

ACT 267

S.B. NO. 155

A Bill for an Act Relating to Tax Increment Financing.

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

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

"PART VI. TAX INCREMENT FINANCING

§46-101 Short title. This part shall be known and may be cited as the "Tax Increment Financing Act."

§46-102 Definitions. As used in this part, the following words and terms shall have the following meanings unless the context indicates a different meaning or intent:

"Adjustment rate" means a percentage rate or rates of adjustment of the assessment base determined by the director of finance at the time the tax increment district is established, based on the historical and projected increases to the assessed values of taxable real property within the boundary of the tax increment district and the projected cost increases to the county for servicing the new developments within the tax increment district.

"Assessment base" means the total assessed values of all taxable real property in a tax increment district as most recently certified by the director of finance on the date of creation of the tax increment district.

"Assessment increment" means the amount by which the current assessed values of taxable real property located within the boundaries of a tax increment district exceeds its assessment base.

"Community development plan" means a plan established pursuant to section 206E-5.

"Council" means the council of the county in which a tax increment district is situated.

"County" has the same meaning as set forth in section 1-22 and means the county in which a tax increment district is situated.

"Director of budget" means the office or chief budget officer of the county charged with the responsibility of preparing and reviewing the operating and capital budget programs of the county.

"Director of finance" means the officer or officers of the county charged with the responsibility of administering the real property taxation function of the county.

"Project costs" means expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the agency that are listed in a tax increment financing plan as costs of public works or public improvements in a tax increment district, plus other costs incidental to the expenditures or obligations. Project costs include:

- (1) Capital costs, including the actual costs of the construction of public works or public improvements, new buildings, structures, and fixtures; the actual costs of the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; and the actual costs of the acquisition, clearing, and grading of land;
- (2) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of tax increment bonds and all interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs, any capitalized interest, and any premium paid over the principal amount of the obligations because of the redemption of the obligations prior to maturity;
- (3) Professional service costs, including architectural, planning, engineering, marketing, appraisal, financial consultant, and special services and legal advice;
- (4) Imputed administrative costs, including reasonable charges for the time spent by employees of the agency in connection with the implementation of a tax increment financing plan;

- (5) Relocation costs to the extent required by federal or state law;
- (6) Organizational costs, including the costs of conducting environmental impact studies or other studies, the costs of publicizing the creation of a tax increment district, and the cost of implementing the tax increment financing plan for the tax increment district;
- (7) Payments determined by the county council to be necessary or convenient to the creation of a tax increment district or to the implementation of the tax increment financing plan for the tax increment district.

“Redevelopment agency” or “agency” means an agency defined in section 53-1 or the Hawaii community development authority as established pursuant to chapter 206E.

“Redevelopment plan” means a plan as defined in section 53-1.

“Tax increment” means the amount of real property taxes levied for one year on the assessment increment.

“Tax increment bonds” mean bonds, notes, interim certificates, debentures, or other obligations issued pursuant to this part.

“Tax increment district” or “district” means a contiguous or noncontiguous geographic area within a redevelopment area or community development area designated pursuant to section 46-103 by the county council for the purpose of tax increment financing.

“Tax increment financing plan” means the plan for tax increment financing for a tax increment district submitted to the county council. The tax increment financing plan shall contain estimates of: project costs; amount of tax increment bonds to be issued; sources of revenue to finance or otherwise pay project costs; the most recent assessed value of taxable real property in the district; the duration of the district’s existence; and statements from the county’s department of finance, and the county’s department of budget, if applicable, regarding the financial and budgetary impacts on the county resulting from the proposed tax increment financing plan.

“Tax increment fund” means a fund which shall be held by the director of finance or other fiduciary designated by the county council and into which all tax increments and other moneys pledged by the county for payment of tax increment bonds are paid, and all proceeds from the sale of tax increment bonds are deposited, and from which moneys are disbursed to pay project costs for the tax increment district or to satisfy claims of holders of tax increment bonds issued for the district.

§46-103 Establishment of tax increment district. Any county council may provide for tax increment financing by approving a tax increment financing plan. If a redevelopment agency desires to establish tax increment financing as part of a redevelopment plan or community development plan, as the case may be, it may designate all or part of the area included within a redevelopment plan or community development plan, as the case may be, as a tax increment district, develop a tax increment financing plan, and submit the plan to the council for its approval. If the council approves a tax increment financing plan, it shall adopt an ordinance establishing the tax increment district. The ordinance shall:

- (1) Describe the boundaries of the tax increment district;
- (2) Provide for the date of commencement of the tax increment district and date of termination of the district;
- (3) Provide for the establishment of a tax increment fund for the district; and

- (4) Provide for such other matters deemed to be pertinent and desirable for tax increment financing and not inconsistent with the redevelopment plan or community development plan, as the case may be.

§46-104 County powers. A county may exercise any power necessary and convenient to establish tax increment districts, including the power to:

- (1) Create tax increment districts as part of a redevelopment plan or community development plan, as the case may be, and determine the boundaries of the districts;
- (2) Issue tax increment bonds;
- (3) Deposit tax increments into the tax increment fund created for a tax increment district; and
- (4) Enter into agreements, including agreements with the redevelopment agency and owners or developers of project lands and bondholders, determined to be necessary or convenient to implement redevelopment plans or community development plans, as the case may be, and achieve their purposes.

