

ACT 180

S.B. NO. 1030

A Bill for an Act Relating to the Hawaii Community Development Authority.

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

SECTION 1. The legislature finds and declares that the development of Kakaako, which could include but not be limited to an ocean science center, aquarium, multicultural center, and ocean park, constitutes a valid public purpose.

Our history, our culture, and our people are integrally tied to the sea. It also shapes our future by dictating our opportunities for economic development. Hawaii is world renowned for its accomplishments in ocean science and would reap significant benefits from an exceptional ocean science facility. The Waikiki Aquarium, which is designated as the state aquarium, has limited land available for expansion at its current location, but would be incorporated into a new, world-class ocean science center in Kakaako. The ocean science center could serve as an important research facility and could include existing marine science facilities in the Kewalo Basin area. The ocean science center will expand research and development opportunities, as well as be a center for discovery, learning, and enrichment for Hawaii's people. In addition, it would add an essential new attraction for visitors to the State and provide a catalyst for commercial and retail development on adjacent state-owned land at Kewalo Basin.

SECTION 2. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . SPECIAL FACILITY PROJECTS

§206E- Definitions. For the purpose of this part, if not inconsistent with the context:

“Special facility” means one or more buildings or structures and the land thereof for the construction of facilities that provides benefits to the community at large including, without limitation, an ocean science center that incorporates research and education programs and which is the subject of a special facility lease.

“Special facility lease” includes a contract, lease, or other agreement, or any combination thereof, the subject matter of which is the same special facility.

§206E- Powers. In addition and supplemental to the powers granted to the authority by law, the authority may:

- (1) With the approval of the governor, and without regard to chapter 103D, enter into a special facility lease or an amendment or supplement thereto whereby the authority agrees to construct, acquire, or remodel and furnish or equip a special facility solely for the use by another person to a special facility lease;
- (2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield all or a portion of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility;
- (3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds which may be issued as provided in paragraph (2);
- (4) Perform and carry out the terms and provisions of any special facility lease;
- (5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease;
- (6) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition; and

- (7) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person. Neither the undertaking by the other person nor the acceptance by the authority of a contract theretofore entered into by the other person therefor, shall be subject to chapter 103D.

§206E- Findings and determination for special facility leases. The authority shall not enter into any special facility lease unless the authority at or prior to the entering into of such special facility lease shall find and determine that the entering into of such special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the authority then outstanding.

§206E- Special facility lease. (a) In addition to the conditions and terms set forth in this part, any special facility lease entered into by the authority shall at least contain provisions obligating the other person to the special facility lease:

- (1) To pay to the authority during the initial term of the special facility lease, whether the special facility is capable of being used or occupied or is being used or occupied by the other person, a rental or rentals at the time or times and in the amount or amounts that will be sufficient:
 - (A) To pay the principal and interest on all special facility revenue bonds issued for the special facility;
 - (B) To establish or maintain any reserves for these payments; and
 - (C) To pay all fees and expenses of the trustees, paying agents, transfer agents, and other fiscal agents for the special facility revenue bonds issued for the special facility;
- (2) To pay to the authority:
 - (A) A ground rental, as determined by the authority, if the land on which the special facility is located was not acquired from the proceeds of the special facility revenue bonds; or
 - (B) A properly allocable share of the administrative costs of the authority in carrying out the special facility lease and administering the special facility revenue bonds issued for the special facility, if the land was acquired from the proceeds of the special facility revenue bonds;
- (3) To either operate, maintain, and repair the special facility and pay the costs thereof or to pay to the authority all costs of operation, maintenance, and repair of the special facility;
- (4) To:
 - (A) Insure, or cause to be insured, the special facility under builder's risk insurance (or similar insurance) in the amount of the cost of construction of the special facility to be financed from the proceeds of the special facility revenue bonds;
 - (B) Procure and maintain, or cause to be procured or maintained, to the extent commercially available, a comprehensive insurance policy providing protection and insuring the authority and its officers, agents, servants, and employees (and so long as special facility revenue bonds are outstanding, the trustee) against all direct or contingent loss or liability for damages for personal injury or death or damage to property, including loss of use thereof, occurring on or in any way related to the special facility

or occasioned by reason of occupancy by and the operations of the other person upon, in, and around the special facility;

