

JAN 26 2022

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# A BILL FOR AN ACT

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PROPOSING AMENDMENTS TO ARTICLE VII, SECTIONS 12 AND 13, OF THE HAWAII CONSTITUTION TO EXPRESSLY PROVIDE THAT THE LEGISLATURE MAY AUTHORIZE THE COUNTIES TO ISSUE TAX INCREMENT BONDS AND TO EXCLUDE TAX INCREMENT BONDS FROM DETERMINATIONS OF THE FUNDED DEBT OF THE COUNTIES.

**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 article VII, sections 12 and 13, of the  
3 Constitution of the State of Hawaii to:

4       (1) Expressly provide that the legislature may authorize  
5 political subdivisions, such as the counties, to issue  
6 tax increment bonds; and

7       (2) Exclude tax increment bonds from determinations of the  
8 funded debt of the political subdivisions.

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

11               **"DEFINITIONS; ISSUANCE OF INDEBTEDNESS**

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

13       1. The term "bonds" shall include bonds, notes and other  
14 instruments of indebtedness.

15       2. The term "general obligation bonds" means all bonds for  
16 the payment of the principal and interest of which the full

# S.B. NO. 3053

1 faith and credit of the State or a political subdivision are  
2 pledged and, unless otherwise indicated, includes reimbursable  
3 general obligation bonds.

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

6 a. A public undertaking, improvement or system remaining  
7 after the costs of operation, maintenance and repair  
8 of the public undertaking, improvement or system, and  
9 the required payments of the principal of and interest  
10 on all revenue bonds issued therefor, have been made;

11 or

12 b. Any payments or return on security under a loan  
13 program or a loan thereunder, after the costs of  
14 operation and administration of the loan program, and  
15 the required payments of the principal of and interest  
16 on all revenue bonds issued therefor, have been made.

17 4. The term "dam and reservoir owner" means any person who  
18 has a right to, title to, or an interest in, a dam, a reservoir,  
19 or the property upon which a dam, a reservoir, or appurtenant  
20 work is located or proposed to be located.

21 5. The term "person" means an individual, firm,  
22 partnership, corporation, association, cooperative or other

S.B. NO. 3053

1 legal entity, governmental body or agency, board, bureau or  
2 other instrumentality thereof, or any combination of the  
3 foregoing.

4       6. The term "rates, rentals and charges" means all  
5 revenues and other moneys derived from the operation or lease of  
6 a public undertaking, improvement or system, or derived from any  
7 payments or return on security under a loan program or a loan  
8 thereunder; provided that insurance premium payments,  
9 assessments and surcharges, shall constitute rates, rentals and  
10 charges of a state property insurance program.

11       7. The term "reimbursable general obligation bonds" means  
12 general obligation bonds issued for a public undertaking,  
13 improvement or system from which revenues, or user taxes, or a  
14 combination of both, may be derived for the payment of the  
15 principal and interest as reimbursement to the general fund and  
16 for which reimbursement is required by law, and, in the case of  
17 general obligation bonds issued by the State for a political  
18 subdivision, general obligation bonds for which the payment of  
19 the principal and interest as reimbursement to the general fund  
20 is required by law to be made from the revenue of the political  
21 subdivision.

S.B. NO. 3053

1           8. The term "revenue bonds" means all bonds payable from  
2 the revenues, or user taxes, or any combination of both, of a  
3 public undertaking, improvement, system or loan program and any  
4 loan made thereunder and secured as may be provided by law,  
5 including a loan program to provide loans to a state property  
6 insurance program providing hurricane insurance coverage to the  
7 general public.

8           9. The term "special purpose revenue bonds" means all  
9 bonds payable from rental or other payments made to an issuer by  
10 a person pursuant to contract and secured as may be provided by  
11 law.

12           10. The term "tax increment bonds" means all bonds, the  
13 principal of and interest on which are payable from and secured  
14 solely by all real property taxes levied by a political  
15 subdivision, such as a county, on the assessed valuation of the  
16 real property in a tax increment district established by the  
17 political subdivision that is in excess of the assessed  
18 valuation of the real property for the fiscal year prior to the  
19 effective date specified by resolution of the political  
20 subdivision of the specified public works, public improvements  
21 or other actions by the political subdivision within the tax  
22 increment district.

