

ACT 80

S.B. NO. 1001

A Bill for an Act Relating to the Issuance of Bonds by the Counties.

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

SECTION 1. Findings and purpose. The legislature hereby finds and determines that:

- (1) The various statutes governing the issuance and sale of general obligation bonds and revenue bonds by the counties were originally enacted prior to statehood and have been amended from time to time in order to facilitate particular objectives.
- (2) There have been many innovations in financing techniques since the original enactment of the various statutes governing the issuance and sale of general obligation bonds and revenue bonds by the counties; and
- (3) It is in the best interest of the counties and the residents thereof that the statutory provisions, governing the issuance and sale of general obligation bonds and revenue bonds by the counties, be amended to provide the counties with maximum flexibility in the issuance and sale of such bonds and further to adopt procedures to permit the policy with respect to the issuance and sale of such bonds by the counties to be more efficiently and effectively applied.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter 47 to read as follows:

**“CHAPTER 47  
COUNTY BONDS**

**PART I. GENERAL OBLIGATION BONDS**

**§47-1 Definitions.** As used in this chapter:

“Bonds” means bonds, notes, and other instruments of indebtedness.

“County” means the counties of Hawaii, Kauai, and Maui and the city and county of Honolulu.

“Director of finance” means the director of finance of each county.

"Governing body" means the council of each county, or any other body exercising the legislative powers of the county.

**§47-2 Issuance authorized; limitation.** Each county in the State shall have the power and is hereby authorized to issue general obligation bonds of the county within the limitations, for the purposes, upon the terms and conditions, and in the manner, provided in this part. The total funded debt of the county that is outstanding and unpaid at any time shall not exceed the limitation prescribed by the Constitution of the State.

**§47-3 Purpose of issuance.** Bonds issued pursuant to this chapter shall be issued for public improvements of the county and such other purposes as may from time to time be authorized by other provisions of general law, including without limitation, special improvements the cost of which is assessed or assessable in whole or in part against properties benefitted or improved by such improvements; provided that the issuance of those bonds for those special improvements shall be limited to special improvements initiated by the county. The purpose or purposes of issuance need not be stated in any bond.

**§47-4 Bonds for revenue-producing undertakings.** General obligation bonds may be issued under this chapter for an undertaking or loan program as defined in section 49-1 or for any other undertaking or purpose for which the bonds are authorized to be issued by other provisions of general law. The bonds may be combined into, issued, and sold with other general obligation bonds of the county as a single issue of bonds. The governing body may require that the general fund of the county shall be reimbursed from the revenue of the undertaking, loan program, or other purpose for all of the principal of and interest on the bonds, or for such part hereof as the governing body may determine, and may further provide that the bonds shall be additionally secured by a pledge of the revenue of the undertaking, loan program, or other purpose, subject to the rights of the holders of any bonds then outstanding and the provisions of the ordinances or resolutions authorizing the outstanding bonds. Whenever the undertaking, loan program, or other enterprise shall be under the management and control of a department or board of the county and the department or board has the power and authority under chapter 49 to issue revenue bonds under that chapter, no bonds shall be authorized under this chapter for that undertaking by the governing body of the county unless the department or board shall have requested the issuance thereof by resolution and no pledge of the revenue of the undertaking shall be made to the payment and security of the bonds unless consented to by the department or board by resolution, and the pledge may be made by the department or board in the resolution requesting the issuance of the proposed bond issue and consenting to the pledge.

**§47-5 Use of proceeds.** The proceeds of the bonds issued under this chapter shall be exclusively devoted to the purposes for which the same are issued; provided, however, that:

- (1) By an affirmative vote of two-thirds of all of the members of the governing body, that part of the proceeds which is determined to be in excess of the amounts required for the purposes for which the bonds were initially issued, or which may not be applied to those purposes, or which the governing body deems should not be applied to those purposes, may be applied to those other public improvements or authorized purposes of the county as the governing body may determine, or may be applied to the redemption of retirement of bonds of the county issued pursuant to this chapter;

- (2) A determination by the governing body that the proceeds of a particular series or issue of bonds should not be applied to a particular purpose shall not prohibit the application of the proceeds of a subsequent series or issue of bonds to such purpose; and
- (3) The actual use and application of the proceeds of bonds issued pursuant to this chapter shall not in any way affect the validity or legality of those bonds.

**§47-6 Method of authorization.** All bonds of a county issued pursuant to this chapter must be authorized by the governing body of the county issuing same, and shall be authorized by an ordinance or resolution of the governing body, which ordinance or resolution may relate to more than one public improvement or purpose or combination thereof. It shall be a sufficient recital of purpose of issuance if the ordinance or resolution recites that the proceeds of the bonds authorized therein which are issued for public improvements are to be used to pay all or part of the cost of appropriations for public improvements made in a capital budget ordinance or resolution identified in the bond authorizing ordinance or resolution, or are to be used to establish, maintain, or replenish the special assessment revolving fund of the county, and neither the individual appropriations nor public improvements to which the proceeds are to be applied need be specified in the bond authorizing ordinance or resolution. The governing body of the county may authorize bonds to pay all or part of the cost of appropriations for public improvements made in a capital budget ordinance in such capital budget ordinance and, in that event, the capital budget ordinance shall constitute the authorizing ordinance under this chapter.

**§47-7 Details of bonds.** (a) The director of finance of the county, upon authorization of its governing body, may issue from time to time and in accordance with this chapter, bonds of the county authorized for issuance by the governing body thereof. All bonds issued under authority of this chapter:

- (1) Shall bear interest at a rate or rates not exceeding a rate or rates established by ordinance enacted by the governing body of the county payable at such time or times;
- (2) 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;
- (3) May be made payable as to both principal and interest at such place or places and in such manner within and without the State;
- (4) May be issued in coupon form without privilege of registration or registrable as to principal only or as to both principal and interest or in fully registrable form without coupons;
- (5) May be made registrable at such place or places within and without the State; and
- (6) May be subject to redemption, to being tendered for purchase or to being purchased prior to their stated maturity at the option of the county, the holder or either or both.

(b) Unless the governing body shall itself perform the actions, the director of finance shall:

- (1) Determine the date, denomination or denominations, interest payment dates, maturity date or dates, place or places of payment, registration privileges and place or places of registration, redemption price or prices and time or times and terms and conditions and method of redemption;

- (2) The rights of the holder to tender for purchase and the price or prices and time or times and terms and conditions upon which those rights may be exercised;
- (3) The rights to purchase and price or prices and the time or times and terms and conditions upon which those rights may be exercised and the purchase may be made; and
- (4) All other details of bonds issued under this chapter.

The principal of and interest and premium, if any, on all bonds issued under this chapter 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.

**§47-8 Sale of bonds.** (a) 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 chapter, including, without limitation, arranging for the preparation and printing of the bonds, the official statement and any other documents or instruments deemed required for the issuance and sale of bonds and retaining those financial, accounting, and legal consultants, all upon such terms and conditions as the director of finance deems advisable and in the best interest of the county. The governing body may authorize the director of finance to offer the bonds at competitive sale or to negotiate the sale of the bonds to:

- (1) Any person or group of persons;
- (2) The United States of America, or any board, agency, instrumentality, or corporation thereof;
- (3) The employees retirement system of the State;
- (4) Any political subdivision of the State;
- (5) Any board, agency, instrumentality, public corporation, or other governmental organization of the State; or of any political subdivision of the State.

(b) Subject to any limitation imposed by the governing body by the ordinance or resolution authorizing the bonds, the sale of the bonds by the director of finance by negotiation shall be at such price or prices and upon such terms and conditions, and the bonds shall bear interest at such rate or rates or such varying rates determined from time to time in such manner, as the director of finance shall approve.

