

ACT 41

H.B..NO. 3004

A Bill for an Act Relating to the Management of Financing Agreements.

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

SECTION 1. The purpose of this Act is to clarify and make technical changes to the statutes on the management of financing agreements.

SECTION 2. Section 37-34, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Before appropriations for the University of Hawaii become available to the university, the university shall advise the governor and the director of finance of the amount necessary for payments for financing agreements under chapter 37D, the governor, with the assistance of the director of finance, as may be necessary, shall establish allotment ceilings for each source of funding of all of the appropriations of the University of Hawaii for each allotment period and shall advise the university of these determinations.”

SECTION 3. Section 37-34.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§37-34.5]] Department of education; allotment and expenditure plan; updates. The department of education shall submit an annual allotment and expenditure plan, including a separate description of all existing financing agreements of the department of education that require funding, together with a statement of the amount of funding required, and all proposed financing agreements of the department of education for the ensuing fiscal year, to the governor for each fiscal year. The governor may require the department of education to submit an update of the expenditure plan based on changing economic conditions.”

SECTION 4. Section 37-41.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of education may retain up to five per cent of any appropriation except for appropriations to fund financing agreements entered into in accordance with chapter 37D, for the school-based budgeting program EDN 100 at the close of a fiscal year and the funds retained shall not lapse until June 30 of the first fiscal year of the next fiscal biennium. The department of education shall submit:

- (1) A report to the director of finance, by the close of the first fiscal year, identifying the total amount of funds that will carry over to the second fiscal year; and
- (2) A copy of this report to the legislature, as well as a report identifying the carryover of funds on a school-by-school basis, at least twenty days prior to the convening of the next regular session of the legislature.”

SECTION 5. Section 37-74, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The department of budget and finance shall:

- (1) Review each operations plan to determine:
 - (A) That it is consistent with the policy decisions of the governor and appropriations by the legislature;
 - (B) That it reflects proper planning and efficient management methods; and
 - (C) That appropriations have been made for the planned purpose and will not be exhausted before the end of the fiscal year;

provided that the department of budget and finance shall review the operations plan submitted by the University of Hawaii solely for consistency with the allotment ceilings established by the governor under section 37-34, appropriations by the legislature, the requirements of chapter 37D, and the status of revenues to support operations plans for all state programs;
- (2) Approve the operations plan if satisfied that it meets the requirements under paragraph (1). Otherwise, the department of budget and finance shall require revision of the operations plan in whole or in part; and
- (3) Modify or withhold the planned expenditures at any time during the appropriation period if the department of budget and finance finds that the expenditures are greater than those necessary to execute the programs at the level authorized by the governor and the legislature, or that state receipts and surpluses will be insufficient to meet the authorized expenditure levels; provided that the planned expenditures for the University of Hawaii may be modified or withheld only in accordance with sections 37-36 and 37-37.

(d) No appropriation transfers or changes between programs or agencies shall be made without legislative authorization; provided that:

- (1) Authorized transfers or changes, when made, shall be reported to the legislature;
- (2) [The] Except with respect to appropriations to fund financing agreements under chapter 37D, the University of Hawaii shall have the flexibility to transfer general fund appropriations for the operating cost category among programs with the same or similar objectives, among cost elements in a program, and between quarters, as applicable; and the Hawaii health systems corporation shall have the flexibility to transfer special fund appropriations among community hospitals facilities as applicable; provided that the Hawaii health systems corporation shall maintain the integrity and services of each individual facility and shall not transfer appropriations out of any facility [which] that would result in a reduction of services offered by the facility, with due regard for statutory requirements, changing conditions, the needs of the programs, and the effective utilization of resources; and
- (3) The university shall account for each transfer implemented under this subsection in quarterly reports to the governor and annual reports at the end of each fiscal year to the legislature and the governor, which shall be prepared in the form and manner prescribed by the governor and shall include information on the sources and uses of the transfer.”

SECTION 6. Section 37D-2, Hawaii Revised Statutes, is amended to read as follows:

“[§37D-2] Financing agreements. Only with the approval of the director, and the approval by the attorney general of form and legality, may the agency enter into a financing agreement in accordance with this chapter[.]. A financing agreement may be entered into at the time (before or after commencement or completion of any improvement to be financed) and shall be upon terms the agency finds to be advantageous. Any financing agreement entered into by the agency without the approvals required by this section shall be void and of no effect. Financing agreements shall be subject to the following limitations:

- (1) Amounts payable by the agency under a financing agreement shall be limited to available funds. In no circumstance shall the agency be obligated to pay amounts due under a financing agreement from any source other than available funds. If, by reason of insufficient available funds or other reason, amounts due under a financing agreement are not paid when due, the lender may exercise any property right that the agency has granted to it in the financing agreement, against the property that was purchased with the proceeds of the financing agreement, and apply the amounts so received toward payments scheduled to be made by the agency under the financing agreement;
- (2) No property rights may be granted in property unless the property is being acquired, is to be substantially improved, [or] is to be refinanced with the proceeds of a financing agreement, or is land on which [such] the property is located;
- (3) The agency shall not enter into financing agreements under any provision of law other than this chapter if the principal amount of the financing agreement, together with the principal amount of any financing agreement previously issued by the agency for the same project, exceeds \$100,000; and

- (4) The sale, assignment, or other disposition of any financing agreements, including certificates of participation, shall require the approval of the director.”

