

JAN 21 2011

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
2 amendments to the Hawaii State Constitution 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 political subdivisions with flexibility in
9 the use of tax increment bonds for financing infrastructure and
10 other improvements. Under the conventional definition, the debt
11 service on tax increment bonds is payable from the real property
12 tax revenues derived from the incremental increase in real
13 property value resulting from the construction of
14 infrastructure.

15 This Act broadens the definition of "tax increment bonds"
16 to also include those bonds, the debt service of which is
17 payable from the real property tax revenues derived from the



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

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

5 **"DEFINITIONS; ISSUANCE OF INDEBTEDNESS**

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

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

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

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

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



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



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 all bonds, the
19 principal of and interest on which are payable from and secured
20 solely by all real property taxes levied by a political
21 subdivision, for a period not to exceed _____ years, on the
22 portion of the assessed valuation of the real property in a tax



1 increment district established by the political subdivision that
2 is in excess of the assessed valuation of the real property for
3 the year prior to the undertaking of specified public works,
4 public improvements or other actions by the political
5 subdivision within the tax increment district.

6 ~~[9-]~~ 10. The term "user tax" means a tax on goods or
7 services or on the consumption thereof, the receipts of which
8 are substantially derived from the consumption, use or sale of
9 goods and services in the utilization of the functions or
10 services furnished by a public undertaking, improvement or
11 system; provided that mortgage recording taxes shall constitute
12 user taxes of a state property insurance program.

13 The legislature, by a majority vote of the members to which
14 each house is entitled, shall authorize the issuance of all
15 general obligation bonds, bonds issued under special improvement
16 statutes and revenue bonds issued by or on behalf of the State
17 and shall prescribe by general law the manner and procedure for
18 such issuance. The legislature by general law shall authorize
19 political subdivisions to issue general obligation bonds, bonds
20 issued under special improvement statutes ~~[and]~~, revenue bonds
21 and tax increment bonds and shall prescribe the manner and
22 procedure for such issuance. All such bonds issued by or on



1 behalf of a political subdivision shall be authorized by the
2 governing body of such political subdivision.

3 Special purpose revenue bonds shall only be authorized or
4 issued to finance facilities of or for, or to loan the proceeds
5 of such bonds to assist:

- 6 1. Manufacturing, processing, or industrial enterprises;
- 7 2. Utilities serving the general public;
- 8 3. Health care facilities provided to the general public
9 by not-for-profit corporations;
- 10 4. Early childhood education and care facilities provided
11 to the general public by not-for-profit corporations;
- 12 5. Low and moderate income government housing programs;
- 13 6. Not-for-profit private nonsectarian and sectarian
14 elementary schools, secondary schools, colleges and
15 universities; or
- 16 7. Agricultural enterprises serving important
17 agricultural lands,

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

20 The legislature, by a two-thirds vote of the members to
21 which each house is entitled, may enact enabling legislation for
22 the issuance of special purpose revenue bonds separately for



1 each special purpose entity, and, by a two-thirds vote of the
2 members to which each house is entitled and by separate
3 legislative bill, may authorize the State to issue special
4 purpose revenue bonds for each single project or multi-project
5 program of each special purpose entity; provided that the
6 issuance of such special purpose revenue bonds is found to be in
7 the public interest by the legislature; and provided further
8 that the State may combine into a single issue of special
9 purpose revenue bonds two or more proposed issues of special
10 purpose revenue bonds to assist not-for-profit private
11 nonsectarian and sectarian elementary schools, secondary
12 schools, colleges, and universities, separately authorized as
13 aforesaid, in the total amount of not exceeding the aggregate of
14 the proposed separate issues of special purpose revenue bonds.
15 The legislature may enact enabling legislation to authorize
16 political subdivisions to issue special purpose revenue bonds.
17 If so authorized, a political subdivision by a two-thirds vote
18 of the members to which its governing body is entitled and by
19 separate ordinance may authorize the issuance of special purpose
20 revenue bonds for each single project or multi-project program
21 of each special purpose entity; provided that the issuance of
22 such special purpose revenue bonds is found to be in the public



1 interest by the governing body of the political subdivision. No
2 special purpose revenue bonds shall be secured directly or
3 indirectly by the general credit of the issuer or by any
4 revenues or taxes of the issuer other than receipts derived from
5 payments by a person or persons under contract or from any
6 security for such contract or contracts or special purpose
7 revenue bonds and no moneys other than such receipts shall be
8 applied to the payment thereof. The governor shall provide the
9 legislature in November of each year with a report on the
10 cumulative amount of all special purpose revenue bonds
11 authorized and issued, and such other information as may be
12 necessary."

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

15 **"DEBT LIMIT; EXCLUSIONS**

16 **Section 13.** General obligation bonds may be issued by the
17 State; provided that such bonds at the time of issuance would
18 not cause the total amount of principal and interest payable in
19 the current or any future fiscal year, whichever is higher, on
20 such bonds and on all outstanding general obligation bonds to
21 exceed: a sum equal to twenty percent of the average of the
22 general fund revenues of the State in the three fiscal years



1 immediately preceding such issuance until June 30, 1982; and
2 thereafter, a sum equal to eighteen and one-half percent of the
3 average of the general fund revenues of the State in the three
4 fiscal years immediately preceding such issuance. Effective
5 July 1, 1980, the legislature shall include a declaration of
6 findings in every general law authorizing the issuance of
7 general obligation bonds that the total amount of principal and
8 interest, estimated for such bonds and for all bonds authorized
9 and unissued and calculated for all bonds issued and
10 outstanding, will not cause the debt limit to be exceeded at the
11 time of issuance. Any bond issue by or on behalf of the State
12 may exceed the debt limit if an emergency condition is declared
13 to exist by the governor and concurred to by a two-thirds vote
14 of the members to which each house of the legislature is
15 entitled. For the purpose of this paragraph, general fund
16 revenues of the State shall not include moneys received as
17 grants from the federal government and receipts in reimbursement
18 of any reimbursable general obligation bonds which are excluded
19 as permitted by this section.

