a fee or rent is charged. A university housing unit includes, but is not limited to, dormitories, apartments, and other multiple unit buildings, houses and other single unit buildings.

'University parking unit' means a facility for the parking or storage, or both, of vehicles owned or used by students enrolled in the university, members of the faculties of the university, persons temporarily visiting the university, employees of the university, and members of the families of any such person, for the use, services or occupancy of which a fee is imposed or charge made. A university parking unit includes, but is not limited to, parking spaces on streets, alleys, drives and other roadways under the jurisdiction of the board, paved or unpaved surface areas or lots, and subsurface, surface or above surface structure or structures, and may be a separate structure or structures or included in another university project.

'University project' means a university athletic unit, university dining unit, university health unit, university housing unit, university parking unit, university student center, and any other undertaking or improvement capable of producing a revenue constructed, maintained, or both, by the board, as furtherance of the purposes of the university, and for the use and services of which fees are imposed or charges made. A university project shall include, but not be limited to, all land, fixtures, appurtenances, improvements, utilities, equipment, and furnishings necessary or convenient for the use and occupancy of a university project for the purposes for which it was constructed or is used. A university project shall be a public improvement or public undertaking within the meaning of section 562(d) of title 48 of the United States Code.

'University student center' means a structure or structures suitable for student activities or endeavors, such as, but not limited to, meetings, organizations, publications, and recreation, for the use and services of which a fee is

imposed or a charge made. A university student center includes, but is not limited to, student unions, bookstores and snack bars, and may be a separate structure or structures or included in another university project.

‘University system’ means two or more university projects operated and maintained jointly as a system. A university system may include various university projects on any one or more of the areas under the jurisdiction of the board and may include university projects of any one or more of the educational institutions under the control of or governed by the board, including the university of Hawaii.”

b. By amending SECTION 306-2 to read:

“**SEC. 306-2 Powers of the board.** In addition to the powers which it now possesses, the board of regents shall have power to:

- (1) Construct and maintain university projects, including a university project included or to be in a university system;
- (2) Combine two or more university projects, now or hereafter existing on any one or more of the areas of any one or more of the educational institutions under the control of or governed by the board, into a university system or systems, and to maintain such system or systems;
- (3) Prescribe and collect rents, fees and charges for the use of or services furnished by any university project or the facilities thereof;
- (4) With the approval of the governor, issue revenue bonds, to finance in whole or in part the cost of construction, or maintenance, or both, of any university project, including a university project included or to be included in a university system;
- (5) Pledge to the punctual payment of such revenue bonds and interest thereon, the revenue of the university project or projects for the construction or maintenance of which the bonds have been issued, or the revenue of the university system in which such university project is to be included, and the revenue of other or all university projects or university systems, in an amount sufficient to pay such bonds and interest as the same become due and to create and maintain reasonable reserves therefor;
- (6) Advance such moneys of the university, not otherwise required, as are necessary to pay the expenses incurred in making the preparations for the initial issuance of revenue bonds under this chapter, and to take any other action necessary or proper for carrying into execution and administering this chapter, including providing for the full utilization of university projects and university systems in every way conducive to the furtherance of any or all of the purposes of the university.”

c. By amending SECTION 306-3 to read:

“**SEC. 306-3. Authorization of University projects, university systems and revenue bonds.** Authorization of construction, maintenance, or both of a university project or projects or university system or systems, and authorization for issuance of revenue bonds under this chapter shall be by resolution or resolutions of the board of regents. The resolution may be adopted at the same meeting at which it is introduced by a majority of all the members of the

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board then in office and shall take effect immediately upon adoption.”

d. By amending SECTION 306-4 to read:

“**SEC. 306-4. Revenue bonds.** Revenue bonds shall be issued in the name of the board of regents, may be in one or more series, may be in such denomination or denominations, may bear such date or dates, may mature at such time or times not exceeding fifty years from their respective dates, may be payable at such place or places within or without the State, may carry such registration privileges as to principal alone or as to both principal and interest, may be subject to such terms or redemption with or without premium, may be executed in such manner, and may contain such terms, covenants, and conditions, and may be in such form, either coupon or registered with privilege of exchange from one form to another, as the resolution authorizing the issuance of the bonds, or subsequent resolutions may provide.

