

# S.B. NO. 2857

JAN 25 2012

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## A BILL FOR AN ACT

RELATING TO SPECIAL PURPOSE REVENUE BONDS TO ASSIST DAM AND RESERVOIR OWNERS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 39A, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4                   **"PART . ASSISTING DAM AND RESERVOIR OWNERS**

5           **§39A-A Definitions.** Whenever used in this part, unless a  
6 different meaning clearly appears from the context:

7           "Department" means the department of budget and finance.

8           "Dams and reservoirs" means those facilities defined as  
9 such pursuant to part I of chapter 179D.

10          "Owner" is defined as any person subject to chapter 179D  
11 who has a right, title, or interest in or to the dam or  
12 reservoir or to the property upon which the dam, reservoir, or  
13 appurtenant works is located or proposed to be located.

14          "Person" or "persons" means an individual, firm,  
15 enterprise, partnership, corporation, association, cooperative  
16 or other legal entity, governmental body or agency, board,

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1 bureau or other instrumentality thereof, or any combination of  
2 the foregoing.

3 "Project" means any work on a "dam", "reservoir" or  
4 "appurtenant works" as defined by section 179D-3 necessary to  
5 maintain or improve such facilities.

6 "Project agreement" means any agreement entered into under  
7 this part by the department with a project party to finance,  
8 construct, operate, or maintain a project from the proceeds of  
9 special purpose revenue bonds, or to lend the proceeds of  
10 special purpose revenue bonds to assist dam and reservoir  
11 owners, including without limitation any loan agreement.

12 "Project party" means a person or persons who are dam and  
13 reservoir owners.

14 "Special purpose revenue bonds" or "bonds" means bonds,  
15 notes, or other evidences of indebtedness of the State issued  
16 pursuant to this part.

17 **§39A-B Department powers as to dam and reservoir owners.**

18 In addition to powers that it may now have, the department shall  
19 have all powers necessary or convenient to accomplish the  
20 purposes of this part. The powers of the department include but  
21 are not limited to the following:

- 22 (1) Notwithstanding and without compliance with section  
23 103-7, but with the approval of the governor, to:

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- 1 (A) Enter into and carry out a project agreement, or  
2 an amendment or supplement to an existing project  
3 agreement, with a project party; and
- 4 (B) Enter into and carry out any agreement whereby  
5 the obligation of a project party under a project  
6 agreement will be unconditionally guaranteed by a  
7 person other than a project party;
- 8 (2) To issue special purpose revenue bonds pursuant to and  
9 in accordance with this part;
- 10 (3) To lend the proceeds of the special purpose revenue  
11 bonds issued for a project to the project party for  
12 use and application by the project party for the  
13 acquisition, purchase, construction, reconstruction,  
14 improvement, betterment, extension, maintenance of a  
15 project, or refinancing of outstanding obligations  
16 related to a project;
- 17 (4) As security for the payment of the principal, premium,  
18 if any, and interest of the special purpose revenue  
19 bonds issued for a project, to:
- 20 (A) Pledge, assign, hypothecate, or otherwise  
21 encumber all or any part of the revenues and

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1 receipts derived or to be derived by the  
2 department under the project agreement for the  
3 project for which the bonds are issued;

4 (B) Pledge and assign the interest and rights of the  
5 department under the project agreement or other  
6 agreement with respect to the project or the  
7 special purpose revenue bonds;

8 (C) Pledge and assign any bond, debenture, note, or  
9 other evidence of indebtedness received by the  
10 department with respect to the project; or

11 (D) Any combination of the foregoing;

12 (5) To extend or renew any project agreement or any  
13 other agreement related thereto; provided that any  
14 renewal or extension shall be subject to the approval  
15 of the governor unless made in accordance with  
16 provisions for the extension or renewal contained in a  
17 project agreement or related agreement previously  
18 approved by the governor; and

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

22 When the department finances or refines a project by the  
23 issuance of special purpose revenue bonds as contemplated by

1 this part, the State shall not exercise the power of eminent  
2 domain to acquire a project or any part thereof for lease or  
3 transfer to a project party, nor shall the State operate a  
4 project on behalf of a project party.

