

DEPARTMENT OF BUDGET AND FINANCE

Adoption of Chapter 6-17
Hawaii Administrative Rules

March 23, 2005

SUMMARY

Chapter 17 of Title 6, Hawaii Administrative Rules, entitled "Special Purpose Revenue Bonds for Not-for-Profit Private Nonsectarian and Sectarian Elementary Schools, Secondary Schools, Colleges, and Universities" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

CHAPTER 17

SPECIAL PURPOSE REVENUE BONDS FOR NOT-FOR-PROFIT
PRIVATE NONSECTARIAN AND SECTARIAN ELEMENTARY
SCHOOLS, SECONDARY SCHOOLS, COLLEGES, AND UNIVERSITIES

Subchapter 1 General Provisions

- §6-17-1 Purpose
- §6-17-2 Definitions
- §§6-17-3 to 6-17-5 (Reserved)

Subchapter 2 Application Process

- §6-17-6 Letter of intent
- §6-17-7 Determination of eligibility
- §6-17-8 Application; application fee
- §6-17-9 Fee agreement
- §§6-17-10 to 6-17-12 (Reserved)

Subchapter 3 Review Process

- §6-17-13 Determination of responsibility
- §6-17-14 Project agreement
- §6-17-15 Estimate of benefits
- §6-17-16 Public access to information
- §§6-17-17 to 6-17-19 (Reserved)

Subchapter 4 Miscellaneous Provisions

§6-17-20 Severability

§6-17-21 Waiver

SUBCHAPTER 1

GENERAL PROVISIONS

§6-17-1 Purpose. This chapter is adopted pursuant to chapter 91, HRS, and implements part VIII of chapter 39A, HRS, providing for the issuance of special purpose revenue bonds to assist not-for-profit corporations that provide nonsectarian and sectarian elementary schools, secondary schools, colleges and universities serving the general public. The objectives of this chapter are:

- (1) To offset the growth of the cost of providing elementary, secondary, and post-secondary education to the people of the State of Hawaii;
- (2) To assist in the development and maintenance of sectarian and nonsectarian elementary, secondary, and post-secondary educational facilities by providing the proceeds of special purpose revenue bonds to not-for-profit corporations for the purpose of providing sectarian and nonsectarian elementary, secondary, and post-secondary educational facilities, or for refinancing debt incurred to provide sectarian and nonsectarian elementary, secondary, and post-secondary educational facilities; and
- (3) To provide a means for the not-for-profit corporations so assisted to provide sectarian and nonsectarian elementary, secondary, and post-secondary education to the general public at the lowest practicable cost. [Eff **APR 1 1 2005**] (Auth: HRS §26-38) (Imp: HRS Chapter 39A)

§6-17-2 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 VIII, chapter 39A, HRS.

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

"Project" means a facility eligible under part VIII, chapter 39A, HRS, to be financed or refinanced with the loan of the special purpose revenue bond proceeds and includes any property used primarily for private nonsectarian and

sectarian elementary schools, secondary schools, colleges and universities serving the general public; provided that it shall not include any property to be used primarily for sectarian instruction or study, or as a place for devotional activities or religious worship, or any property used primarily in connection with any part of a program of a school or department of divinity of any religious denomination. [Eff ~~APR 1 1 2005~~] (Auth: HRS §26-38) (Imp: HRS Chapter 39A)

§§6-17-3 to 6-17-5 (Reserved)

SUBCHAPTER 2

APPLICATION PROCESS

§6-17-6 Letter of intent. An applicant shall submit a letter of intent for a project agreement to the director of finance. The letter shall contain, at a minimum, the following information:

- (1) The approximate principal amount of the special purpose revenue bonds, not including bond issuance costs. This amount represents the net proceeds of the bonds required for the financing of the cost of the facility.
 - (2) A general description of the educational facility to be financed, including the types of services to be provided and the number of students to be served.
 - (3) The proposed security for the repayment of the bonds.
 - (4) If the facility involves new construction, the estimated timetable for its construction and availability for use.
 - (5) The proposed timetable for the issuance of the bonds.
- [Eff ~~APR 1 1 2005~~] (Auth: HRS §26-38) (Imp: HRS §39A-252)

§6-17-7 Determination of eligibility. (a) The department shall review the letter of intent and related documentation submitted by an applicant and shall determine whether the applicant is a "project party" as defined in section 39A-251, HRS, and whether the project described in the application is a "project" as the term is defined in section 6-17-2.