Revenue bonds may be sold at private sale to the United States, or any agency, instrumentality, or corporation thereof, to the State or any political subdivision, agency, instrumentality, or corporation thereof, or to any person or group of persons offering to purchase all of a major portion of a particular issue or series. Unless sold at private sale as herein provided, revenue bonds shall be sold at public sale after publication of a notice of such sale at least once, the date of publication to be at least five days prior to the date of the sale, and the publication shall be made in a newspaper published and of general circulation in the State and in a financial newspaper published in either of the cities of New York, Chicago, or San Francisco. The revenue bonds shall be sold for not less than 98 per cent of the principal amount thereof. Pending the preparation of definitive revenue bonds, interim receipts or temporary bonds may be issued and delivered to the purchasers of the bonds in such form and containing such provisions as the board may determine. Revenue bonds, interim receipts, and temporary bonds shall be fully negotiable within the meaning of and for all the purposes of the Uniform Commercial Code, chapter 490.

It shall be legal for the State and any of its political subdivisions, or any political or public corporation, including the employees retirement system of the State, or any instrumentality of the State, or any insurance company or building and loan association, or any savings bank or trust company, or any bank or other financial institution operating under the laws of this State, or for any executor, administrator, guardian, trustee or other fiduciary, or any educational, charitable, or eleemosynary institution, to invest their funds, and moneys in their custody in revenue bonds issued under this chapter.”

e. By amending Section 306-5 to read:

“**SEC. 306-5 Covenants in resolution authorizing revenue bonds.** Any resolution or resolutions authorizing the issuance of revenue bonds under this chapter may contain covenants as to:

- (1) The purpose or purposes to which the proceeds of the sale of the revenue bonds may be applied; the use and disposition of such proceeds; the investment thereof pending such use and disposition; and the use and disposition of the income from such investment;

- (2) The use and disposition of the revenue of the university project or projects for the construction or maintenance of which the revenue bonds are issued or of the university system or systems in which such project or projects are to be included; the use and disposition of the revenue of all university projects and university systems, and of the revenues of the university, including the creation and maintenance of reserves; the investment of such revenues and of the moneys in such reserves; and the use and disposition of the income from such investments;
- (3) The minimum amount of revenues to be produced by the university projects or university systems, over and above the amount required to be produced by the first sentence and clauses (1) through (3) of the second sentence of §306-9 of this chapter;
- (4) The use and disposition of the proceeds of the sale of any university project or university system, or part of either thereof;
- (5) The construction and maintenance of any university project or university system other than the university project or projects for the construction or maintenance of which revenue bonds are issued or the university system or systems in which such latter project or projects are to be included;
- (6) The issuance of other or additional revenue bonds payable either from the revenue of the university project or projects for the construction or maintenance of which the revenue bonds are issued or the revenue of the university system or systems in which such project or projects are to be included, or payable from the revenue of other university projects or university systems;
- (7) The maintenance of the university project or university system, including the creation by the board of regents of such supervisory positions, which shall not be subject to chapter 76 and 77, as are necessary to facilitate the issuance of revenue bonds by ensuring the adequacy of revenues;
- (8) The insurance to be carried on university projects and university systems and the use and disposition of insurance moneys;
- (9) Books of account and inspection and audit thereof;
- (10) A procedure by which the terms and conditions of the bond resolution or indenture may be subsequently amended or modified with the consent of the board, the vote or written assent of the holders of bonds or any proportion of the holder, or any trustee thereof; and
- (11) The terms and conditions upon which the holders of bonds evidencing the obligation to repay loans, or any proportion of the holders, or any trustee thereof, shall be entitled to the appointment of a receiver by any court of competent jurisdiction, which court shall have jurisdiction in such proceedings, and which receiver may enter and take possession of the university project or projects, or university system or systems, maintain them, prescribe rents, fees, and charges, and collect, receive, and apply all revenue thereafter arising therefrom in the same manner as the board itself might do, but the receiver shall have no power, nor be granted any power,

to utilize, or permit the utilization of, any university project or university system other than in a manner consistent with and in furtherance of the purposes of the university; provided that all such covenants shall be subject to review by the governor.

This chapter and any such resolution or resolutions shall be a contract with the holders of bonds issued under this chapter, and the duties of the board and any such resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.”

f. By amending Section 306-6 to read:

“**SEC. 306-6 Validity of bonds.** Revenue bonds issued under this chapter shall bear the signatures of the chairman and executive officer of the board of regents, either of which signatures may be a lithographed or engraved facsimile of such signature so long as at least one of said signature is a manual signature, and shall be sealed with the seal of the board or in lieu thereof shall bear a lithographed or engraved facsimile of such seal. The coupons pertaining to the revenue bonds shall be executed with the lithographed or engraved facsimile signatures of the chairman and executive officer of the board. Revenue bonds bearing the signature of officers in office at the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the construction or maintenance of the university project or projects or university system or systems for which the bonds were issued. The resolution authorizing the issuance of revenue bonds may provide that the bonds shall contain a recital that they are issued pursuant to this chapter, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.”