5 **§39A-C Compliance with state and local law.** The issuance  
6 of special purpose revenue bonds with respect to any project  
7 under this part shall not relieve any project party or other  
8 user of the project from the laws, ordinances, and rules of the  
9 State or any political subdivision thereof, or any departments  
10 or boards thereof with respect to:

- 11 (1) The construction, operation, and maintenance of  
12 projects;
- 13 (2) Compliance with zoning laws or regulations;
- 14 (3) Obtaining of building permits; and
- 15 (4) Compliance with building and health codes and other  
16 laws, ordinances, or rules and regulations of similar  
17 nature pertaining to the project.

18 These laws shall be applicable to the party or any other user to  
19 the same extent they would be if the costs of the project were  
20 directly financed by the project party.

21 **§39A-D Conditions precedent to negotiating and entering**  
22 **into a project agreement.** Prior to entering into negotiations  
23 with respect to a project agreement or at any time during the

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1 negotiations, the department shall require that as a condition  
2 to the negotiations or the continuation thereof, the State shall  
3 be reimbursed for any and all costs and expenses incurred by it  
4 even though a project agreement may not be entered into and may  
5 further require the deposit of moneys with the department as  
6 security for the reimbursement. Any amount of the deposit in  
7 excess of the amount required to reimburse the State shall be  
8 returned by the department to the party that has made the  
9 deposit. The State shall not be required to pay to the project  
10 party any interest or earnings on such deposit.

11 The department shall not enter into any project agreement  
12 with respect to any project unless the legislature shall have  
13 first authorized the issuance of special purpose revenue bonds  
14 to finance the project pursuant to section 39A-G and the  
15 department has thereafter found and determined either that the  
16 project party is a responsible party, whether by reason of  
17 economic assets or experience in the type of enterprise to be  
18 undertaken through the project, or otherwise, or that the  
19 obligations of the project party under the project agreement  
20 will be unconditionally guaranteed by a person who is a  
21 responsible party, whether by reason of economic assets or  
22 experience in the type of enterprise to be undertaken through  
23 the project, or otherwise.

1           **§39A-E Project agreement.** No special purpose revenue  
2 bonds shall be issued unless at the time of issuance the  
3 department shall have entered into a project agreement with  
4 respect to the project for the financing of which the special  
5 purpose revenue bonds are to be issued. Any project agreement  
6 entered into by the department shall contain provisions  
7 unconditionally obligating the project party:

8           (1) To pay to the department during the period or term of  
9           the project agreement, exclusive of any renewal or  
10           extension thereof and whether or not the project is  
11           used or occupied by the project party, the sum or  
12           sums, at time or times, and in amounts that will be at  
13           least sufficient:

14           (A) To pay the principal and interest on all special  
15           purpose revenue bonds issued with respect to the  
16           project as and when the same become due,  
17           including any premium payable upon any required  
18           redemption of the bonds;

19           (B) To establish or maintain a reserve, if any, that  
20           may be required by the instrument authorizing or  
21           securing the special purpose revenue bonds;

22           (C) To pay all fees and expenses, including the fees  
23           and expenses of the paying agents and trustees,

1           incurred in connection with the special purpose  
2           revenue bonds; and

3           (D) To pay the expenses, direct or indirect, incurred  
4           by the State, as determined by the department, in  
5           administering the bonds or in carrying out the  
6           project agreement; and

7           (2) To operate, maintain, and repair the project as long  
8           as the same is used, as provided in the project  
9           agreement, and to pay all costs of the operation,  
10          maintenance, and repair.

11          Moneys received by the department pursuant to paragraph  
12          (1)(D) shall not be, or be deemed to be, revenues of the project  
13          and shall be paid into the general fund of the State.

