



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 1205, PROPOSING AMENDMENTS TO ARTICLE VII, SECTIONS 12 AND 13, OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO TAX INCREMENT BONDS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 25, 2010 **TIME:** 11:00 a.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Randall S. Nishiyama, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General provides these comments regarding a legal issue with this bill.

H.B. No. 1205 proposes to amend Article VII, sections 12 and 13, of the Hawaii Constitution to permit political subdivisions, such as the counties, to issue tax increment bonds. Tax increment bonds can be used to finance public improvements for redevelopment and for economic development within a designated tax increment area.

Tax increment bonds work as follows:

1. The County establishes a tax increment district with specified boundaries.
2. When the tax increment district is formed, the total assessed value of the taxable real property in the tax increment district becomes the basis for allocating future real property taxes on that property (the "assessment base").
3. Each year, the real property tax generated by applying the tax rate to the assessment base is deposited into the County's general fund. The increment of tax generated by applying the tax rate to the amount by which the then current

assessed value exceeds the assessment base is used to pay the tax increment bonds.

The function of tax increment bonds is to use the incremental real property taxes (which the private developer/property owner would be paying in any event) to pay for qualifying project costs, and not to use any county moneys to fund such improvements.

Curtis Christensen, Kutak Rock LLP, the State's Public Finance General Advice Counsel, notes that the bill's definition of "tax increment bonds" in the proposed amendment to Article VII, section 12, of the Hawaii Constitution, raises a legal concern. The inclusion of the phrase "reasonably estimated by a county" in the new paragraph 9.a and the new paragraph 9.b's recourse to "other county revenues" creates the possibility that a tax increment bond could be construed as a de facto general obligation bond of the county. Mr. Christensen has suggested deleting these provisions and has provided alternative language for paragraph 9 which is reflected in the attached draft of H.B. No. 1205. Please note that the Legislature must establish the maximum term for a tax increment bond under Mr. Christensen's proposal.

A corresponding change is also needed to the proposed amendment to the new paragraph 5 of Article VII, section 13, of the Hawaii Constitution, and is reflected in our proposed draft of the bill.

In addition, Mr. Christensen also suggests substituting "political subdivision" for "county" in the proposed amendments to be consistent with the terminology of Article VII, section 12, of the Hawaii Constitution.

We respectfully ask the Committee to consider our recommended amendments.

Attachment

H.B. NO. 1205, H.D. 1 (PROPOSED)

A BILL FOR AN ACT

PROPOSING AMENDMENTS TO ARTICLE VII, SECTIONS 12 AND 13, OF THE
CONSTITUTION OF THE STATE OF HAWAII RELATING TO TAX
INCREMENT BONDS.

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

1 SECTION 1. The purpose of this Act is to propose amendments to
2 the Constitution of the State of Hawaii to expressly provide
3 that the legislature may authorize political subdivisions, such
4 as the counties, to issue tax increment bonds.

5 The legislature recognizes that the definition of "tax
6 increment bonds" under this Act is broader than the conventional
7 definition. The legislature has purposely broadened the
8 definition to provide [~~the counties~~] political subdivisions with
9 flexibility in the use of tax increment bonds for financing
10 infrastructure and other improvements. Under the conventional
11 definition, the debt service on tax increment bonds are payable
12 from the real property tax revenues derived from the incremental
13 increase in real property value resulting from the construction
14 of infrastructure.

15 This Act broadens the definition of "tax increment bonds"
16 to also include those bonds, the debt service of which are

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1 payable from the real property tax revenues derived from the
2 incremental increase in real property value resulting from
3 county action, such as the rezoning of an area.

4 SECTION 2. Article VII, section 12, of the Constitution of
5 the State of Hawaii is amended to read as follows:

6 **"DEFINITIONS; ISSUANCE OF INDEBTEDNESS**

7 **Section 12.** For the purposes of this article:

8 1. The term "bonds" shall include bonds, notes and other
9 instruments of indebtedness.

