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**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.

**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

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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 of  
8 the public undertaking, improvement or system, and the  
9 required payments of the principal of and interest on  
10 all revenue bonds issued therefor, have been made; or  
11 b. Any payments or return on security under a loan program  
12 or a loan thereunder, after the costs of operation and  
13 administration of the loan program, and the required  
14 payments of the principal of and interest on all revenue  
15 bonds issued therefor, have been made.

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

20 5. The term "person" means an individual, firm,  
21 partnership, corporation, association, cooperative or other  
22 legal entity, governmental body or agency, board, bureau or

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1 other instrumentality thereof, or any combination of the  
2 foregoing.

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

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

21         8. The term "revenue bonds" means all bonds payable from  
22 the revenues, or user taxes, or any combination of both, of a

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1 public undertaking, improvement, system or loan program and any  
2 loan made thereunder and secured as may be provided by law,  
3 including a loan program to provide loans to a state property  
4 insurance program providing hurricane insurance coverage to the  
5 general public.

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

10 10. The "term tax increment bonds" means all bonds, the  
11 principal of and interest on which are payable from and secured  
12 solely by the amount of real property taxes levied and collected  
13 by a political subdivision, such as a county, on the difference  
14 between the assessed value of the taxable real property located  
15 within the boundaries of a tax increment district established by  
16 a political subdivision in a given year and the assessed value  
17 of the taxable real property in the tax increment district  
18 during the year of creation of that tax increment district.

19 [~~10-~~] 11. The term "user tax" means a tax on goods or  
20 services or on the consumption thereof, the receipts of which  
21 are substantially derived from the consumption, use or sale of  
22 goods and services in the utilization of the functions or

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1 services furnished by a public undertaking, improvement or  
2 system; provided that mortgage recording taxes shall constitute  
3 user taxes of a state property insurance program.

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

17 Special purpose revenue bonds shall only be authorized or  
18 issued to finance facilities of or for, or to loan the proceeds  
19 of [~~such~~] the bonds to assist:

- 20 1. Manufacturing, processing or industrial enterprises;
- 21 2. Utilities serving the general public;

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

18           The legislature, by a two-thirds vote of the members to  
19    which each house is entitled, may enact enabling legislation for  
20    the issuance of special purpose revenue bonds separately for  
21    each special purpose entity, and, by a two-thirds vote of the  
22    members to which each house is entitled and by separate

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1 legislative bill, may authorize the State to issue special  
2 purpose revenue bonds for each single project or multi-project  
3 program of each special purpose entity; provided that the  
4 issuance of [~~such~~] the special purpose revenue bonds is found to  
5 be in the public interest by the legislature; [~~and~~] provided  
6 further that the State may combine into a single issue of  
7 special purpose revenue bonds two or more proposed issues of  
8 special purpose revenue bonds to assist:

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

12 (2) Dam and reservoir owners; or

13 (3) Agricultural enterprises,

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

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

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

16 "DEBT LIMIT; EXCLUSIONS

17 Section 13. General obligation bonds may be issued by the  
18 State; provided that [~~such~~] the bonds at the time of issuance  
19 would not cause the total amount of principal and interest  
20 payable in the current or any future fiscal year, whichever is  
21 higher, on [~~such~~] the bonds and on all outstanding general  
22 obligation bonds to exceed: a sum equal to twenty percent of



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

21 A sum equal to fifteen percent of the total of the assessed  
22 values for tax rate purposes of real property in each political

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1 subdivision, as determined by the last tax assessment rolls  
2 pursuant to law, is established as the limit of the funded debt  
3 of [~~such~~] the political subdivision that is outstanding and  
4 unpaid at any time.

5 All general obligation bonds for a term exceeding two years  
6 shall be in serial form maturing in substantially equal  
7 installments of principal, or maturing in substantially equal  
8 installments of both principal and interest. The first  
9 installment of principal of general obligation bonds and of  
10 reimbursable general obligation bonds shall mature not later  
11 than five years from the date of issue of [~~such~~] the series.  
12 The last installment on general obligation bonds shall mature  
13 [~~not~~] no later than twenty-five years from the date of [~~such~~]  
14 the issue and the last installment on general obligation bonds  
15 sold to the federal government, on reimbursable general  
16 obligation bonds and on bonds constituting instruments of  
17 indebtedness under which the State or a political subdivision  
18 incurs a contingent liability as a guarantor shall mature [~~not~~]  
19 no later than thirty-five years from the date of [~~such~~] the  
20 issue. The interest and principal payments of general  
21 obligation bonds shall be a first charge on the general fund of  
22 the State or political subdivision, as the case may be.

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1           In determining the power of the State to issue general  
2 obligation bonds or the funded debt of any political subdivision  
3 under section 12{7} of this article, the following shall be  
4 excluded:

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

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

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1 the same to [~~such~~] the payments in the amount necessary  
2 therefor.

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

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

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

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

21 7. Reimbursable general obligation bonds issued by the  
22 State for any political subdivision, whether issued before or

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

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

21 9. Bonds issued by or on behalf of the State or by any  
22 political subdivision to meet appropriations for any fiscal

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

7 10. Tax increment bonds issued by a political subdivision  
8 such as a county.

9 The total outstanding indebtedness of the State or funded  
10 debt of any political subdivision and the exclusions therefrom  
11 permitted by this section shall be made annually and certified  
12 by law or as provided by law. For the purposes of section 12 of  
13 this article and this section, amounts received from on-street  
14 parking may be considered and treated as revenues of a parking  
15 undertaking.

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

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

20 "Shall the Legislature be authorized to allow  
21 political subdivisions, such as the counties, to issue tax  
22 increment bonds, payable from and secured solely by real

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1 property taxes levied and collected by a political  
2 subdivision, to pay for specified public works, public  
3 improvements or other actions by the political subdivision  
4 within the tax increment district established by the  
5 political subdivision; and also be authorized to exclude  
6 tax increment bonds in determining the funded debt of the  
7 political subdivisions, such as the counties?"

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

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

14

15

INTRODUCED BY: 

16

BY REQUEST

S.B. NO. 3651

**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: To 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, such as the counties.

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 can be remedied by 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 density and mixed-use development in transit

areas. Infrastructure improvements could expedite the production of affordable housing.

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. On the other hand, infrastructure improvements could expedite the construction of housing and thus respond to the housing crisis. Agencies with development interests, such as the Hawaii Public Housing Authority (HPHA) and the Hawaii Housing Finance Development Corporation (HHFDC) 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: County of Kauai, City and County of Honolulu, County of Maui, and County of Hawaii, HPHA, and HHFDC.

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