(c) Subject to any limitation imposed by the governing body by the ordinance or resolution authorizing the bonds, the sale of the bonds by the director of finance at competitive sale shall be at such price or prices and upon such terms and conditions, and the bonds shall bear interest at such rate or rates or such varying rates determined from time to time in the manner, as specified by the successful bidder, and the bonds shall be sold in accordance with this subsection. The bonds offered at competitive sale shall be sold only after published notice of sale advising prospective purchasers of the proposed sale. The bonds offered at competitive sale may be sold to the bidder offering to purchase the bonds at the lowest interest cost, the interest cost, for the purpose of this subsection, being determined on one of the following basis as selected by the director of finance:

- (1) The figure obtained by adding together the amounts of interest payable on the bonds from their date to their respective maturity dates at the rate or rates specified by the bidder and deducting from the sum obtained the amount of any premium offered by the bidder;
- (2) Where the interest on the bonds is payable annually, the annual interest rate (compounded annually), or, where the interest on the bonds is payable semiannually, the rate obtained by doubling the semiannual interest rate (compounded semiannually), necessary to discount the principal and interest payments on the bonds from the dates of payment thereof to the date of the bonds and to the price bid (the price bid for

the purpose of this paragraph shall not include the amount of interest accrued on the bonds from their date to the date of delivery and payment); or

- (3) Where the interest on the bonds is payable other than annually or semiannually or will vary from time to time, upon such basis as, in the opinion of the director of finance, shall result in the lowest cost to the county;

provided that in any case the right shall be reserved to reject any or all bids and waive any irregularity or informality in any bid.

(d) Bonds offered at competitive sale, without further action of the governing body, shall bear interest at the rate or rates specified by the successful bidder or varying rate or rates determined from time to time in the manner specified by the successful bidder with the consent of the director of finance. The notice of sale required by this section shall be published at least once and at least five days prior to the date of the sale in a newspaper circulating in the county and in a financial newspaper or newspapers published in any of the cities of New York, Chicago, or San Francisco, and shall be in such form and contain such terms and conditions as the director of finance shall determine. The notice of sale shall comply with the requirements of this section if it merely advises prospective purchasers of the proposed sale and makes reference to a detailed notice of sale which is available to the prospective purchasers and which sets forth the specific details of the bonds and terms and conditions upon which such bonds are to be offered. The notice of sale published and any detailed notice of sale may omit the date and time of sale, in which event the date and time shall be either published in the same newspapers in which the notice of sale has been published or transmitted via electronic communication systems deemed proper by the director of finance which is generally available to the financial community, in either case at least forty-eight hours prior to the time fixed for the sale.

**§47-9 Form and execution of bonds.** (a) All bonds issued under this chapter shall be lithographed or steel engraved, shall bear the manual signature of the director of finance or the deputy director of finance of the county, shall bear the manual or lithographed or engraved facsimile signature of the mayor of the county and shall be sealed with the seal or lithographed or engraved facsimile seal of the county. In addition, fully registered bonds may be authenticated with the manual signature of the registrar, if any, thereunto duly appointed by the governing body or the director of finance. Notwithstanding the preceding provisions of this section, the governing body or the director of finance may provide that bonds issued under this chapter may be typewritten, printed, or otherwise reproduced. Interest coupons shall bear a lithographed or engraved facsimile of the signature of the director of finance or the deputy director of finance of the county. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the director of finance may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter.

(b) When bonds of the county are prepared and signed by the director of finance or the deputy director of finance and by the mayor in office at the time of the signing or lithographing or engraving of a facsimile signature upon the bonds, the signatures of the director of finance or deputy director of finance and mayor shall be valid and sufficient for all purposes, and shall have the same effect as if the persons so officially signing the bonds or whose facsimile signature appears thereon had remained in office until the delivery of the same to the initial purchasers thereof, and in the case of fully registered bonds, upon any exchange or transfer between subsequent holders thereof, notwithstanding the term of office of the persons or either of them may have expired or they may otherwise have ceased to

be the officers before delivery, exchange, or transfer. If the governing body or director of finance has designated a registrar for fully registered bonds, the governing body or director of finance may provide that no fully registered bond shall be valid or obligatory for any purpose unless certified or authenticated by the registrar. If the governing body or director of finance shall have designated a registrar as aforesaid, then notwithstanding subsection (a), all signatures of the officers of the county upon the fully registered bonds may be facsimiles of the signatures, and the fully registered bonds shall be valid and sufficient only if certified or authenticated as aforesaid by the manual signature of an authorized officer or signatory of the registrar. Any law to the contrary notwithstanding, if blanks of fully registered bonds are held by a registrar pending exchange or transfer for other fully registered bonds of the same series, then upon delivery of bonds in an exchange or transfer, the bonds shall be valid and sufficient for all purposes notwithstanding that the signature of the director of finance or the mayor appearing thereon shall be that of the person in office at the time of initial delivery of the series of bonds of which the bond is one or at the time of such exchange or transfer.

**§47-10 CUSIP numbers.** Unless the governing body shall otherwise direct, the director of finance of the county in the director's discretion, may provide that CUSIP identification numbers shall be imprinted on bonds issued under the authority of this chapter. In the event the numbers are imprinted on any bonds:

- (1) No 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 county or any officer or agent thereof, including any fiscal agent, paying agent, or registrar for the bonds, by reason of the numbers or any use made thereof, including any use thereof made by the county, any officer or any agent, or by reason of any inaccuracy, error or omission with respect thereto or in any use. Unless the governing body shall otherwise direct, the director of finance, in the director's discretion, may require that all cost of obtaining and imprinting the numbers shall be paid by the purchasers of the bonds. For the purposes of this section, the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

**§47-11 Support facility for variable rate bonds.** If bonds issued pursuant to this chapter are issued bearing interest at a rate or rates which vary from time to time or with a right of holders to tender the bonds for purchase, or both, the director of finance with the approval of the governing body, may contract for such support facility or facilities and remarketing arrangements as are required to market the bonds to the greatest advantage of the county upon such terms and conditions as the director of finance deems necessary and proper. The director of finance may select and enter into contracts or agreements with the entity or entities providing a support facility; provided that any contract or agreement shall provide, in essence, that any amount due and owing by the county under the contract or agreement on an annual basis shall be subject to annual appropriation by the governing body and any obligation issued or arising pursuant to the terms of the contract or agreement in the form of bonds, notes, or other evidences or indebtedness shall only arise at such time as either:

- (1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of bonds issued pursuant to this part; or

- (2) A like principal amount of the issue or series of bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility.

**§47-12 Pledge of full faith and credit, unlimited taxation to pay principal and interest; satisfaction of judgment.** The full faith and credit of the county shall be pledged to the payment of the principal of and interest on the bonds issued by the county under this chapter, whether or not the pledge is stated in the bonds. For the payment of the principal and interest, the governing body shall levy ad valorem taxes without limitation as to rate or amount on all the real property subject to taxation by the county.

Should any county default in the payment of any judgment secured against the county, upon an action at law for the collection of the principal or interest, or any part of either thereof, of any bond of the county, the director of finance of the county shall thereafter reserve from the general revenues of the county, as soon as received, money sufficient to pay the judgment.

**§47-13 Exemption from taxes; first charge on general fund.** All bonds heretofore or hereafter issued under the authority of this chapter and the income therefrom shall be exempt from any and all taxation by the State or any county or other political subdivision thereof, except inheritance, transfer, and estate taxes.

The interest and principal payments of bonds issued under this chapter shall be a first charge on the general fund of the county issuing same, and sufficient revenues shall be raised or provided from time to time by the county for the purpose of that payment. The governing body of any county issuing bonds under this chapter shall appropriate out of the general fund of the county all amounts necessary for the payment of the principal of and interest on the bonds as and when the same become due, and the appropriation shall be a paramount appropriation upon the general fund of the county issuing same.

**§47-14 Federal tax-exempt status; preference; protection.** Bonds issued under this chapter, to the extent practicable, shall be issued so as to comply with requirements imposed by valid federal law providing that the interest on those bonds shall be excluded from gross income for federal income<sup>1</sup> purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance is authorized to enter into arrangements, establish funds or accounts, and take any action required in order to comply with any valid federal law. Nothing in this chapter shall be deemed to prohibit the issuance of bonds, the interest on which may be included in gross income for federal income tax purposes.

For the purpose of ensuring that interest on bonds issued pursuant to this chapter which is excluded from gross income for federal income tax purposes (except as provided above) on the date of issuance shall continue to be so excluded. No county officer or employee or user of an undertaking or loan program shall authorize or allow any change, amendment, or modification to an undertaking or loan program financed or refinanced with the proceeds of the bonds which change, amendment or modification would affect the exclusion of interest on the bonds from gross income for federal income tax purposes unless the change, amendment, or modification shall have received the prior approval of the director of finance. Failure to receive the approval of the director of finance shall render any change, amendment, or modification void.

**§47-15 Payment by director of finance.** The director of finance of the county shall pay the principal of the bonds at maturity and the interest thereon as and when the same become due at the place or places and in the manner prescribed for the payment under this chapter and the proceedings authorizing those bonds.