10 2. The term "general obligation bonds" means all bonds for
11 the payment of the principal and interest of which the full
12 faith and credit of the State or a political subdivision are
13 pledged and, unless otherwise indicated, includes reimbursable
14 general obligation bonds.

15 3. The term "net revenues" or "net user tax receipts"
16 means the revenues or receipts derived from:

17 a. A public undertaking, improvement or system remaining
18 after the costs of operation, maintenance and repair
19 of the public undertaking, improvement or system, and
20 the required payments of the principal of and interest
21 on all revenue bonds issued therefor, have been made;
22 or

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1 b. Any payments or return on security under a loan
2 program or a loan thereunder, after the costs of
3 operation and administration of the loan program, and
4 the required payments of the principal of and interest
5 on all revenue bonds issued therefor, have been made.

6 4. The term "person" means an individual, firm,
7 partnership, corporation, association, cooperative or other
8 legal entity, governmental body or agency, board, bureau or
9 other instrumentality thereof, or any combination of the
10 foregoing.

11 5. The term "rates, rentals and charges" means all
12 revenues and other moneys derived from the operation or lease of
13 a public undertaking, improvement or system, or derived from any
14 payments or return on security under a loan program or a loan
15 thereunder; provided that insurance premium payments,
16 assessments and surcharges, shall constitute rates, rentals and
17 charges of a state property insurance program.

18 6. The term "reimbursable general obligation bonds" means
19 general obligation bonds issued for a public undertaking,
20 improvement or system from which revenues, or user taxes, or a
21 combination of both, may be derived for the payment of the
22 principal and interest as reimbursement to the general fund and

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1 for which reimbursement is required by law, and, in the case of
2 general obligation bonds issued by the State for a political
3 subdivision, general obligation bonds for which the payment of
4 the principal and interest as reimbursement to the general fund
5 is required by law to be made from the revenue of the political
6 subdivision.

7 7. The term "revenue bonds" means all bonds payable from
8 the revenues, or user taxes, or any combination of both, of a
9 public undertaking, improvement, system or loan program and any
10 loan made thereunder and secured as may be provided by law,
11 including a loan program to provide loans to a state property
12 insurance program providing hurricane insurance coverage to the
13 general public.

14 8. The term "special purpose revenue bonds" means all
15 bonds payable from rental or other payments made to an issuer by
16 a person pursuant to contract and secured as may be provided by
17 law.

18 ~~9. The term "tax increment bonds" means bonds, the~~
19 ~~principal of and interest on which are:~~

20 ~~a. Payable from and secured by the real property tax~~
21 ~~revenues derived from the incremental increase in real~~
22 ~~property value reasonably estimated by a county that~~

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1 ~~is a result of an improvement made or other action~~
2 ~~taken by a county; or~~

3 ~~b. Payable from other county revenues only if the~~
4 ~~revenues derived from the incremental increase are~~
5 ~~insufficient.]~~

6 9. The term "tax increment bonds" means all bonds, the
7 principal of and interest on which are payable from and secured
8 solely by all real property taxes levied by a political
9 subdivision, for a period not to exceed ___ years, on the
10 assessed valuation of the real property in a tax increment
11 district established by the political subdivision that is in
12 excess of the assessed valuation of the real property for the
13 year prior to the undertaking of specified public works, public
14 improvements or other actions by the political subdivision
15 within the tax increment district.

16 ~~[9.]~~ 10. The term "user tax" means a tax on goods or
17 services or on the consumption thereof, the receipts of which
18 are substantially derived from the consumption, use or sale of
19 goods and services in the utilization of the functions or
20 services furnished by a public undertaking, improvement or
21 system; provided that mortgage recording taxes shall constitute
22 user taxes of a state property insurance program.

