

Rules Adopting Chapter 4 of Title 6, Administrative Rules

SUMMARY

Chapter 4 of Title 6, Administrative Rules, entitled "Special Purpose Revenue Bonds for Health Care Facilities", is adopted.

TITLE 6
DEPARTMENT OF BUDGET AND FINANCE
CHAPTER 4
SPECIAL PURPOSE REVENUE BONDS FOR
HEALTH CARE FACILITIES

SUBCHAPTER 1 GENERAL PROVISIONS

- §6-4-1 Purpose
- §6-4-2 Definitions

SUBCHAPTER 2 APPLICATION PROCESS AND PROCEDURE

- §6-4-3 Loan application and review procedures
- §6-4-4 Letter of intent
- §6-4-5 Formal application
- §6-4-6 Application fee

SUBCHAPTER 3 REVIEW PROCESS AND PROCEDURE

- §6-4-7 Determination of eligibility
- §6-4-8 Determination of responsibility
- §6-4-9 Project Agreement
- §6-4-10 Estimate of benefits
- §6-4-11 Public access to information

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

- §6-4-12 Severability
- §6-4-13 Waiver
- §6-4-14 Certificate of need or exemption

GENERAL PROVISIONS

§6-4-1 Purpose. This chapter is adopted pursuant to chapter 91, HRS, and implements part II of chapter 39A, HRS, providing for the issuance of special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public. The objectives of this chapter are:

- (1) To offset the growth of the cost of health care to the people of the State of Hawaii;
- (2) To assist in the development and maintenance of public health, health care, including care for the aged, hospitals, and related facilities, through the making of loans to not-for-profit corporations for the purpose of providing health care facilities, or for refinancing debt incurred to provide health care facilities; and
- (3) To ensure that amounts saved by the assistance result in the provision of health care to the general public at the lowest practicable cost by the not-for-profit corporations so assisted.

[Eff. December 4, 1981] (Auth: HRS §26-38) (Imp: HRS Chapter 39A)

§6-4-2 Definitions. For the purpose of this chapter:

"Bonds" means the special purpose revenue bonds or special purpose revenue bond anticipation notes issued pursuant to part II, chapter 39A, HRS;

"Chapter" means this chapter 4 of title 6, Administrative Rules;

"Department" means the department of budget and finance, State of Hawaii;

"Loan" means the loan of the proceeds of bonds to a project party for the purposes authorized by part II, chapter 39A, HRS;

"Loan application and review procedures" means the set of instructions, forms, guidelines, terms, and conditions governing the application to the department for assistance under part II, chapter 39A, HRS, and the granting of the assistance by the department;

"Project" means any health care facility eligible under part II, chapter 39A, HRS, to be financed or refinanced with the proceeds of a loan and includes any structure or building suitable for use as a hospital, clinic, nursing home, home for the aged or infirm, or other health care

facility, laboratory, laundry, nurses' or interns' residences, administration building, research facility, maintenance, storage, or utility facility, auditorium, dining hall; food service and preparation facility; mental or physical health care facility; dental care facility; nursing school; medical or dental school or teaching facility; mental or physical health facilities related to any such structure or facility; or any other structure or facility required or useful for the operation of a health care facility, including, but not limited to, offices, parking lots and garages, and other supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and including the acquisition, preparation, and development of all real and personal property necessary or convenient as a site or sites for any such structure or facility, but does not include any property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship or any property used or to be used primarily in connection with any part of a program of a school or department of divinity of any religious denomination;

"Project agreement" means the agreement between the project party and the department pursuant to which the department agrees to make a loan and the project party agrees to repay such loan in the amount equal to the amount set forth in section 39A-35, HRS, which agreement may be in the form of a lease agreement, a loan agreement or an installment sale agreement;

"Project party" means a not-for-profit corporation that provides health care facilities to the general public and which has applied for a loan pursuant to part II, chapter 39A, HRS;

"State" means the State of Hawaii.

[Eff. December 4, 1981] (Auth: HRS §26-38) (Imp: HRS §39A-31)

SUBCHAPTER 2

APPLICATION PROCESS AND PROCEDURE

§6-4-3 Loan application and review procedures. The loan application and review procedures, shall be as provided in exhibit no. 1 entitled "State of Hawaii, Department of Budget and Finance, Loan Application and Review Procedures for Financing of Health Care Facilities through the Issuance of Special Purpose Revenue Bonds," dated September 24, 1981, located at the end of this chapter which are made a part of this section.