**§47-16 Bond anticipation notes.** Whenever the governing body of the county shall have authorized the issuance of bonds under this chapter, general obligation bond anticipation notes of the county are hereby authorized to be issued in anticipation of the issuance of the bonds and of the receipt of the proceeds of sale thereof, for the purposes for which the bonds have been authorized. All general obligation notes must be authorized by the governing body of the county issuing same by ordinance or resolution of the governing body, which may be the same or a different ordinance or resolution as that authorizing the bonds. The maximum principal amount of the notes shall not exceed the authorized principal amount of the bonds. The director of finance of the county, with the approval of the governing body, may issue and sell from time to time the bond anticipation notes which have been authorized by the governing body. The full faith and credit of the county shall be pledged to the payment of the principal of and interest on the notes. The authorization, issuance, and details of the notes shall be governed by this chapter with respect to bonds insofar as the same may be applicable, provided that:

- (1) 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; and
- (2) The interest on the notes shall be paid from the general fund of the county and the principal of the notes shall be paid from the proceeds of sale of the bonds in anticipation of which the notes have been issued or from any money in the general fund available therefor.

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.

**§47-17 Refunding bonds authorized.** For the purpose of refunding all or any portion of the present and future bonded indebtedness of any county issued pursuant to this chapter or bonds payable from the revenue of an undertaking or loan program as defined in section 49-1, the director of finance of any county, upon authorization of the governing body, may from time to time issue general obligation refunding bonds of the county to pay or to provide for the payment of all or any part thereof, and may include various series and issues of the outstanding bonds in a single issue of refunding bonds and may include refunding bonds and bonds otherwise to be issued under this chapter, in a single issue of bonds.

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 on, 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 governing body, determines to be in the best interest of the county. The refunding bonds shall be issued in accordance with this chapter with respect to bonds otherwise issued under this chapter, and all of the provisions of this chapter shall apply to the refunding bonds. Nothing in this section shall require or be deemed to require the county to elect to redeem or prepay bonds being refunded, or, if the county elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates.

Proceeds of the sale of the refunding bonds shall be applied solely to the payment of the principal of, and redemption premium, if any, and interest on the bonds to be refunded under this chapter and to the payment of all costs of issuance of such refunding bonds and interest accrued on the refunding bonds to the date of delivery thereof and payment therefor. Pending the time the proceeds derived from the sale of refunding bonds issued under this section are required for the purposes for which they were issued, the director of finance, upon authorization or approval



of the governing body, may invest the 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 the savings accounts, time deposits, or certificates of deposit are collaterally secured by a pledge of obligations of, or obligations unconditionally guaranteed by, the United States of America; or in obligations of any state of the United States of America or any agency, instrumentality or local government of any such state, the provision for payment of the principal of and interest on which shall have irrevocably been made by deposit of obligations of, or obligations unconditionally guaranteed by, the United States of America. To further secure the bonds being refunded the director of finance, upon authorization or approval of the governing body, may 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 the refunding bonds, and the safekeeping and application of the earnings on the investment, which contract shall become a part of the contract with the holders of the bonds being refunded.

**§47-18 Action on default.** In case of any default in the payment of the principal of any bonds at maturity or of the interest thereon when the same becomes due, the holder of any of the bonds on which any default is made may bring an action at law against the county making the default, for the amount due by reason of the default, and should any moneys be then or thereafter payable by the State to the county which is defendant in the action, the holder, in the petition and prayer for process, may insert a request to the court issuing process to insert therein a direction to the officer serving the same to leave a true copy thereof attested by any chief of police, sheriff, deputy sheriff, or their authorized subordinates, with the state comptroller, who, hereafter in this chapter, is called the garnishee.

**§47-19 Service on garnishee.** Service of process upon the garnishee may be made as follows:

- (1) If the garnishee lives or has the garnishee's office in the district where the process is issued, by handing the copy to the garnishee personally or leaving it in the garnishee's office with a deputy, clerk, or other employee therein; or
- (2) If the garnishee does not live, nor have an office in the district where the process is issued, by handing the copy to the garnishee personally, or by depositing it in the nearest post office, enclosed in a sealed envelope, postage prepaid, and addressed to the garnishee at the garnishee's office in Honolulu.

**§47-20 Garnishee to withhold funds.** It shall not be incumbent on the garnishee to appear and answer the process, but the trial of the action shall proceed in all respects as if the garnishee had not been made a party. From the time of service upon the garnishee, it shall be unlawful for the garnishee to draw, sign, or issue any warrant payable to the order of the county defendant or any of its officers, or permit or cause the same to be done, for any money which be then or thereafter payable to the defendant, until the action has been finally determined and the judgment therein rendered, if any, has been fully paid and satisfied with legal interest thereon. All moneys due or to become due to the defendant shall be held in the treasury of the State from the time of the service until the final judgment or determination of the action; provided that no more shall thus be held than shall be sufficient to meet the demand with costs and interest of plaintiff or plaintiffs in the action.

**§47-21 Certificate furnished garnishee.** After final judgment or determination of the action, the party prevailing shall obtain from the court by which the

final judgment or determination was made, a certificate, which shall sufficiently describe the action to apprise the garnishee of its identity, and shall state the nature and amount of the final judgment or determination made therein, and the certificate shall be immediately furnished to the garnishee.

**§47-22 Garnishee to satisfy judgment.** If final judgment is rendered against defendant in the action, garnishee shall immediately thereafter draw, sign, and deliver to the plaintiff or plaintiffs a warrant or warrants for the sum held by the garnishee in obedience to service of process; and if the sum does not equal the amount of the final judgment, then the drawing, signing, and delivery of the warrants shall continue to be made from time to time as funds become available until the final judgment, with interest, is fully paid. All warrants so drawn, signed, and delivered shall be charged against the defendant.

**§47-23 Successive actions.** In case of successive actions being so brought against the same county defendant, precedence shall be given by the garnishee to that in which process is first served on the garnishee; and if two or more processes are simultaneously served, precedence shall be given in the order of the priority of their issuance by the courts issuing them. This order of precedence shall not be disturbed by the fact of a posterior action being carried to final judgment earlier than its anterior in time of service on the garnishee. All amounts held on account of the anterior action shall be held until the final determination thereof, and then applied in payment of the judgment therein. In case the amounts shall not be sufficient fully to satisfy the judgment, then all judgments obtained in posterior actions shall be again postponed to that in the anterior action until it is satisfied.

**§47-24 Validation of proceedings.** All proceedings heretofore taken with respect to the contracting of general obligation bonded indebtedness and the issuance, sale, execution and delivery of bonds by or on behalf of a county, are hereby validated, ratified, approved and confirmed, notwithstanding any defects or irregularities in any such proceedings or in the issuance, execution, sale or delivery, and the bonds so issued or to be issued are and shall be binding, legal, valid and enforceable obligations of the county.

**§47-25 Bonds negotiable, incontestable.** This chapter, without reference to any other law, shall be full authority to issue, exchange, or sell bonds of the county, and the bonds and all interim receipts or certificates shall have all the qualities of negotiable paper under state law. The bonds shall not be invalid for any irregularity or defect in the proceedings for the issue, sale or exchange thereof. The 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 bonds shall be necessary except such proceedings as are required by this chapter.

**§47-26 Provisions of chapter controlling.** Insofar as the provisions of this chapter are inconsistent with the provisions of any law or charter, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law or charter, and bonds may be issued hereunder for any public improvement or other purpose as may from time to time be authorized by law, including special improvements the cost of which is assessed or assessable in whole or in part against properties benefited or improved thereby or an undertaking, improvement or system of the county, notwithstanding that any other law or charter may provide for the issuance of bonds for like purposes and without regard to the requirements, restrictions, or

other provisions contained in any other law or charter. Bonds may be issued under this chapter notwithstanding any debt or other limitation prescribed by any other law or charter and without obtaining the consent of any commission, board, bureau, agency, or department of the State, and without any other proceeding or happening of any other condition or thing than those proceedings, conditions, or things which are specifically required by this chapter, and the mode and method of procedure for the issuance of bonds under this chapter need not conform to any other law or charter. The authorization, issuance, and validity of bonds under this chapter shall not be dependent on or affected in any way by proceedings taken, contracts made, acts performed or done in connection with, or in furtherance of any public improvement undertaken by the county authorizing and issuing the bonds, or by the validity of any such proceedings, contracts, or acts, nor shall the authorization, issuance, and validity of bonds issued under this chapter be dependent upon or affected in any way by the proceedings taken in connection with the creation of any improvement district and the fixing or imposition of any assessments or by the validity of any such proceedings or assessments, nor shall the authorization, issuance and validity of bonds issued under this chapter be dependent in any way upon the due adoption or enactment of any capital program or capital budget ordinance or resolution or upon the continued effectiveness of any appropriation made in any capital budget ordinance or resolution; provided that nothing in this section shall be deemed to permit the application of the proceeds of the bonds to appropriations which have lapsed pursuant to the provisions of law or of a charter.