14          **§39A-F Issuance of special purpose revenue bonds to**  
15          **finance projects.** In addition to the other powers that it may  
16          otherwise have, the department may issue special purpose revenue  
17          bonds to finance or refinance, in whole or in part, the costs of  
18          facilities of, or for, or to loan the proceeds of the bonds to  
19          assist project parties. All revenue bonds issued under this  
20          part are special purpose revenue bonds and the provisions of  
21          part III of chapter 39 shall not apply thereto. All special  
22          purpose revenue bonds shall be issued in the name of the  
23          department and not in the name of the State.



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1 In determining the cost of any project, the department may  
2 also include the following:

- 3 (1) Financing charges, fees, and expenses of any trustee  
4 and paying agents for special purpose revenue bonds  
5 issued to pay the cost of the project;
- 6 (2) Interest on the bonds and the expenses of the State in  
7 connection with the bonds and the project to be  
8 financed from the proceeds of the bonds accruing or  
9 incurred prior to and during the estimated period of  
10 construction and for the period not exceeding twelve  
11 months thereafter;
- 12 (3) Amounts necessary to establish or increase reserves  
13 for the special purpose revenue bonds;
- 14 (4) The cost of plans, specifications, studies, surveys,  
15 and estimates of costs and of revenues;
- 16 (5) Other expenses incidental to determining the  
17 feasibility or practicability of the project;
- 18 (6) Administrative expenses;
- 19 (7) Legal, accounting, consulting, and other special  
20 service fees;
- 21 (8) Interest cost incurred by the project party with  
22 respect to the project prior to the issuance of the  
23 special purpose revenue bonds; and

1           (9) Other costs, commissions, and expenses incidental to  
2           the construction, acquisition, reconstruction,  
3           renovation, rehabilitation, improvement, betterment,  
4           operation, maintenance, or extension of the project,  
5           the financing or refinancing thereof, placing of same  
6           in operation, and the issuance of the special purpose  
7           revenue bonds, whether incurred prior to or after the  
8           issuance of the bonds.

9           The legislature finds and determines that the exercise of  
10          the powers vested in the department by this part constitutes  
11          assistance to dam and reservoir owners and that the issuance of  
12          special purpose revenue bonds to finance facilities of, or for,  
13          or to loan the proceeds of the bonds to assist project parties  
14          is in the public interest.

15           **§39A-G Authorization of special purpose revenue bonds.**

16          (a) Special purpose revenue bonds for each project or multi-  
17          project program shall be authorized by a separate act of the  
18          legislature, by an affirmative vote of two-thirds of the members  
19          to which each house is entitled; provided that the legislature  
20          shall find that the issuance of the bonds is in the public  
21          interest; provided further that no authorization shall be made  
22          for a period exceeding five years of its enactment. Any special  
23          purpose revenue bond authorization, or any portion of the

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1 special purpose revenue bond authorization that has not been  
2 issued at the close of the fiscal year for the period for which  
3 the authorization is made, shall lapse. Special purpose revenue  
4 bonds issued pursuant to this part may be in one or more series  
5 for each project. The special purpose revenue bonds of each  
6 issue shall be dated, shall bear interest at a rate or rates,  
7 shall mature at a time or times not exceeding forty years from  
8 their date or dates, shall have a rank or priority and may be  
9 made redeemable before maturity at the option of the department,  
10 at a price or prices and under terms and conditions, all as may  
11 be determined by the department. The department shall determine  
12 the form of the special purpose revenue bonds, including any  
13 interest coupons to be attached thereto, and the manner of  
14 execution of the special purpose revenue bonds, and shall fix  
15 the denomination or denominations of the special purpose revenue  
16 bonds and the place or places of payment of principal and  
17 interest that may be at any bank or trust company within or  
18 without the State. The special purpose revenue bonds may be  
19 issued in coupon or in registered form, or both, as the  
20 department may determine. Provisions may be made for the  
21 registration of any coupon bonds as to principal alone and also  
22 as to both principal and interest and for the reconversion into  
23 coupon bonds of any bonds registered as to both principal and

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1 interest. The department may sell special purpose revenue bonds  
2 either at public or private sale and for a price that it may  
3 determine.

