

ACT 202

H. B. NO. 2093-70

A Bill for an Act to Amend Subtitle 1 of Title 6, HRS, by Adding Thereto a New Chapter Entitled, "Indebtedness of the Counties, Exclusions from the Funded Debt Thereof and the Certification of such Exclusions".

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Subtitle 1 of Title 6, Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

"INDEBTEDNESS OF THE COUNTIES, EXCLUSIONS FROM THE FUNDED DEBT THEREOF AND THE CERTIFICATION OF SUCH EXCLUSIONS.

"Section -1. Definitions. As used in Sections -1 through -6, the following words and terms shall have the following meanings or inclusions:

"Chairman of the finance committee' shall mean the chairman of the finance committee of the council of the county, or if the council of the county does not have a finance committee, the member of the council appointed by the council to perform the functions required by this chapter to be performed by the chairman of the finance committee of the council.

"Corporation counsel' shall mean the chief legal advisor or legal representative of the county.

"County' shall include each county of the state, including the City and County of Honolulu.

"Director of finance' shall mean the director of finance of the county, or if the county does not have a director of finance, the officer of the county in whom is vested the functions and powers of maintaining the treasury of the county and issuing and selling, paying interest on and redeeming bonds of the county.

"Fiscal year' shall mean the fiscal year of the county as defined in Section 46-41 of the Hawaii Revised Statutes.

"Special assessment bonds' shall mean bonds issued under special improvement statutes when the only security for such bonds is the properties benefited or improved or the assessments thereon.

"As used in Sections -1 through -6, the words or terms 'bonds', 'general obligation bonds', 'revenue bonds', 'user tax', 'net revenue' and 'net user tax receipts' shall have the respective meanings and inclusions given to such words and terms in Section 3 of Article VI of the Constitution.

“Section -2. Determination of Funded Debt. Within ninety days after the first day of each fiscal year, the director of finance of each county shall ascertain and set forth in a tabular summary the total indebtedness of the county outstanding and unpaid as of the first day of such fiscal year. The summary shall include the following:

- “1. An itemization of the total principal amount of all general obligation bonds, revenue bonds, special assessment bonds and all other bonds of the county outstanding and unpaid, including bonds which may be excluded under clauses (a), (b), (c), (d) and (e) of Section 3 of Article VI of the Constitution when determining the funded debt of the county for the purposes of that section and bonds required to be paid within one year issued to meet appropriations for any fiscal period in anticipation of the collection of the revenues for such period or to meet casual deficits or failures of revenue, together with a grand total of such total principal amounts.
- “2. The total principal amount of all bonds of the state required by clause (h) of Section 3 of Article VI of the Constitution to be included when determining the funded debt of the county for the purposes of that section.
- “3. A grand total of the total principal amounts set forth in the summary pursuant to clauses 1 and 2 above of this section.
- “4. An itemization of the total of the principal amount of all general obligation bonds, revenue bonds and special assessment bonds of the county outstanding and unpaid which may be excluded under clauses (a), (b), (c), (d) and (e) of Section 3 of Article VI of the Constitution when determining the total funded debt of the county for the purposes of that section, together with a grand total of such total principal amounts.
- “5. The difference between the grand total principal amount set forth in the summary pursuant to clause 3 above of the section and the grand total principal amount set forth in the summary pursuant to clause 4 above of this section.

“The director of finance shall also prepare and attach to the tabular summary such supporting schedules as may be required to set forth in detail the bonds included in the itemizations required by clauses 1 and 4 above of this section. Such supporting schedules shall also set forth or make reference to the relevant statutory, charter, ordinance or other legal provision, and the relevant figures of assessment collections, revenues, user tax receipts, cost of operation, maintenance and repair, net revenues, net user tax receipts, reimbursements to the general fund and other financial information, justifying the inclusion of such bonds in the itemization required by clause 4 above of this section. The director of finance shall indicate in the supporting schedules whether the financial findings and figures are based upon the records of his office or upon audited statements and reports, and if based upon the latter, shall identify in the schedules the audited reports and statements.