S.B. NO. 3053

1       ~~[10-]~~ 11. The term "user tax" means a tax on goods or  
2 services or on the consumption thereof, the receipts of which  
3 are substantially derived from the consumption, use or sale of  
4 goods and services in the utilization of the functions or  
5 services furnished by a public undertaking, improvement or  
6 system; provided that mortgage recording taxes shall constitute  
7 user taxes of a state property insurance program.

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

20       Special purpose revenue bonds shall only be authorized or  
21 issued to finance facilities of or for, or to loan the proceeds  
22 of such bonds to assist:

S.B. NO. 3053

1. Manufacturing, processing or industrial enterprises;
2. Utilities serving the general public;
3. Health care facilities provided to the general public  
by not-for-profit corporations;
4. Early childhood education and care facilities provided  
to the general public by not-for-profit corporations;
5. Low and moderate income government housing programs;
6. Not-for-profit private nonsectarian and sectarian  
elementary schools, secondary schools, colleges and  
universities;
7. Agricultural enterprises; or
8. Dam and reservoir owners; provided that the bonds are  
issued for and the proceeds are used to offer loans to  
assist dam and reservoir owners to improve their  
facilities to protect public safety and provide  
significant benefits to the general public as  
important water sources, each of which is hereinafter  
referred to in this paragraph as a special purpose  
entity.

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

S.B. NO. 3053

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:

11 (1) Not-for-profit private nonsectarian and sectarian  
12 elementary schools, secondary schools, colleges, and  
13 universities;

14 (2) Dam and reservoir owners; or

15 (3) Agricultural enterprises,

16 separately authorized as aforesaid, in the total amount not  
17 exceeding the aggregate of the proposed separate issues of  
18 special purpose revenue bonds. The legislature may enact  
19 enabling legislation to authorize political subdivisions to  
20 issue special purpose revenue bonds. If so authorized, a  
21 political subdivision by a two-thirds vote of the members to  
22 which its governing body is entitled and by separate ordinance

S.B. NO. 3053

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

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

18 **"DEBT LIMIT; EXCLUSIONS**

19 **Section 13.** General obligation bonds may be issued by the  
20 State; provided that such bonds at the time of issuance would  
21 not cause the total amount of principal and interest payable in  
22 the current or any future fiscal year, whichever is higher, on



S.B. NO. 3053

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

S.B. NO. 3053

1       A sum equal to fifteen percent of the total of the assessed  
2 values for tax rate purposes of real property in each political  
3 subdivision, as determined by the last tax assessment rolls  
4 pursuant to law, is established as the limit of the funded debt  
5 of such political subdivision that is outstanding and unpaid at  
6 any time.

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

S.B. NO. 3053

1 the general fund of the State or political subdivision, as the  
2 case may be.

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

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

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

S.B. NO. 3053

1 or a combination of both into a special fund and to apply the  
2 same to such payments in the amount necessary therefor.

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

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

11 5. General obligation bonds issued for assessable  
12 improvements, but only to the extent that reimbursements to the  
13 general fund for the principal and interest on such bonds are in  
14 fact made from assessment collections available therefor.

15 6. Reimbursable general obligation bonds issued for a  
16 public undertaking, improvement or system but only to the extent  
17 that reimbursements to the general fund are in fact made from  
18 the net revenue, or net user tax receipts, or combination of  
19 both, as determined for the immediately preceding fiscal year.

20 7. Reimbursable general obligation bonds issued by the  
21 State for any political subdivision, whether issued before or  
22 after the effective date of this section, but only for as long

S.B. NO. 3053

1 as reimbursement by the political subdivision to the State for  
2 the payment of principal and interest on such bonds is required  
3 by law; provided that in the case of bonds issued after the  
4 effective date of this section, the consent of the governing  
5 body of the political subdivision has first been obtained; and  
6 provided further that during the period that such bonds are  
7 excluded by the State, the principal amount then outstanding  
8 shall be included within the funded debt of such political  
9 subdivision.

10 8. Bonds constituting instruments of indebtedness under  
11 which the State or any political subdivision incurs a contingent  
12 liability as a guarantor, but only to the extent the principal  
13 amount of such bonds does not exceed seven percent of the  
14 principal amount of outstanding general obligation bonds not  
15 otherwise excluded under this section; provided that the State  
16 or political subdivision shall establish and maintain a reserve  
17 in an amount in reasonable proportion to the outstanding loans  
18 guaranteed by the State or political subdivision as provided by  
19 law.