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1 The legislature, by a majority vote of the members to which
2 each house is entitled, shall authorize the issuance of all
3 general obligation bonds, bonds issued under special improvement
4 statutes and revenue bonds issued by or on behalf of the State
5 and shall prescribe by general law the manner and procedure for
6 such issuance. The legislature by general law shall authorize
7 political subdivisions to issue general obligation bonds, bonds
8 issued under special improvement statutes [~~and~~], revenue bonds,
9 and tax increment bonds and shall prescribe the manner and
10 procedure for such issuance. All such bonds issued by or on
11 behalf of a political subdivision shall be authorized by the
12 governing body of such political subdivision.

13 Special purpose revenue bonds shall only be authorized or
14 issued to finance facilities of or for, or to loan the proceeds
15 of such bonds to assist:

- 16 1. Manufacturing, processing, or industrial enterprises;
- 17 2. Utilities serving the general public;
- 18 3. Health care facilities provided to the general public
19 by not-for-profit corporations;
- 20 4. Early childhood education and care facilities provided
21 to the general public by not-for-profit corporations;
- 22 5. Low and moderate income government housing programs;



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Tax increment bonds work as follows:

1. The County establishes a tax increment district with specified boundaries.
2. When the tax increment district is formed, the total assessed value of the taxable real property in the tax increment district becomes the basis for allocating future real property taxes on that property (the "assessment base").
3. Each year, the real property tax generated by applying the tax rate to the assessment base is deposited into the County's general fund. The increment of tax generated by applying the tax rate to the amount by which the then current

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1 6. Not-for-profit private nonsectarian and sectarian
2 elementary schools, secondary schools, colleges and
3 universities; or

4 7. Agricultural enterprises serving important
5 agricultural lands,

6 each of which is hereinafter referred to in this paragraph as a
7 special purpose entity.

8 The legislature, by a two-thirds vote of the members to
9 which each house is entitled, may enact enabling legislation for
10 the issuance of special purpose revenue bonds separately for
11 each special purpose entity, and, by a two-thirds vote of the
12 members to which each house is entitled and by separate
13 legislative bill, may authorize the State to issue special
14 purpose revenue bonds for each single project or multi-project
15 program of each special purpose entity; provided that the
16 issuance of such special purpose revenue bonds is found to be in
17 the public interest by the legislature; and provided further
18 that the State may combine into a single issue of special
19 purpose revenue bonds two or more proposed issues of special
20 purpose revenue bonds to assist not-for-profit private
21 nonsectarian and sectarian elementary schools, secondary
22 schools, colleges, and universities, separately authorized as

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1 aforesaid, in the total amount of not exceeding the aggregate of
2 the proposed separate issues of special purpose revenue bonds.
3 The legislature may enact enabling legislation to authorize
4 political subdivisions to issue special purpose revenue bonds.
5 If so authorized, a political subdivision by a two-thirds vote
6 of the members to which its governing body is entitled and by
7 separate ordinance may authorize the issuance of special purpose
8 revenue bonds for each single project or multi-project program
9 of each special purpose entity; provided that the issuance of
10 such special purpose revenue bonds is found to be in the public
11 interest by the governing body of the political subdivision. No
12 special purpose revenue bonds shall be secured directly or
13 indirectly by the general credit of the issuer or by any
14 revenues or taxes of the issuer other than receipts derived from
15 payments by a person or persons under contract or from any
16 security for such contract or contracts or special purpose
17 revenue bonds and no moneys other than such receipts shall be
18 applied to the payment thereof. The governor shall provide the
19 legislature in November of each year with a report on the
20 cumulative amount of all special purpose revenue bonds
21 authorized and issued, and such other information as may be
22 necessary."

