

JAN 17 2020

A BILL FOR AN ACT

RELATING TO CERTIFICATES OF PARTICIPATION.

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

1 SECTION 1. Section 37D-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§37D-3 Related agreements.** (a) With the approval of the
4 attorney general as to form and legality, the department may,
5 and with the approval of the attorney general as to form and
6 legality and of the director as to fiscal responsibility, an
7 agency may:

8 (1) Enter into agreements with trustees, within or without
9 the State, to hold financing agreement proceeds,
10 payments, and reserves as security for lenders to
11 accept assignments of rights in the financing
12 agreement from, and to enforce the rights of, the
13 lessor or other party thereto, and to issue
14 certificates of participation for the right to receive
15 payments due from the department or agency under a
16 financing agreement. A financing agreement by an
17 agency shall provide that all payments due from the



1 agency under the financing agreement shall be
2 deposited to or on the order of the department, or
3 shall be for payment to or at the order of the lender
4 in accordance with the financing agreement. The sale
5 of certificates of participation shall be, at the
6 option of the director, by negotiation or by
7 competitive sale, in accordance with the procedures
8 set out by section 39-55. The interest component of
9 the certificates of participation shall be at the rate
10 or rates payable at the time or times as the financing
11 agreement may provide. The certificates of
12 participation may be in one or more series; may bear
13 the date or dates; may mature at the time or times not
14 exceeding the lesser of:

15 (A) The weighted average economic life of the related
16 project or projects; or

17 (B) Thirty years from their date;

18 may be payable in the medium of payment at the place
19 or places within or without the State; may carry
20 registration privileges; may be subject to terms of
21 redemption, to tenders for purchase or to purchase



1 prior to their stated maturity at the option of the
2 department or the agency, or the holder, or both; and
3 may contain terms, covenants, and conditions; and may
4 be in the form, either coupon or registered, as the
5 financing agreement may provide. Amounts held by a
6 trustee shall be invested by the trustee at the
7 direction of the department or the agency in
8 investments as are permitted by state law and as shall
9 be specified in the agreement with the trustee.
10 Interest earned on any investment held by a trustee as
11 security for a financing agreement may, at the option
12 of the department or the agency, be credited to the
13 accounts held by the trustee and applied in payment of
14 sums due under the financing agreement;
15 (2) Enter into credit enhancement agreements for financing
16 agreements or certificates of participation; provided
17 that the credit enhancement agreements shall be
18 payable solely from available moneys and amounts
19 received from the exercise of property rights granted
20 under the financing agreements;



- 1 (3) Use financing agreements to finance the costs of
2 acquiring or refinancing property, plus the costs of
3 reserves and credit enhancements and costs associated
4 with obtaining the financing;
- 5 (4) Grant leases of real property subject to section
6 37D-2(b)(2). The leases may be for a term that ends
7 on the date on which all amounts due under a financing
8 agreement have been paid or provision for payment has
9 been made or ten years after the last scheduled
10 payment under a financing agreement, whichever is
11 later. The leases may grant the lessor the right to
12 evict the department or the agency, as the case may
13 be, and exclude it from possession of the real
14 property for the term of the lease, if the department
15 or the agency, as the case may be, fails to
16 appropriate or pay when due the amounts scheduled to
17 be paid under a financing agreement or otherwise
18 defaults under a financing agreement. Upon failure to
19 pay or default, the lessor may sublease the land to
20 third parties and apply any rentals toward payments
21 scheduled to be made under a financing agreement;



1 (5) Grant security interests in personal property subject
2 to section 37D-2(b)(2). The security interests shall
3 attach and be perfected on the date the department or
4 the agency, as the case may be, takes possession of
5 the personal property, or the date the secured party
6 advances money under a financing agreement, whichever
7 is later. A security interest authorized by this
8 section shall have, except as otherwise provided by
9 law, priority over all other liens and claims. Upon
10 failure to pay or default, the secured party shall
11 have the rights and remedies available to a secured
12 party under chapter 490 or a first, perfected security
13 interest in goods and fixtures. No later than ten
14 days after a security interest authorized by this
15 section attaches, the department or the agency, as the
16 case may be, shall cause a financing statement for the
17 security interest to be filed with the bureau of
18 conveyances in the same manner as financing statements
19 are filed for goods;

20 (6) Pledge any amounts that are deposited with a trustee
21 in accordance with a financing agreement. The pledge



1 shall be valid and binding from the time it is made,
2 the amounts so pledged shall immediately be subject to
3 the lien of the pledge without filing, physical
4 delivery, or other act, and the lien of the pledge
5 shall be superior to all other claims and liens of any
6 kind whatsoever;

7 (7) Purchase fire and extended coverage or other casualty
8 insurance, or liability, title, rental interruption,
9 or other insurance for property that is acquired or
10 refinanced with proceeds of a financing agreement,
11 assign the proceeds thereof to a lender or trustee to
12 the extent of its interest, and covenant to maintain
13 the insurance while the financing agreement is unpaid,
14 so long as available funds are sufficient to purchase
15 the insurance; and

16 (8) In connection with any financing agreement by which
17 the department, on behalf of an agency, leases or
18 purchases property from another party, notwithstanding
19 and without regard to chapter 171 or any other law,
20 the department or the agency may lease or sell, on any
21 terms as the department or the agency shall determine,



S.B. NO. 2322

1 to that party the site or property to be improved or
 2 otherwise to be leased or sold back to the department
 3 or the agency.

4 (b) The department shall not issue a certificate of
 5 participation under this chapter for which the principal amount
 6 exceeds \$10,000,000."

7 SECTION 2. New statutory material is underscored.

8 SECTION 3. This Act shall take effect upon its approval.

9

INTRODUCED BY:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]



S.B. NO. 2322

Report Title:

Financing Agreements; Certificates of Participation; Limitation;
Department of Budget and Finance

Description:

Prohibits the department of budget and finance from issuing any certificate of participation that exceeds \$10 million.

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