



GOV. MSG. NO. **884**

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 4, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 4, 2007, the following bill was signed into law:

SB1372 SD1 HD1 CD1

A BILL FOR AN ACT RELATING TO THE
MANAGEMENT OF FINANCING AGREEMENTS.
(ACT 126)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO THE MANAGEMENT OF FINANCING AGREEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 37D, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "CHAPTER 37D

4 MANAGEMENT OF FINANCING AGREEMENTS

5 §37D-1 Definitions. Unless the context requires
6 otherwise, as used in this chapter:

7 "Agency" [~~or "participating agency"~~] means the judiciary,
8 any executive department, [any] independent commission, [any]
9 board, [any] authority, [any] bureau, [any] office, [any] other
10 establishment of the State (except the legislature and its
11 agencies), or [any] public corporation that is supported in
12 whole or in part by state funds, or any agent thereof,
13 authorized by law to expend available moneys; provided that the
14 Hawaii health systems corporation shall not be governed by this
15 chapter for any financing agreement unless it elects to do so.

16 "Attorney general" means the attorney general of the State
17 or any duly designated deputy attorney general.



1 "Available moneys" means moneys appropriated or otherwise
2 made available, from time to time, by the legislature to pay
3 amounts due under a financing agreement for the fiscal period in
4 which the payments are due, together with any unexpended
5 proceeds of the financing agreement, and any reserves or other
6 amounts that have been deposited in trust to pay amounts due
7 under the financing agreement. The legislature shall not be
8 obligated to appropriate or otherwise make moneys available.

9 "Certificate of participation" means any certificate
10 evidencing a participation right or a proportionate interest in
11 any financing agreement or the right to receive proportionate
12 payments from [~~the State or~~] an agency due under any financing
13 agreement.

14 "Credit enhancement agreement" means any agreement or
15 contractual relationship between the State, the department, or,
16 with the approval of the director, any agency, and any bank,
17 trust company, insurance company, surety bonding company,
18 pension fund, or other financial institution providing
19 additional credit on or security for a financing agreement or
20 certificates of participation authorized by this chapter.

21 "Department" means the department of budget and finance of
22 the State.



1 "Director" means the director of finance of the State or
2 any duly designated deputy director of finance.

3 "Financial institution" means any organization authorized
4 to do business under state or federal laws relating to financial
5 institutions, including[7] without limitation[7] banks, savings
6 banks, savings and loan companies or associations, financial
7 services loan companies, and credit unions.

8 "Financing agreement" means any lease purchase agreement,
9 installment sale agreement, loan agreement, line of credit, or
10 other agreement of the department or, with the approval of the
11 director, and any agency, to finance the improvement, use, or
12 acquisition of real or personal property that is or will be
13 owned or operated by one or more agencies of the State, the
14 department, or any [~~participating~~] agency, or to refinance
15 previously executed financing agreements including certificates
16 of participation relating thereto.

17 "Line of credit" means an account at a financial
18 institution under which the financial institution agrees to lend
19 money to the department or to an agency, with the approval of
20 the director and the agency, from time to time to finance one or
21 more projects that are authorized by this chapter.



1 "Personal property" means tangible personal property,
2 software, and fixtures.

3 "Project" means the real and personal property to be
4 acquired or improved by [~~a participating agency~~] the department
5 or an agency with the proceeds of a financing agreement of the
6 department or the agency, respectively, or provided to the
7 [~~participating~~] agency by the department.

8 "Property rights" means, with respect to personal property,
9 the rights of a secured party under chapter 490, and, with
10 respect to real property, the rights of a trustee or lender
11 under a lease authorized by section 37D-3(4).

12 "Software" includes software, training, and maintenance
13 contracts related to the operation of computer equipment.