(b) Within ten business days of receipt of a letter of intent, the department shall send the applicant a written acknowledgement of the receipt of the letter of intent and shall inform the applicant preliminarily, whether, based

§6-17-7

on the information provided, the applicant is an eligible project party and the proposed elementary, secondary, and post-secondary facility is a project eligible for financing. [Eff **APR 1 1 2005**] (Auth: HRS §26-38) (Imp: HRS §39A-254)

§6-17-8 Application; application fee. (a) Upon receipt of the acknowledgement from the department containing the determination that the applicant is an eligible project party and that the elementary, secondary, and post-secondary facility is an eligible project, the project party may submit an application for assistance on the application form prescribed by the director.

(b) Any application submitted by a project party must be accompanied by an application fee of \$1,000, payable by certified or cashier's check made payable to the department. The application fee shall be applied against the amounts owing under the fee agreement. [Eff **APR 1 1 2005**] (Auth: HRS §26-38) (Imp: HRS §39A-254)

§6-17-9 Fee agreement. An executed copy of a fee agreement in the form prescribed by the director shall be submitted with the application. 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 VIII, chapter 39A, HRS, whether or not the special purpose revenues bonds are ultimately issued to finance the project; and
- (2) The issuance of bonds to finance a loan to the project party.
[Eff **APR 1 1 2005**] (Auth: HRS §26-38) (Imp: HRS §39A-254)

§§6-17-10 to 6-17-12 (Reserved)

SUBCHAPTER 3

REVIEW PROCESS

§6-17-13 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 elementary, secondary, and post-secondary education 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 that 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, 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
- (6) Any other factors the department deems relevant to a determination of responsibility with respect to any project party. [Eff APR 11 2005] (Auth: HRS §26-38) (Imp: HRS §39A-254)

§6-17-14 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 conform to the requirements of part VIII, chapter 39A, HRS, and shall contain any additional terms and conditions as the department deems necessary or desirable. [Eff APR 11 2005] (Auth: HRS §26-38) (Imp: HRS §39A-255)

§6-17-15 Estimate of benefits. (a) Each project party that has entered into a project agreement with the department shall prepare 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. 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 finance the project shall be the interest 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 interest rate on the existing financing; or
 - (B) If the loan is to be the initial financing of the project, the interest rate that 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 demonstrate a savings in interest expense that will result in a savings to consumers of the services of the project party by reducing the amount of allowable costs that would otherwise be incurred by the project party, and consequently a reduction in payments by consumers using the project. In addition, the effect of decreased interest expense shall be reflected in lower charges by the project party to consumers 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).

(c) The department may furnish the project party with the format to be used in making the calculations required by subsection (b).

[Eff **APR 11 2005**] (Auth: HRS §39A-271) (Imp: HRS §39A-271)

§6-17-16 Public access to information. Records maintained by the department relating to the special purpose revenue bond project shall be available to the public pursuant to chapter 92F, HRS.

[Eff **APR 11 2005**] (Auth: HRS §39A-270) (Imp: HRS §39A-270)

§§6-17-17 to 6-17-19 (Reserved)

SUBCHAPTER 4

MISCELLANEOUS PROVISIONS

§6-17-20 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 APR 1 1 2005] (Auth: HRS §26-38) (Imp: HRS §39A-252)

§6-17-21 Waiver. The director of the department may waive or vary particular provisions of this chapter to conform to applicable federal requirements. [Eff APR 1 1 2005] (Auth: HRS §26-38) (Imp: HRS §39A-252)