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1 SECTION 3. Article VII, section 13, of the Constitution of
2 the State of Hawaii is amended to read as follows:

3 **"DEBT LIMIT; EXCLUSIONS**

4 **Section 13.** General obligation bonds may be issued by the
5 State; provided that such bonds at the time of issuance would
6 not cause the total amount of principal and interest payable in
7 the current or any future fiscal year, whichever is higher, on
8 such bonds and on all outstanding general obligation bonds to
9 exceed: a sum equal to twenty percent of the average of the
10 general fund revenues of the State in the three fiscal years
11 immediately preceding such issuance until June 30, 1982; and
12 thereafter, a sum equal to eighteen and one-half percent of the
13 average of the general fund revenues of the State in the three
14 fiscal years immediately preceding such issuance. Effective
15 July 1, 1980, the legislature shall include a declaration of
16 findings in every general law authorizing the issuance of
17 general obligation bonds that the total amount of principal and
18 interest, estimated for such bonds and for all bonds authorized
19 and unissued and calculated for all bonds issued and
20 outstanding, will not cause the debt limit to be exceeded at the
21 time of issuance. Any bond issue by or on behalf of the State
22 may exceed the debt limit if an emergency condition is declared

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1 to exist by the governor and concurred to by a two-thirds vote
2 of the members to which each house of the legislature is
3 entitled. For the purpose of this paragraph, general fund
4 revenues of the State shall not include moneys received as
5 grants from the federal government and receipts in reimbursement
6 of any reimbursable general obligation bonds which are excluded
7 as permitted by this section.

8 A sum equal to fifteen percent of the total of the assessed
9 values for tax rate purposes of real property in each political
10 subdivision, as determined by the last tax assessment rolls
11 pursuant to law, is established as the limit of the funded debt
12 of such political subdivision that is outstanding and unpaid at
13 any time.

14 All general obligation bonds for a term exceeding two years
15 shall be in serial form maturing in substantially equal
16 installments of principal, or maturing in substantially equal
17 installments of both principal and interest. The first
18 installment of principal of general obligation bonds and of
19 reimbursable general obligation bonds shall mature not later
20 than five years from the date of issue of such series. The last
21 installment on general obligation bonds shall mature not later
22 than twenty-five years from the date of such issue and the last

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1 installment on general obligation bonds sold to the federal
2 government, on reimbursable general obligation bonds and on
3 bonds constituting instruments of indebtedness under which the
4 State or a political subdivision incurs a contingent liability
5 as a guarantor shall mature not later than thirty-five years
6 from the date of such issue. The interest and principal
7 payments of general obligation bonds shall be a first charge on
8 the general fund of the State or political subdivision, as the
9 case may be.

10 In determining the power of the State to issue general
11 obligation bonds or the funded debt of any political subdivision
12 under section 12, the following shall be excluded:

13 1. Bonds that have matured, or that mature in the then
14 current fiscal year, or that have been irrevocably called for
15 redemption and the redemption date has occurred or will occur in
16 the then fiscal year, or for the full payment of which moneys or
17 securities have been irrevocably set aside.

18 2. Revenue bonds, if the issuer thereof is obligated by
19 law to impose rates, rentals and charges for the use and
20 services of the public undertaking, improvement or system or the
21 benefits of a loan program or a loan thereunder or to impose a
22 user tax, or to impose a combination of rates, rentals and

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1 charges and user tax, as the case may be, sufficient to pay the
2 cost of operation, maintenance and repair, if any, of the public
3 undertaking, improvement or system or the cost of maintaining a
4 loan program or a loan thereunder and the required payments of
5 the principal of and interest on all revenue bonds issued for
6 the public undertaking, improvement or system or loan program,
7 and if the issuer is obligated to deposit such revenues or tax
8 or a combination of both into a special fund and to apply the
9 same to such payments in the amount necessary therefor.

10 3. Special purpose revenue bonds, if the issuer thereof is
11 required by law to contract with a person obligating such person
12 to make rental or other payments to the issuer in an amount at
13 least sufficient to make the required payment of the principal
14 of and interest on such special purpose revenue bonds.

15 4. Bonds issued under special improvement statutes when
16 the only security for such bonds is the properties benefited or
17 improved or the assessments thereon.

