HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 2178 H.D. 1

A BILL FOR AN ACT

RELATING TO SPECIAL PURPOSE REVENUE BONDS.

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

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

"PART . ASSISTING AGRICULTURAL ENTERPRISES

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

"Department" means the department of budget and finance.

"Important agricultural lands" means those lands designated as such pursuant to part III of chapter 205.

"Project" means any combination of land, buildings, and other improvements thereon, including without limitation irrigation systems and infrastructure, for use of, or for, or to assist an agricultural enterprise that is directly associated with and serves important agricultural lands, including, without limiting the generality of the foregoing, machinery, equipment, furnishings, and apparatus that are deemed necessary, suitable, or useful to the enterprise.

"Project agreement" means any agreement entered into under this part by the department with a project party to finance, construct, operate, or maintain a project from the proceeds of special purpose revenue bonds, or to lend the proceeds of special purpose revenue bonds to assist an agricultural enterprise that constructs or renovates agricultural irrigation systems or infrastructure that directly benefits and serves important agricultural lands, including without limitation any loan agreement.

"Project party" means a person, firm, or corporation qualified to do business in this State and conducting or proposing to conduct an agricultural enterprise in this State that constructs or renovates agricultural irrigation systems or infrastructure that directly benefit and serve important agricultural lands.

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

§39A-B Department powers as to agricultural enterprises that benefit important agricultural lands. 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, 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 the bonds are issued;

(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;

(C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to 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 renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for 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.

§39A-C Compliance with state and local law. The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of the project from the laws, ordinances, and rules of the State or any political subdivision thereof, or any departments or boards thereof with respect to the construction, operation, and maintenance of projects, or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project, and these laws shall be applicable to the party or any other user to the same extent they would be if the costs of the project were directly financed by the project party.

§39A-D Conditions precedent to negotiating and entering into a project agreement. The department prior to entering into negotiations with respect to a project agreement or at any time during the negotiations shall require that as a condition to the negotiations or the continuation thereof the State shall be reimbursed for any and all costs and expenses incurred by it

1 even though a project agreement may not be entered into and may
2 further require the deposit of moneys with the department as
3 security for the reimbursement. Any amount of the deposit in
4 excess of the amount required to reimburse the State shall be
5 returned by the department to the party that has made the
6 deposit.

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

20 **§39A-E Project agreement.** No special purpose revenue
21 bonds shall be issued unless at the time of issuance the
22 department shall have entered into a project agreement with

respect to the project for the financing of which the special purpose revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

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

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

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

(C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) incurred in connection with the special purpose revenue bonds; and

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

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

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

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

The department, in determining the cost of any project, may also include the following:

(1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of the project;

(2) Interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed from the proceeds of the bonds accruing or incurred prior to and during the estimated period of construction and for not exceeding twelve months thereafter;

(3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;

(4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;

(5) Other expenses incidental to determining the feasibility or practicability of the project;

(6) Administration expenses;

(7) Legal, accounting, consulting, and other special service fees;

(8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and

(9) Such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, maintenance, or extension of the project, the financing, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of the bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to an agricultural enterprise and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of the bonds to assist, project parties, is in the public interest.

§39A-G Authorization of special purpose revenue bonds. (a) Special purpose revenue bonds for each project or multiproject program shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of the bonds is in the

public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any special purpose revenue bond authorization, or any portion of the special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at a rate or rates, shall mature at a time or times not exceeding forty years from their date or dates, shall have a rank or priority and may be made redeemable before maturity at the option of the department, at a price or prices and under terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or

both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in a manner, either at public or private sale, and for a price as it may determine.

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

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

(1) Has paid the reasonable expense and charges in connection therewith;

(2) In the case of a lost, stolen, or destroyed bond or coupon, has filed with the department or its fiduciary evidence satisfactory to the department or its fiduciary that the bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof; and

(3) Has furnished indemnity satisfactory to the department.

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

(1) No such number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted; and

(2) No liability shall attach to the department or any officer or agent thereof, including any fiscal agent, paying agent, or registrar for the bonds, by reason of the numbers or any use made thereof, including any use thereof made by the department, any officer, or any

1 agent, or by reason of any inaccuracy, error, or
2 omission with respect thereto or in any use.
3 The department may require that all costs of obtaining and
4 imprinting the numbers shall be paid by the purchaser of the
5 bonds. For the purpose of this subsection, the term "CUSIP
6 identification numbers" means the numbering system adopted by
7 the Committee for Uniform Security Identification Procedures
8 formed by the Securities Industry Association.
9 **§39A-H Special purpose revenue bond anticipation notes.**
10 Whenever the department has authorized the issuance of special
11 purpose revenue bonds under this part, special purpose revenue
12 bond anticipation notes of the department may be issued in
13 anticipation of the issuance of the bonds and of the receipt of
14 the proceeds of sale thereof, for the purposes for which the
15 bonds have been authorized. All special purpose revenue bond
16 anticipation notes shall be authorized by the department, and
17 the maximum principal amount of the notes shall not exceed the
18 authorized principal amount of the bonds. The notes shall be
19 payable solely from and secured solely by the proceeds of sale
20 of the special purpose revenue bonds in anticipation of which
21 the notes are issued and the revenues from which would be
22 payable and by which the bonds would be secured; provided that

to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of the bonds, the maximum amount of bonds in anticipation of which the notes are issued that has been authorized shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and the details of the notes shall be governed by this part with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note.

