

ACT 283

S.B. NO. 2261

A Bill for an Act Relating to Hawaiian Affairs.

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

SECTION 1. The purpose of this Act is to improve the administration of the office of Hawaiian affairs (OHA) by giving OHA the authority to issue revenue bonds secured by the moneys received by OHA from the twenty per cent share of revenue from the public land trust.

OHA was established as a body corporate and as a separate entity independent of the executive branch. As part of its general powers, the OHA board of trustees is required to:

- (1) Manage, invest, and administer the proceeds from the sale or other

disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all moneys received by the office equivalent to that pro rata portion of the revenue derived from the public land trust;

- (2) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
- (3) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under Article XII, section 4, of the State Constitution; and
- (4) Determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to the office of Hawaiian affairs.

Further, the 1978 Constitutional Convention intended that "the office could have maximum control over its budget, assets and personnel", as stated in Standing Committee Report No. 59, issued August 29, 1978. It is clear that the office was established to have full control over the administration of its trust funds "for the betterment of conditions of native Hawaiians". Included in this statutory and fiduciary duty is the responsibility to administer the trust funds in the best interest of the trust beneficiaries.

This Act enables the office to maximize the trust funds without eroding the trust corpus by providing another alternative to leverage the trust funds. The Act requires that the revenue bonds authorized by OHA be issued by and on behalf of OHA's board of trustees and not by or on behalf of the State. In addition, other stipulations provide for the exclusion of these revenue bonds from the State's debt ceiling. This Act further provides that the issuance of OHA's revenue bonds has no effect on the State's power to issue general obligation bonds or the funded debt of any political subdivision under Article VII, section 12, of the Hawaii Constitution.

SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended as follows:

1. By designating sections 10-1 to 10-16 as part I and inserting a title before section 10-1 to read as follows:

"PART I. GENERAL PROVISIONS"

2. By adding a new part to be appropriately designated and to read as follows:

"PART . REVENUE BONDS"

§10-A Definitions. Whenever used in this part:

"Office project" or "project" means:

- (1) The lawful acquisition of any property, real, personal, or mixed, tangible or intangible, or any interests therein, pursuant to section 10-4(2);
- (2) Any capital improvement projects on lands held by the office pursuant to section 10-4(2) or in the public land trust, including but not limited to the construction of buildings and other improvements; infrastructure development, and other enterprises which are

acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by or on behalf of the office;

- (3) Pilot projects, demonstrations, or both, where those projects or demonstrations fulfill criteria established by the board, pursuant to section 10-5(7); and
- (4) Any other projects determined by rules adopted by the board pursuant to chapter 91 to be for the betterment of native Hawaiians and are consistent with the purposes of this chapter.

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

“Revenue bonds” means revenue bonds, interim certificates, notes, debentures, or other evidence of indebtedness of the board authorized by or issued under this part.

§10-B Powers of the board. In addition to the powers which it now possesses, the board shall have power to:

- (1) Prescribe and collect rents, fees, and charges for the use of or services furnished by any office project or the facilities thereof;
- (2) Issue revenue bonds to finance in whole or in part the cost of construction or maintenance, or both, of any office project;
- (3) Pledge to the punctual payment of such revenue bonds and interest thereon, the revenue of the office project or projects for the construction or maintenance of which the bonds have been issued, or the office’s revenue in an amount sufficient to pay such bonds and interest as the same become due and to create and maintain reasonable reserves therefor; and
- (4) Advance such moneys of the office, not otherwise required, as are necessary to pay the expenses incurred in making the preparations for the initial issuance of revenue bonds under this part, and to take any other action necessary or proper for carrying into execution and administering this part, including providing for the full utilization of office projects in every way conducive to the furtherance of any or all purposes of the office.

§10-C Authorization of office projects and revenue bonds. Authorization of construction, maintenance, or both, of an office project or projects and authorization for issuance of revenue bonds under this part shall be by resolution or resolutions of the board. The resolution may be adopted at the same meeting at which it is introduced by a majority of all the members of the board then in office and shall take effect immediately upon adoption.

§10-D Revenue bond anticipation notes. In anticipation of the issuance under this part of revenue bonds authorized by the board and of the receipt of the proceeds of sale of the bonds, the board shall have power to issue and sell bond anticipation notes for the purposes for which the bonds have been authorized, the maximum principal amount of which shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of the sale of the bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which would be secured the bonds; provided that to the extent the principal of the notes is paid from moneys other than the proceeds of the 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 the notes so paid. The issuance of the notes and the details thereof shall be governed by this part with respect to bonds as applicable; provided that:

- (1) Each note, together with all renewals and extensions, or refundings by other notes issued under this section, shall mature within five years from the date of the original note; and
- (2) The notes may be sold at public or private sale, as the board may determine.