## PART II. SINKING FUNDS

**§47-31 Sinking fund.** The director of finance of each county shall establish as a special deposit in the treasury of the county a sinking fund with which to pay any present or future bonded indebtedness of the county issued under this chapter in the form commonly known as “term bonds”, and may establish the sinking fund with respect to bonds issued under this chapter in the form commonly known as “serial bonds”. The governing body or the director of finance in the case of term bonds shall, and in the case of serial bonds may, provide in the proceedings authorizing the bonds, that for the purpose of retiring the bonds, there shall be transferred from the current receipts of the county provided by law for the purpose or which may be set aside by the governing body for the purpose and deposited to the sinking fund, such a sum of moneys that at such times and in such amounts that the aggregate of the amounts on deposit in the sinking fund will be sufficient to provide for the retirement of the bonds, whether at maturity or upon redemption or purchase, at the times and in the amounts set forth in the proceedings.

Except as otherwise provided by law, the director of finance of each county shall also deposit to the sinking fund, immediately upon the receipt thereof, all premiums received on the sale of bonds under this chapter; provided that the premiums on serial bonds shall be deposited to the interest fund from which the payment of interest on the bonds will be made.

The money deposited in a sinking fund shall be used for the retirement, whether at maturity or upon redemption or purchase, of any outstanding bonds of the county issued under this chapter in accordance with the proceedings authorizing the bonds, and shall be held in trust exclusively for those purposes.

**§47-32 Retirement of bonds from sinking fund money.** The director of finance, without further authorization or direction, shall apply money on deposit to a sinking fund to redeem bonds at such times and in such amounts as is required by the proceedings authorizing the bonds. The director of finance shall provide a notice of redemption in the event the bonds are retired by redemption, in such form

and substance as is required by the proceedings authorizing the bonds. If the bonds so redeemed as aforesaid are not presented for payment or redemption on or before the redemption date specified in the notice, the amount due thereon shall be held exclusively for the payment of the bonds whenever presented. All redemptions shall be made as provided by law and no notice of redemption shall be required other than that as provided in the proceedings authorizing the bonds.

**§47-33 Purchase of bonds, when.** Provided it can be shown to be to the financial advantage of the county, whenever there are any moneys on deposit in the sinking fund in excess of the amount needed for the redemption of any bonds then matured or required to be redeemed, the director of finance of each county, with the approval of the governing body, may buy with those moneys, on the open market, any of the outstanding bonds or any interest bearing notes of the county, or invest the moneys 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 the savings accounts, time deposits, or certificates of deposit are collaterally secured by a pledge of obligations of, or obligations unconditionally guaranteed by, the United States of America; or in obligations of any state of the United States of America or any agency, instrumentality or local government of any such state, the provision for payment of the principal of and interest on which shall have irrevocably been made by deposit of obligations of, or obligations unconditionally guaranteed by, the United States of America.

All bonds and notes purchased pursuant to this section shall be canceled and not reissued.

### **PART III. LOST, STOLEN, DESTROYED, DEFACED BONDS AND COUPONS**

**§47-41 Request for replacement or payment.** Any party claiming ownership of a bond issued by a county or any interest coupon appertaining to any bond of that county and which bond, coupon, or both, as the case may be, has been lost, stolen, destroyed, wholly or in part, or so defaced as to impair its value, may file with the director of finance of that county a request for replacement or payment of the bond, coupon or both, as the case may be. The request shall be in the form of an affidavit describing the bond, coupon, or both, as the case may be, and explaining the circumstances under which the bond, coupon, or both, as the case may be, was lost, stolen, destroyed or defaced. The affidavit shall be presented with such evidence as the director of finance may require to establish the ownership of the bond, coupon, or both.

**§47-42 Issuance of duplicate.** (a) When the director of finance is satisfied that the bond, coupon, or both, as the case may be, is in fact lost, stolen, destroyed, wholly or in part, or defaced and that the claimant is the legal and beneficial owner of such bond, coupon, or both, as the case may be, and that if lost or stolen, such bond, coupon, or both, as the case may be, has not been acquired by a bona fide purchaser, the director, except as provided in sections 47-43 and 47-44, may cause to be issued a duplicate thereof, which shall be so marked as to adequately identify it as such to the county, any transfer agent, paying agent, or bond registrar.

(b) A duplicate bond in coupon form issued in place of a bond lost, stolen, destroyed, or defaced shall be lithographed or steel engraved unless otherwise provided in the proceedings authorizing the issuance thereof, and shall bear the manual signature of the director of finance or duly authorized deputy director of finance of the county and the mayor of the county, and an impression of the seal

of the county shall be affixed thereon. Any duplicate coupon issued in place of any lost, stolen, destroyed, or defaced coupon appertaining to an interest bearing bond of the county shall bear a lithographed or engraved facsimile of the signature of the director of finance. When a duplicate of the bond being replaced bears the manual signature of the mayor and the manual signature of the director of finance or deputy director of finance in office at the time of issuance of such duplicate bond, or any coupon being replaced bears the facsimile signature of the director of finance in office at the time of issuance of such coupon, the signature of the mayor and director of finance or deputy director of finance shall be valid and sufficient and shall have the same effect as that of the persons originally signing the bond or whose facsimile signatures appears on such bond, coupon, or both, as the case may be.

(c) All duplicate bonds in fully registered form issued in place of bonds lost, stolen, destroyed, wholly or in part, or defaced shall be from the stock of fully registered bonds of the series then held by the registrar for the series and shall be executed, sealed, and authenticated in the same manner as fully registered bonds of the series, and any duplicate fully registered bond so executed, sealed, and authenticated shall be valid and sufficient for all purposes.

**§47-43 Payment to be made.** If a lost, stolen, destroyed or defaced bond, coupon or both, as the case may be, has matured, has been called for redemption or is due, as the case may be, at the time of request for replacement of such bond, coupon or both, as the case may be, the director of finance may pay the face value of the matured bond or coupon or the call price of the called bond, as the case may be.

**§47-44 Issuance of transferable certificate.** If a lost, stolen, destroyed, wholly or in part, or defaced bond, coupon or both, as the case may be, will mature, will be called for redemption or will become due, as the case may be, within a period of one year from the date of request for replacement, the director of finance may issue to the claimant a transferable certificate for the face value of the bond, coupon or both, as the case may be, such certificate to be in such form as shall be prescribed by the director of finance.

**§47-45 Condition of replacement or payment.** The director of finance shall not provide for the issuance of a replacement for or the payment of the lost, stolen, destroyed, wholly or in part, or defaced bond, coupon, or both, as the case may be, unless the claimant shall have executed and delivered to the director a legal and sufficient surety bond in an amount equal to the loss which may be suffered by the county, any transfer agent, paying agent, or registrar by reason of issuing replacements or making payments mentioned herein. Any such surety bond shall be in such form and with such sufficient surety or sureties as shall be satisfactory to the director of finance, and shall be conditioned to indemnify and save harmless the county, any transfer agent, paying agent, or registrar from any and all loss on account of the bond, coupon, or both, as the case may be, so claimed to have been lost, stolen, destroyed, or defaced. The duration of the surety bond shall be not less than the date upon which the bond, coupon, or both, as the case may be, being replaced or paid become due and payable, plus the period of the statute of limitations applicable to bonds and coupons. In the case of a partially destroyed or defaced bond, coupon, or both, as the case may be, the claimant shall surrender the partially destroyed or defaced bond, coupon, or both, as the case may be, at the time of delivery of the replacement therefor.

All expenses necessary for the providing of any duplicate bond, coupon, or both, as the case may be, or any transferable certificate shall be borne by the

claimant thereof, and the expenses shall be paid at the time the request for replacement is filed.