SECTION 7. Section 37D-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§37D-3**~~]]~~ **Related agreements.** With the approval of the director and the approval by the attorney general of form and legality, an agency may:

- (1) Enter into agreements with trustees, within or without the State, to hold financing agreement proceeds, payments, and reserves as security for lenders to accept assignments of rights in the financing agreement from, and to enforce such rights of, the lessor or other party thereto, and to issue certificates of participation for the right to receive payments due from the agency under a financing agreement. Amounts held by a trustee shall be invested by the trustee at the direction of the agency in such investments as shall be specified in the agreement with the trustee. Interest earned on any investment held by a trustee as security for a financing agreement may, at the option of the agency, be credited to the accounts held by the trustee and applied in payment of sums due under a financing agreement;
- (2) Enter into credit enhancement agreements for financing agreements or certificates of participation[,]; provided that the credit enhancement agreements shall be payable solely from available funds and amounts received from the exercise of property rights granted under such financing agreements;
- (3) Use financing agreements to finance the costs of acquiring or refinancing property, plus the costs of reserves and credit enhancements and costs associated with obtaining the financing;
- (4) Use a single financing agreement to finance property to be used by multiple agencies;
- (5) Grant leases of real property subject to section 37D-2(2). The leases may be for a term that ends on the date on which all amounts due under a financing agreement have been paid or provision for payment has been made[,], or ten years after the last scheduled payment under a financing agreement, whichever is later. The leases may grant the lessor the right to evict the agency and exclude it from possession of the real property for the term of the lease, if the agency fails to appropriate or pay when due the amounts scheduled to be paid under a financing agreement or otherwise defaults under a financing agreement. Upon failure to pay or default, the lessor may sublease the land to third parties and apply any rentals toward payments scheduled to be made under a financing agreement;
- (6) Grant security interests in personal property subject to section 37D-2(2). The security interests shall attach and be perfected on the date the agency takes possession of the personal property, or the date the lender advances money under a financing agreement, whichever is later. A security interest authorized by this section shall have, except as otherwise provided by law, priority over all other liens and claims. Upon failure to pay or default, the secured party shall have the rights and remedies available to a secured party under chapter 490 or a first, perfected security interest in goods and fixtures. No later than ten days after a security interest authorized by this section attaches, the agency shall cause a financing statement for the security interest to be filed

- with the bureau of [conveyance] conveyances in the same manner as financing statements are filed for goods;
- (7) Pledge any amounts that are deposited with a trustee in accordance with a financing agreement. The pledge shall be valid and binding from the time it is made, the amounts so pledged shall immediately be subject to the lien of the pledge without filing, physical delivery, or other act, and the lien of the pledge shall be superior to all other claims and liens of any kind whatsoever;
 - (8) Bill any other agency that benefits from property acquired with the proceeds of a financing agreement for an appropriate share of the financing costs, including debt service, on a monthly or other periodic basis, and deposit payments received in connection with the billings with a trustee as security for a financing agreement. Any agency receiving such a bill shall be authorized and shall pay the amounts billed from the first amounts legally available to it; [and]
 - (9) Purchase fire and extended coverage or other casualty insurance, or liability, title, rental interruption or other insurance for property that is acquired or refinanced with proceeds of a financing agreement, assign the proceeds thereof to a lender or trustee to the extent of their interest, and covenant to maintain such insurance while the financing agreement is unpaid, so long as available funds are sufficient to purchase such insurance[.]; and
 - (10) In connection with any financing agreement by which any agency leases or purchases property from another party, notwithstanding and without regard to chapter 171 or any other law, the agency may lease or sell, on such terms as the agency shall determine, to that party the site or property to be improved or otherwise to be leased or sold back to the agency.”

SECTION 8. Section 37D-4, Hawaii Revised Statutes, is amended to read as follows:

“[[§37D-4]] Inclusion in governor’s budget request. There shall be included in the governor’s budget request to the legislature, for each fiscal period, amounts sufficient to permit the payment of all amounts that will be due [on unpaid] under financing agreements during that fiscal period[.], including any expenses and replenishment of any reserve funds up to the balances required by the respective financing agreements.”

SECTION 9. Section 37D-8, Hawaii Revised Statutes, is amended to read as follows:

“[[§37D-8]] Exemption from taxation. All real and personal property owned or operated by the agency, and any interests created in or transfer or recording of the property or any interest in the property, and payments made under the financing agreements to which the property is subject shall be exempt from all state, county, and municipal taxation[.], and fees and charges of every kind. Financing agreements issued pursuant to this chapter and the income therefrom, including, without limitation, the interest component of any lease payments, shall be exempt from all taxation by the agency or any county or other political subdivision thereof, except inheritance, transfer, and estate taxes.”

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved April 29, 1998.)