“Section -3. Supplemental Determination. Whenever the county proposes to issue bonds, the director of finance shall prepare a supplemental summary of the indebtedness of the county setting forth therein such information and findings as of a date within thirty days of the delivery of such bonds as will bring up to date and make current the most recent summary prepared in accordance with the provisions of Section -2. The director of finance shall also prepare and attach to such supplemental summary such supporting schedules as may be required to set forth in detail the variations and changes from the summary prepared in accordance with Section -2, including such legal and financial findings as will justify any changes in the itemizations set forth in such previous summary pursuant to the requirements of clause 4 of said section. If all the bonds proposed to be issued may be excluded when determining the funded debt of the county for the purposes of Section 3 of Article VI of the Constitution by reason of the provisions of clauses (b) or (c) of that section, the supplemental summary and supporting schedules may be limited to such bonds and findings as are necessary to justify such exclusion under said clauses.

“In the event proceeds of the bonds proposed to be issued are to be applied to the retirement in the then fiscal year of outstanding bonds, including notes issued in anticipation of the issuance of the bonds proposed to be issued, for the purpose of applying the provisions of clause (a) of Section 3 of Article VI of the Constitution to the bonds to be retired, that amount of such proceeds to be so applied may be considered and treated as moneys irrevocably set aside for the payment of such bonds.

“Section -4. Exclusionary Provisions. The provisions of this section shall be applicable in determining whether any bonds or portion thereof may be excluded under Section 3 of Article VI of the Constitution when determining the funded debt of the county for the purposes of that section.

“In the event that any general obligation bonds have been issued for assessable improvements, only the principal amount of such bonds for which at least one interest payment date has elapsed may be excluded by reason of the provisions of clause (d) of Section 3 of Article VI of the Constitution. Subject to the provisions of the preceding sentence, the principal amount of general obligation bonds issued for assessable public improvements which may be excluded by reason of the provisions of said clause (d) shall be that percentage of the total principal amount of such bonds which is equal to the percentage of the total of the principal and interest of such bonds theretofore becoming due for the payment of which reimbursement has been made to the general fund of the county from assessment collections available therefor.

“In the event that any general obligation bonds have been issued for a public undertaking, improvement or system from which revenues, user taxes, or a combination of both may be derived for the payment of all or part of the principal and interest as reimbursement to the general fund, only the principal amount of such bonds issued prior to the then current fiscal year and for which at least one interest payment date has elapsed may be excluded by reason of the provisions of clause (e) of Section 3 of Article VI of the Constitution. Subject to the provisions of the next preceding sentence, the principal amount of

general obligation bonds issued for such a public undertaking, improvement or system which may be excluded by reason of said clause (e) shall be that percentage of the total principal amount of such bonds which is equal to the percentage of the principal and interest of such bonds which became due in the immediately preceding fiscal year for the payment of which reimbursement was made to the general fund of the county from the net revenue, net user tax receipts, or a combination of both, derived from such public undertaking, improvement or system in such immediately preceding fiscal year. Amounts received from the federal government for the payment or reimbursement of costs of operation, maintenance and repair of a public undertaking, improvement or system or for the payment of the principal and interest of bonds issued for such public undertaking, improvement or system, may be considered and treated as revenues of such undertaking, improvement or system. Amounts derived from any extra or special motor vehicle fuel tax by law set aside for the use of a county, and amounts received by a county as its share of any motor vehicle fuel taxes or motor vehicle license fees, may be considered and treated as revenue of any street or highway undertaking, improvement or system of the county, including any tunnels, bridges, or overpasses for the movement of motor vehicles. If the costs of operation, maintenance and repair of a public undertaking, improvement or system are the responsibility of the state or a governmental body other than the county, the county shall not be deemed to derive net revenue, or net user taxes, or combination of both, from such undertaking, improvement or system unless the amount of revenues, or user taxes, or combination of both, received by the state or such other governmental body from such undertaking, improvement or system are at least equal to such costs of operation, maintenance and repair.