**§47-46 Disputed ownership.** If there are two or more claimants claiming adversely, each to the other or others, to be the owner in due course of a bond, coupon, or both, as the case may be, alleged to have been lost, stolen, or destroyed, or defaced, the director of finance, in the director's discretion, may require the claimants, if not within the State, to appoint agents within the State to accept service of process, or otherwise to submit to the jurisdiction of the courts of the State, and may bring suit on behalf of the State in any circuit court against the claimants, by interpleader, for the determination of the claimant or claimants entitled to the payment of the bond, coupon, or both, as the case may be. Jurisdiction is hereby conferred upon the designated circuit court to hear and determine, without a jury, the suits and to determine whether any of the claimants is entitled to the payment, and, if so, which of the claimants is so entitled; provided that no such judicial determination shall dispense with the condition prescribed by section 47-45 requiring a surety bond before the payment of the claims. The cost of the suit shall be borne by the claimants and the court may decree the payment of such costs by any of the unsuccessful claimants, or the apportionments thereof, as may be deemed just. The decision of the court may be appealed to the supreme court in the same manner and subject to the same conditions and incidents as appeals in equity."

SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter 49 to read as follows:

## **"CHAPTER 49 REVENUE BONDS**

**§49-1 Definitions.** Whenever used in this chapter, unless a different meaning clearly appears from the context:

"Board" means any department or board of a county authorized to issue revenue bonds under this chapter.

"County" means the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui, the board of water supply of the city and county of Honolulu and the boards of water supply of the counties of Hawaii, Kauai, and Maui.

"Director of finance" means the director of finance of the various counties.

"Governing body" means council of each county, or any other body exercising the legislative powers of the county.

"Loan program" means the activities and policies undertaken by any county to provide assistance to members of the general public who are residents of the county by making loans or causing loans to be made available to them for such purposes as may be authorized by law.

"Revenue" means the moneys collected, including any moneys collected from the county or any department thereof, from the rates, rentals, fees and charges prescribed for the use and services of, and the facilities and commodities furnished by, an undertaking or the use and services and benefits of a loan program.

"Revenue bonds" means all bonds payable solely from and secured by the revenue, or user taxes, or any combination of both, of an undertaking or loan program or any loan made thereunder for which such bonds are issued and as otherwise provided in this chapter.

"Undertaking" means any public works and properties, improvement or system owned or operated by the county, and from which the county may derive revenue, or with respect to which the county may derive user taxes, including, but not limited to one or a combination of two or more of the following: water, sewerage,

gas or electric, heat, light or power works, solid waste processing and disposal, public off-street parking facilities, plants, and systems, together with all parts thereof and appurtenances thereto.

"User taxes" means taxes on goods or services or on the consumption thereof, the receipts of which are substantially derived from the consumption, use or sale of goods and services in the utilization of the functions or services furnished by the undertaking.

**§49-2 Declaration of policy.** It is declared to be the policy of the State that any county acquiring, purchasing, constructing, reconstructing, improving, bettering, or extending an undertaking or establishing or administering a loan program pursuant to this chapter shall manage the undertaking or loan program in the most efficient manner consistent with sound economy and public advantage and consistent with the protection of bondholders.

**§49-3 Additional powers of counties.** In addition to the powers which it may now have, any county under this chapter may:

- (1) Construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better, or extend any undertaking, within or without the county, or partially within or partially without the county, and acquire by gift, purchase, or the exercise of the right of eminent domain, lands or rights in land or water rights in connection therewith or undertake the establishment and administration of a loan program as authorized by the law;
- (2) Operate and maintain any undertaking and maintain a loan program as authorized by law and furnish the services, facilities, and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of the county;
- (3) Issue its revenue bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking or the establishment and administration of any loan program as authorized by law;
- (4) Impose, prescribe, and collect rates, rentals, fees and charges for the use and services of, and the facilities and commodities furnished by, the undertaking or the use and services of the loan program as authorized by law, as provided in section 49-10; and
- (5) Pledge to the punctual payment of the revenue bonds and interest thereon or covenant to pay into any special funds from which any revenue bonds may be payable, all or any portion of the revenue of the undertaking or loan program or of any part thereof, or the user taxes derived therefrom, or any combination of both (including improvements, betterments, or extensions thereto thereafter constructed or acquired) sufficient, among other things, to pay the revenue bonds and interest thereon as the same shall become due and create and maintain reasonable reserves therefor.

The governing body of the county in determining the cost may include all costs and estimated costs of the issuance of the revenue bonds, all architectural, engineering, inspection, financial and legal expenses, all costs of establishing or administering a loan program authorized by law, the cost of causing the payment of the principal or interest or both of the revenue bonds to be insured or guaranteed, the initial cost of any support facility obtained as permitted by section 47-8, and interest which it is estimated will accrue on the bonds during the construction or origination period and for six months thereafter.

Subject to the approval of the governing body, a board may exercise all or any part of the powers vested in the county pursuant to this chapter but only with

respect to an undertaking or loan program under the jurisdiction of such board. In the event a board shall exercise any of the powers vested in the county pursuant to this chapter, the term governing body as used in this chapter shall be deemed to mean the board, and the term director of finance shall be deemed to mean the chief financial officer of the board.

**§49-4 Authorization of undertaking, loan program and revenue bonds; details of revenue bonds.** (a) The acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking or the establishment and administration of a loan program may be authorized under this chapter, and revenue bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the county issuing the revenue bonds which may be adopted at the same meeting at which the same are introduced by a majority of all the members of the governing body of the county then in office and shall take effect immediately upon adoption.

(b) The revenue bonds, subject to the proviso to this paragraph shall, bear interest at such rate or rates payable at such time or times, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding thirty years from their respective dates, may be payable in such medium of payment and at such place or places, may carry such registration privileges, may be subject to such terms of redemption, to being tendered for purchase or to being purchased prior to their stated maturity at the option of the county, the holder or either or both, may contain such terms, covenants, and conditions, and may be in such form, either coupon or registered, as the resolution and subsequent resolutions may provide; provided that notwithstanding the foregoing the governing body may provide for deeply discounted revenue bonds which do not bear interest but which are subject to redemption or retirement at their accreted value provided that the discounted value of the revenue bonds shall not exceed ten per cent of any series of revenue bonds.

(c) The governing body shall determine the date, denomination or denominations, interest payment dates, maturity date or dates, place or places of payment, registration privileges and place or places of registration, redemption price or prices and time or times and terms and conditions and method of redemption, the rights of the holder to tender for purchase and the price or prices and time or times and terms and conditions upon which the rights might be exercised, the rights to purchase and the price or prices and the time or times and terms and conditions upon which the rights might be exercised and the purchase may be made, and all other details of revenue bonds issued under this part. A governing body may delegate the responsibility for any or all of the aforesaid determinations, within limits prescribed by the governing body, to the director of finance.

**§49-5 Sale of revenue bonds.** (a) The director of finance may make such arrangements as may be necessary or proper for the sale of each issue of revenue bonds or part thereof as are issued under this chapter, including, without limitation, arranging for the preparation and printing of the revenue bonds, the official statement and any other documents or instruments deemed required for the issuance and sale of revenue bonds and retaining such financial, accounting and legal consultants, all upon such terms and conditions as the director of finance deems advisable and in the best interest of the county. The governing body may offer the revenue bonds at competitive sale or may negotiate the sale of the revenue bonds to any person or group of persons, to the United States of America, or any board, agency, instrumentality, or corporation thereof, to the employees retirement system of the State, to the State or any political subdivision of the State, or to any board, agency, instrumentality, public corporation, or other governmental organization of the State or of any political subdivision of the State.



(b) The sale of the revenue bonds by the governing body by negotiation shall be at such price or prices and upon such terms and conditions, and the revenue bonds shall bear interest at such rate or rates or such varying rates determined from time to time in such manner, as the governing body shall approve.

(c) The sale of the revenue bonds by the governing body at competitive sale shall be at such price or prices and upon such terms and conditions, and the revenue bonds shall bear interest at such rate or rates or such varying rates determined from time to time in the manner, as specified by the successful bidders, in which event the revenue bonds shall be sold in accordance with this subsection. The revenue bonds offered at competitive sale shall be sold only after published notice of sale advising prospective purchasers of the proposed sale. The revenue bonds offered at competitive sale may be sold to the bidder offering to purchase the revenue bonds at the lowest interest cost, such interest cost, for the purpose of this subsection, being determined on one of the following bases as selected by the governing body:

- (1) The figure obtained by adding together the amounts of interest payable on the revenue bonds from their dates to their respective maturity dates at the rate or rates specified by the bidder and deducting from the sum obtained the amount of any premium offered by the bidder;
- (2) Where the interest on the revenue bonds is payable annually, the annual interest rate (compounded annually), or, where the interest on the bonds is payable semiannually, the rate obtained by doubling the semiannual interest rate (compounded semiannually), necessary to discount the principal and interest payments on the revenue bonds from the dates of payment thereof to the date of the revenue bonds and to the price bid (the price bid for the purpose of this paragraph shall not include the amount of interest accrued on the revenue bonds from their date to the date of delivery and payment); or
- (3) Where the interest on the revenue bonds is payable other than annually or semiannually or will vary from time to time upon such basis as, in the opinion of the director of finance, shall result in the lowest cost to the county;

provided that in any case the right shall be reserved to reject any or all bids and waive any irregularity or informality in any bid.