- (C) Provide all risk casualty insurance, including insurance against loss or damage by fire, lightning, flood, earthquake, typhoon, or hurricane, with standard extended coverage and standard vandalism and other malicious mischief endorsements; and
- (D) Provide insurance for workers' compensation and employer's liability for personal injury or death or damage to property (the other party may self-insure for workers' compensation if permitted by law);

provided that all policies with respect to loss or damage of property including fire or other casualty and extended coverage and builder's risk shall provide for payments of the losses to the authority, the other person, or the trustee as their respective interests may appear; and provided further that the insurance may be procured and maintained as part of or in conjunction with other policies carried by the other person; and provided further that the insurance shall name the authority, and so long as any special facility revenue bonds are outstanding, the trustee, as additional insured; and

- (5) To indemnify, save, and hold the authority, the trustee and their respective agents, officers, members, and employees harmless from and against all claims and actions and all costs and expenses incidental to the investigation and defense thereof, by or on behalf of any person, firm, or corporation, based upon or arising out of the special facility or the other person's use and occupancy thereof, including, without limitation, from and against all claims and actions based upon and arising from any:
 - (A) Condition of the special facility;
 - (B) Breach or default on the part of the other person in the performance of any of the person's obligations under the special facility lease;
 - (C) Fault or act of negligence of the other person or the person's agents, contractors, servants, employees, or licensees; or
 - (D) Accident to, or injury or death of, any person or loss of, or damage to any property occurring in or about the special facility, including any claims or actions based upon or arising by reason of the negligence or any act of the other person.

Any moneys received by the authority pursuant to paragraphs (2) and (3) shall be paid into the Hawaii community development revolving fund and shall not be nor be deemed to be revenues of the special facility.

(b) The term and all renewals and extensions of the term of any special facility lease (including any amendments or supplements thereto) shall not extend beyond the lesser of the reasonable life of the special facility which is the subject of the special facility lease, as estimated by the authority at the time of the entering into thereof, or thirty years.

(c) Any special facility lease entered into by the authority shall contain any other terms and conditions that the authority deems advisable to effectuate the purposes of this part.

§206E- Special facility revenue bonds. All special facility revenue bonds authorized to be issued shall be issued pursuant to part III of chapter 39, except as follows:

- (1) No revenue bonds shall be issued unless at the time of issuance the authority shall have entered into a special facility lease with respect to the special facility for which the revenue bonds are to be issued;
- (2) The revenue bonds shall be issued in the name of the authority, and not in the name of the State;
- (3) The revenue bonds shall be payable solely from and secured solely by the revenues derived by the authority from the special facility for which they are issued;
- (4) The final maturity date of the revenue bonds shall not be later than either the estimated life of the special facility for which they are issued or the initial term of the special facility lease;
- (5) If deemed necessary or advisable by the authority, or to permit the obligations of the other person to the special facility lease to be registered under the U.S. Securities Act of 1933, the authority, with the approval of the director of finance, may appoint a national or state bank within or without the State to serve as trustee for the holders of the revenue bonds and may enter into a trust indenture or trust agreement with the trustee. The trustee may be authorized by the authority to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued and to apply the revenues to the payment of the principal and interest on the revenue bonds. If any trustee shall be appointed, any trust indenture or agreement entered into by the authority with the trustee may contain the covenants and provisions authorized by part III of chapter 39 to be inserted in a resolution adopted or certificate issued, as though the words "resolution" or "certificate" as used in that part read "trust indenture or agreement". The covenants and provisions shall not be required to be included in the resolution or certificate authorizing the issuance of the revenue bonds if included in the trust agreement or indenture. Any resolution or certificate, trust indenture, or trust agreement adopted, issued, or entered into by the authority pursuant to this part may also contain any provisions required for the qualification thereof under the U.S. Trust Indenture Act of 1939. The authority may pledge and assign to the trustee the special facility lease and the rights of the authority including the revenues thereunder;
- (6) If the authority, with the approval of the director of finance, shall have appointed or shall appoint a trustee for the holders of the revenue bonds, then notwithstanding the provisions of the second sentence of section 39-68, 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 of finance shall perform as the fiscal agent. The authority, with the approval of 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 payment, purchase, registration, transfer, exchange, and redemption, that the authority 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 conduction of the destruction thereof in accordance with sections 40-10 and 40-11. Nothing in this paragraph shall be a limitation upon or construed as a limitation upon the powers granted in the preceding paragraph to the authority, with the approval of the director of finance, to appoint the trustee, or granted in sections 36-3 and 39-13 and the

third sentence of section 39-68 to the director of finance 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 that paragraph and sections, it being the intent of this paragraph to confirm that the director of finance as aforesaid may elect not to serve as fiscal agent for the revenue bonds or may elect to limit the functions the director of finance shall perform as the fiscal agent, that the director of finance may deem necessary, advisable, or expedient;

