

ACT 171

S.B. NO. 403

A Bill for an Act Relating to Bonds.

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

SECTION 1. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§10- Federal tax-exempt status; preference; protection. (a) Revenue bonds issued pursuant to this part, to the extent practicable, shall be issued to comply with requirements imposed by applicable federal law providing that the interest on revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The board is authorized to enter into agreements, establish funds or accounts, and take any action required in order to comply with applicable federal law. Nothing in this part or this chapter shall be deemed to prohibit the issuance of revenue bonds, the interest on which may be included in gross income for federal income tax purposes.

(b) For the purpose of ensuring that interest on revenue bonds issued pursuant to this part which is excluded from gross income for federal income tax purposes (except as provided in subsection (a)) on the date of issuance shall continue to be so excluded, no state officer or employee, or user of an undertaking or loan program shall authorize or allow any change, amendment, or modification to an undertaking or loan program financed or refinanced with the proceeds of revenue bonds which change, amendment, or modification thereto would affect the exclusion of interest on those revenue bonds from gross income for federal income tax purposes unless the change, amendment, or modification shall have received the prior approval of the board. Failure to receive the approval of the board shall render any change, amendment, or modification void.”

SECTION 2. 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;
- (6) To issue revenue bonds pursuant to this chapter to finance the cost of an office project or to fund a loan program, and to provide for the security thereof, in the manner and pursuant to the procedure prescribed in part II;
- (7) To lend or otherwise apply the proceeds of the bonds issued for an office project or a loan program either directly or through a trustee or a qualified person for use and application in the acquisition, ~~purchase~~, construction, ~~[installation, or modification]~~ reconstruction, improvement, betterment, extension, or maintenance of an office project~~;~~ or the establishment, funding, and administration of a loan program, 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~~;~~ or loan agreement, as applicable, to exercise any and all rights provided by law for entry and re-entry upon or to take possession of an office project or enforce a loan agreement at any time or from time to time upon breach or default by a qualified person under a project agreement~~;~~ or loan 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 enforcing the loan agreement 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~~;~~ or loan agreement; and
- (9) To take such actions as may be necessary or appropriate to carry out the powers conferred upon it by law."

SECTION 3. Section 10-21, Hawaii Revised Statutes, is amended as follows:

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

"“Loan program” means the activities and policies undertaken by the office to provide assistance to any department of the State or to any county or board, agency, or instrumentality thereof, or to private individuals or organizations, by making loans or causing loans to be made available to them or by buying, refinancing, or guaranteeing loans made to or other obligations incurred by them for the betterment of native Hawaiians.”

2. By amending the definitions of ““office project” or “project”” and ““revenues of the office” or “office’s revenue”” to read as follows:

““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 or otherwise authorized by the board in accordance with applicable law to be for the betterment of native Hawaiians and are consistent with the purposes of this chapter.

For purposes of this chapter, the term “office project” or “project” may include projects of the foregoing types that are undertaken by the office in cooperation with other governmental entities or private individuals or organizations.

“Revenues of the office” or “office’s revenue” means all rates, rentals, fees and charges, and user taxes, received by the office of Hawaiian affairs, and all money and revenue derived from the operations of the office [~~of Hawaiian affairs~~], other than:

- (1) General appropriations; and
- (2) Funds, the terms of which preclude their being used for payment of the costs of acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or [~~costs of~~] maintenance of an office project or the costs of a loan program or the payment of principal or interest of revenue bonds.

For purposes of the issuance of revenue bonds, the office [~~of Hawaiian affairs~~] or any office project or projects shall constitute a public undertaking, improvement, or system.”

SECTION 4. Section 10-22, Hawaii Revised Statutes, is amended to read as follows:

“§10-22 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[;] or of any loan program.
- (2) Issue revenue bonds under this chapter, in such principal amounts as may be authorized by the legislature from time to time, to finance in whole or in part the cost of acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance[~~, or both,~~] of any office project[;] or the establishment, funding, or administration of any loan program, including reserves therefor;
- (3) Pledge to the punctual payment of such revenue bonds and interest thereon, the revenue of the office project or projects or loan program or programs for [~~the construction or maintenance of~~] which

the bonds have been issued, or the revenues of the office, or both, 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 use of office projects or the establishment, funding, and administration of any loan program in every way conducive to the furtherance of any or all purposes of the office.”

SECTION 5. Section 10-23, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§10-23]]~~ **Authorization of office projects and loan programs; issuance of revenue bonds.** Authorization of acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance, ~~or both,~~ of an office project or projects or the establishment, funding, and administration of any loan program, 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.”