20 A sum equal to fifteen percent of the total of the assessed
21 values for tax rate purposes of real property in each political
22 subdivision, as determined by the last tax assessment rolls



1 pursuant to law, is established as the limit of the funded debt
2 of such political subdivision that is outstanding and unpaid at
3 any time.

4 All general obligation bonds for a term exceeding two years
5 shall be in serial form maturing in substantially equal
6 installments of principal, or maturing in substantially equal
7 installments of both principal and interest. The first
8 installment of principal of general obligation bonds and of
9 reimbursable general obligation bonds shall mature not later
10 than five years from the date of issue of such series. The last
11 installment on general obligation bonds shall mature not later
12 than twenty-five years from the date of such issue and the last
13 installment on general obligation bonds sold to the federal
14 government, on reimbursable general obligation bonds and on
15 bonds constituting instruments of indebtedness under which the
16 State or a political subdivision incurs a contingent liability
17 as a guarantor shall mature not later than thirty-five years
18 from the date of such issue. The interest and principal
19 payments of general obligation bonds shall be a first charge on
20 the general fund of the State or political subdivision, as the
21 case may be.



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

4 1. Bonds that have matured, or that mature in the then
5 current fiscal year, or that have been irrevocably called for
6 redemption and the redemption date has occurred or will occur in
7 the then fiscal year, or for the full payment of which moneys or
8 securities have been irrevocably set aside.

9 2. Revenue bonds, if the issuer thereof is obligated by
10 law to impose rates, rentals and charges for the use and
11 services of the public undertaking, improvement or system or the
12 benefits of a loan program or a loan thereunder or to impose a
13 user tax, or to impose a combination of rates, rentals and
14 charges and user tax, as the case may be, sufficient to pay the
15 cost of operation, maintenance and repair, if any, of the public
16 undertaking, improvement or system or the cost of maintaining a
17 loan program or a loan thereunder and the required payments of
18 the principal of and interest on all revenue bonds issued for
19 the public undertaking, improvement or system or loan program,
20 and if the issuer is obligated to deposit such revenues or tax
21 or a combination of both into a special fund and to apply the
22 same to such payments in the amount necessary therefor.



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

6 4. Bonds issued under special improvement statutes when
7 the only security for such bonds is the properties benefited or
8 improved or the assessments thereon.

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

18 [5-] 6. General obligation bonds issued for assessable
19 improvements, but only to the extent that reimbursements to the
20 general fund for the principal and interest on such bonds are in
21 fact made from assessment collections available therefor.



1 ~~[6-]~~ 7. Reimbursable general obligation bonds issued for a
2 public undertaking, improvement or system but only to the extent
3 that reimbursements to the general fund are in fact made from
4 the net revenue, or net user tax receipts, or combination of
5 both, as determined for the immediately preceding fiscal year.

6 ~~[7-]~~ 8. Reimbursable general obligation bonds issued by
7 the State for any political subdivision, whether issued before
8 or after the effective date of this section, but only for as
9 long as reimbursement by the political subdivision to the State
10 for the payment of principal and interest on such bonds is
11 required by law; provided that in the case of bonds issued after
12 the effective date of this section, the consent of the governing
13 body of the political subdivision has first been obtained; and
14 provided further that during the period that such bonds are
15 excluded by the State, the principal amount then outstanding
16 shall be included within the funded debt of such political
17 subdivision.

18 ~~[8-]~~ 9. Bonds constituting instruments of indebtedness
19 under which the State or any political subdivision incurs a
20 contingent liability as a guarantor, but only to the extent the
21 principal amount of such bonds does not exceed seven percent of
22 the principal amount of outstanding general obligation bonds not



1 otherwise excluded under this section; provided that the State
2 or political subdivision shall establish and maintain a reserve
3 in an amount in reasonable proportion to the outstanding loans
4 guaranteed by the State or political subdivision as provided by
5 law.

6 ~~[9.]~~ 10. Bonds issued by or on behalf of the State or by
7 any political subdivision to meet appropriations for any fiscal
8 period in anticipation of the collection of revenues for such
9 period or to meet casual deficits or failures of revenue, if
10 required to be paid within one year, and bonds issued by or on
11 behalf of the State to suppress insurrection, to repel invasion,
12 to defend the State in war or to meet emergencies caused by
13 disaster or act of God.

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

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



1 SECTION 4. The question to be printed on the ballot shall
2 be as follows:

3 "Shall the Hawaii State Constitution be amended to expressly
4 provide that the legislature may authorize the counties to
5 issue tax increment bonds?"

6 SECTION 5. Constitutional material to be repealed is
7 bracketed and stricken. New constitutional material is
8 underscored.

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

12

INTRODUCED BY:

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Report Title:

Tax Increment Bonds; Constitutional Amendment

Description:

Proposes amendments to the Hawaii State Constitution to expressly provide that the legislature may authorize the counties to issue tax increment bonds.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