18 ~~[5. Tax increment bonds, but only to the extent that the~~
19 ~~principal of and interest on the bonds are paid from real~~
20 ~~property tax revenues derived from the incremental increase in~~
21 ~~real property value reasonably estimated by the county that is a~~

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1 ~~result of an improvement made or other action taken by the~~
2 ~~county.]~~

3 5. Tax increment bonds, but only to the extent that the
4 principal of and interest on the bonds are in fact paid from the
5 real property taxes levied by a political subdivision on the
6 assessed valuation of the real property in a tax increment
7 district established by the political subdivision that is in
8 excess of the assessed valuation of the real property for the
9 year prior to the undertaking of specified public works, public
10 improvements or other actions by the political subdivision
11 within the tax increment district.

12 ~~[5.]~~ 6. General obligation bonds issued for assessable
13 improvements, but only to the extent that reimbursements to the
14 general fund for the principal and interest on such bonds are in
15 fact made from assessment collections available therefor.

16 ~~[6.]~~ 7. Reimbursable general obligation bonds issued for a
17 public undertaking, improvement or system but only to the extent
18 that reimbursements to the general fund are in fact made from
19 the net revenue, or net user tax receipts, or combination of
20 both, as determined for the immediately preceding fiscal year.

21 ~~[7.]~~ 8. Reimbursable general obligation bonds issued by
22 the State for any political subdivision, whether issued before

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1 or after the effective date of this section, but only for as
2 long as reimbursement by the political subdivision to the State
3 for the payment of principal and interest on such bonds is
4 required by law; provided that in the case of bonds issued after
5 the effective date of this section, the consent of the governing
6 body of the political subdivision has first been obtained; and
7 provided further that during the period that such bonds are
8 excluded by the State, the principal amount then outstanding
9 shall be included within the funded debt of such political
10 subdivision.

11 ~~[8-]~~ 9. Bonds constituting instruments of indebtedness
12 under which the State or any political subdivision incurs a
13 contingent liability as a guarantor, but only to the extent the
14 principal amount of such bonds does not exceed seven percent of
15 the principal amount of outstanding general obligation bonds not
16 otherwise excluded under this section; provided that the State
17 or political subdivision shall establish and maintain a reserve
18 in an amount in reasonable proportion to the outstanding loans
19 guaranteed by the State or political subdivision as provided by
20 law.

21 ~~[9-]~~ 10. Bonds issued by or on behalf of the State or by
22 any political subdivision to meet appropriations for any fiscal

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1 period in anticipation of the collection of revenues for such
2 period or to meet casual deficits or failures of revenue, if
3 required to be paid within one year, and bonds issued by or on
4 behalf of the State to suppress insurrection, to repel invasion,
5 to defend the State in war or to meet emergencies caused by
6 disaster or act of God.

7 The total outstanding indebtedness of the State or funded
8 debt of any political subdivision and the exclusions therefrom
9 permitted by this section shall be made annually and certified
10 by law or as provided by law. For the purposes of section 12
11 and this section, amounts received from on-street parking may be
12 considered and treated as revenues of a parking undertaking.

13 Nothing in section 12 or in this section shall prevent the
14 refunding of any bond at any time."

15 SECTION 4. The question to be printed on the ballot shall
16 be as follows:

17 "Shall the Constitution be amended to expressly provide that
18 the legislature may authorize the counties to issue tax
19 increment bonds?"

20 SECTION 5. Constitutional material to be repealed is
21 bracketed and stricken. New constitutional material is
22 underscored.

H.B. NO. 1205, H.D. 1
(PROPOSED)

1 SECTION 6. This amendment shall take effect upon
2 compliance with article XVII, section 3, of the Constitution of
3 the State of Hawaii.