SECTION 6. Section 10-25.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§10-25.5]]~~ **Support facility for variable rate revenue bonds.** If revenue bonds issued pursuant to this chapter are issued bearing interest at a rate or rates that vary from time to time or with a right of holders to tender the revenue bonds for purchase, or both, the board may contract for a support facility or facilities and remarketing arrangements as are required to market the revenue bonds to the greatest advantage of the board and the office upon ~~such~~ terms and conditions as the board deems necessary and proper.

The board may enter into contracts or agreements with the entity or entities providing a support facility; provided that any contract or agreement shall provide, in essence, that any amount due and owing by the board under the contract or agreement on an annual basis shall be payable from the revenue of the office project or loan program for which revenue bonds are issued or the revenue of the office; provided further that any obligation issued or arising pursuant to the terms of the contract or agreement in the form of revenue bonds, notes, or other evidences of indebtedness shall only arise at such time as either:

- (1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of revenue bonds issued pursuant to this chapter; or
- (2) A like principal amount of the issue or series of revenue bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility.”

SECTION 7. Section 10-27, Hawaii Revised Statutes, is amended to read as follows:

“§10-27 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 or the loan program or programs 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 loan programs, 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, the loan programs, or the office, over and above the amount required to be produced by the first sentence and paragraphs (1) to (3) of section 10-31;
- (4) The use and disposition of the proceeds of the sale of any office project, or part thereof;
- (5) The acquisition, purchase, construction, reconstruction, improvement, betterment, extension, 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 or the loan program or programs for [~~the construction or maintenance of~~] which the revenue bonds are issued or from the revenue of the office or payable from the revenue of other office projects[;] or loan programs;
- (7) The maintenance of the office project[;] and administration of the loan program, including the creation by the board of such supervisory positions, which shall not be subject to chapter 76, 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 or for loan programs 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 holders, or any trustee thereof; and
- (11) The terms and conditions upon which the holders of revenue 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[;] therefrom, enforce or foreclose loans, 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 or to enforce

any loan agreement 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.”

SECTION 8. Section 10-28, Hawaii Revised Statutes, is amended to read as follows:

“**§10-28 Validity of bonds.** Revenue bonds issued under this part shall bear the manual signatures of the chairperson of the board and the administrator, and shall be sealed with the seal of the board or in lieu thereof shall bear a lithographed or engraved facsimile of ~~[such]~~ the seal. If the board designates a registrar other than itself for the revenue bonds, the resolution authorizing the revenue bonds may provide that none of the revenue bonds shall be valid or obligatory for any purpose unless authenticated by the registrar. If the resolution so provides, then all signatures of the board upon the revenue bonds may be facsimiles of the signatures, and the revenue bonds shall be valid and obligatory only if authenticated by the manual signature of an authorized officer or signatory of the registrar. 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 acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of the office project or projects or the establishment, funding, or administration of the loan program or programs 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.”

SECTION 9. Section 10-29, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§10-29**~~]]~~ **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, of a loan program or programs, or of the office, and the pledge shall constitute a lien on the revenue of such project or projects, of such loan program or programs, or of the office 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.”

SECTION 10. Section 10-30, Hawaii Revised Statutes, is amended to read as follows:

“§10-30 Payment and security of revenue bonds; revenue bonds not a debt of the State. Revenue bonds issued under this part shall be payable from and secured solely by the revenues of the office project or projects, the revenues of the loan program or programs, or revenues of the office pledged to the payment thereof, or both, and those revenues shall be applied to the 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 or the making of any appropriation to pay the revenue bonds, or interest thereon. Each revenue bond shall recite in substance that the revenue bond, including interest thereon, is payable solely from and secured by the revenue pledged to the payment thereof, and that the bond does not constitute a general or moral obligation or indebtedness of the State within the meaning of any law.”

SECTION 11. Section 10-31, Hawaii Revised Statutes, is amended to read as follows:

“§10-31 Office of Hawaiian affairs projects and loan programs 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[-] or for each loan program, as applicable, and shall revise such rates, rents, fees, and charges, whenever necessary, or direct all or any portion of the revenues of the office, so that in the aggregate, the revenues of the office project or the loan program, and the revenues of the office shall produce revenue at least sufficient to:

- (1) Pay the cost of maintenance of the office project or projects[-] or administering the loan program or programs, 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 or for a loan program or programs 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 revenues of the office or other 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[-] or the administration of any loan program.

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[-] or loan program.”

SECTION 12. Section 10-32, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§10-32]] Office of Hawaiian affairs [project] projects, loan programs, and bonds exempt from taxation.~~ The property and revenue of any office project or loan program 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.”

SECTION 13. Section 10-34, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§10-34]] Funding and refunding bonds; authorization and purpose.~~ The board ~~may~~, without further authorization from the legislature, ~~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 10-25, 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.”

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 15. This Act shall take effect upon its approval.

(Approved June 24, 2013.)

Note

1. Edited pursuant to HRS §23G-16.5.