A BILL FOR AN ACT

RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

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

SECTION 1. In 1994, the legislature passed Act 283, Session Laws of Hawaii 1994, to improve the administration of the office of Hawaiian affairs (OHA) by giving OHA the authority to issue revenue bonds secured by the moneys received by OHA from the twenty per cent share of the revenue from the public land trust. Act 283 accomplished this purpose through amendments to chapter 10, Hawaii Revised Statutes, that primarily added a new part entitled "Revenue Bonds". Section 1 of Act 283 noted that OHA was established as a body corporate and as a separate entity independent of the executive branch. Further, section 1 noted that the 1978 constitutional convention intended that OHA have maximum control over its budget, assets, and personnel. The Act also enabled OHA to maximize the trust funds without eroding the trust corpus by providing another alternative to leverage the trust funds. Act 283 required that the revenue bonds authorized by OHA be issued by, and on behalf of, OHA's board of trustees and not by,
or on behalf of, the State. The Act provided that these revenue bonds would be excluded from the State's debt ceiling and that issuance of OHA revenue bonds would have no effect on the State's power to issue general obligation bonds or the funded debt of any political subdivision under article VII, section 12, of the Hawaii Constitution.

The legislature finds that although OHA has never issued revenue bonds, the Hawaii and national economies are now creating a renewed impetus for OHA to seek alternative sources of funding for its projects. In addition, the legislature finds that the revenue bond provisions of chapter 10, Hawaii Revised Statutes, which have not been amended since their enactment, need updating to better reflect current government bond practices and to ensure that OHA has maximum independence in issuing bonds.

The purpose of this Act is to clarify and strengthen OHA's bond authority. This Act contains, among other things, provisions clarifying the following:

(1) If OHA adheres to part II of chapter 10, Hawaii Revised Statutes, no other law need be enacted to authorize the principal amounts of an office of Hawaiian affairs revenue bond issuance;
(2) OHA's board of trustees can issue revenue bonds without further authorization or approval; and

(3) OHA can meet the requirement that a project financed by revenue bonds is self-supporting not only by imposing and collecting rates, rents, fees, and charges for the use or enjoyment and services, but also by using other office of Hawaiian affairs revenues.

SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§10- 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; 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 3. 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 [in such principal amounts as may be authorized from time to time by law] to finance the cost of an office project [as authorized by law] and to provide for the security thereof [as permitted by this chapter;] in the manner of, 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 either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of an office project, 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, to exercise any and all rights provided by law for entry and re-entry upon or to take possession of an office project at any time or from time to time upon breach or default by a qualified person under a project 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 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; and

(9) To take such actions as may be necessary or appropriate to carry out the powers conferred upon it by law."

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;
(2) [Issue] Without further authorization or approval, issue and authorize revenue bonds under this chapter in such principal amount as may be required to finance in whole or in part the cost of construction or maintenance, or both, of any office project[s], including reserves therefor;

(3) Pledge to the punctual payment of such revenue bonds and interest thereon, the revenue of the office project or projects for the construction or maintenance of which the bonds have been issued, or the [office's revenue] 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 utilization of office projects
in every way conducive to the furtherance of any or all purposes of the office."

SECTION 5. Section 10-25, Hawaii Revised Statutes, is amended to read as follows:

"[§10-25] Revenue bonds. (a) Revenue bonds shall be issued in the name of the board, may be in one or more series, may be in the denomination or denominations, may bear [such] the date or dates, may mature at [such] the time or times not exceeding fifty years from their respective dates, may [be] bear interest at the rate or rates payable at [such] the time or times and at the place or places within or without the State, may carry [such] the registration privileges as to principal alone or as to both principal and interest, may be subject to [such] the terms or redemption with or without premium, may be executed in [such] the manner, may contain [such] the terms, covenants, and conditions, and may be in such form[, either coupon or registered with privilege of exchange from one form to another,] as the resolution authorizing the issuance of the bonds, or subsequent resolutions may provide.

[Revenue bonds may be sold at private sale to the United States, or any agency, instrumentality, or corporation thereof, to the State or any political subdivision, agency,
instrumentality, or corporation thereof, or to any person or
group of persons offering to purchase all or a major portion of
a particular issue or series. Unless sold at private sale as
herein provided, revenue bonds shall be sold at public sale
after publication of a notice of such sale at least once, the
date of publication to be at least five days prior to the date
of the sale, and the publication shall be made in a newspaper
published and of general circulation in the State and in a
financial newspaper published in either of the cities of New
York, Chicago, or San Francisco. The revenue bonds shall be
sold for not less than ninety-eight per cent of the principal
amount thereof. Pending the preparation of definitive revenue
bonds, interim receipts or temporary bonds may be issued and
delivered to the purchasers of the bonds in such form and
containing such provisions as the board may determine. Revenue
bonds, interim receipts, and temporary bonds shall be fully
negotiable within the meaning of and for all the purposes of the
Uniform Commercial Code, chapter 490.

