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## A BILL FOR AN ACT

RELATING TO FINANCING AGREEMENTS.

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

1           SECTION 1. Section 37D-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§37D-2 Financing agreements.** (a) There is hereby  
4 established and authorized the financing agreement program of  
5 the State. Any agency desiring to acquire or improve projects  
6 through the financing agreement program established and  
7 authorized by this chapter shall submit a written request to the  
8 department providing any information that the department shall  
9 require. Notwithstanding any other law to the contrary, and  
10 except for the Hawaii health systems corporation and its  
11 regional system boards, only with the approval by the attorney  
12 general as to form and legality and upon the written request of  
13 one or more agencies may the department enter into a financing  
14 agreement in accordance with this chapter, and only with the  
15 approval by the attorney general as to form and legality, and by  
16 the director as to fiscal responsibility, and upon the written  
17 request of an agency, the agency may enter into a financing  
18 agreement in accordance with this chapter, except that the



1 department of education may enter into a financing agreement in  
2 accordance with section 36-32 with the concurrence of the  
3 director and with the approval of the attorney general as to  
4 form and legality; and that the board of regents of the  
5 University of Hawaii may enter into a financing agreement in  
6 accordance with this chapter without the approval of the  
7 director and of the attorney general as to form and legality if  
8 the principal amount of the financing agreement does not exceed  
9 \$3,000,000. A financing agreement may be entered into by the  
10 department on behalf of one or more agencies, or by an agency,  
11 at any time (before or after commencement or completion of any  
12 improvements or acquisitions to be financed) and shall be upon  
13 terms and conditions the department finds to be advantageous.  
14 In each case of a written request by the judiciary to  
15 participate in the financing agreement program, the department  
16 shall implement the request; provided that the related financing  
17 agreement shall be upon terms and conditions the department  
18 finds to be advantageous. Any financing agreement entered into  
19 by the department without the approval, or by an agency without  
20 the approvals required by this section shall be void and of no  
21 effect. A single financing agreement entered into by the  
22 department may finance a single item or multiple items of



1 property to be used by multiple agencies or may finance a single  
2 item or multiple items of property to be used by a single  
3 agency. If the financing agreement is by the department, the  
4 department shall bill any agency that benefits from property  
5 acquired with the proceeds of a financing agreement for the  
6 agency's pro rata share of:

7 (1) The department's costs of administration of the  
8 financing agreement program; and

9 (2) The financing costs, including the principal and  
10 interest components of the financing agreement and  
11 insurance premiums,

12 on a monthly or other periodic basis, and may deposit payments  
13 received in connection with the billings with a trustee as  
14 security for the financing agreement. Any agency receiving such  
15 a bill shall be authorized and shall pay the amounts billed from  
16 available moneys.

17 If a financing agreement is by an agency, the agency shall  
18 deposit on a monthly or other periodic basis with the  
19 department, payments from available moneys with respect to the  
20 agency's financing costs, including the principal and interest  
21 components of the financing agreement and insurance premiums,  
22 which payments the department may deposit with a trustee as



1 security for the financing agreement. The department may bill  
2 an agency for the department's costs of administering the  
3 agency's payments and the agency receiving such a bill shall be  
4 authorized to and shall pay the amounts billed from available  
5 moneys.

6 (b) Financing agreements shall be subject to the following  
7 limitations:

8 (1) Amounts payable by an agency to or upon the direction  
9 of the department in respect to a project and by the  
10 department or an agency under a financing agreement  
11 shall be limited to available moneys. In no  
12 circumstance shall the department or an agency be  
13 obligated to pay amounts due under a financing  
14 agreement from any source other than available moneys.  
15 If, by reason of insufficient available moneys or  
16 other reason, amounts due under a financing agreement  
17 are not paid when due, the lender may exercise any  
18 property right that the department or the agency has  
19 granted to it in the financing agreement, against the  
20 property that was purchased with the proceeds of the  
21 financing agreement, and apply the amounts so received



1           toward payments scheduled to be made by the department  
2           or the agency under the financing agreement;

3           (2) No property rights may be granted in property unless  
4           the property is being acquired, is to be substantially  
5           improved, is to be refinanced with the proceeds of a  
6           financing agreement, or is land on which the property  
7           is located;

8           (3) Notwithstanding any other law to the contrary, and  
9           except for the Hawaii health systems corporation and  
10          its regional system boards, and as otherwise provided  
11          in this section with respect to the department of  
12          education and the University of Hawaii, and except as  
13          provided in chapter 323F as to the Hawaii health  
14          systems corporation and its regional system boards, an  
15          agency shall not have the power to enter into a  
16          financing agreement, except as authorized by this  
17          chapter, and nothing in this chapter shall be  
18          construed to authorize the sale, lease, or other  
19          disposition of property owned by an agency;

20          (4) Except as otherwise provided in this section with  
21          respect to the department of education and the  
22          University of Hawaii, the sale, assignment, or other



1 disposition of any financing agreements, including  
 2 certificates of participation relating thereto, shall  
 3 require the approval of the director; and

4 (5) The department or the agency proposing to enter into a  
 5 financing agreement shall not be subject to  
 6 chapter 103D and any and all other requirements of law  
 7 for competitive bidding for financing agreements.

8 (c) The issuance of certificates of participation shall  
 9 not require legislative approval."

10 SECTION 2. New statutory material is underscored.

11 SECTION 3. This Act shall take effect on July 1, 2012.

12

INTRODUCED BY:

JAN 23 2012



# H.B. NO. 2341

**Report Title:**

Certificates of Participation; Legislative Approval

**Description:**

Specifies that the issuance of certificates of participation does not require legislative approval.

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