§46-105 Collection of tax increments. (a) The county by ordinance shall provide for the allocation of real property taxes and tax increments in the manner required by this part.

(b) If a county exercises the power allowed under this part, then commencing with the first payment of real property taxes levied by the county subsequent to the time a tax increment district takes effect, receipts from real property taxes shall be allocated and paid over as follows:

- (1) The amount of real property tax produced from the assessment base shall be paid to the county general fund; and
- (2) The tax increments produced from the assessment increment in the tax increment district shall be applied as follows:
 - (A) First, an amount equal to the installment of (i) principal and interest falling due of any tax increment bonds, or (ii) any project cost approved by the county, shall be deposited into the tax increment fund established for the tax increment district.
 - (B) Second, an amount equal to the adjustment rate times the amount of real property tax produced from the assessment base shall be computed and paid to the county general fund.
 - (C) Third, the remaining amount of tax increments, if any, shall be deposited into the tax increment fund established for the tax increment district.

(c) The allocation of real property taxes pursuant to this part shall in no way limit the power of the county under section 47-16 to levy ad valorem taxes without limitation as to rate or amount on all real property subject to taxation by the county for the payment of the principal and interest of its general obligation bonds.

§46-106 Tax increment bonds. (a) A county may issue tax increment bonds, the proceeds of which may be used to pay project costs for a tax increment district or to satisfy claims of bondholders. The county may issue refunding bonds previously issued by the county for the purpose of paying or retiring or in exchange for tax increment bonds previously issued by the county. Principal and interest on tax increment bonds shall be made payable, as to both principal and interest, solely from the tax increment fund established for the tax increment district.

A county may provide in its contract with the owners or holders of the tax increment bonds that the county will pay into the tax increment fund all or

any part of the revenue or money produced or received as a result of the operation or sale of a facility acquired, improved, or constructed pursuant to a redevelopment plan or community development plan, as the case may be, to be used to pay principal and interest on the tax increment bonds and, if a county so agrees, the owners or holders of the tax increment bonds may have a lien or mortgage on any facility acquired, improved, or constructed with the proceeds of the tax increment bonds.

(b) Tax increment bonds, and the income therefrom, issued pursuant to this part shall be exempt from all state and county taxation, except estate and transfer taxes.

The bonds shall be authorized by ordinance and may be issued in one or more series. The tax increment bonds of each issue shall be dated, be payable upon demand or mature at a time or times not exceeding thirty years from their date of issuance, bear interest at a rate or rates, be in a denomination or denominations, be in registered form, have a rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, and be subject to terms of redemption (with or without premium), be secured in a manner, and have other characteristics as may be provided by the ordinance providing for issuance of the bonds or by the trust indenture or mortgage issued in connection with the bonds. The county may sell tax increment bonds in such manner, either at public or private sale, and for such price as it may determine.

(c) Prior to the preparation of definitive tax increment bonds, the county may issue interim receipts or temporary bonds exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(d) Should any bond issued under this part become mutilated or be lost, stolen, or destroyed, the county may cause a new bond of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of such mutilated bond, or in lieu of and in substitution for such lost, stolen, or destroyed bond. Such new bond shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond:

- (1) Has paid reasonable expenses and charges in connection therewith;
- (2) In the case of a lost, stolen, or destroyed bond, has filed with the county or its fiduciary satisfactory evidence that such bond was lost, stolen, or destroyed, and that the holder was owner thereof; and
- (3) Has furnished indemnity satisfactory to the county.

(e) Notwithstanding any of the provisions of this part or any recital in any tax increment bond issued under this part, all tax increment bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions pertaining to registration.

(f) In any suit, action, or other proceeding involving the validity or enforceability of a bond issued under this part or the security for a bond or note issued under this part, a bond reciting in substance that it had been issued by the county for a tax increment district shall be conclusively deemed to have been issued for that purpose, and the development or redevelopment of the district conclusively shall be deemed to have been planned, located, and carried out as provided by this part.

(g) All banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all personal representatives, administrators, curators, trustees, and other fiduciaries legally may invest sinking funds, money, or other funds belonging to them or within their control in tax increment bonds issued by a

county pursuant to this part. The bonds shall be authorized security for all public deposits. Any person, political subdivision, and officer, public or private, are authorized to use funds owned or controlled by them for the purchase of tax increment bonds. This part does not relieve any person of the duty to exercise reasonable care in selecting securities.

(h) Tax increment bonds shall be payable only out of the tax increment fund. The county council may pledge irrevocably all or a part of the fund for payment of the bonds. The part of the fund pledged in payment thereafter shall be used only for the payment of the bonds or interest or redemption premium, if any, on the bonds until the bonds have been fully paid. A holder of the bonds shall have a lien against the fund for payment of the bonds and interest thereon and may either at law or in equity protect and enforce such lien.