g. By amending Section 306-7 to read:

“**SEC. 306-7 Bonds.** The resolution or resolutions authorizing the issuance of revenue bonds may pledge to the payment thereof all or any part of the revenue of a university project or projects or university system or systems, and the pledge shall constitute a lien on the revenue of such project or projects or system or systems to the extent and in the manner in the resolution or resolutions provided prior and paramount to any claim or other obligation of any nature against the revenue so pledged subsequently arising or subsequently incurred. The board of regents may provide in the resolution or resolutions that all revenue bonds of the same issue shall be equally and ratably secured without priority by reason of number, date, or maturity of the bonds, date of sale, execution, or delivery thereof. Any pledge of revenues contained in any resolution or resolutions adopted under this chapter shall be valid and binding from and after the adoption of the resolution or resolutions without physical delivery of the revenues therein pledged or the necessity of any further action by the State or the board, or any officer or agent of either the State or board.”

h. By amending Section 306-8 to read:

**“SEC. 306-8 Payment and security of revenue bonds; revenue bonds not a debt of the state.** Revenue bonds issued under this chapter shall be payable solely from and secured solely by the revenues of the university project or projects or university system or systems pledged to the payment thereof, and such revenues shall be applied to such payment in accordance with the provisions of this chapter and the resolution or resolutions authorizing the issuance of the revenue bonds. No holder or holders of any revenue bonds issued under this chapter shall ever have the right to compel any exercise of the taxing power of the State to pay such bonds, or interest thereon. Each revenue bond shall recite in substance that the bond, including interest thereon, is payable solely from and secured solely by the revenue pledged to the payment thereof, and that the bond does not constitute an indebtedness of the State within the meaning of any limitation of law.”

i. By amending Section 306-9 to read:

**“SEC. 306-9 University projects and university systems to be self-supporting.** The board of regents shall impose and collect rates, rents, fees and charges for the use or enjoyment and services of the facilities of each university project, and shall revise such rates, rents, fees, and charges from time to time whenever necessary, so that all university projects and university systems shall be and always remain self-supporting. The rates, rents, fees and charges prescribed shall be such as will produce revenue at least sufficient:

- (1) To pay the cost of maintenance of the university project or projects or university system or systems, including reserves therefor;
- (2) To pay when due all bonds and interest thereon, for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves therefor;
- (3) To reimburse the general fund of the State for any bond requirements on general obligation bonds issued for university project or projects or university system or systems to the extent required by law; and
- (4) To carry out all covenants and provisions of the resolution or resolutions authorizing the issuance of revenue bonds.

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

j. By amending section 306-10 to read:

**“SEC. 306-10 University revenue-undertakings fund.** The director of finance shall establish as a special deposit in the treasury of the State, a special or revolving fund into which all revenues received from all university projects or university systems constructed, maintained, or both, by the board under this chapter shall be paid, which special or revolving fund is hereby created and shall be known as the university revenue-undertakings fund. In

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the event that revenue bonds are issued under this chapter payable from the revenues of a university parking unit or the revenues of a university system which includes a university parking unit, the board in the resolution or resolutions authorizing such revenue bonds may direct that all or any part of the moneys required by sections 308-2 and 308-3, Hawaii Revised Statutes, to be paid into the university parking revolving fund created by said section 308-2 shall be deposited in the university revenue-undertakings fund in lieu of being deposited in the university parking revolving fund, and thereafter all such moneys or such part thereof as the board has directed shall be deposited in the university revenue-undertakings fund in lieu of being deposited in the university parking revolving fund. All moneys in the university revenue-undertakings fund are appropriated and shall be applied in accordance with the provisions of the resolution or resolutions of the board authorizing the issuance of revenue bonds under this chapter:

- (1) To provide for all costs of construction, operation, repair and maintenance of university projects or university systems, including reserves therefor;
- (2) To pay when due all revenue bonds and interest thereon, for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves therefor;
- (3) To reimburse the university for all moneys advanced to pay the expenses incurred in making the preparation for the initial issuance of revenue bonds under this chapter;
- (4) To reimburse the general fund of the State for all bond requirements for general obligation bonds which are or shall have been issued for a university project or university system, or to refund any of such general obligation bonds, except insofar as such obligation of reimbursement has been or shall be cancelled by the legislature, such bond requirements being the interest on term and serial bonds, sinking fund for term bonds, and principal of serial bonds maturing the following year;
- (5) To provide a reserve for betterments and improvements to and renewals and replacements of, university projects or university systems. If adequate provision has been made for all the foregoing purposes, and if permitted by the covenants in the resolution or resolutions authorizing the issuance of revenue bonds under this chapter, any surplus moneys remaining in the university revenue-undertakings fund at the end of any fiscal year may be expended by the board in subsequent years in furtherance of any or all of the purposes of the university.

