

ACT 285

S.B. NO. 755

A Bill for an Act Relating to Harbors.

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

SECTION 1. The legislature finds that private development of harbor facilities on state lands should be encouraged to save taxpayers the burden of funding costly construction or improvements. The legislature further finds that private development would more likely result in projects being completed on time.

The purpose of this Act is to allow the department of transportation's harbors division and the department of land and natural resources to enter into capital advancement contracts with private developers to make up to \$5,000,000 of public improvements to small boat or commercial harbor facilities, and to do so without legislative approval where the value of the contract does not exceed \$2,000,000.

SECTION 2. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§200- Private financing of small boat harbor improvements. (a) Notwithstanding any law to the contrary, the board may enter into a capital advancement contract with a private party for any public improvement to or

construction of a state small boat harbor, if the chairperson determines that a capital advancement contract promotes the best interest of the State by finding that:

- (1) Private development is likely to be less costly than any other type of contract;
- (2) Private development provides needed public improvements on a significantly more timely basis; or
- (3) Public financing for the public improvements is not available on a timely basis.

(b) A capital advancement contract under subsection (a) may be financed by legislative appropriation to reimburse the private party or by credit against the private party's future rental or tariff payments to the State; provided that the terms of the contract shall ensure that the State benefits financially from the arrangement and that public use of the facility is maintained; provided further that capital advancement contracts under this section shall not be general obligations of the State for which the full faith and credit of the department is pledged and the legislature shall have no obligation to appropriate funds to reimburse a private party to a capital advancement contract.

(c) A capital advancement contract under subsection (a) shall be subject to the requirements of chapters 103 and 103D and be subject to the approval of the board; provided that all related transactions shall be subject to state audit.

(d) The board may execute capital advancement contracts pursuant to subsection (a) with a total contract value of \$2,000,000 or less without legislative approval. If the total value of a capital advancement contract pursuant to subsection (a) is greater than \$2,000,000 then the board shall obtain legislative approval in the form of the adoption of a concurrent resolution affirming the purpose, project, and contract issuance prior to executing the capital advancement contract. The total aggregate value of all capital advancement contracts entered into by the board pursuant to this section shall not exceed \$5,000,000 in any calendar year.

(e) For the purposes of this section:

“Capital advancement contract” means an agreement between the board and a private party whereby the private party agrees to furnish capital, labor, or materials for a public improvement to or construction of a state small boat harbor and in return for which the private party may be reimbursed in a manner to be determined by the board.

“Total value” includes any contract extension, project redesign, add-ons, or any other occurrence, act, or material cost that may increase the cost of the contracted project.”

SECTION 3. Chapter 266, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§266- Private financing of harbor improvements. (a) Notwithstanding any law to the contrary, the department of transportation may enter into a capital advancement contract with a private party for any public improvement to or construction of a state harbor, commercial harbor, roadstead, or other waterfront improvement belonging to or controlled by the State, if the director of transportation determines that a capital advancement contract promotes the best interest of the State by finding that:

- (1) Private development is likely to be less costly than any other type of contract;
- (2) Private development provides needed public improvements on a significantly more timely basis; or
- (3) Public financing for the public improvements is not available on a timely basis.

(b) A capital advancement contract under subsection (a) may be financed by legislative appropriation to reimburse the private party or by credit against the private party's future rental or tariff payments to the State; provided that the terms of the contract shall ensure that the State benefits financially from the arrangement and that public use of the facility is maintained; provided further that capital advancement contracts under this section shall not be general obligations of the State for which the full faith and credit of the department is pledged and the legislature shall have no obligation to appropriate funds to reimburse a private party to a capital advancement contract.

(c) A capital advancement contract under subsection (a) shall be subject to the requirements of chapters 103 and 103D and be subject to the approval of the department of transportation; provided that all related transactions shall be subject to state audit.

(d) The department of transportation may execute capital advancement contracts pursuant to subsection (a) with a total contract value of \$2,000,000 or less without legislative approval. If the total value of a capital advancement contract pursuant to subsection (a) is greater than \$2,000,000 then the department of transportation shall obtain legislative approval in the form of the adoption of a concurrent resolution affirming the purpose, project, and contract issuance prior to executing the capital advancement contract. The total aggregate value of all capital advancement contracts entered into by the department pursuant to this section shall not exceed \$5,000,000 in any calendar year.

(e) For the purposes of this subsection:

“Capital advancement contract¹” means an agreement between the department of transportation and a private party whereby the private party agrees to furnish capital, labor, or materials for a public improvement to or construction of a state harbor, commercial harbor, roadstead, or other waterfront improvement belonging to or controlled by the State and in return for which the private party may be reimbursed in a manner to be determined by the department.

“Total value” includes any contract extension, project redesign, add-ons, or any other occurrence, act, or material cost that may increase the cost of the contracted project.”

SECTION 4. New statutory material is underscored.²

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved June 28, 2001.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.