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

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

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

§10-F CUSIP numbers. The board in its discretion may provide that CUSIP identification numbers shall be imprinted on revenue bonds issued under this part. In the event such numbers are imprinted on any such bonds:

- (1) No such number shall constitute a part of the contract evidenced by the particular bonds upon which it is imprinted; and
- (2) No liability shall attach to the board or any officer or agent thereof or the State or any officer thereof, including any fiscal agent, paying

agent, or registrar for such bonds, by reason of such numbers or any use made thereof, including any use thereof made by the board, the State, any such officer or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use.

The board in its discretion may require that all cost of obtaining and imprinting such numbers shall be paid by the purchaser of such 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.

§10-G Covenants in resolution authorizing revenue bonds. Any resolution or resolutions authorizing the issuance of revenue bonds under this part may contain covenants as to:

- (1) The purpose or purposes to which the proceeds of the sale of revenue bonds may be applied; the use and disposition of such proceeds; the investment thereof pending such use and disposition; and the use and disposition of the income from such investment;
- (2) The use and disposition of the revenue of the office project or projects for the construction or maintenance of which the revenue bonds are issued are to be included; the use and disposition of the revenue of all office projects, and of the revenues of the office, including the creation and maintenance of reserves; the investment of such revenues and of the moneys in such reserves; and the use and disposition of the income from such investments;
- (3) The minimum amount of revenues to be produced by the office projects or the office, over and above the amount required to be produced by the first sentence and paragraphs (1) to (3) of section 10-K;
- (4) The use and disposition of the proceeds of the sale of any office project, or part thereof;
- (5) The construction and maintenance of any office project other than the office project or projects for the construction or maintenance of which revenue bonds are issued;
- (6) The issuance of other or additional revenue bonds payable either from the revenue of the office project or projects for the construction or maintenance of which the revenue bonds are issued or the revenue of the office or payable from the revenue of other office projects;
- (7) The maintenance of the office project, including the creation by the board of such supervisory positions, which shall not be subject to chapters 76 and 77, as are necessary to facilitate the issuance of revenue bonds by ensuring the adequacy of revenues;
- (8) The insurance to be carried on office projects and the use and disposition of insurance moneys;
- (9) Books of account and inspection and audit thereof;
- (10) A procedure by which the terms and conditions of the bond resolution or indenture may be subsequently amended or modified with the consent of the board, the vote or written assent of the holders of bonds or any proportion of the holder, or any trustee thereof; and
- (11) The terms and conditions upon which the holders of bonds evidencing the obligation to repay loans, or any proportion of the holders, or any trustee thereof, shall be entitled to the appointment of a receiver

by any court of competent jurisdiction, which court shall have jurisdiction in such proceedings, and which receiver may enter and take possession of the office project or projects, maintain them, prescribe rents, fees, and charges, and collect, receive, and apply all revenue thereafter arising therefrom in the same manner as the board itself might do, but the receiver shall have no power, nor be granted any power, to utilize, or permit the utilization of, any office project other than in a manner consistent with and in furtherance of the purposes of the office.

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

§10-H Validity of bonds. Revenue bonds issued under this part shall bear the signatures of the chairperson of the board and the administrator, either of which signatures may be a lithographed or engraved facsimile of the signature provided that at least one of the signatures is a manual signature, and shall be sealed with the seal of the board or in lieu thereof shall bear a lithographed or engraved facsimile of such seal. The coupons pertaining to the revenue bonds shall be executed with the lithographed or engraved facsimile signatures of the chairperson of the board and the administrator. Revenue bonds bearing the signature of officers in office at the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the construction or maintenance of the office project or projects for which the bonds were issued. The resolution authorizing the issuance of revenue bonds may provide that the bonds shall contain a recital that they are issued pursuant to this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

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

§10-J Payment and security of revenue bonds; revenue bonds not a debt of the State. Revenue bonds issued under this part shall be payable solely from and secured solely by the revenues of the office project or projects or office

pledged to the payment thereof, and such revenues shall be applied to such payment in accordance with the provisions of this part and the resolution or resolutions authorizing the issuance of the revenue bonds. No holder or holders of any revenue bonds issued under this part shall have the right to compel any exercise of the taxing power of the State to pay such bonds, or interest thereon. Each revenue bond shall recite in substance that the bond, including interest thereon, is payable solely from and secured solely by the revenue pledged to the payment thereof, and that the bond does not constitute an indebtedness of the State within the meaning of any limitation of law.