[Eff. December 4, 1981] (Auth: HRS §26-38) (Imp: HRS §39A-32)

§6-4-4 Letter of intent. After receipt of the loan application and review procedures, a prospective project party shall furnish the department with a letter setting forth:

- (1) The intention of the prospective project party to apply for a loan;
- (2) The approximate principal amount of the loan to be requested;
- (3) A general description of the project to be financed;
- (4) The property, if any, proposed to be pledged to secure payment of the loan; and
- (5) If the project involves new construction, an approximate timetable for the construction.

[Eff. December 4, 1981] (Auth: HRS §26-38) (Imp: HRS §39A-32)

§6-4-5 Formal application. A project party shall submit an application for assistance under part II, chapter 39A, HRS on the form or forms and accompanied by the documentation prescribed in the loan application and review procedures. The application shall be verified by an officer authorized to administer oaths.

[Eff. December 4, 1981] (Auth: HRS §26-38) (Imp: HRS §39A-32)

§6-4-6 Application fee and fee agreement. A project party shall submit with the formal application described in the preceding section a non-refundable application fee in the amount of \$1,000, payable by certified or cashier's check made payable to the department, and an executed copy of the prescribed form of fee agreement included in the loan application and review procedures. The fee agreement shall obligate the project party to reimburse the department and the State for any and all costs and expenses incurred in:

- (1) The processing and reviewing of the project party's application for assistance under part II, chapter 39A, HRS, whether or not a loan is ultimately made to the project party; and
- (2) The issuance of bonds to finance a loan to the project party.

The application fee shall be applied against amounts owing under the fee agreement.

[Eff. December 4, 1981] (Auth: HRS §26-38) (Imp: HRS §39A-34)

SUBCHAPTER 3

REVIEW PROCESS PROCEDURE

§6-4-7 Determination of eligibility. The department shall review the application and related documentation submitted by a project party and shall determine whether the applicant is a "project party" and the project described in the application is a "project" as the terms are defined in section 39A-31, HRS, and section 6-4-2.

[Eff. December 4, 1981] (Auth: HRS §26-38) (Imp: HRS §39-34)

§6-4-8 Determination of responsibility. The department shall determine whether a project party is a responsible party. The determination shall be made on a case-by-case basis. The following elements shall be considered in making the determination: .

- (1) The experience of the project party in providing health care to the general public and in providing the type of service represented by the project;
- (2) The financial condition of the project party and the ability of the project party to make the payments which would be required by the project agreement from revenues derived from the project or otherwise; .
- (3) The security proposed for the loan including, if any, the real or personal property or both proposed to be pledged, mortgaged, or leased, and the presence of a guaranty of a third party (including a controlling party of the project party);
- (4) If determined necessary or desirable by the department, a financial feasibility study prepared by an independent party approved by the department, or other projection of the future ability of the project party to repay the loan;
- (5) The project party's credit reputation including, if the project has been previously financed, the project party's experience with respect to the prior financing of the project; and any other factors the department may deem relevant to a determination of responsibility with respect to any project party.
- (6) Any other factors the department may deem relevant to a determination of responsibility with respect to any project party.

[Eff. December 4, 1981] (Auth: HRS §26-38) (Imp: HRS §39A-34)

§6-4-9 Project agreement. Upon a determination of eligibility and responsibility, and with the approval of the governor, the department shall enter into a project agreement with the project party. The project agreement shall in all respects conform to the requirements of part II, chapter 39A, HRS, and shall contain any additional terms and conditions as the department shall deem necessary or desirable.

[Eff. December 4, 1981] (Auth: HRS §26-38) (Imp: HRS §39A-32)

§6-4-10 Estimate of benefits. (a) Each project party which has entered into a project agreement with the department in the form and manner prescribed in the loan application and review procedures, shall perform an estimate of the benefits to be derived from financing the project with the proceeds of a loan. The benefits shall be the amount projected to be saved by consumers of the services of the project party over the life of the bonds to be issued to fund the loan as a result of financing the project with the proceeds of a loan rather than by alternative means. Consumers shall be deemed to include third party payors and their subscribers. The following shall be elements of any estimate of benefits:

- (1) The interest rate to be assumed on the bonds proposed to be issued to fund a loan shall be the rate supplied to the project party by the department;
- (2) The interest rate to be employed in calculating the cost of alternative financing of the project shall be:
 - (A) In the case of a proposed refinancing through a loan, the rate of interest on the existing financing; or
 - (B) If the loan is to be the initial financing of the project, the rate of interest which would be charged to the project party by a financial institution with which the project party has a continuing relationship or the interest rate supplied by another source, in either case, as approved by the department for use in the estimate of benefits.

