

SB 403

Measure Title: RELATING TO BONDS.
Report Title: Office of Hawaiian Affairs Package; Bonds; Loan Program
Description: Authorizes the office of Hawaiian affairs to issue revenue bonds to fund a loan program.
Companion: [HB217](#)
Package: OHA
Current Referral: THA, WAM
Introducer(s): KIM (Introduced by request of another party)

Sort by Date		Status Text
1/18/2013	S	Introduced.
1/22/2013	S	Passed First Reading.
1/22/2013	S	Referred to THA, WAM.
2/7/2013	S	The committee(s) on THA has scheduled a public hearing on 02-13-13 2:45PM in conference room 224.

Daniel Nahoopii	OAHU COUNCIL ASSOCIATION OF HAWAIIAN CIVIC CLUBS	SUPPORT
	OFFICE OF HAWAIIAN AFFAIRS	SUPPORT
Troy Abraham		SUPPORT
	ATTORNEY GENERAL	COMMENTS
Troy Abraham		SUPPORT

SB403

Submitted on: 2/12/2013

Testimony for THA on Feb 13, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Naho'opi'i	Oahu Council, Association of Hawaiian Civic Club	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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SB403
RELATING TO BONDS

Senate Committee on Tourism and Hawaiian Affairs

February 13, 2013

2:45 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** SB403, which is a bill in OHA's 2013 Legislative Package. This bill proposes to amend OHA's revenue bond statute to provide greater flexibility in the following key areas:

1. The types of projects and project costs that can be funded with bond proceeds
2. The issuance of bonds to fund loan programs
3. The ability to refund outstanding bonds without further legislative authorization

1. Types of Projects and Project Costs

A. Definition of Project.

Under Section 10-21 of OHA's existing bond statute, the term "project" is defined to include four different classes of projects:

1. The acquisition of property pursuant to Section 10-4(2), Hawaii Revised Statutes;
2. Capital improvement on such property;
3. Pilot projects or demonstrations pursuant to Section 10-5(7); and
4. Other projects determined by rules adopted pursuant to Chapter 91, Hawaii Revised Statutes, to be for the betterment of native Hawaiians and consistent with Chapter 10.

Although this definition covers a fairly broad range of projects, it is not possible to predict whether and to what extent there may be opportunities in the future to pursue new (and as yet unidentified) types of projects that do not fit neatly into the existing categories of projects. The flexibility to pursue new types of projects may become more important, as OHA moves forward with the development of its Kaka'ako properties, for example. For this reason, the bill recommends two amendments to the project definition:

- First, as noted above, part 4 of the existing definition includes projects determined by rules adopted pursuant to Chapter 91. While this would authorize OHA to consider new types of projects, it would require OHA to undertake the rulemaking process in order to do so. OHA does not operate by rulemaking and it seems unnecessary to require that it do so solely for bond issues. Therefore, the bill proposes that part 4 of the definition be amended to allow, in addition to projects determined by rule, those which are “otherwise authorized by the Board in accordance with applicable law.”
- In addition, the existing definition of “project” is silent as to whether OHA may issue bonds for projects partnered with others. In order to make it clear that OHA has the flexibility to do so in appropriate cases, the bill proposes that the definition of projects be amended to include an express statement that bond-financed projects may include those “that are undertaken in cooperation with other governmental entities or with non-governmental individuals or organizations.”

B. Project Costs.

OHA’s bond statute currently authorizes the use of bond proceeds to pay the costs of “construction or maintenance, or both,” of a project. The reference to construction does not expressly include project activities such as renovations and equipment acquisitions. In contrast, Chapter 39, Hawaii Revised Statutes, specifically provides that executive branch departments may issue revenue bonds to fund the costs of “acquisition, purchase, construction, reconstruction, improvement, betterment or extension” of their projects. In order to provide OHA with comparable flexibility in this regard, the bill proposes that the references to construction be replaced with the language used in Chapter 39. This language would appear in numerous places in Chapter 10.

