

ACT 292

S.B. NO. 2897

A Bill for an Act Relating to Procurement.

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

SECTION 1. The purpose of this part is to restore or add the exemption from the State's procurement code for special purpose revenue bonds for health care facilities, manufacturing enterprises, processing enterprises, industrial enterprises, energy projects, early childhood education and care facilities serving the general public, and private nonsectarian and sectarian elementary schools, secondary

schools, colleges, and universities serving the general public, on the basis that no public moneys are involved in issuing special purpose revenue bonds.

SECTION 2. Section 39A-32, Hawaii Revised Statutes, is amended to read as follows:

“§39A-32 Department powers as to health care facilities. In addition to powers ~~[which]~~ that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7~~[7]~~ and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or refinancing of outstanding obligations related to a project;
- (4) As security for the payment of the principal ~~[of]~~, premium, if any, and interest of the special purpose revenue bonds issued for this project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which ~~[such]~~ the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to ~~[such]~~ the project or ~~[such]~~ the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to ~~[such]~~ the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any ~~[such]~~ renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for ~~[such]~~ the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.”

SECTION 3. Section 39A-72, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-72 Department powers as to manufacturing enterprises.** In addition to powers [which] that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7[5] and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project;
- (4) As security for the payment of the principal [of], premium, if any, and interest of the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which [such] the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to [such] the project or [such] the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to [such] the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any [such] renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for [such] the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.”

SECTION 4. Section 39A-112, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-112 Department powers as to processing enterprises.** In addition to powers [which] that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7[5] and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and

- (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project;
- (4) As security for the payment of the principal [øf], premium, if any, and interest of the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which [sueh] the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to [sueh] the project or [sueh] the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to [sueh] the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any [sueh] renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for [sueh] the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.”

SECTION 5. Section 39A-152, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-152 Department powers as to industrial enterprises.** In addition to powers [whieh] that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7[;] and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project;
- (4) As security for the payment of the principal [øf], premium, if any, and interest of the special purpose revenue bonds issued for a project, to:

- (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which [sueh] the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to [sueh] the project or [sueh] the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to [sueh] the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any [sueh] renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for [sueh] the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.”

SECTION 6. Section 39A-192, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-192 Department powers as to energy projects.** In addition to powers [whieh] that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7[;] and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for an energy project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of an energy project;
- (4) As security for the payment of the principal of and interest on the special purpose revenue bonds issued for an energy project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the energy project for which [sueh] the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to [sueh] the project or [sueh] the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to [sueh] the energy project; or
 - (D) Any combination of the foregoing;

- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any [such] renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for [such] the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances an energy project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire an energy project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party."

SECTION 7. Section 39A-222, Hawaii Revised Statutes, is amended to read as follows:

"[H]§39A-222[H] **Department powers as to early childhood education and care facilities.** In addition to powers [which] that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include[;] but are not limited to[;] the following:

- (1) Notwithstanding and without compliance with section 103-7[;] and chapter 103D, but with the approval of the governor, to [enter]:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party[;] and [~~to enter~~]
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party[;]
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part[;]
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or refinancing of outstanding obligations related to a project[;]
- (4) As security for the payment of the principal [of], premium, if any, and interest of the special purpose revenue bonds issued for this project, to [pledge]:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which [such] the special purpose revenue bonds are issued; [~~to pledge~~]
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to [such] the project or [such] the special purpose revenue bonds; [~~and to pledge~~]
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to [such] the project; or [any]
 - (D) Any combination of the foregoing[;]
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any [such] renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for [such] the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor[;] and

- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.”

SECTION 8. Section 39A-252, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§39A-252]]~~ **Department powers as to private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities.** In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7[;] and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement or an amendment or supplement to an existing project agreement with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or refinancing of outstanding obligations related to a project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for this project, to ~~[pledge];~~
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which ~~[such] the special purpose revenue~~ bonds are issued; ~~[to pledge]~~
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds; ~~[and to pledge]~~
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or ~~[any]~~
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related to the project agreement; provided that any ~~[such]~~ renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for ~~[such] the~~ extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part of the project for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.”

PART II¹

SECTION 9. The purpose of this part is to provide an exemption from the State's procurement code for special facility revenue bonds for special facilities acquired, constructed, improved, and developed by the high technology development corporation solely for use by another party.

SECTION 10. Section 206M-42, Hawaii Revised Statutes, is amended to read as follows:

“**§206M-42 Powers.** In addition to any other powers granted to the development corporation by law, the development corporation may:

- (1) ~~[With]~~ Without compliance with chapter 103D, but with the approval of the governor, enter into a special facility lease or an amendment or supplement thereto whereby the development corporation agrees to acquire, construct, improve, install, equip, and develop a special facility solely for the use by another party 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 the amount of the cost of any acquisition, construction, improvement, installation, equipping, and development of any special facility, including, subject to paragraph (6), the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this section shall not exceed \$100,000,000;
- (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 refunding purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds that 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, improve, install, equip, or develop any special facility, or accept the assignment of any contract therefor entered into by the other party to the special facility lease;
- (6) Construct any special facility on land owned by the State; provided that no funds derived herein shall be expended for land acquisition; and
- (7) Agree with the other party to the special facility lease whereby any acquisition, construction, improvement, installation, equipping, or development of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person.”

PART III

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved July 10, 2006.)

Note

1. No Part I.