

**ACT 57**

S.B. NO. 2726

A Bill for an Act Relating to Solid Waste Processing and Disposal and Electric  
Generating Facilities of Counties and the Sale and Leaseback Thereof.

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

SECTION 1. The legislature hereby finds and determines that the protection of the environment of this State is a matter of statewide concern; that federal and state environmental regulations and rules have increased the costs of proper and environmentally safe processing and disposal of solid waste; that the ability of counties to finance the costs of construction and operation of facilities for the processing and disposal of solid waste is burdensome; that it is in the best interests of all state residents to have costs of construction and operation of facilities for the processing and disposal of solid waste financed for or at the lowest possible amount or rate; that the lowest interest rate on capital to finance the costs of construction of facilities for the processing and disposal of solid waste can be obtained through the issuance of general obligation bonds by the county; that existing provisions of federal law create tax incentives for private investors to acquire facilities for the processing and disposal of solid waste and this acquisition can result in a reduction to the county of the costs of facilities for the processing and disposal of solid waste; that the sale by a county of a facility for the processing and disposal of solid waste and the generation of electric energy in order to transfer federal tax benefits to the purchaser will not deprive that county of the availability of the facility for the processing and disposal of solid waste in that county and, accordingly, the facility will continue to constitute a public undertaking, improvement, or system, and the financing thereof will continue to constitute a public purpose for which the county may issue its bonds and expend moneys.

The purpose of this Act is to amend section 46-19.1, Hawaii Revised Statutes, to provide for the sale and leaseback of a facility for the processing and disposal of solid waste and the generation of electric energy financed from the proceeds of general obligation bonds issued under that section and chapter 47, Hawaii Revised Statutes, in order to realize the benefits and savings to the counties associated with the transaction, and to facilitate the sale so as to maximize benefits and savings.

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated to read as follows:

**“§237- Solid waste processing, disposal, and electric generating facility; certain amounts exempt.** (a) Any provision of the law to the contrary notwithstanding, there shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the amounts enumerated in subsection (b) arising from a transaction involving a sale and leaseback of a solid waste processing, disposal, and electric generating facility entered into by a political subdivision of the State under section 46-19.1 where the facility is owned or under construction by the subdivision before the effective date of this section.

(b) Amounts are exempted or excluded from taxation under this chapter only to the extent that they:

- (1) Are received by an operator of a facility under an operating contract with a political subdivision, where the:
  - (A) Operator, or its successor, entered into an operating contract prior to the effective date of this section;
  - (B) Operator enters into a lease of the facility from the owner at a time that coincides with the time the owner and the political subdivision entering into a sale and leaseback transaction; and
  - (C) Amounts are used by the operator to make rental payments to the owner;
- (2) Are received as rental payments by the owner of the facility from the operator of the facility;

- (3) Do not exceed the payments made by the owner of the facility under the sale and leaseback transaction to the political subdivision; and
- (4) In no case exceed debt service costs incurred by the political subdivision for the construction of the facility.

(c) For the purposes of this section:

“Debt service costs” means payments of principal and interest on general obligation bonds issued at any time by a political subdivision for the construction of the facility.

“Sale and leaseback” means a transaction in which a facility is sold by a political subdivision to a private entity for cash, under an installment sale, a financing lease, or similar arrangement, or any combination thereof, where the political subdivision has the right to repurchase the facility at a later date, and where the facility is leased to an operator of the facility.

“Solid waste processing, disposal, and electric generating facility” or “facility” means a facility for the processing and disposal of solid waste or the generation of electric energy, or both, the construction of which has been financed pursuant to section 47-2.1 and constitutes an undertaking as defined in section 49-1.

“Operator” means a private entity who enters into an agreement or other arrangement with the owner of a solid waste processing, disposal, and electric generating facility for the purpose of operating such facility for a political subdivision of the State.

“Owner” means any person who purchases a solid waste processing, disposal, and electric generating facility under section 46-19.1.”