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

(1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed from proceeds thereof and interest thereon, and to covenant against thereafter pledging any revenues or receipts

to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon the revenues;

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

(3) To covenant as to the use and disposition of the proceeds from the sale of the bonds;

(4) To covenant to set aside or pay over reserves and sinking funds for the bonds and as to the disposition thereof;

(5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;

(6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with the trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which the bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply the revenues to the payment of the principal and interest on the bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering the bonds or in carrying out the project agreement. If a trustee is appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the

department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable in order to secure the bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform these functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation the holding of the special purpose revenue bonds and coupons that have been paid and the supervision of the destruction thereof in accordance with law;

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

(9) To make covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure the bonds, notwithstanding that the covenants, acts, or things may not be enumerated herein; it being the purpose thereof to give the department power to do all things in the issuance of the bonds and for their security that may be consistent with the Constitution of the State of Hawaii.

§39A-J Security for special purpose revenue bonds. Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other agreements entered into with respect to the project and shall be secured solely by the bond revenues and by the pledges and assignments authorized by this part. All special purpose revenue bonds of the same issue, subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, shall have a prior and paramount lien on

the revenues derived from the project agreement with respect to the project, for which the bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable from the revenues that may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the department may reserve the right and privilege to subsequently issue additional series of special purpose revenue bonds, from time to time, payable from the revenues derived from the project agreement on a parity with the special purpose revenue bonds theretofore issued, and the subsequently issued series of special purpose revenue bonds may be secured, without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this part.

Notwithstanding any other provisions herein, all or part of the property constituting the project and all interest of the project party in the project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds. The rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders

of the special purpose revenue bonds in the project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage.

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

§39A-L Validity of special purpose revenue bonds. The special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment

1 therefor any or all the persons whose signatures appear thereon
2 shall have ceased to be officers of the department. Special
3 purpose revenue bonds shall contain a recital that they are
4 issued pursuant to this part, which recital shall be conclusive
5 evidence of their validity and of the regularity of their
6 issuance.

7 **§39A-M Use of revenues derived from project agreement.**
8 The department shall have the right to appropriate, apply, or
9 expend the revenues derived with respect to the project
10 agreement for a project for the following purposes:
11 (1) To pay when due all special purpose revenue bonds,
12 premiums if any and interest thereon, for the payment
13 of which the revenues are or have been pledged,
14 charged, or otherwise encumbered, including reserves
15 therefor; and
16 (2) To the extent not paid by the project party to provide
17 for all expenses of administration, operations, and
18 maintenance of the project, including reserves
19 therefor.
20 Unless and until adequate provision has been made for the
21 foregoing purposes, the department shall not transfer the

revenues derived from the project agreement to the general fund of the State.

§39A-N Special purpose revenue bonds exempt from taxation. Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state and county taxation except inheritance, transfer, and estate taxes.

§39A-O Federal tax exempt status. Special purpose 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 the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes.

§39A-P Exemption from taxation of department property. All revenues derived by the department from any project or under the project agreement pertaining thereto shall be exempt from

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

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

§39A-Q Refunding special purpose revenue bonds. The legislature, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption. The legislature may provide, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of:

(1) Financing the cost of a project or improvement or expansion thereof; and

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

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

§39A-R Status of special purpose revenue bonds under the Uniform Commercial Code. Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue

bonds issued under this part, all special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration.

§39A-S Special purpose revenue bonds as legal investments and lawful security. The special purpose revenue bonds issued pursuant to this part shall be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. The special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and the bonds shall be lawful and sufficient security for public fund deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto.

§39A-T Access to and public disclosure of financial records of project party. (a) Each project party with a project agreement with the department shall allow the department full access to the project party's financial records. Upon the

request of the department for the examination of any financial record, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

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

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

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

(b) To promote public understanding of the role played by special purpose revenue bonds in providing benefits to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

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

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

SECTION 2. This Act shall take effect upon its 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 agricultural enterprises that directly benefit and serve important agricultural lands.

H.B. 2178 H.D. 1

Report Title:
Important Agricultural Lands; Special Purpose Revenue Bonds

Description:
Allows the authorization of special purpose revenue bonds for certain agricultural enterprises that construct or renovate irrigation systems or infrastructure that directly benefit and serve important agricultural lands. (HB2178 HD1)