4 (b) Prior to the preparation of definitive special purpose  
5 revenue bonds, the department may issue interim receipts or  
6 temporary bonds, with or without coupons, exchangeable for  
7 definitive bonds when the bonds have been executed and are  
8 available for delivery.

9 (c) Should any bond issued under this part or any coupon  
10 appertaining thereto become mutilated or be lost, stolen, or  
11 destroyed, the department may cause a new bond or coupon of like  
12 date, number, and tenor to be executed and delivered in exchange  
13 and substitution for, and upon the cancellation of the mutilated  
14 bond or coupon, or in lieu of and in substitution for a lost,  
15 stolen, or destroyed bond or coupon. The new bond or coupon  
16 shall not be executed or delivered until the holder of the  
17 mutilated, lost, stolen, or destroyed bond or coupon has:

18 (1) Paid the reasonable expense and related charges;

19 (2) In the case of a lost, stolen, or destroyed bond or  
20 coupon, filed with the department or its fiduciary  
21 evidence satisfactory to the department or its  
22 fiduciary that the bond or coupon was lost, stolen, or

1 destroyed and that the holder was the owner of the  
2 bond; and

3 (3) Furnished indemnity satisfactory to the department.

4 (d) The department may provide that CUSIP identification  
5 numbers be printed on the special purpose revenue bonds. If  
6 numbers are imprinted on the bonds:

7 (1) No CUSIP identification number shall constitute a part  
8 of the contract evidenced by the particular bond upon  
9 which it is imprinted; and

10 (2) No liability shall attach to the department or any of  
11 its officers or agents, including any fiscal agent,  
12 paying agent, or registrar for the bonds, by reason of  
13 the numbers or any use made thereof, including any use  
14 made by the department, any officer, or any agent, or  
15 by reason of any inaccuracy, error, or omission with  
16 respect thereto or in any use.

17 The department may require that all costs of obtaining and  
18 imprinting the numbers shall be paid by the purchaser of the  
19 bonds. For the purpose of this subsection, the term "CUSIP  
20 identification numbers" means the numbering system adopted by  
21 the Committee for Uniform Security Identification Procedures  
22 formed by the Securities Industry Association.

S.B. NO. 2857**1 §39A-H Special purpose revenue bond anticipation notes.**

2 Whenever the department has authorized the issuance of special  
3 purpose revenue bonds under this part, special purpose revenue  
4 bond anticipation notes of the department may be issued in  
5 anticipation of the issuance of the bonds and of the receipt of  
6 the proceeds of sale of the bonds, for the purposes for which  
7 the bonds have been authorized. All special purpose revenue  
8 bond anticipation notes shall be authorized by the department,  
9 and the maximum principal amount of the notes shall not exceed  
10 the authorized principal amount of the bonds. The notes shall  
11 be payable solely from and secured solely by the proceeds of  
12 sale of the special purpose revenue bonds in anticipation of  
13 which the notes are issued and the revenues from which would be  
14 payable and by which the bonds would be secured; provided that  
15 to the extent that the principal of the notes shall be paid from  
16 moneys other than the proceeds of sale of the bonds, the maximum  
17 amount of bonds in anticipation of which the notes are issued  
18 that has been authorized shall be reduced by the amount of notes  
19 paid in such manner. The authorization, issuance, and the  
20 details of the notes shall be governed by this part with respect  
21 to special purpose revenue bonds insofar as the same may be  
22 applicable; provided that each note, together with all renewals  
23 and extensions thereof, or refundings thereof by other notes

1 issued under this section, shall mature within five years from  
2 the date of the original note.