2. Funding of Loan Programs

Under its existing bond statute, OHA is not authorized to issue bonds for purposes other than the funding of project costs. In contrast, executive branch departments are authorized by Chapter 39 to issue bonds to fund loan programs as well as project costs. Where bonds are issued to fund a department’s loan program, the bond proceeds are used to create a pool of money that is available for loans by the department, and the loan repayments are used, in turn, to pay debt service on the bonds.

Although OHA does not have current plans to establish a bond-financed loan program, the bill proposes that OHA’s bond statute be amended to allow the flexibility for OHA to do so in the future. For this purpose, the bill proposes the addition of a new definition of “loan program” in Section 10-21. This definition is based on the precedent in Chapter 39, modified to authorize bond-financed loan

programs that are consistent with OHA's mission and responsibilities under Chapter 10. The definition would read as follows:

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

Also, in order to implement this amendment, the bill proposes the addition of language specifically authorizing the use of bond proceeds for “the establishment, funding and authorization” of loan programs, along with language authorizing the pledge of loan program revenues to pay debt service on bonds issued to fund such programs. This additional language would appear in numerous places in Chapter 10.

3. Refunding Bonds

Under its existing bond statute, OHA is authorized to issue bonds for the purpose of refunding outstanding bonds of a prior issue. This authorization is generally consistent with the refunding provisions of Chapter 39, except that Chapter 39 expressly authorizes executive branch departments to issue refunding bonds without further authorization by the legislature. In comparison, OHA's bond statute is silent on this point. Given this difference between the two statutes, it is possible that OHA's bond statute could be interpreted as requiring further legislative authorization for a refunding. If further legislative authorization is deemed necessary, the time required to obtain such an authorization delay could cause OHA to miss a market opportunity to achieve significant debt service savings. In order to preserve OHA's ability to pursue refundings in a timely manner, the bill proposes that Section 10-32 of OHA's bond statute be amended to state expressly that refundings may be undertaken without further legislative authorization.

In light of the above, OHA urges the committee to **PASS** SB403. Mahalo for the opportunity to testify on this important measure.

SB403

Submitted on: 2/8/2013

Testimony for THA on Feb 13, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

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**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:
S.B. NO. 403, RELATING TO BONDS.

BEFORE THE:

SENATE COMMITTEE ON TOURISM AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 13, 2013 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): David M. Louie, Attorney General, or
Randall S. Nishiyama, Deputy Attorney General

Chair Galuteria and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

S.B. No. 403 proposes to amend the Office of Hawaiian Affairs (OHA) revenue bond statutes to provide greater flexibility for its revenue bond program.

Based on discussions with Curtis Christensen of Kutak Rock LLP, the State's Public Finance General Advice Counsel, we offer three comments regarding the bill.

First, in section 2 of the bill, in the new "loan program" definition at page 4, line 14, and the expanded definition of "office project" or "project" at page 5, line 21, the term "nongovernmental individuals or organizations" is used without any description or definition. We suggest that this term be defined to avoid any confusion regarding scope.

Second, section 11 of the bill proposes to allow OHA to issue refunding revenue bonds without further authorization from the Legislature. Since this bill reflects an intention to make OHA's revenue bond issuing powers parallel those provided for by part III, chapter 39, Hawaii Revised Statutes (HRS), the State's revenue bond statutory authority, we note that the corresponding section 39-71, HRS, the State's refunding revenue bond provision, permits the issuance of refunding revenue bonds without legislative authorization, but requires the approval of the Governor. If the Committee agrees to allow OHA to issue refunding revenue bonds without further legislative authorization, then we suggest that the approval of the Governor be added to provide OHA with the benefit of an "extra pair of eyes" in reviewing the transaction.

Third, chapter 10, HRS does not now include a section corresponding to section 39-66, HRS, addressing the tax-exempt or other status of OHA's revenue bonds. We suggest that the Committee consider adding a section corresponding to section 39-66, HRS, to chapter 10 to address this situation. Please note that the interest on revenue bonds can be exempt from federal income taxation only if they so qualify under the Internal Revenue Code and Regulations. That legal determination will be based on the particular facts of the transaction.

We respectfully ask the Committee to consider our comments.