
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) Subject to the limitations on financing agreements
9 pursuant to subsection (b)(1), the issuance of certificates of
10 participation shall not require legislative approval."

11 SECTION 2. New statutory material is underscored.

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



Report Title:

Certificates of Participation; Legislative Approval

Description:

Specifies that, subject to limitations, the issuance of certificates of participation does not require legislative approval. (SD1)

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