3       **§39A-I Powers with respect to and security for special**  
4 **purpose revenue bonds.** To secure the payment of any of the  
5 special purpose revenue bonds issued pursuant to this part and  
6 interest thereon, or in connection with the bonds, the  
7 department shall have the power:

8       (1) To pledge all or any part of the revenues derived by  
9 the department from the project agreement to the  
10 punctual payment of special purpose revenue bonds  
11 issued with respect to the project financed from  
12 proceeds thereof and interest thereon, and to covenant  
13 against thereafter pledging any revenues or receipts  
14 to any other bonds or any other obligations of the  
15 department for any other purpose, except as otherwise  
16 stated in the law providing for the issuance of  
17 additional special purpose revenue bonds to be equally  
18 and ratably secured by a lien upon the revenues;

19       (2) To pledge and assign the interest and right of the  
20 department under the project agreement and other  
21 agreements related thereto and the rights, duties, and  
22 obligations of the department thereunder, including  
23 the right to receive revenues thereunder;

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- 1           (3) To covenant as to the use and disposition of the  
2           proceeds from the sale of the bonds;
- 3           (4) To covenant to set aside or pay over reserves and  
4           sinking funds for the bonds and as to the disposition  
5           thereof;
- 6           (5) To covenant and prescribe as to what happenings or  
7           occurrences shall constitute "events of default" and  
8           the terms and conditions upon which any or all of the  
9           bonds shall become or may be declared due before  
10          maturity and as to the terms and conditions upon which  
11          the declaration and its consequences may be waived;
- 12          (6) To covenant as to the rights, liabilities, powers, and  
13          duties arising upon the breach by it of any covenant,  
14          condition, or obligation;
- 15          (7) To designate a national or state bank or trust company  
16          within or without the State, incorporated in the  
17          United States, to serve as trustee for the holders of  
18          the special purpose revenue bonds and to enter into a  
19          trust indenture or trust agreement or indenture of  
20          mortgage with the trustee. The trustee may be  
21          authorized by the department to receive and receipt  
22          for, hold, and administer the proceeds of the special  
23          purpose revenue bonds issued for the project and to



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1 apply the proceeds to the purposes for which the bonds  
2 are issued, or to receive and receipt for, hold, and  
3 administer the revenues derived by the department  
4 under the project agreement and to apply the revenues  
5 to the payment of the principal and interest on the  
6 bonds, or both, and any excess revenues to the payment  
7 of expenses incurred by the State in administering the  
8 bonds or in carrying out the project agreement. If a  
9 trustee is appointed, any trust indenture or trust  
10 agreement or indenture of mortgage entered into by the  
11 department with the trustee may contain whatever  
12 covenants and provisions as may be necessary or  
13 convenient or desirable to secure the bonds. The  
14 department may pledge and assign to the trustee the  
15 interest of the department under the project agreement  
16 and other agreements related thereto and the rights,  
17 duties, and obligations of the department thereunder,  
18 including the right to receive revenues thereunder.  
19 The department may appoint the trustee to serve as  
20 fiscal agent for the payment of the principal and  
21 interest, and for the purchase, registration,  
22 transfer, exchange, and redemption of the special  
23 purpose revenue bonds. The department may also

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1 authorize and empower the trustee to perform these  
2 functions with respect to the payment, purchase,  
3 registration, transfer, exchange, and redemption, as  
4 the department may deem necessary, advisable, or  
5 expedient, including without limitation the holding of  
6 the special purpose revenue bonds and coupons that  
7 have been paid and the supervision of the destruction  
8 thereof in accordance with law;

9 (8) To execute all instruments necessary or convenient in  
10 the exercise of the powers herein granted or in the  
11 performance of its covenants and duties; and

12 (9) To make covenants and do any and all acts as may be  
13 necessary, convenient, or desirable to secure the  
14 bonds, notwithstanding that the covenants, acts, or  
15 items may not be enumerated herein.

16 The department shall have the power to do all things in the  
17 issuance of the bonds and for their security that are consistent  
18 with the Constitution of the State of Hawaii.

