

TAX FOUNDATION OF HAWAII

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SUBJECT: CONSTITUTIONAL AMENDMENT, Authorize Issuance of Tax Increment Bonds

BILL NUMBER: SB 858; HB 541 (Identical)

INTRODUCED BY: SB by KEITH-AGARAN, BAKER, S. CHANG, DELA CRUZ, ENGLISH, J. KEOHOKALO, Gabbard, Wakai; HB by YAMASHITA, DECOITE, HASHIMOTO, MCKELVEY, WOODSON, Wildberger

EXECUTIVE SUMMARY:

SYNOPSIS: Amends Article VII, Section 12, of the state constitution to allow the legislature to authorize the counties to issue tax increment bonds. Defines “tax increment bonds” as all bonds, the principal of and interest on which are payable from and secured solely by all real property taxes levied by a political subdivision, for a period not to exceed ____ years, on the assessed valuation of the real property in a tax increment district established by the political subdivision that is in excess of the assessed valuation of the real property for the year prior to the undertaking of specified public works, public improvements or other actions by the political subdivision within the tax increment district.

Amends Article VII, Section 13, of the state constitution to provide that tax increment bonds issued by the counties shall not be included in the determinations of the funded debt of the counties.

EFFECTIVE DATE: Upon voter approval.

STAFF COMMENTS: The proposed measure would allow each of the counties to issue tax increment bonds and utilize the concept of tax increment financing as another means of financing capital improvements. The concept of tax increment financing is based on increased property tax revenue generated from rising property tax assessments which result from the improvements. Under a tax increment financing plan, a specific geographic area would be designated as a tax increment district for which tax increment bonds would be sold to cover capital improvement project costs within that district.

Upon the designation of a tax increment district an “assessment base” is established, based on the total assessed value of taxable real property in a tax increment district at that time. A “tax increment,” which is the amount by which the current valuation of the real property exceeds the assessment base, is then determined. The revenues derived from the assessment base would be paid into the county’s general fund while the revenues derived from the tax increment would be deposited into the tax increment fund. In addition to the revenues derived from the determination of the tax increment, the proceeds of tax increment bonds are also to be deposited into the tax increment fund. The total revenues in the tax increment fund are then be used to finance capital improvements including debt repayment made to the tax increment district which, in turn, will

result in increased property valuations due to renovation and increased capital improvements within the designated district.

While this concept provides another means for the financing of capital improvements, caution should be exercised to ensure that the amount of revenues generated within a tax increment district will be enough to cover the debt service of the tax increment bonds issued. Provisions should be made to ensure that this method of financing is not abused as it has been in other states. Specifically, it should be provided that once a tax increment financing district has been designated and the project costs estimated, such districts may not be enlarged nor shall expenditures exceed projections to include purposes other than originally authorized without specific local government approval.

In other words, in designating such districts, certification of assessment values should be done to ensure that valuations of properties within the tax increment district will increase sufficiently to generate enough revenues to repay the cost of the bonds sold. Conversely, specific provisions should be made to ensure that any excess revenues are returned to the county general fund.

The measure also provides that tax increment bonds shall be excluded from the determination of funded debt of the counties for purposes of the constitutional spending ceiling. It is questionable why tax increment bonds should be treated differently from any other debt of the counties.

As the Hawaii Supreme Court explained in *Convention Center Authority v. Anzai*, 78 Haw. 157, 890 P.2d 1197 (1995), Hawaii's Constitution has had some form of debt limitation in place essentially from its inception. Under the Organic Act, the debt limit was set at ten percent of the assessed value of real property. The limit was subsequently increased to fifteen percent at the 1950 Constitutional Convention. The present structure of the debt limit and its exceptions was adopted by the 1968 Constitutional Convention, where the delegates were particularly wary of the implications of pledging the full faith and credit of the state behind an undertaking that was not "self-sustaining" or whose revenues, and/or the user taxes derived from the undertaking, could not cover the debt service charges. That is why the present constitutional provisions provide for the excludability of reimbursable general obligation bonds from the debt limit to the extent that "reimbursements are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year." Haw. Const. art. VII, § 13(6). In other words, the amounts that are not directly reimbursed to the general fund by revenue and/or user taxes are not excludable from the debt limit. This compromise position carefully balances the competing interests of flexibility and security.

We question the wisdom of writing an exception into our constitutional debt limit safeguards for debt that is supposed to be paid back by increased property tax revenues from development that has yet to occur. If the development does not deliver as advertised, government remains on the hook to repay the bonds, meaning that all of us suffer.

SB-858

Submitted on: 2/5/2019 8:59:30 AM

Testimony for JDC on 2/5/2019 9:00:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
David Z. Arakawa	Testifying for Land Use Research Foundation of Hawaii	Oppose	No

Comments:

The Land Use Research Foundation of Hawaii (LURF) supports the counties use of reap property tax (RPT) increment financing (TIFs) to build public infrastructure and to support other county functions. While well-intended, LURF must OPPOSE SB 858, based on the following:

1. A constitutional amendment is unnecessary, as state law already allows the use of TIFs. We believe that one of the counties already has an ordinance to implement TIFs.
2. This measure infringes upon the counties' ability to determine the use of its own RPT,
3. Unfortunately, this well-meaning constitutional amendment will fail, because the voting public will view "tax increment bonds (and financing) as yet another tax that will increase the cost of living, similar to the proposed 2018 constitutional amendment to impose a surcharge on RPT to fund public school expenses.

LURF would respectfully recommend that the counties and State implement TIFs within the current constitutional authority and state and county laws.