(d) Revenue bonds offered at competitive sale, without further action of the governing body, shall bear interest at the rate or rates specified by the successful bidder or such varying rates determined from time to time in the manner specified by the successful bidder with the consent of the governing body. The notice of sale required by this section shall be published at least once and at least five days prior to the date of the sale in a newspaper or newspapers published in any of the cities of New York, Chicago, or San Francisco, and shall be in such form and contain such terms and conditions as the governing body shall determine. The notice of sale shall comply with the requirements of this section if it merely advises prospective purchasers of the proposed sale and makes reference to a detailed notice of sale which is available to the prospective purchasers and which sets forth the specific details of the revenue bonds and terms and conditions upon which any revenue bonds are to be offered. The notice of sale published and any detailed notice of sale may omit the date and time of sale, in which event such date and time shall be either published or transmitted via electronic communication systems deemed proper by the governing body which is generally available to the financial community, in either case at least forty-eight hours prior to the time fixed for such sale.

(e) A governing body may delegate the responsibility for any or all of the determinations or actions under this chapter to the director of finance.

**§49-6 Form and execution of revenue bonds.** (a) Revenue bonds issued under this chapter shall be in such form as the governing body may determine, shall be lithographed or engraved, shall be manually signed by the director of finance or deputy director of finance, shall be countersigned with a lithographed or engraved facsimile of the signature of the mayor, and shall be sealed with the seal or a lithographed or engraved facsimile of the seal of the county. In addition, fully registered revenue bonds may be authenticated with the manual signature of the registrar, if any, thereunto duly appointed by the director of finance. Notwithstanding the preceding provisions of this section, the governing body may provide that revenue bonds issued under this chapter may be typewritten, printed, or otherwise reproduced, and that the signature of the mayor upon the revenue bonds may be the mayor's manual signature. The coupons pertaining to the revenue bonds shall be executed with the lithographed or engraved facsimile signatures of the mayor and the director of finance. In the case of a board, for purposes of this section, the member thereof who is the presiding officer or, if authorized by the board, the executive director, and such other officer of the board as is provided by the board, shall be deemed the mayor and the director of finance. Pending the preparation of the definitive revenue bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued.

(b) The revenue bonds bearing the signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, and shall have the same effect as if the persons officially signing the bonds had remained in office until the delivery of the revenue bonds to the initial purchasers thereof, and in the case of fully registered bonds upon any exchange or transfer between subsequent holders thereof notwithstanding that the term of office of the persons or any of them may have expired or they may otherwise have ceased to be officers before the delivery, exchange, or transfer. If the director of finance shall have designated a registrar for fully registered revenue bonds, the resolution authorizing the revenue bonds may provide that no fully registered revenue bond shall be valid or obligatory for any purpose unless certified or authenticated by the registrar. If the resolution provides, then all signatures of the officers of the county upon the fully registered revenue bonds may be facsimiles of the signatures, and the fully registered revenue bonds shall be valid and sufficient only if certified or authenticated by the manual signature of an authorized officer or signatory of such registrar. Any law to the contrary notwithstanding, if blanks of fully registered revenue bonds are held by a registrar pending exchange or transfer for other fully registered revenue bonds of the same series, then upon delivery of revenue bonds in an exchange or transfer, the revenue bonds shall be valid and sufficient for all purposes notwithstanding that the signatures of the officers of the county appearing thereon shall be that of the persons in office at the time of initial delivery of the revenue bonds or that of the persons in office at the time of the exchange or transfer. The validity of the revenue bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking or establishment or administration of the loan program authorized by law for which the revenue bonds are issued. The resolution authorizing the revenue bonds shall provide that the revenue 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.

**§49-7 CUSIP numbers.** The governing body issuing revenue bonds pursuant to this chapter, in its discretion, may provide that CUSIP identification numbers shall be imprinted on the revenue bonds. In the event such numbers are imprinted on any revenue bonds (1) no CUSIP number shall constitute a part of the contract

evidenced by the particular revenue bond upon which it is imprinted and (2) no liability shall attach to the county, or any officer or agent thereof, including any fiscal agent, paying agent, or registrar for the bonds, by reason of the numbers or any use made thereof, and including any use thereof made by the county, any officer or any agent, or by reason of any inaccuracy, error, or omission with respect thereto or in that use. The governing body in its discretion may require that all cost of obtaining and imprinting the numbers shall be paid by the purchaser of the bonds. For the purposes of this section the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

**§49-8 Support facility for variable rate revenue bonds.** If revenue bonds issued pursuant to this chapter are issued bearing interest at a rate or rates which vary from time to time and with a right of holders to tender the revenue bonds for purchase, the governing body may authorize the director of finance to contract for such support facility or facilities and remarketing arrangements as are required to market the revenue bonds to the greatest advantage of the county upon such terms and conditions as deemed necessary and proper. The director of finance may enter into contracts or agreement with the entity or entities providing a support facility; provided that any contract or agreement shall provide, in essence, that any amount due and owing by the county under the contract or agreement on an annual basis shall be payable solely from the revenue of the undertaking or loan program and any obligation issued or arising pursuant to the terms of the contract or agreement in the form of bonds, notes, or other evidences of indebtedness shall only arise at such time as either:

- (1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of revenue bonds issued pursuant to this chapter; or
- (2) A like principal amount of the issue or series of revenue bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility.

**§49-9 Covenants in resolution authorizing issuance of revenue bonds.** Any resolution or resolutions authorizing the issuance of revenue bonds under this chapter may contain covenants including but not limited to:

- (1) The purpose or purposes to which the proceeds of sale of the revenue bonds shall be applied and the use and disposition thereof;
- (2) The use and disposition of the revenue of the undertaking or the loan program for which the revenue bonds are to be issued, or the user taxes derived therefrom, or both, to the extent pledged to the payment of the revenue bonds, including the priority of payments from such revenue and the creation and maintenance of reserves and the investment thereof;
- (3) Transfer from the general fund of the county to the account or accounts of the undertaking an amount equal to the cost of furnishing the county or any of its departments, boards, or agencies, at their request, with the services, facilities and commodities of the undertaking;
- (4) The issuance of other or additional revenue bonds payable from the revenue of the loan program or of the undertaking, or the user taxes derived therefrom, or both revenue and user taxes, to the extent pledged to the payment of the revenue bonds;
- (5) The operation, maintenance, and repair of the undertaking or the administration, operation, and maintenance of the loan program; or

- (6) Other appropriate suit, action, or proceeding in any court of competent jurisdiction.

**§49-10 Rates, rentals, fees and charges; undertakings and loan programs to be self-sustaining.** The governing body issuing revenue bonds pursuant to this chapter shall impose, prescribe and collect, or authorize and require the imposition, prescription and collection of, rates, rentals, fees or charges for the use and services of, and the facilities and commodities furnished by, the undertaking or for the use and services and benefits of the loan program for which the revenue bonds are issued, and shall revise, or require revision of, the rates, rentals, fees or charges from time to time whenever necessary, so that, together with the proceeds of the user taxes derived with respect to the undertaking pledged to the payment of the revenue bonds, the undertaking or loan program shall be and always remain self-sustaining. The rates, rentals, fees or charges imposed and prescribed shall produce revenue which, together with the proceeds of such user taxes, will be at least sufficient:

- (1) To make the required payments of the principal of and interest on all revenue bonds issued for the undertaking or loan program, including the payment of all revenue bonds and interest thereon for the payment of which the revenue, or user taxes, or combination of both, are or shall have been pledged, charged or otherwise encumbered, or which are otherwise payable from the revenue, or user taxes, or combination of both, or are payable from a special fund maintained, or to be maintained, from the revenue, or user taxes, or combination of both, including reserves therefor, and to maintain the special fund in an amount at least sufficient to pay when due all revenue bonds and interest thereon which are payable from the special fund, including reserves therefor;
- (2) To pay the cost of operation, maintenance, and repair of the undertaking, or to pay the cost of the administration, operation, and maintenance of the loan program, including reserves therefor; and
- (3) To carry out the covenants of the resolution or resolutions authorizing the issuance of the revenue bonds, including any covenant as to the minimum amounts of revenue to be produced by the undertaking or loan program for which the revenue bonds are issued.

