

ACT 307

H.B. NO. 4145

A Bill for an Act Relating to the Hawaii Hurricane Relief Fund.

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

SECTION 1. The legislature finds that the destruction caused by Hurricane Iniki in 1992 resulted in an estimated \$1,600,000,000 in insured property losses to various areas of the State. Immediately after the hurricane, homeowners insurance, which included hurricane coverage, became difficult to obtain. Act 339, Session Laws of Hawaii 1993, created the Hawaii hurricane relief fund to encourage insurance companies to resume issuing homeowners' insurance policies in Hawaii. As a result of the law, insurance companies now issue homeowners' insurance policies that do not include coverage for hurricane risk. The Hawaii hurricane relief fund issues policies covering hurricane risk.

The legislature established several possible methods of funding the Hawaii hurricane relief program:

- (1) State revenue bonds;
- (2) Loan commitments from the federal government or any agency of the federal government, including federal disaster relief agencies;
- (3) Loan commitments such as lines-of-credit or standby bank facilities from financial institutions or other private sources; and
- (4) Any combination of the above.

Although revenue bonds are included as a possible means of financing the Hawaii hurricane relief fund, Act 339 failed to amend the revenue bond law to include this particular undertaking as a legitimate use of revenue bonds. The purpose of this Act is to include financing the Hawaii hurricane relief fund as a legitimate use of state revenue bonds.

SECTION 2. Section 39-51, Hawaii Revised Statutes, is amended:

1. By adding a new definition to be appropriately inserted and to read as follows:

““Policy of hurricane property insurance” means a policy or endorsement of insurance issued by the Hawaii hurricane relief fund under section 431P-10.”

2. By amending the definition of “revenue” to read as follows:

““Revenue” means the moneys collected, including any moneys collected from the State or any department, or any county or board, agency, or instrumentality 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[.]; provided that the term shall include all insurance premium payments, assessments, surcharges, investment earnings, and all other income of the Hawaii hurricane relief fund.”

3. By amending the definition of “revenue bonds” as follows:

““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 bonds are issued and as otherwise

provided in this part[.]; provided that the term shall include all bonds issued by the director of finance under the authority of section 10(a), Act 339, Session Laws of Hawaii 1993, as amended, for the purposes of the hurricane bond loan fund.”

SECTION 3. Section 39-52, Hawaii Revised Statutes, is amended to read as follows:

**“§39-52 Declaration of policy.** It is declared to be the policy of the State that any department acquiring, purchasing, constructing, reconstructing, improving, bettering, or extending an undertaking or establishing or administering a loan program pursuant to this chapter or providing policies of hurricane property insurance to the general public, shall manage the undertaking [or], loan program, or the Hawaii hurricane relief fund in the most efficient manner consistent with sound economy and public advantage, and consistent with the protection of bondholders.”

SECTION 4. Section 39-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The issuance of revenue bonds for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking [or]; the establishment and administration of any loan program authorized by law; or the coverage of policies of hurricane property insurance issued by the Hawaii hurricane relief fund shall be authorized:

- (1) By a resolution or resolutions of the governing body of the department, 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 department then in office, and shall take effect immediately upon filing with the director of finance; or
- (2) By a certificate or certificates of a department head, which shall take effect immediately upon filing with the director of finance.”

SECTION 5. Section 39-60, Hawaii Revised Statutes, is amended to read as follows:

**“§39-60 Covenants in resolution or certificate authorizing issuance of revenue bonds.** Any resolution or certificate authorizing the issuance of revenue bonds pursuant to this part may contain covenants as 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 Hawaii hurricane relief fund, or the loan program for which the revenue bonds are to be issued, or the user taxes derived therefrom, or both revenue and user taxes, to the extent pledged to the payment of the revenue bonds, including the priority of payments from the revenue and the creation and maintenance of reserves and the investment thereof;
- (3) The issuance of other or additional revenue bonds payable from the revenue of the loan program, the Hawaii hurricane relief fund, 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;
- (4) The operation, maintenance, and repair of the undertaking or the administration, operation, and maintenance of the loan program[.]; or the Hawaii hurricane relief fund;
- (5) The insurance to be carried on an undertaking or on the security for the Hawaii hurricane relief fund, or a loan program and the use and

disposition of insurance proceeds, the insurance policies being by this section authorized to be carried, and no undertaking shall have recourse to the state insurance fund for the repair or replacement of any property in the undertaking, or for payment of claims under chapter 386 (relating to workers' compensation);

- (6) Books of account and the inspection and audit thereof; and
- (7) The terms and conditions upon which the holders of the revenue bonds or any proportion of them or any trustee therefor shall be entitled to the appointment of a receiver by any court of competent jurisdiction, which court shall have jurisdiction in the proceedings, and which [the] receiver may enter and take possession of the undertaking, operate, maintain, and repair the same, enforce or foreclose loans made under a loan program, impose and prescribe rates, rentals, fees, or charges, collect, receive, and apply all revenue, and receive and apply all user taxes, thereafter arising therefrom in the same manner and to the same extent as the department itself might do;

provided that all covenants shall be subject to review by the governor; and provided further that the provisions of this section with respect to user taxes shall be applicable only if the legislature in the specific act or acts authorizing the issuance of the revenue bonds has provided that the revenue bonds may be paid from and secured by the user taxes derived from an undertaking.