19 **§39A-J Security for special purpose revenue bonds.**

20 Special purpose revenue bonds shall be payable solely from the  
21 revenues derived by the department from payments made to the  
22 department under the project agreement or other supplemental  
23 agreements entered into with respect to the project and shall be

1 secured solely by the bond revenues and by the pledges and  
2 assignments authorized by this part. Subject to the prior and  
3 superior rights of outstanding bonds, claims, obligations, or  
4 mechanic's and materialman's liens, all special purpose revenue  
5 bonds of the same issue shall have a prior and paramount lien on  
6 the revenues derived from the project agreement with respect to  
7 the project, for which the bonds have been issued, over and  
8 ahead of all special purpose revenue bonds of any issue payable  
9 from the revenues that may be subsequently issued and over and  
10 ahead of any claims or obligations of any nature against the  
11 revenues subsequently arising or subsequently incurred; provided  
12 that the department may reserve the right and privilege to  
13 subsequently issue additional series of special purpose revenue  
14 bonds, from time to time, payable from the revenues derived from  
15 the project agreement on a parity with the special purpose  
16 revenue bonds previously issued, and the subsequently issued  
17 series of special purpose revenue bonds may be secured, without  
18 priority by reason of date of sale, date of execution, or date  
19 of delivery, by a lien on the revenues in accordance with law,  
20 including this part.

21 Notwithstanding any other provisions herein, all or part of  
22 the property constituting the project and all interest of the  
23 project party in the project and the revenues of the project

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1 party therefrom may be subjected to the present and future lien  
2 of any mortgage of the project party securing the project  
3 party's bonds, and the rights of the department and any trustee  
4 for the holders of the special purpose revenue bonds and the  
5 holders of the special purpose revenue bonds in the project and  
6 the revenues therefrom may be made subject to the prior lien of  
7 the project party's mortgage.

8       **§39A-K Special purpose revenue bonds not a general**  
9 **obligation of the State.** No holder or holders of any special  
10 purpose revenue bonds issued under this part shall ever have the  
11 right to compel any exercise of the taxing power of the State to  
12 pay the bonds or the interest thereon and no moneys other than  
13 the revenues pledged to the bonds shall be applied to the  
14 payment thereof. Each special purpose revenue bond issued under  
15 this part shall recite in substance that the bond, including  
16 interest thereon, is not a general obligation of the State and  
17 is payable solely from the revenues pledged to the payment  
18 thereof, and that the bond is not secured, directly or  
19 indirectly, by the full faith and credit or the general credit  
20 of the State or by any revenues or taxes of the State other than  
21 the revenues specifically pledged thereto.

22       **§39A-L Validity of special purpose revenue bonds.** The  
23 special purpose revenue bonds bearing the signature or facsimile

1 signature of officers in office on the date of the signing  
2 thereof shall be valid and sufficient for all purposes,  
3 notwithstanding that before the delivery thereof and payment  
4 therefor, any or all the persons whose signatures appear thereon  
5 shall have ceased to be officers of the department. Special  
6 purpose revenue bonds shall contain a recital that they are  
7 issued pursuant to this part, which recital shall be conclusive  
8 evidence of their validity and of the regularity of their  
9 issuance.

10 **§39A-M Use of revenues derived from project agreement.**

11 The department shall have the right to appropriate, apply, or  
12 expend the revenues derived with respect to the project  
13 agreement for a project for the following purposes:

- 14 (1) To pay when due all special purpose revenue bonds,  
15 premiums if any, and interest thereon, for the payment  
16 of which the revenues are or have been pledged,  
17 charged, or otherwise encumbered, including reserves  
18 therefor; and
- 19 (2) To the extent not paid by the project party to provide  
20 for all expenses of administration, operations, and  
21 maintenance of the project, including reserves  
22 therefor.

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1 Unless and until adequate provision has been made for the  
2 foregoing purposes, the department shall not transfer the  
3 revenues derived from the project agreement to the general fund  
4 of the State.

5 **§39A-N Special purpose revenue bonds exempt from taxation.**

6 Special purpose revenue bonds and the income therefrom issued  
7 pursuant to this part shall be exempt from all state and county  
8 taxation except inheritance, transfer, and estate taxes.

9 **§39A-O Federal tax exempt status.** To the extent

10 practicable, special purpose revenue bonds issued pursuant to  
11 this part shall be issued to comply with requirements imposed by  
12 applicable federal law providing that the interest on the  
13 special purpose revenue bonds shall be excluded from gross  
14 income for federal income tax purposes, except as certain  
15 minimum taxes or environmental taxes may apply. The director of  
16 finance may enter into agreements, establish funds or accounts,  
17 and take any action required to comply with applicable federal  
18 law. Nothing in this part shall be deemed to prohibit the  
19 issuance of special purpose revenue bonds, the interest on which  
20 may be included in gross income for federal income tax purposes.