**§49-11 Use of revenue and user taxes of undertaking or loan program.** Whenever any revenue bonds have been issued under this chapter for an undertaking or a loan program, the revenue, or the user taxes, or combination of both, from which the revenue bonds are payable and by which they are secured of the undertaking or loan program shall be deposited in a special fund and shall be appropriated, applied, or expended, and the county shall have the right to appropriate, apply, or expend the same, in the amount necessary therefor for the following purposes and in such order of priority as the county shall provide in the resolution or resolutions authorizing the issuance of revenue bonds:

- (1) To pay when due all revenue bonds and interest thereon issued for the undertaking or loan program, for the payment of which the revenue, or user taxes, or combination of both, is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;
- (2) To pay or provide for the payment of the cost of operation, maintenance, and repair of the undertaking, or to pay or provide for the payment of administering, operating, and maintaining the loan program, including reserves therefor;

- (3) For such purposes, within the jurisdiction, powers, duties, and functions of the county, including the creation and maintenance of reserves, as shall have been covenanted in any resolution or resolutions of the county providing for the issuance of revenue bonds;
- (4) To reimburse the general fund of the county for all bond requirements for general obligation bonds which are or shall have been issued for the undertaking or loan program, or to refund any of the general obligation bonds, except insofar as the obligation of reimbursement has been or shall be canceled by the governing body, the 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 for betterments and improvements to the undertaking or expansion of the loan program, including reserves therefor; or
- (6) To provide such special reserve funds and other special funds as are or may be created by the resolution or resolutions authorizing the revenue bonds.

Unless and until adequate provision has been made for the foregoing purposes, the county shall not have the right to transfer to its general fund or apply to any other purposes any part of the revenue, or user taxes, pledged to the payment of the revenue bonds, of the undertaking or loan program.

**§49-12 Lien and charge of revenue bonds.** Unless otherwise provided in the resolution or resolutions, all revenue bonds of the same issue, subject to the prior and superior rights of outstanding revenue bonds, claims, or obligations, shall have a prior and paramount lien and charge on the revenue, or the user taxes, or combination of both, pledged to the payment thereof, of the undertaking or loan program for which the revenue bonds have been issued, over and ahead of all bonds of any issue payable from the revenue, or user taxes, or combination of both, which may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenue, or user taxes, or combination of both, subsequently arising or subsequently incurred. All revenue bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, of sale, of execution, or of delivery, by a lien and charge on the revenue or user taxes, or combination of both, pledged to the payment thereof, in accordance with this chapter and the resolution or resolutions authorizing the revenue bonds.

**§49-13 Revenue bonds not a general or moral obligation of the county.** Unless otherwise provided in this section, revenue bonds issued under this chapter shall be payable solely from and secured by the revenue, or the user taxes, or combination of both, pledged to the payment thereof, of the undertaking or loan program for which the revenue bonds have been issued, or secured solely by and payable from a special fund to be maintained from the revenue, or user taxes, or combination of both, pledged to the special fund, and shall not constitute a general or moral obligation of the county or a charge upon the general fund of the county, nor shall the full faith and credit of the county be pledged to the payment of the principal and interest thereof. Revenue bonds issued for the purpose of establishing and administering a loan program authorized by law may also be secured by a pledge of all or a portion of undertakings, mortgages, and other obligations held by the county as security for a loan made under the program. Each revenue bond issued under this chapter shall recite in substance that the revenue bonds and the interest thereon are payable from and secured by the revenue, or the user taxes, or combination of both, pledged to the payment thereof, of the undertaking or loan program for which the revenue bond is issued, or secured by and payable from a

special fund to be maintained from the revenue, or user taxes, or combination of both, pledged to the special fund, and that the revenue bond is not a general or moral obligation of the county and the full faith and credit of the county are not pledged to the payment of the principal and interest.

**§49-14 Undertaking, loan program, and revenue bonds exempt from taxation.** So long as the county owns any undertaking or administers a loan program, the property and revenue of the undertaking or loan program shall be exempt from all state, county, and municipal taxation; provided that any interest in property provided or given as security for a loan made under a loan program shall not be or be deemed to be property of the county for purposes of this section. Revenue bonds issued pursuant to this chapter and the income therefrom shall be exempt from all taxation by the State or any county or other political subdivision thereof, except inheritance, transfer, and estate taxes.

**§49-15 Federal tax-exempt status; preference; protection.** Revenue bonds issued under this chapter, to the extent practicable, shall be issued so as to comply with requirements imposed by valid federal law providing that the interest on the bonds shall be excluded from gross income for federal income<sup>1</sup> purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance is authorized to enter into such agreements, establish such funds or accounts and take any action as required in order to comply with such valid federal law. Nothing in this chapter shall be deemed to prohibit the issuance of revenue bonds, the interest on which may be included in gross income for federal income tax purposes.

For the purpose of ensuring that interest on revenue bonds issued pursuant to this chapter which is excluded from gross income for federal income tax purposes (except as provided above) on the date of issuance shall continue to be so excluded<sup>1</sup> no county officer or employee or user of an undertaking or loan program shall authorize or allow any change, amendment, or modification to an undertaking or loan program financed or refinanced with the proceeds of revenue bonds which change, amendment or modification would affect the exclusion of interest on the revenue bonds from gross income for federal income tax purposes unless the change, amendment, or modification shall have received the prior approval of the director of finance. Failure to receive the approval of the director of finance shall render any change, amendment, or modification void.

**§49-16 Revenue bonds legal investments.** All public officers and bodies of the State, all political subdivisions, all insurance companies and associations, all banks, saving banks, and savings institutions, including building or savings and loan associations, all trust companies, all personal representatives, guardians, trustees, and all other persons and fiduciaries in the State who are regulated by law as to the character of their investment, may legally invest funds within their control and available for investment in revenue bonds of the county. The purpose of this section is to authorize any persons, firms, corporations, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including (without prejudice to the generality of the foregoing), sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any revenue bonds of the county.

**§49-17 Duties of the director of finance.** (a) The director of finance shall be the fiscal agent for the payment of all principal and interest, and for the transfer of revenue bonds. The director of finance may appoint other fiscal agents and transfer agents.

The director of finance shall cause to be set up in the treasury of the county suitable accounts for the deposit of all revenue of the undertaking or loan program,

and for the payment of all revenue bonds and the interest thereon and for all other payment provided or required by this chapter, and for the holding of all reserves created under this chapter.

If deemed necessary or advisable by the director of finance, the director may appoint a national or state bank or trust company within or without the State to serve as trustee for the holders of the revenue bonds and the director of finance may enter into a trust indenture or trust agreement or indenture of mortgage with the trustee. The trustee may be authorized by the county to receive and receipt for, hold and administer the proceeds of the revenue bonds and to apply the same to the purposes for which the bonds are issued, or to receive and receipt for, hold and administer all or part of the revenue derived by the county from the undertaking and to apply the revenue to the payment of the principal of and interest on the revenue bonds, or both. In the event that the trustee shall be appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the director of finance with the trustee may contain whatever covenants and provisions as may be authorized by this chapter as may be deemed necessary by the director, and any covenants or provisions so contained need not be included in a resolution or resolutions adopted under this chapter, but may be incorporated by general reference thereto in such resolution or resolutions. Any resolution or resolutions, trust indenture or trust agreement or indenture of mortgage adopted by the governing body or entered into by the director of finance pursuant to this chapter may also contain any provisions required for the qualification thereof under the United States Trust Indenture Act of 1939 or deemed necessary or desirable by the director of finance for the security and protection of the holders of the revenue bonds or to carry out the purposes of this chapter. The county may pledge and assign to the trustee all or part of the revenue of the undertaking or the loan program for the benefit of the holders of the revenue bonds.