SECTION 3. Section 46-19.1, Hawaii Revised Statutes, is amended to read as follows:

**“[[§46-19.1]] Facilities for solid waste processing and disposal and electric generation; financing[.]; sale. (a)** In addition to any other powers provided by law, any county may issue general obligation bonds to finance a facility for the processing and disposal of solid waste, or generation of electric energy, or both, pursuant to section 47-2.1, and provide for interest on [such] the bonds which will accrue during the construction period. Any such facility shall be and constitute an undertaking as defined in section 49-1, and all revenues derived from the services and commodities furnished by [such] the undertaking, including the disposal of solid waste and the sale of steam and electric energy and recovered materials, shall constitute revenues of [such] the undertaking.

Any law to the contrary notwithstanding, and particularly section 47-7, bonds issued pursuant to this section to finance a facility for the processing and disposal of solid waste,<sup>1</sup> or generation of electric energy, or both[,] may be sold at competitive or negotiated sale at [such] whatever price or prices, may bear interest at [such] whatever rate or rates payable at [such] whatever time or times, and may be made redeemable before maturity at the option of the county, the holder, or both[,] at [such] whatever price or prices and upon [such] whatever terms and conditions[, all] as the governing body of the county or, if authorized by the governing body of the county, the director of finance may determine.

If bonds issued pursuant to this section for the processing and disposal of solid waste and generation of electric energy are issued bearing interest at rates which vary from time to time and with a right of the holders to put [such] the bonds, all as provided in the proceedings authorizing the issuance thereof, any county may contract for [such] support [facility or] facilities and remarketing arrangements as are required to market [such] the bonds to the greatest advantage of the county upon such terms and conditions as the governing body of the county

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shall approve by resolution. The county may enter into [such] contracts or agreements with the entity or entities providing a support facility as aforesaid as the governing body of the county shall approve by resolution; provided that any [such] contract or agreement shall provide, in essence, that any amounts due and owing by the county under [such] the contract or agreement on an annual basis shall be subject to annual appropriations by the county, and any obligation issued pursuant to the terms of [such] the contract or agreement in the form of bonds, notes, or other evidences of indebtedness shall [only] arise [at such time as] only when moneys or securities have been irrevocably set aside for the full payment of a like principal amount of bonds issued pursuant to this section. The selection of entities to provide a support facility or to remarket bonds may be in such manner and upon such terms and conditions as the governing body shall approve by resolution.

(b) If the governing body of the county shall find that the sale of a facility for the processing and disposal of solid waste, or generation of electric energy, or both will not deprive the county of the availability of the facility and will result in a reduction to the county of the costs of the facility, any law to the contrary notwithstanding, any county may sell a facility financed pursuant to this section at competitive or negotiated sale at such price and upon such terms and conditions as the governing body shall approve by resolution. The sale may be pursuant to an installment sales contract or such other form of agreement as the governing body shall approve by resolution. A facility sold as authorized by this subsection shall continue to constitute a public undertaking as provided in subsection (a), and the proceeds of such sale shall constitute revenues derived from the services and commodities furnished by the undertaking.

(c) A county may lease any facility sold as authorized by this section or enter into an operating agreement or other arrangement with the purchaser or a lessee of the purchaser of the facility upon such terms and conditions as the governing body shall approve by resolution. So long as a facility sold as authorized by this section is available to the county, notwithstanding that availability is conditioned on payment of reasonable fees for the services and commodities furnished thereby, the facility shall be deemed used for a public purpose and payment of the costs of construction shall constitute a purpose for which bonds may be issued as authorized by subsection (a).

(d) Insofar as this section is inconsistent with the provisions of any law or charter, this section shall control. The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law or charter, and bonds may be issued and a facility financed from the proceeds thereof may be sold as authorized by this section notwithstanding any debt or other limitation prescribed by any other law or charter."

SECTION 4. Statutory material to be replaced is bracketed. New statutory material is underlined.<sup>2</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved May 10, 1988.)

### Notes

1. Comma should be underscored.
2. Edited pursuant to HRS §23G-16.5.