4

5

6

INTRODUCED BY: _____

7

By Request

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813.
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

MUFI HANNEMANN
MAYOR



RDX MAURER III
DIRECTOR

MARK K. OTO
DEPUTY DIRECTOR

February 25, 2010

The Honorable Marcus R. Oshiro, Chair
and Members
The Committee on Finance
House of Representatives
The Twenty-Fifth State Legislature
State Capitol, Room 302
Honolulu, Hawaii 96813

Dear Chair Oshiro and Committee Members:

Subject: H.B. No. 1205 Proposing Amendments to Article VII, Section
12 and 13, of the Constitution of the State of Hawaii Relating
to Tax Increment Financing

This is to express our support of H.B. No. 1205, which would clarify, in the State Constitution, the counties' authority to issue tax increment finance (TIF) bonds.

Chapter 46-101 through 46-113, Hawaii Revised Statutes, authorizes the counties to issue TIF bonds to finance improvements within a designated tax increment district. Briefly, the tax increment program works as follows:

- (1) A county establishes a tax increment district with specified boundaries, and TIF bonds are issued to finance improvements within the tax increment district.
- (2) The real assessed value of all taxable real property in the tax increment district, on the date of creation of the district, become the basis for allocation of all future real property taxes on that property, referred to as the "assessment base."
- (3) Each year, the real property tax produced by applying the tax rate to the assessment base continues to go the county's general fund, but the increment of tax produced by applying the tax rate to the amount by which the current assessed value exceeds the assessment base goes to pay the debt service on tax increment bonds.

The Honorable Marcus R. Oshiro, Chair
and Members
February 25, 2010
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TIF bond financing affords the counties a tool to make improvements to areas which may not otherwise enjoy improvements. The policy theory is that, but for the improvements financed with the tax increment, there would be no increase in the assessed value and no tax increment.

While the TIF bonds have not yet been used in Honolulu, the prospect of transient oriented development (TOD) has elevated this issue. TOD would provide another financing tool for owners of properties around transit stations to redefine and redevelop their properties and, consequently, enhance the community and improve the lives of those residents.

Even though the counties have been afforded statutory authority to issue TIF bonds since 1985, the City and County of Honolulu (City) was informed by Bond Counsel that,

(i) it is unclear whether that statutory authorization is supported by the Hawaii Constitution. Article VII, Section 12, provides that the Legislature will by "general law authorize political subdivisions to issue general obligation bonds, bonds issued under special improvement statutes and revenue bonds." TIF bonds are not general obligation bonds, and bonds issued under special improvement statutes. This leaves "revenue bonds" which are defined in that same section of the Constitution as bonds payable from "the revenues or user taxes... of a public undertaking, improvement, system or loan program...." Tax increment does not seem to fit easily into any of these categories.

This read by Bond Counsel has created uncertainty and placed a cloud over the City's authority to issue TIF bonds. And, it deprives the City of a critical tool we may use to redevelop communities and enhance the quality of life of families in those communities.

Enactment of H.B. 1205, and the subsequent approval by the public, will put to rest any question regarding the counties' ability to use TIF bonds for the betterment of all counties in Hawaii.

Sincerely,



Mark K. Oto
Deputy Director

Testimony of C. Mike Kido
External Affairs
The Pacific Resource Partnership

House Committee on Finance
Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair

HB 1205 – Proposing Amendments to Article VII, Sections 12 and 13, of the Constitution
of the State of Hawaii Relating to Tax Increment Bonds
Thursday, February 25, 2010
11:00 A.M.
Conference Room 308

Chair Oshiro, Vice Chair Lee and members of the House Committee on Finance:

My name is C. Mike Kido, External Affairs for the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

PRP supports HB 1205 – Proposes amendments to the Constitution of the State of Hawaii to expressly provide that the legislature may authorize the counties to issue tax increment bonds.

Tax Increment Finance (TIF) bonds afford the counties a financing mechanism tool to make improvements in depressed or economically deprived areas in Hawaii. It would enhance and revitalize that area and surrounding neighborhoods by stimulating growth in the business, agricultural, and industrial segments of the economy.

HB 1205 will allow the City a critical tool to use in redeveloping our communities and help to get the State's economy back on its feet by providing much needed employment opportunities.

Thank you for allowing us to share our opinion and we kindly ask for your support of HB 1205.