



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

H.B. NO. 1457, RELATING TO TAX INCREMENT FINANCING.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Friday, January 31, 2025

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Rodney A. Char, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

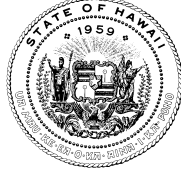
This bill amends section 46-103, Hawai'i Revised Statutes (HRS), to authorize the Hawaiian Homes Commission to designate tax increment districts within a county. It further requires the county council to adopt a tax increment financing plan for the designated district and adopt an ordinance establishing the tax increment district according to boundaries determined by the commission.

The bill may be subject to challenge under article VIII, section 3, of the Hawai'i Constitution, which mandates, among other things, that "all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, with the exception of the county of Kalawao." Tax increments are portions of taxes on real property within a tax increment district that counties may use in part to finance public works and public improvement projects within the district. See sections 46-102 and 46-105, HRS. By allowing the Hawaiian Homes Commission to designate tax increment districts and requiring the counties to adopt those designations, this bill may interfere with the counties' assessment and collection of tax increments, potentially infringing on their exclusive constitutional authority over real property taxation.

Thank you for the opportunity to provide comments.

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ke Kia'āina o ka Moku'āina 'o
Hawai'i*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Hope Kia'āina o ka Moku'āina
'o Hawai'i*



KALI WATSON
CHAIRPERSON, HHC
Ka Luna Ho'okele

KATIE L. LAMBERT
DEPUTY TO THE CHAIR
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STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
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TESTIMONY OF KALI WATSON, CHAIR
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
HEARING ON JANUARY 31, 2025 AT 2:00PM IN CR 325

HB 1457, RELATING TO TAX INCREMENT FINANCING

January 30, 2025

Aloha Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits **comments** on this bill which authorizes the Hawaiian Homes Commission to designate tax increment districts that may utilize tax increment financing.

DHHL appreciates the opportunity for the Hawaiian Homes Commission to designate tax increment districts that may utilize tax increment financing. A better understanding of how this would assist homestead lessees would need to be considered before supporting this option.

Thank you for your consideration of our testimony.

TAX FOUNDATION OF HAWAII

735 Bishop Street, Suite 417

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SUBJECT: MISCELLANEOUS; DHHL; Counties; Tax Increment Financing

BILL NUMBER: HB 1457

INTRODUCED BY: HUSSEY

EXECUTIVE SUMMARY: Authorizes the Hawaiian Homes Commission to designate tax increment districts that may utilize tax increment financing.

SYNOPSIS: Amends section 46-103, HRS, allowing the Hawaiian Homes Commission to designate a tax increment district under section 46-103(a), HRS. Additionally, requires the county council to adopt a tax increment financing plan and ordinance establishing the tax increment district according to the boundaries determined by the Hawaiian Homes Commission.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: Currently only county councils can establish tax increment districts and approve tax increment financing plans under section 46-103, HRS. This proposed measure would allow the Hawaiian Homes Commission to establish a tax increment district and require county councils to adopt a tax increment financing plan according to boundaries determined by the Hawaiian Homes Commission.

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 are concerned that the measure as currently drafted is unconstitutional. The measure, if enacted, would force a county to adopt by ordinance a tax increment financing plan (the tax involved being county real property tax) for a district that DHHL designates. However, as explained in *State ex rel. Anzai v. City & County of Honolulu*, 99 Haw. 508, 522, 57 P.3d 433, 447 (2002), our state constitution gives the property tax mechanism exclusively to the counties and the State has no power to compel or forbid a county to do anything relating to real property tax.