

ADOPTION OF CHAPTER 6-10, ADMINISTRATIVE RULES

SUMMARY

1. Chapter 6-10, Administrative Rules, entitled "Special Purpose Revenue Bonds for Industrial Enterprises", is adopted.

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

CHAPTER 10

SPECIAL PURPOSE REVENUE BONDS FOR

INDUSTRIAL ENTERPRISES

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SUBCHAPTER 1

GENERAL PROVISIONS

§6-10-1 Purpose. This chapter is adopted pursuant to chapter 91, Hawaii Revised Statutes, and implements part V of chapter 39A, Hawaii Revised Statutes, providing for the issuance of special purpose revenue bonds to assist persons, firms, or corporations qualified to do business in the State who conduct or propose to conduct industrial enterprises in the State. The objective of this chapter is to attract high technology and other industrial enterprises to the State and thereby create new jobs and increase tax receipts within the State. [Eff. August 12, 1985] (Auth: HRS §26-38) (Imp: HRS §39A-151 to §39A-171)

§6-10-2 Definitions. As used in this chapter:

"Bonds" means the special purpose revenue bonds or special purpose revenue bond anticipation notes issued pursuant to part V, chapter 39A, Hawaii Revised Statutes;

"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 V, chapter 39A, Hawaii Revised Statutes;

"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 V, chapter 39A, Hawaii Revised Statutes, and the granting of the assistance by the department;

"Project" means any combination of land, buildings, and other improvements thereon, for use as an industrial enterprise, including, without limiting the generality of the foregoing, machinery, equipment, furnishings, and apparatus which shall be deemed necessary, suitable, or useful to such enterprise;

"Project agreement" means any agreement entered into under part V of chapter 39A, Hawaii Revised Statutes, by the department with a project party to finance, construct, operate, or maintain an industrial plant from the proceeds of special purpose revenue bonds, 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 industrial enterprise in this State;

"State" means the State of Hawaii.

[Eff. August 12, 1985] (Auth: HRS §26-38) (Imp: HRS §39A-151)

SUBCHAPTER 2

APPLICATION PROCESS AND PROCEDURE

§6-10-3 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 Industrial Enterprises through the Issuance of Special Purpose Revenue Bonds," dated August, 5, 1985, located at the end of this chapter which is made a part of this section.

[Eff. August 12, 1985] (Auth: HRS §26-38) (Imp: HRS §39A-152)

§6-10-4 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. August 12, 1985] (Auth: HRS §26-38) (Imp: HRS §39A-152)

§6-10-5 Formal application. A project party shall submit an application for assistance under part V, chapter 39A, Hawaii Revised Statutes on the form or forms provided by the department 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. August 12, 1985] (Auth: HRS §26-38) (Imp: HRS §39A-152)

§6-10-6 Application fee and fee agreement. A project party shall submit with the formal application described in §6-10-5, a non-refundable application fee in the amount of \$1,000, by certified or cashier's check made payable to the department, and an executed copy of the fee agreement prescribed 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 V, chapter 39A, Hawaii Revised Statutes, 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. August 12, 1985] (Auth: HRS §26-38) (Imp: HRS §39A-154)

SUBCHAPTER 3

REVIEW PROCESS AND PROCEDURE

§6-10-7 Determination of eligibility. The department shall review the formal 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 §6-10-2.

[Eff. August 12, 1985] (Auth: HRS §26-38) (Imp: HRS §39A-154)

§6-10-8 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 the type of enterprise to be undertaken as a 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) who the department determines to be a responsible 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
- (6) Any other factors the department may deem relevant to a determination of responsibility with respect to any project party.

[Eff. August 12, 1985] (Auth: HRS §26-38) (Imp: HRS §39A-154)

§6-10-9 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 V, chapter 39A, Hawaii Revised Statutes, including, but not limited to, the provisions described in §39A-155, Hawaii Revised Statutes, and shall contain any additional terms and conditions as the department shall deem necessary or desirable.

[Eff. August 12, 1985] (Auth: HRS §26-38) (Imp: HRS §39A-152; 155)

§6-10-10 Estimate of benefits. Prior to entering into a project agreement with the department in the form and manner prescribed in the loan application and review procedures, each project party shall estimate the benefits to be derived from financing the project with loan. The statement of the estimate of benefits shall include an estimate of the number of new job positions directly or indirectly created with respect to the project, an estimate of the direct or indirect potential effect of the project on tax receipts, an estimate of any other direct or indirect economic benefits to be derived from the project, and the basis upon which such estimates have been made.

[Eff. August 12,1985] (Auth: HRS §39A-170) (Imp: HRS §39A-170)

§6-10-11 Public access to information. (a) 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 loan application;
- (2) The statement of the estimate of the benefits;
- (3) The project agreement;
- (4) All feasibility studies or similar reports, if any, prepared in connection with the financing of a project and furnished to the department;
- (5) All documents securing bonds;
- (6) 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;
- (7) 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
- (8) Information, reports, and annual audits required to be furnished to the department under the terms of the project agreement.

(b) A project party with a project agreement shall make available to the public all its relevant financial records required to be disclosed by §39A-169, Hawaii Revised Statutes (b).

[Eff. August 12, 1985] (Auth: HRS §39A-169) (Imp: HRS §39A-169)

SUBCHAPTER 4

MISCELLANEOUS PROVISIONS

§6-10-12 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. August 12, 1985] (Auth: HRS §26-38) (Imp: HRS §39A-152)

§6-10-13 Waiver. The director of the department may waive or vary particular provisions of this chapter to conform to applicable federal requirements.

[Eff. August 12, 1985] (Auth: HRS §26-38) (Imp: HRS §39A-152)

2. The Department of Budget and Finance authorized the adoption of Chapter 10 of Title 6, Administrative Rules, on July 22, 1985 following public hearings held on July 17, 1985 after public notice was given in The Honolulu Advertiser, Maui News, The Garden Island, and Hawaii Tribune-Herald on June 12, 1985.

3. These rules 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
Dated: July 30, 1985

APPROVED AS TO FORM:

/s/ _____
LORI KAY AQUINO
Deputy Attorney General

Filed