21 **§39A-P Exemption from taxation of department property.**

22 All revenues derived by the department from any project or under  
23 the project agreement pertaining thereto shall be exempt from

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1 all state and county taxation. Any right, title, and interest  
2 of the department in any project shall also be exempt from all  
3 state and county taxation.

4 Except as otherwise provided by law, the interest of the  
5 project party or user of the project under the project agreement  
6 or related agreement shall not be exempt from taxation to a  
7 greater extent than it would be if the costs of the project were  
8 directly financed by the project party or other user.

9 **§39A-Q Refunding special purpose revenue bonds.** By act  
10 enacted by an affirmative vote of two-thirds of the members to  
11 which each house is entitled, the legislature may authorize the  
12 issuance of refunding special purpose revenue bonds for the  
13 purpose of refunding any special purpose revenue bonds then  
14 outstanding and issued under this part, whether or not the  
15 outstanding special purpose revenue bonds have matured or are  
16 then subject to redemption. By act enacted by an affirmative  
17 vote of two-thirds of the members to which each house is  
18 entitled, the legislature may provide for the issuance of a  
19 single issue of special purpose revenue bonds for the combined  
20 purposes of:

- 21 (1) Financing or refinancing the cost of a project or  
22 improvement or expansion thereof; and

1           (2) Refunding special purpose revenue bonds that shall  
2           therefore have been issued under this part and shall  
3           then be outstanding, whether or not the outstanding  
4           special purpose revenue bonds have matured or are then  
5           subject to redemption.

6           Nothing in this section shall require or be deemed to  
7           require the department to elect to redeem or prepay special  
8           purpose revenue bonds being refunded, or to redeem or prepay  
9           special purpose revenue bonds being refunded that were issued in  
10          the form customarily known as term bonds in accordance with any  
11          sinking fund installment schedule specified in any instruments  
12          providing for the issuance thereof, or, if the department elects  
13          to redeem or prepay any bonds, to redeem or prepay as of any  
14          particular date or dates. The issuance of refunding special  
15          purpose revenue bonds, the maturities and other details thereof,  
16          the rights and remedies of the holders thereof, and the rights,  
17          powers, privileges, duties, and obligations of the department  
18          with respect to the same, shall be governed by the foregoing  
19          provisions of this part insofar as the same may be applicable.

20           **§39A-R Status of special purpose revenue bonds under the**  
21          **Uniform Commercial Code.** Notwithstanding any of the provisions  
22          of this part or any recitals in any special purpose revenue  
23          bonds issued under this part, all special purpose revenue bonds



1 shall be deemed to be investment securities under the Uniform  
2 Commercial Code, chapter 490, subject only to the provisions of  
3 the special purpose revenue bonds pertaining to registration.

4 **§39A-S Special purpose revenue bonds as legal investments**

5 **and lawful security.** Special purpose revenue bonds issued  
6 pursuant to this part shall be and are declared to be legal and  
7 authorized investments for banks, savings banks, trust  
8 companies, savings and loan associations, insurance companies,  
9 credit unions, fiduciaries, trustees, guardians, and for all  
10 public funds of the State or other political corporations or  
11 subdivisions of the State. The special purpose revenue bonds  
12 shall be eligible to secure the deposit of any and all public  
13 funds of the State and any and all public funds of counties or  
14 other political corporations or subdivisions of the State, and  
15 the bonds shall be lawful and sufficient security for public  
16 fund deposits to the extent of their value when accompanied by  
17 all unmatured coupons appertaining thereto.

18 **§39A-T Access to and public disclosure of financial**

19 **records of project party.** (a) Each project party with a  
20 project agreement with the department shall allow the department  
21 full access to the project party's financial records. Upon the  
22 request of the department for the examination of any financial  
23 record, the project party shall allow the department to examine

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1 the requested records within a reasonably prompt time from the  
2 date of the request. If the department requests copies of the  
3 records, the project party shall provide the copies.