“Amounts received from on-street parking may be considered and treated as revenues of a parking undertaking.

Section -5. Concurrence in Summaries. Upon the preparation by the director of finance of any summaries and supporting schedules required by the provisions of Sections -2 and -3, he shall submit such summary and supporting schedules to the corporation counsel of the county for his concurrence as to all legal findings upon which such summary and schedules are based, and to the chairman of the finance committee of the county for his concurrence as to all matters therein. The corporation counsel and the chairman of the finance committee shall notify the director of finance in writing of their concurrence in such summary and supporting schedules. If the corporation counsel or the chairman of the finance committee shall disagree with any items included in the summary and supporting schedules, the corporation counsel or the chairman of the finance committee, as the case may be, shall notify the director of finance in writing of his concurrence as to all other items and as to the items of disagreement and his reasons therefor. The director of finance shall thereupon certify the summary and supporting schedules to the council of the county, setting forth in such certification any items therein disagreed to by the corporation counsel or the chairman of the finance committee. The summary and schedules so certified shall be conclusive as to all items therein concurred to by the corporation counsel and the chairman of the finance committee.

“Section -6. Public Hearing; Declaratory Judgment. In the event the certification by the director of finance of any summary and supporting schedules filed with the council of the county shall set forth therein that the corporation counsel or the chairman of the finance committee has disagreed as to any item therein, the council at its election may hold a public hearing on any factual matters as to which there is disagreement. Such public hearing shall be held at a regular meeting of the council. Notice of such public hearing shall be published at least once at least five days prior to the date set for such meeting, in a newspaper of general circulation in the county. The council after such public hearing may make findings as to all the factual items about which there is disagreement, which findings shall be conclusive. Upon any such findings having been made, the director of finance shall revise the summary and supporting schedules to reflect such findings, and shall certify the revised summary and supporting schedules to the council.

“In the event the certification by the director of finance of any summary and supporting schedules filed with the council of the county shall set forth therein that the corporation counsel has disagreed as to any legal finding or determination therein, the council at its election may direct the corporation counsel to file a declaratory judgment action in the name of the county against the director of finance in the circuit court having jurisdiction over the county. The circuit court having jurisdiction over the county is hereby vested with jurisdiction over such declaratory judgment action. The findings and determinations by the circuit court in such action shall be conclusive. Upon any such findings and determinations having been made by the circuit court, the director of finance shall revise the summary and supporting schedules to reflect such findings, and shall certify the revised summary and supporting schedules to the council.

“Section -7. Effect of Summary. In the event of the issuance of bonds by the county, the summary most recently prepared pursuant to Section -2 prior to the issuance of such bonds, together with the supplementary summary pertaining to such issuance prepared pursuant to Section -3, both as certified to the council, shall be utilized in determining whether the issuance of such bonds would cause the limit set forth in Section 3 of Article VI of the Constitution on the funded debt of the county to be exceeded by such issuance. Such summaries shall be conclusive as to all items therein concurred to by the corporation counsel and the chairman of the finance committee and as to all items therein revised to reflect the findings of the council of the county upon public hearing or the findings and determination of the circuit court in a declaratory judgment action. In the event that the disagreement of the corporation counsel or the chairman of the finance committee as to any item in a summary or supporting schedules has not been resolved upon public hearing or by a declaratory judgment action, the bonds or portion thereof to which such disagreement pertains shall be included in determining the funded debt of the county for the purposes of Section 3 of Article VI of the Constitution unless and until such disagreement is resolved upon public hearing or by a declaratory judgment action.”

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SECTION 2. The Revisor of Statutes may re-word and re-number the references in this Act and make such other formal or verbal changes thereto, as may be necessary to conform with the Hawaii Revised Statutes.

SECTION 3. This Act shall take effect upon its approval.
(Approved July 2, 1970.)