(i) No officer of the county including any officer executing tax increment bonds shall be liable for the tax increment bonds by reason of the issuance thereof. Tax increment bonds issued under this part shall not be general obligations of the State or county, nor in any event shall they give rise to a charge against the general credit or taxing powers of the State or county or be payable other than as provided by this part. No holder of bonds issued under this part shall have the right to compel any exercise of the taxing power of the State or county to pay such bonds or the interest thereon, and no moneys other than the moneys in the tax increment fund pledged to the bonds shall be applied to the payment thereof. Tax increment bonds issued under this part shall state these restrictions on their face.

(j) The tax increment bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all persons whose signatures appear thereon shall have ceased to be officers of the county.

(k) Tax increment bonds shall not be issued in an amount exceeding the total costs of implementing the tax increment financing plan for which they were issued.

§46-107 Tax increment bond anticipation notes. Whenever the county has authorized the issuance of tax increment bonds under this part, tax increment bond anticipation notes of the county may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All tax increment bond anticipation notes shall be authorized by the county, and the maximum principal amount of such notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the tax increment bonds in anticipation of which the notes are issued and the moneys in the tax increment fund from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such bonds, the maximum amount of bonds authorized in anticipation of which the notes are issued shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and details of such notes shall be governed by this part with respect to tax increment bonds insofar as the same may be applicable; provided that each note, together with renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note.

§46-108 Annual report. The county council by ordinance may require the director of finance to prepare a report to the county council on the status of the

tax increment district. The county council shall determine what information and data are required to be included in the report.

§46-109 Termination of a tax increment district. A tax increment district shall terminate at the time designated in the ordinance creating the district or at an earlier time designated by a subsequent ordinance, but in no event shall the district terminate until such time as all project costs and tax increment bonds issued for the district and the interest thereon, have been paid in full, or sufficient funds have been irrevocably deposited in a special fund or other escrow account held in trust for all outstanding tax increment bonds issued for such district to provide for the payment of such bonds at maturity or date of redemption and interest and premium, if any, thereon.

§46-110 Tax increment fund. (a) Money shall be disbursed from the tax increment fund for a tax increment district only to satisfy the claims of holders of tax increment bonds issued for the tax increment district or to pay project costs for the district, or to make payments to the county as provided by subsection (c).

(b) Subject to an agreement with the holders of tax increment bonds, money in a tax increment fund may be temporarily invested in the same manner as other funds of the county.

(c) In any year in which the tax increment exceeds the amount necessary to pay all project costs and all installments of principal and interest of tax increment bonds issued for a tax increment district falling due and the amount paid to the county general fund pursuant to section 46-105(b)(2)(B), and subject to any agreement with bondholders, any excess money in the fund at the option of the county council, shall be used to redeem or purchase any outstanding tax increment bonds issued for the district, discharge the pledge of tax increment therefor, be paid into an escrow account dedicated to the payment of such bonds, be paid over to the county general fund, or any combination thereof.

§46-111 Computation of tax increment. Upon or after creation of a tax increment district, the director of finance of the county in which the district is situated shall certify the assessment base of the tax increment district and shall certify in each year thereafter the amount by which the assessment base has increased or decreased as a result of a change in tax exempt status of property within the district, or reduction or enlargement of the district. The amount to be added to the assessment base of the district as a result of previously tax exempt real property within the district becoming taxable shall be equal to the assessed value of the real property as most recently assessed or, if the assessment was made more than one year prior to the date of transfer rendering the property taxable, the value which shall be assessed by the director of finance at the time of such transfer. The amount to be added to the assessment base of the district as a result of enlargements thereof shall be equal to the assessed value of the additional real property as most recently certified by the director of finance as of the date of modification of the tax increment financing plan. The amount to be subtracted from the assessment base of the district as a result of previously taxable real property within the district becoming tax exempt, or a reduction in the geographic area of the district, shall be the amount of assessment base initially attributed to the property becoming tax exempt or being removed from the district.

If the assessed value of property located within the tax increment district is reduced by reason of a court-ordered abatement, stipulated agreement, or voluntary abatement made by the director of finance, the reduction shall be applied to the assessment base of the district when the property upon which the abatement is made has not been improved since the date of creation of the

district, and to the assessment increment of the district in each year thereafter when the abatement relates to improvements made after the date of creation.

(b) The director of finance shall certify the amount of the assessment increment to the county and redevelopment agency each year, together with the proportion that the assessment increment bears to the total assessed value of the real property within the tax increment district for that year.

§46-112 Tax on leased redevelopment property. Whenever property in the tax increment district has been redeveloped and thereafter is leased by the county or redevelopment agency to any person or whenever the county or agency leases real property in any tax increment district to any person for redevelopment, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes upon the assessed value of the entire property and not merely the assessed value of the lessee's leasehold interest.

§46-113 Cumulative effect. Neither this part nor anything contained in this part shall be construed as a restriction or limitation upon any power which a county might otherwise have under any law of this State, but shall be construed as cumulative. The authorization granted may be carried out by the county council acting at any regular or special meeting."

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 6, 1985.)