4 (b) To provide the public with full knowledge of the use  
5 of the proceeds and benefits derived from special purpose  
6 revenue bonds issued under this part, the department shall  
7 require each project party with a project agreement with the  
8 department to make available to the public all relevant  
9 financial records that pertain to the use of or savings  
10 resulting from the use of special purpose revenue bonds.

11 (c) The department shall adopt rules under chapter 91 for  
12 the purposes of this section.

13 **§39A-U Estimate of benefits.** (a) Each project party with  
14 a project agreement with the department shall estimate the  
15 benefits derived from the use of the proceeds of special purpose  
16 revenue bonds. The benefits estimated shall be based on the  
17 creation of new jobs and potential effect on tax receipts. The  
18 format of and method for determining the estimates shall be  
19 established by the department and shall be uniform for each  
20 project party.

21 (b) To promote public understanding of the role played by  
22 special purpose revenue bonds in providing benefits to the  
23 general public, the department shall take appropriate steps to

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1 ensure public access to and scrutiny of the estimates determined  
2 under subsection (a).

3 (c) The department shall adopt rules under chapter 91 for  
4 the purposes of this section.

5 **§39A-V Construction of this part.** The powers conferred by  
6 this part shall be in addition and supplemental to the powers  
7 conferred by any other law. Insofar as the provisions of this  
8 part are inconsistent with the provisions of any other law, this  
9 part shall control."

10 SECTION 2. In codifying the new part added to chapter 39A,  
11 Hawaii Revised Statutes, by section 1 of this Act, the revisor  
12 of statutes shall substitute appropriate section numbers for the  
13 letters used in designating and referring to the new sections in  
14 this Act.

15 SECTION 3. This Act shall take effect upon its approval  
16 and upon ratification of constitutional amendments authorizing  
17 the State to issue special purpose revenue bonds and use the  
18 proceeds from the bonds to assist dam and reservoir owners.

19

20

INTRODUCED BY:

*W.S.T.*

21

BY REQUEST

S.B. NO. 2857

**Report Title:**

Special Purpose Revenue Bonds; Dams and Reservoirs

**Description:**

Allows the authorization of special purpose revenue bonds to assist dam and reservoir owners.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS TO ASSIST DAM AND RESERVOIR OWNERS.

PURPOSE: To authorize the State to issue special purpose revenue bonds and use the proceeds from the bonds to assist dam and reservoir owners.

MEANS: Add a new part to chapter 39A, Hawaii Revised Statutes.

JUSTIFICATION: This bill would assist dam and reservoir owners by providing an economic means to bring their facilities up to current safety standards. As a result of the Kaloko disaster on Kauai and implementation of the current dam safety law, dam and reservoir owners are mandated to bring their dams and reservoirs into compliance.

Dams and reservoirs provide many public benefits as a potential resource for agriculture, water supply, recharge, flood control, hydropower and other beneficial uses. Dams are a critical part of our state infrastructure, providing benefits upon which our communities and industries depend. Over 80 per cent of the dams in Hawaii were constructed before 1940 to support the sugarcane plantations. Due to the age of these facilities and deferred maintenance due to demise of the sugar industry, without needed safety improvements, many dams could pose risks to life and property due to dam failures. The alternative of bringing a dam into compliance would be to decommission the structure entirely, which would preempt the many benefits that dams provide.

Impact on the public: Could provide an economic means to dam and reservoir owners to bring their facilities up to safety standards and promote the retention of such dams and reservoirs for agricultural, flood control, power generation, or other purposes.

Impact on the department and other agencies: Would require the Department of Budget and Finance to enter project agreements and to issue and manage the special purpose revenue bonds.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: LNR 810.

OTHER AFFECTED  
AGENCIES: Department of Budget and Finance.

EFFECTIVE DATE: Upon approval and upon ratification of constitutional amendments authorizing the State to issue special purpose revenue bonds and use the proceeds from the bonds to assist dam and reservoir owners.