(b) If the director of finance appoints a trustee for the holders of the revenue bonds, then notwithstanding the first sentence of subsection (a), the director of finance may elect not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange and redemption, of the revenue bonds, or may elect to limit the functions the director shall perform as the fiscal agent. The director of finance may appoint the trustee to serve as the fiscal agent, and may authorize and empower the trustee to perform the functions with respect to the payment, purchase, registration, transfer, exchange and redemption, as the director of finance may deem necessary, advisable, or expedient, including without limitation the holding of the revenue bonds and coupons which have been paid and the supervision and conducting of the destruction thereof in accordance with law, to appoint the trustee or others as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower the fiscal agents, paying agents, and registrars to perform the functions referred to in subsection (a), it being the intent of this subsection to permit, the director of finance, at the director's election, not to serve as fiscal agent for the revenue bonds or to limit the functions the director shall perform as such fiscal agent, as the director may deem necessary, advisable, or expedient.

**§49-18 Investment of reserves, etc.** The director of finance may invest any money held as reserves or in sinking funds or not required for immediate disbursement, including proceeds of the revenue bonds, which in the director's judgment are in excess of the amounts necessary for the meeting of immediate requirements, in securities permitted by the resolution or resolutions and which constitute legal investments for public funds. Income derived therefrom shall be treated as revenue of the undertaking or loan program; expenses of purchase, safekeeping, sale, and redemption, and all other expenses of the undertaking or loan program. Securities

so purchased shall be considered as being deposited in the custody or control of the director of finance and shall be legally secured as required by law.

**§49-19 Bond anticipation notes.** In anticipation of the issuance under this chapter of revenue bonds theretofore authorized by the governing body for an undertaking or a loan program and of the receipt of the proceeds of the bonds, the county, with the approval of the governing body, may issue and sell revenue bond anticipation notes for the purposes for which the revenue bonds have been authorized, the maximum principal amount of which notes shall not exceed the authorized principal amount of the revenue bonds. The notes shall be payable solely from and secured by the proceeds of the sale of the revenue bonds in anticipation of which they were issued and the revenue, or the user taxes, or a combination of both, from which would be payable and by which would be secured those revenue bonds; provided that to the extent the principal of the notes is paid from moneys other than the proceeds of sale of the revenue bonds, the maximum amount of revenue bonds in anticipation of which the notes are issued that has been authorized shall be reduced by the amount of the notes paid in that manner. The issuance of the notes and the details thereof shall be governed by this chapter with respect to revenue bonds insofar as the same may apply, 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.

**§49-20 Refunding revenue bonds.** Whenever the county has any outstanding revenue bonds or general obligation bonds issued for an undertaking or loan program pursuant to section 47-4, and the governing body determines that it will be financially sound and advantageous to the county to refund the outstanding revenue bonds or general obligation bonds, the governing body shall have the power to provide for the issuance of refunding revenue bonds with which to provide for the payment of the outstanding bonds or any part thereof at or before the maturity or redemption date thereof, with the right to include various series and issues of the outstanding bonds in a single issue of refunding revenue bonds and to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded and to establish reserves for the refunding revenue bonds and partly for the construction or acquisition of improvements and additions to and extensions of the undertaking for the construction or acquisition of which the outstanding bonds were issued or in the case of a loan program partly to extend the loan program.

The refunding revenue bonds shall be payable solely from and secured by the revenue of the loan program or undertaking financed from the proceeds of the bonds being refunded, or the user taxes derived with respect to such undertaking, or a combination of both, and shall be a valid claim only as against that revenue, or user taxes, or combination of both. Refunding revenue bonds issued for the purpose of establishing and administering a loan program may also be secured by a pledge of all or a portion of undertakings, mortgages, and other obligations held by the department as security for a loan made under the program. The interest rate or rates of the refunding revenue bonds shall not be limited by the interest rate or rates borne by any of the revenue bonds to be refunded thereby. The refunding revenue bonds, in the discretion of the governing body, may be exchanged at par for the bonds which are being refunded or may be sold in the manner provided in this chapter for revenue bonds, as the governing body shall deem for the best interests of the county. The refunding revenue bonds may be issued and delivered at any time prior to the date of maturity or redemption date of the bonds to be refunded that the governing body determines to be in the best interest of the county. The refunding revenue bonds, except as specifically provided in this section, shall



be issued in accordance with this chapter. Pending the time the proceeds derived from the sale of refunding revenue bonds issued hereunder are required for the purposes for which they were issued, the proceeds, upon authorization or approval of the governing body, may be invested 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 the savings accounts, time deposits, or certificates of deposit are collaterally secured by a pledge of obligations of, or obligations unconditionally guaranteed by, the United States of America; or in obligations of any state of the United States of America or any agency, instrumentality or local government of any state, the provision for payment of the principal of and interest on which shall have irrevocably been made by deposit of obligations of, or obligations unconditionally guaranteed by, the United States of America, and to further secure the refunding revenue bonds, or the revenue bonds being refunded, or both, the county may 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 the refunding revenue bonds, and the safekeeping and application of the earnings of the investment. All bonds so refunded and redeemed by the issue and sale or issue and exchange of refunding revenue bonds shall be canceled.

Nothing in this section shall require or be deemed to require the county to elect to redeem or prepay bonds being refunded, or to redeem or prepay 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 proceedings authorizing the issuance thereof, or, in the event the county elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The determination of the county with respect to the financial soundness and advantage of the issuance and delivery of refunding revenue bonds authorized hereby when approved by the governing body shall be conclusive, but nothing in this section shall require the holders of any outstanding revenue bonds being refunded to accept payment thereof otherwise than as provided in the revenue bonds to be refunded.

**§49-21 General laws applicable.** The provisions of part III of chapter 47, relating to lost, stolen, destroyed, or defaced bonds, and to lost, stolen, destroyed, or defaced coupons, to the extent that they are applicable, shall apply to revenue bonds issued pursuant to this chapter.

**§49-22 Consent of another county.** No county shall construct an undertaking or administer a loan program wholly or partly within the corporate limits of another county except with the consent of the governing body of the other county.

**§49-23 Consent of state agencies.** It shall not be necessary for any county proceeding under this chapter to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other like instrumentality of the State in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate an undertaking or undertake the establishment of loan programs, but the powers and duties of the bureau, board, commission, or instrumentality shall continue as heretofore.

**§49-24 Validation of proceedings.** All proceedings heretofore taken with respect to the contracting of revenue bonded indebtedness and the issuance, sale, execution, and delivery of revenue bonds by or on behalf of the county, are hereby validated, ratified, approved and confirmed, notwithstanding any defects or irregularities in any of those proceedings or in the issuance, execution, sale, or delivery,

and the bonds so issued or to be issued are and shall be binding, legal, valid, and enforceable obligations of the county.

**§49-25 Construction of chapter.** The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law or charter. The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and the loan program may be established, and revenue bonds may be issued under this chapter for those purposes, notwithstanding that any other law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking, or the establishment of a like loan program, or the issuance of revenue bonds for like purposes, and without regard to the requirements, restrictions, limitations, or other provisions contained in any other law or charter, including, but not limited to, any requirement for the approval by the voters of any county. Revenue bonds may be issued under this chapter notwithstanding any debt or other limitation prescribed by any law or charter and without obtaining the consent of any commission, board, bureau, agency, or department of the State, and without any other proceeding or happening of any other condition or thing than those proceedings, conditions, or things which are specifically required by this chapter, and the mode and method of procedure for the issuance of revenue bonds under this chapter need not conform to the provisions of any other law or charter. The authorization, issuance and validity of revenue bonds under this chapter shall not be dependent on or affected in any way by proceedings taken, contracts made, acts performed or done in connection with, or in furtherance of any undertaking or loan program by the county authorizing and issuing the revenue bonds, or by the validity of any such proceedings, contracts or acts, nor shall the authorization, issuance and validity of bonds issued under this chapter be dependent in any way upon the due adoption or enactment of any capital program or capital budget ordinance or resolution or upon the continued effectiveness of any appropriation made in any capital budget ordinance or resolution; provided that nothing in this section shall be deemed to permit the application of the proceeds of such bonds to appropriations which have lapsed pursuant to the provisions of law or of a charter. Insofar as the provisions of any other law or charter conflicts with this chapter, this chapter shall be controlling."

**SECTION 4.** Chapter 47, Hawaii Revised Statutes, is repealed.

**SECTION 5.** Chapter 49, Hawaii Revised Statutes, is repealed.

**SECTION 6.** The provisions of this Act shall control over any and all acts passed by the legislature during this Regular Session of 1989, whether enacted before or after the effective date of this Act, unless such acts shall specifically provide that this Act is being amended.

**SECTION 7.** This Act shall take effect upon its approval.

(Approved May 12, 1989.)

**Note**

1. So in original.