The comptroller of the State shall open and keep in his books a separate and special account of the university revenue-undertakings fund which shall be known as the university revenue-undertakings fund account and which shall at all times show the exact condition thereof, including reserves.

Moneys appropriated as hereinabove provided shall be payable by the director of finance, upon warrants issued by the comptroller, upon vouchers approved by the board or its duly authorized agent."

k. By amending Section 306-11 to read:

**“SEC. 306-11 University project, university system, bonds exempt from taxation.** The property and revenue of any university project or university system shall be exempt from all state, county, and municipal taxation and assessments. Revenue bonds issued under this chapter, and all income therefrom shall be exempt from all state, county, and municipal taxation except inheritance, transfer, and estate taxes.”

l. By amending SECTION 306-13 to read:

**“SEC. 306-13 Funding and refunding bonds; authorization and purpose.** The board of regents may, with the approval of the governor, provide for the issuance of revenue bonds (herein referred to as refunding bonds) for the purpose of refunding, redeeming, or retiring at or at any time before maturity or at any time before the first date upon which the outstanding bonds to be refunded may be called for redemption, any bonds issued under this chapter, including any bonds which the holders may consent to be paid or refunded even though the bonds are not matured or are not callable or redeemable, and for the purpose of funding indebtedness not evidenced by revenue bonds but which was incurred for purposes for which revenue bonds may be issued pursuant to this chapter. The rate or rates of interest borne by the refunding bonds shall not be affected or limited by the rate or rates of interest borne by the bonds to be refunded or the indebtedness to be funded. All provisions of this chapter applicable to the issuance of revenue bonds shall be compiled with in the issuance of refunding bonds. Refunding bonds shall be sold as provided in section 306-4, or the board may, in its discretion, provide for the exchange of refunding bonds for a like principal amount of outstanding bonds for the refunding of which the issuance of such refunding bonds has been authorized, whether or not the interest rate on the refunding bonds is higher than the interest rate on the bonds refunded thereby.”

m. By amending SECTION 306-14 to read:

**“SEC. 306-14 Funding and refunding bonds; principal amount.** Refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds or indebtedness to be funded or refunded thereby, and for the payment of all expenses paid or incurred in connection with the calling, redeeming, retiring, or paying of such indebtedness or outstanding bonds, and the issuance of such refunding bonds. The expenses may include the amount necessary for the payment of interest upon the indebtedness to be funded or the bonds to be refunded to the maturity or redemption date thereof, the amount necessary for the payment of interest upon the refunding bonds from the date of delivery thereof to the date upon which the principal of the outstanding bonds to be refunded will be paid whether at maturity or pursuant to a call for redemption thereof, or pursuant to agreement with the holders thereof, plus in any case the amount of the premium, if any, required to be paid in order to call or retire the bonds to be required.”

n. By amending SECTION 306-15 to read:

**“SEC. 306-15 Fiscal agents.** The director of finance of the State of

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Hawaii, when requested by the board, shall render full and complete assistance to the board in the preparation and sale of revenue bonds issued pursuant to this chapter. The director of finance shall be the fiscal agent of the board for the payment of all principal and interest, and for the transfer, of revenue bonds. The provisions of section 36-3 and 39-12, relating to the appointment by the director of finance of other fiscal agents, paying agents, transfer agents and registrars, and to the status of funds held by these fiscal agents, to the extent that they may appropriately be applied, shall be deemed incorporated in this chapter. The director of finance shall cause to be set up in the treasury of the State suitable accounts for the deposit of all revenues of university projects or university systems, and for the payment of all revenue bonds and the interest thereon, and for all other payments provided or required by this chapter, or any resolution or resolutions of the board and for the holding of all reserves created under this chapter or any resolution or resolutions of the board."

o. By amending SECTION 306-16 to read:

**"SEC. 306-16 Limitation of authority.** Notwithstanding any other provision to the contrary, nothing in this chapter shall be construed to authorize the board of regents to incur any indebtedness contrary to article VI, section 3, of the Constitution of the State or to incur any indebtedness which would not qualify for exclusion from the total indebtedness of the State under clause (b) of section 3 of said article VI."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.\*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 28, 1971.)

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\* Edited accordingly.