It shall be legal for the State and any of its political
subdivisions, or any political or public corporation, including
the employees' retirement system of the State or any
instrumentality of the State or any insurance company or
building and loan association, or any savings bank or trust company, or any bank or other financial institution operating under the laws of this State, or for any personal representative, guardian, trustee, or other fiduciary, or any educational, charitable, or eleemosynary institution, to invest their funds, and moneys in their custody in revenue bonds issued under this part.]

(b) The board may acquire policies of insurance and enter into banking arrangements upon terms and conditions as the board may deem necessary or desirable, at the time of delivery of an issue of revenue bonds or a later date as the board deems in the best interest of the office, including without limitation, contracting for a support facility or facilities as permitted in section 10-, and contracting for interest rate swaps, swaptions, interest rate floors, and other similar contracts to hedge or reduce the amount or duration of payment, rate, spread, or similar risk or to reduce the cost of borrowing when used in conjunction with revenue bonds issued pursuant to this chapter.

(c) The board may make arrangements as may be necessary or proper for the sale of each issue of revenue bonds or part thereof as are issued pursuant to this chapter, including, without limitation, arranging for the preparation and printing
of the revenue bonds, the official statement, and any other
documents or instruments deemed required for the issuance and
sale of revenue bonds and retaining financial, accounting, and
legal consultants, all upon terms and conditions as the board
deems advisable and in the best interest of the State and the
office. The board may offer the revenue bonds at competitive
sale or may negotiate the sale of the revenue bonds to any
person or group of persons, to the United States, or any board,
agency, instrumentality, or corporation thereof, to the
employees' retirement system of the State, to any political
subdivision of the State, or to any board, agency,
instrumentality, public corporation, or other governmental
organization of the State or of any political subdivision
thereof.

The sale of the revenue bonds by the board by negotiation
shall be at a price or prices, and upon terms and conditions,
and the revenue bonds shall bear interest at a rate or rates or
varying rates determined from time to time, in the manner as the
board shall approve.

The sale of the revenue bonds by the board at competitive
sale shall be at a price or prices and upon terms and
conditions, and the revenue bonds shall bear interest at a rate
or rates or varying rates determined from time to time in the
manner as specified by the successful bidder. The revenue bonds
shall be sold in the manner provided in section 39-55.

(d) The board may delegate the responsibility for the sale
and the fixing of the terms and details of revenue bonds and
such other determinations or actions as may be provided by
resolution of the board, to the chairperson of the board, the
administrator, or another designated officer.

(e) All public officers and bodies of the State, all
political subdivisions, all insurance companies and
associations, all banks, savings banks, and savings
institutions, including building or savings and loan
associations, all credit unions, all trust companies, all
personal representatives, guardians, trustees, and all other
persons and fiduciaries in the state who are regulated by law as
to the character of their investment, may legally invest funds
within their control and available for investment in revenue
bonds issued under this chapter. The purpose of this subsection
is to authorize any person, firm, corporation, association,
political subdivision, body, or officer, public or private, to
use any funds owned or controlled by them, including, without
prejudice to the generality of the foregoing, sinking,
insurance, investment, retirement, compensation, pension, or

trust funds, and funds held on deposit, for the purchase of any

revenue bonds issued under this chapter."

SECTION 6. 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, [either of which

signatures may be a lithographed or engraved facsimile of the

signature provided that at least one of the signatures is a

manual signature,] and shall be sealed with the seal of the

board or in lieu thereof shall bear a lithographed or engraved

facsimile of such seal. [The coupons pertaining to the revenue

bonds shall be executed with the lithographed or engraved

facsimile signatures of the chairperson of the board and the

administrator.] 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 construction or maintenance of the office project or projects 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 7. 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 [solely] from and secured solely by the revenues of the office project or projects or office pledged to the payment thereof, or both, and [such] those
revenues shall be applied to [such] 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 to pay such bonds, or interest thereon. Each revenue bond shall recite in substance that the revenue bond, including interest thereon, is payable [solely] from and secured [solely] by the revenue pledged to the payment thereof, and that the bond does not constitute [an] a general or moral obligation or indebtedness of the State within the meaning of any limitation of law."

SECTION 8. Section 10-31, Hawaii Revised Statutes, is amended to read as follows:

"[+]§10-31[+] Office of Hawaiian affairs projects 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 direct the allocation of the revenues of the office, and shall revise such rates, rents, fees, and charges from time to time whenever necessary, so that [all office projects shall be self-supporting. The rates, rents, fees, and charges prescribed] in HB899 SD1.DOC *HB899 SD1.DOC* *HB899 SD1.DOC*
aggregate, the revenue of the office project and the office
shall be such as will produce revenue at least sufficient to:

(1) Pay the cost of maintenance of the office project or
projects, 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 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.
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."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2020.
Report Title:
Office of Hawaiian Affairs; Revenue Bonds

Description:
Clarifies and strengthens the Office of Hawaiian Affairs' bond authority. Effective 07/01/2020. (SD1)