§10-K Office of Hawaiian affairs projects to be self-supporting. The board shall impose and collect rates, rents, fees, and charges for the use or enjoyment and services of the facilities of each office project, and shall revise such rates, rents, fees, and charges from time to time whenever necessary, so that all office projects shall be self-supporting. The rates, rents, fees, and charges prescribed shall be such as will produce revenue at least sufficient to:

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

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

All moneys received pursuant to this section shall be administered as trust funds, as provided by this chapter, and in separate accounts designated for each office project.

§10-L Office of Hawaiian affairs project and bonds exempt from taxation. The property and revenue of any office project shall be exempt from all state, county, and municipal taxation and assessments. Revenue bonds issued under this part, and all income therefrom shall be exempt from all state, county, and municipal taxation except inheritance, transfer, and estate taxes.

§10-M Powers herein, additional to other powers. The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other general, special, or local law. Insofar as this part is inconsistent with any other general, special, or local law this part shall be controlling.

§10-N Funding and refunding bonds; authorization and purpose. The board may provide for the issuance of revenue bonds (herein referred to as refunding bonds) for the purpose of refunding, redeeming, or retiring at or at any time before maturity or at any time before the first date upon which the outstanding bonds to be refunded may be called for redemption, any bonds issued under this part, including any bonds which the holders may consent to be paid or

refunded even though the bonds are not matured or are not callable or redeemable, and for the purpose of funding indebtedness not evidenced by revenue bonds but which was incurred for purposes for which revenue bonds may be issued pursuant to this part. The rate or rates of interest borne by the refunding bonds shall not be affected or limited by the rate or rates of interest borne by the bonds to be refunded or the indebtedness to be funded. All provisions of this part applicable to the issuance of revenue bonds shall be complied with in the issuance of refunding bonds. Refunding bonds shall be sold as provided in section 10-E, or the board may, in its discretion, provide for the exchange of refunding bonds for a like principal amount of outstanding bonds for the refunding of which the issuance of such refunding bonds has been authorized, whether or not the interest rate on the refunding bonds is higher than the interest rate on the bonds refunded thereby.

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

§10-P Limitation of authority. Notwithstanding any other provision to the contrary, nothing in this part shall be construed to authorize the board to incur any indebtedness contrary to Article VII, sections 12 and 13, of the Constitution of the State or to incur any indebtedness which would not qualify for exclusion from the total indebtedness of the State under section 13(2), Article VII."

SECTION 3. Section 10-4, Hawaii Revised Statutes, is amended to read as follows:

"[[§10-4]] Office of Hawaiian affairs; established; general powers. There shall be an office of Hawaiian affairs constituted as a body corporate which shall be a separate entity independent of the executive branch. The office, under the direction of the board of trustees, shall have the following general powers:

- (1) To adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law;
- (2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate the same; and to sell, lease, or otherwise dispose of the same at such time, in such manner and to the extent necessary or appropriate to carry out its purpose;
- (3) To determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to the office of Hawaiian affairs;

- (4) To enter into and perform such contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, or with the State, or with any political subdivision thereof, or with any person, firm, association, or corporation, as may be necessary in the conduct of its business and on such terms as it may deem appropriate;
- (5) To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; [and]
- (6) To issue revenue bonds pursuant to this chapter in such principal amounts as may be authorized from time to time by law to finance the cost of an office project as authorized by law and to provide for the security thereof as permitted by this chapter;
- (7) To lend or otherwise apply the proceeds of the bonds issued for an office project either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of an office project, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;
- (8) With or without terminating a project agreement, to exercise any and all rights provided by law for entry and re-entry upon or to take possession of an office project at any time or from time to time upon breach or default by a qualified person under a project agreement, including any action at law or in equity for the purpose of effecting its rights of entry or re-entry or obtaining possession of the project or for the payments of rentals, user taxes, or charges, or any other sum due and payable by the qualified person to the office pursuant to the project agreement; and
- [(6)] (9) To take such actions as may be necessary or appropriate to carry out the powers conferred upon it by law."

SECTION 4. In codifying the new part added to chapter 10, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for letters used in the designation of those new sections.

SECTION 5. All acts passed by the legislature during this Regular Session of 1994, whether enacted before or after the effective date of this Act, shall be amended to conform with this Act unless such acts specifically provide that this Act is being amended.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved July 6, 1994.)