(b) The estimate of benefits shall take into account the different classes of payers with which the project party has agreements or does business including cost-based and charge-based third party payors, and the estimated percentage of revenue derived from each during the most recent year for which the project party has cost reports which have been filed with the appropriate party, or if the cost reports are inapplicable to the project party, audited financial statements.

(c) The estimate of benefits shall demonstrate a savings in interest expense which will result in a savings to consumers of the services of the project party by reducing the amount of allowable costs which would otherwise be incurred by the project party, and consequently a reduction in payments representing reimbursement by cost-based payers. In addition, the effect of decreased interest expense shall be reflected in lower charges by the project party to charge-based payors than would be the case if bonds were not issued to finance the project. The foregoing shall be demonstrated by calculating:

- (1) The interest expense to the project party if the project is financed at the interest rate set forth in subsection (a)(1); and
- (2) The interest expense to the project party if the project is financed at the interest rate set forth in subsection (a)(2).

(d) The savings realized by financing the project at the interest rate set forth in subsection (a)(1) shall be related to:

- (1) Cost-based and charge-based payors; and
- (2) The basic unit of service provided by the project party, which shall be:
 - (A) Patient days in the case of hospitals and long-term care facilities;
 - (B) Clinic visits in the case of freestanding clinics; and
 - (C) Any other unit of service as shall be approved by the department for other facilities.

(e) The department may furnish the project party with the format to be employed in making the calculations required by subsections (c) and (d).

(f) Before submitting an estimate of benefits to the department, the project party shall employ an independent feasibility consultant with experience in the area of health care, or another party approved by the department, to review the methodology, assumptions, and statistical and historical data employed in making the estimate. The consultant or other party shall determine whether the information and assumptions used constitute reasonable bases for the preparation of the estimate of benefits. A copy of the determination shall be furnished to the department with the estimate of benefits.

[Eff. December 4,1981] (Auth: HRS §39A-50) (Imp: HRS §39A-50)

§6-4-11 Public access to information. The department shall have available for inspection by the public during normal business hours, copies of the following to the extent applicable to each particular project for which the department has executed a project agreement:

- (1) The estimate of benefits submitted in accordance with §6-4-10;
- (2) The project agreement;
- (3) All feasibility studies or similar reports, if any, prepared in connection with the financing of a project and furnished to the department;
- (4) All documents securing bonds;
- (5) Any contract relating to the construction and equipping of a project which is in an amount at least equal to ten per cent of the project cost and which has been furnished to the department;
- (6) The certification of completion of the project furnished by the architect for the project and the certification of the expenditure of funds for the project furnished by the trustee under the trust indenture securing the bonds issued to finance the project, both filed with the department upon the completion of construction and equipping of the project; and
- (7) Information, reports, and annual audits required to be furnished to the department under the terms of the project agreement.

[Eff. December 4, 1981] (Auth: HRS §39A-49) (Imp: HRS §39A-49)

SUBCHAPTER 4

MISCELLANEOUS PROVISIONS

§6-4-12 Severability. If any part, section, sentence, clause, or phrase of this chapter, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or its application to other persons or transactions or circumstances, shall not be affected.

[Eff. December 4, 1981] (Auth HRS §26-38) (Imp: HRS §39A-32)

§6-4-13 Waiver. The director of the department may waive or vary particular provisions of this chapter to conform to applicable federal requirements.

[Eff. December 4, 1981] (Auth: HRS §26-38) (Imp: HRS §39A-32)

§6-4-14 Certificate of need or exemption. If any project or any part thereof requires a certificate of need from the state health planning and development agency, no application shall be made to the department for assistance pursuant to part II, chapter 39A, HRS, nor shall the department take any action with respect to any application unless and until the state health planning and development agency issues a final decision awarding a certificate of need or an exemption from certificate of need requirements to the project party for the project or part thereof.

[Eff. December 4, 1981] (Auth: HRS §26-38) (Imp: HRS §39A-33)

The Department of Budget and Finance authorized the adoption of Chapter 4 of Title 6, Administrative Rules, on November 9, 1981 following public hearings held on November 5, 1981 after public notice was given in The Honolulu Advertiser, Maui News, The Garden Island, and Hawaii Tribune-Herald on October 7, 1981.

This chapter shall take effect ten days after filing with Office of the Lieutenant Governor.

/s/
JENSEN S. L. HEE
Director
Department of Budget and Finance

APPROVED:

/s/
GEORGE R. ARIYOSHI
Governor
State of Hawaii

APPROVED AS TO FORM:

Dated: November 23, 1981

/s/
ROGER MOSELY
Deputy Attorney General