- (7) The authority may sell the revenue bonds either at public or private sale;
- (8) If no trustee shall be appointed to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued, the revenues shall be held in a separate account in the treasury of the State, separate and apart from the Hawaii community development revolving fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing the revenue bonds;
- (9) If the resolution, certificate, trust indenture, or trust agreement shall provide that no revenue bonds issued thereunder shall be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of the revenue bonds, signatures of the officers of the State upon the bonds required by section 39-56 may be facsimiles of their signatures;
- (10) Proceeds of the revenue bonds may be used and applied by the authority to reimburse the other person to the special facility lease for all preliminary costs and expenses, including architectural and legal costs; and
- (11) If the special facility lease shall require the other person to operate, maintain, and repair the special facility which is the subject of the lease, at the other person's expense, the requirement shall constitute compliance by the authority with section 39-61(a)(2), and none of the revenues derived by the authority from the special facility shall be required to be applied to the purposes of section 39-62(2). Sections 39-62(4), 39-62(5), and 39-62(6) shall not be¹ apply to the revenues derived from a special facility lease.

§206E- Special facility revenue bonds; special funds. (a) A separate special fund shall be established for each special facility financed from the proceeds of the revenue bonds secured under the same trust indenture. Each fund shall be designated "special facility revenue bond special fund" and shall bear additional designation as the authority deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, including particularly section 206E-16, all revenues, income, and receipts derived from the special facility for which the revenue bonds are issued shall be paid into the special facility revenue bond fund established for that special facility and applied as provided in the proceedings authorizing the issuance of the revenue bonds."

SECTION 3. Pursuant to part , chapter 206E, Hawaii Revised Statutes, the Hawaii community development authority, with the approval of the governor, may issue in one or more series special facility revenue bonds in a total amount not to exceed \$20,000,000 for the fiscal biennium 2001-2003 for the purpose of constructing, furnishing, and equipping an ocean science center in Kakaako. The

legislature finds and determines that the ocean science center in Kakaako constitutes a special facility as defined in section 2 of this Act.

SECTION 4. The Hawaii community development authority may make grants for projects in the Kakaako community development district.

Chapter 42F, Hawaii Revised Statutes, shall not apply to any grants made to the ocean science center, but all such grants shall only be made in accordance with the following standards and conditions:

- (1) Requests for grants shall be submitted to the executive director of the Hawaii community development authority. Each request shall state:
 - (A) The name of the requesting organization;
 - (B) The public purpose for the grant;
 - (C) The services to be supported by the grant;
 - (D) The target group; and
 - (E) The cost of the grant and the budget.
- (2) Grants shall only be awarded to organizations which:
 - (A) Are licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which a grant is awarded;
 - (B) Comply with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability;
 - (C) Agree not to use state funds for entertainment or lobbying activities;
 - (D) Allow the Hawaii community development authority, legislative committees and their staff, and the auditor full access to their records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant; and
 - (E) Comply with other requirements as the Hawaii community development authority may prescribe.
- (3) In addition, a grant may be made to an organization only if the organization:
 - (A) Is incorporated under the laws of the State; and
 - (B) Has bylaws or policies that describe the manner in which the activities or services for which a grant is awarded shall be conducted or provided.
- (4) Further, a grant may be awarded to a nonprofit organization only if the organization:
 - (A) Has been determined and designated to be a nonprofit organization by the Internal Revenue Service; and
 - (B) Has a governing board whose members have no material conflict of interest and serve without compensation.

SECTION 5. The Hawaii community development authority may from time to time issue refunding special facility revenue bonds authorized in such principal amounts as the executive director shall determine to be necessary to refund the special facility revenue bonds authorized in section 3 of this Act.

SECTION 6. This Act shall take effect on July 1, 2001.

(Approved May 29, 2001.)

Note

1. So in original.