20 9. Bonds issued by or on behalf of the State or by any  
21 political subdivision to meet appropriations for any fiscal  
22 period in anticipation of the collection of revenues for such

S.B. NO. 3053

1 period or to meet casual deficits or failures of revenue, if  
2 required to be paid within one year, and bonds issued by or on  
3 behalf of the State to suppress insurrection, to repel invasion,  
4 to defend the State in war or to meet emergencies caused by  
5 disaster or act of God.

6 10. Tax increment bonds, but only to the extent that the  
7 principal of and interest on the bonds are in fact paid from the  
8 real property taxes levied by a political subdivision, such as a  
9 county, on the assessed valuation of the real property in a tax  
10 increment district established by the political subdivision that  
11 is in excess of the assessed valuation of the real property for  
12 the fiscal year prior to the effective date specified by  
13 resolution of the political subdivision of the specified public  
14 works, public improvements or other actions by the political  
15 subdivision within the tax increment district.

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

S.B. NO. 3053

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

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

"Shall the constitution be amended to expressly provide that the legislature may authorize political subdivisions, such as the counties, to issue tax increment bonds to pay for specified public works, public improvements or other actions by the political subdivision within the tax increment district and also be amended to exclude tax increment bonds in determining the funded debt of the political subdivisions?"

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

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

INTRODUCED BY:



BY REQUEST

**S.B. NO. 3053**

**Report Title:**

Tax Increment Bonds; Constitutional Amendment

**Description:**

Proposes amendments to the Constitution of the State of Hawaii to expressly provide that the legislature may authorize political subdivisions, such as counties, to issue tax increment bonds and to exclude tax increment bonds in calculating the debt limit of the political subdivisions.

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



JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT PROPOSING AMENDMENTS TO ARTICLE VII, SECTIONS 12 AND 13, OF THE HAWAII CONSTITUTION TO EXPRESSLY PROVIDE THAT THE LEGISLATURE MAY AUTHORIZE THE COUNTIES TO ISSUE TAX INCREMENT BONDS AND TO EXCLUDE TAX INCREMENT BONDS FROM DETERMINATIONS OF THE FUNDED DEBT OF THE COUNTIES.

PURPOSE: Amend the Constitution of the State of Hawaii to expressly provide that the Legislature may authorize the counties to issue tax increment bonds and to exclude tax increment bonds in calculating the debt limit of the political subdivisions.

MEANS: Amend article VII, sections 12 and 13, of the Hawaii State Constitution.

JUSTIFICATION: Tax increment financing is a method through which a portion of property taxes in excess of a base assessed value may be dedicated to finance costs of a project through the issuance of bonds. While section 46-103, Hawaii Revised Statutes (HRS), permits a county council to provide for tax increment financing, and section 46-104(2), HRS, grants a county the power to issue tax increment bonds, tax increment bonds do not fit neatly within the types of bonds that counties may issue under Hawaii's Constitution. This constitutional cloud can be cleared through this bill, which could enable use of this method to finance costly infrastructure upgrades in smart growth and transit-oriented development areas.

Impact on the public: No direct impacts to the public. Allows bonds to be issued to fund public infrastructure from increases in property taxes attributable to higher

## SB. NO. 3053

density and mixed-use development in transit areas.

Impact on the department and other agencies:

Redirects property tax revenues to fund public infrastructure in areas that have experienced increased property valuations due to increased density and transit proximity. County concerns could arise from the diversion of future revenues that could restrict the county's ability to pay for basic services such as police, fire, and parks. Agencies with development interests would benefit from this financing tool that helps fund needed infrastructure.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BED-144 PL.

OTHER AFFECTED  
AGENCIES: Departments of Accounting and General Services, Attorney General, Budget and Finance, Taxation, Land and Natural Resources, and Education. Hawaii Housing and Finance Development Corporation, Hawaii Public Housing Authority, Hawaii Community Development Authority, University of Hawaii, County finance and real property agencies, and County Public Works.

EFFECTIVE DATE: Upon compliance with section 3 of article XVII of the Hawaii State Constitution.