The provisions of this part and any resolution or certificate shall be a contract with the holder or holders of the revenue bonds. The duties of the department, its governing body and department head, pursuant to this part, and any resolution or certificate shall be enforceable by any bondholder, by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction."

SECTION 6. Section 39-62, Hawaii Revised Statutes, is amended to read as follows:

**"§39-62 Use of revenue and user taxes [of] by any undertaking [or], loan program[.], or the Hawaii hurricane relief fund.** Whenever any revenue bonds have been issued pursuant to this part for an undertaking [or], a loan program, or the Hawaii hurricane relief fund, the revenue, or the user taxes, or combination of both, of the undertaking [or], loan program, or fund from which the revenue bonds are payable and by which they are secured shall be deposited in a special fund and shall be appropriated, applied, or expended in the amount necessary therefor for the following purposes and in the order of priority as the department shall provide in the resolution or certificate authorizing the issuance of revenue bonds pursuant to this part:

- (1) To pay when due all revenue bonds and interest thereon issued for the undertaking [or], loan program, or the Hawaii hurricane relief fund 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 department, including the creation and maintenance of reserves, as shall have been covenanted in any resolution or resolutions or certificate or certificates of the department providing for the issuance of revenue bonds;

- (4) To reimburse the general fund of the State for all bond requirements for general obligation bonds which are or shall have been issued for the undertaking [or], loan program, or the Hawaii hurricane relief fund, or to refund any general obligation bonds, except insofar as the obligation of reimbursement has been or shall be canceled by the legislature, 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[,] or the Hawaii hurricane relief fund including reserves therefor; and
- (6) To provide special reserve funds and other special funds as are or may be created by law.

The appropriation, application, or expenditure of amounts deposited in the special fund pursuant to this section shall be accounted for on a fiscal year basis. Unless and until adequate provision has been made for the foregoing purposes, the State shall not have the right to transfer to its general fund or any special fund or to apply to any other purposes any part of the revenue or user taxes pledged to the payment of revenue bonds of the undertaking or loan program.”

SECTION 7. Section 431P-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The Hawaii hurricane relief fund shall have the following general powers:

- (1) To sue and be sued;
- (2) To make and alter policies for its organization and internal administration;
- (3) To adopt rules in accordance with chapter 91 to effectuate the purposes of this chapter;
- (4) To borrow moneys, including but not limited to moneys from state or federal sources and to issue notes or other obligations of the fund for the purposes of providing funds for any of its purposes as authorized by the legislature from time to time;
- (5) To pledge [or], assign, or grant a security interest in all or any part of the moneys, rents, charges, assessments, or other revenue and any proceeds thereof derived by the fund; [and] provided that any pledge, assignment, or grant of security interest shall constitute a lien and security interest on such money, rents, charges, assessments, or other revenue, and any proceeds thereof to the extent and with the priority set forth in the document establishing the pledge, assignment, or security interest, without the necessity for physical delivery, recording, or further act; and provided further that in effectuating any pledge, assignment, or grant of security interest, the fund may do either or both of the following:
  - (A) Transfer possession of collateral to its secured parties; or
  - (B) Execute and cause to be filed at the bureau of conveyances of the State of Hawaii, Uniform Commercial Code financing statements for the purpose of providing notice to third parties of a pledge, assignment, or grant of security interest; provided that any failure to file a financing statement or the filing of a financing statement that contains incomplete or inaccurate information shall not affect the perfected lien and security interest of the pledge, assignment, or grant of security interest; and

- (6) Enter into contracts as necessary to effectuate the purposes of this chapter.”

SECTION 8. Section 431P-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The fund shall establish outside the state treasury a hurricane reserve trust fund and any accounts thereunder and any other trust fund necessary to carry out the purposes of this chapter. Moneys deposited in the hurricane reserve trust fund and any accounts thereunder or any other trust fund shall be held by the fund, as trustee, in a depository as defined in section 38-1 or according to a similar arrangement at the discretion of the board[.], including, but not limited to, trust or custodial accounts created for the benefit of the fund’s secured parties under contractual claims financing arrangements. These moneys may be invested and reinvested in accordance with the plan of operation. Disbursements from the trust funds shall not be subject to chapter 103D and shall be made in accordance with procedures adopted by the board.”

SECTION 9. Section 11, Act 339, Session Laws of Hawaii 1993, is repealed.

[“SECTION 11. The state supreme court shall have exclusive and original jurisdiction over any controversy or dispute regarding the financing of the Hawaii hurricane relief fund and the hurricane reserve trust fund through the issuance of revenue bonds or general obligation bonds, and the security provisions thereof and the imposition and collection of any rates and charges to repay or provide security for the bonds; provided that the jurisdiction be limited to the applicability of Article VII of the Constitution of the State of Hawaii to these matters.”]

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved July 3, 1996.)