14 **§37D-2 Financing agreements.** (a) There is hereby
15 established and authorized the financing agreement program of
16 the State. Any agency desiring to acquire or improve projects
17 through the financing agreement program established and
18 authorized by this chapter shall submit a written request to the
19 department providing [~~such~~] any information [~~as~~] that the
20 department shall require. Notwithstanding any other law to the
21 contrary, and except for the Hawaii health systems corporation,
22 only with the approval by the attorney general as to form and



1 legality and upon the written request of one or more
2 [~~participating~~] agencies may the department enter into a
3 financing agreement in accordance with this chapter, and only
4 with the approval by the attorney general as to form and
5 legality, and by the director as to fiscal responsibility, and
6 upon the written request of an agency, the agency may enter into
7 a financing agreement in accordance with this chapter, except
8 that the board of regents of the University of Hawaii may enter
9 into a financing agreement in accordance with this chapter
10 without the approval of the director and of the attorney general
11 as to form and legality if the principal amount of the financing
12 agreement does not exceed \$3,000,000. A financing agreement may
13 be entered into by the department on behalf of one or more
14 [~~participating~~] agencies, or by an agency, at any time (before
15 or after commencement or completion of any improvements or
16 acquisitions to be financed) and shall be upon terms and
17 conditions the department finds to be advantageous. In each
18 case of a written request by the judiciary to participate in the
19 financing agreement program, the department shall implement the
20 request; provided that the related financing agreement shall be
21 upon terms and conditions the department finds to be
22 advantageous. Any financing agreement entered into by the



1 department without the approval, or by an agency without the
2 approvals required by this section shall be void and of no
3 effect. A single financing agreement entered into by the
4 department may finance a single item or multiple items of
5 property to be used by multiple agencies or may finance a single
6 item or multiple items of property to be used by a single
7 agency. ~~[The]~~ If the financing agreement is by the department,
8 the department shall bill any [participating] agency that
9 benefits from property acquired with the proceeds of a financing
10 agreement for [such participating] the agency's pro rata share
11 of:

- 12 (1) The department's costs of administration of the
13 financing agreement program; and
- 14 (2) The financing costs, including the principal and
15 interest components of the financing agreement and
16 insurance premiums ~~[,]~~,
17 on a monthly or other periodic basis, and may deposit payments
18 received in connection with the billings with a trustee as
19 security for [a] the financing agreement. Any ~~[participating]~~
20 agency receiving such a bill shall be authorized and shall pay
21 the amounts billed from ~~[the]~~ available moneys.



1 If a financing agreement is by an agency, the agency shall
2 deposit on a monthly or other periodic basis with the
3 department, payments from available moneys with respect to the
4 agency's financing costs, including the principal and interest
5 components of the financing agreement and insurance premiums,
6 which payments the department may deposit with a trustee as
7 security for the financing agreement. The department may bill
8 an agency for the department's costs of administering the
9 agency's payments and the agency receiving such a bill shall be
10 authorized to and shall pay the amounts billed from available
11 moneys.

12 (b) Financing agreements shall be subject to the following
13 limitations:

14 (1) Amounts payable by [~~a participating~~] an agency to or
15 upon the direction of the department in respect to a
16 project and by the department or an agency under a
17 financing agreement shall be limited to available
18 moneys. In no circumstance shall the department or an
19 agency be obligated to pay amounts due under a
20 financing agreement from any source other than
21 available moneys. If, by reason of insufficient
22 available moneys or other reason, amounts due under a



1 financing agreement are not paid when due, the lender
2 may exercise any property right that the department or
3 the agency has granted to it in the financing
4 agreement, against the property that was purchased
5 with the proceeds of the financing agreement, and
6 apply the amounts so received toward payments
7 scheduled to be made by the department or the agency
8 under the financing agreement;

9 (2) No property rights may be granted in property unless
10 the property is being acquired, is to be substantially
11 improved, is to be refinanced with the proceeds of a
12 financing agreement, or is land on which the property
13 is located;

14 (3) Notwithstanding any other law to the contrary, and
15 except for the Hawaii health systems corporation and
16 as otherwise provided in this section with respect to
17 the University of Hawaii, and except as provided in
18 chapter 323F as to the Hawaii health systems
19 corporation, an agency shall not have the power to
20 enter into a financing agreement, except [~~through the~~
21 ~~department~~] as authorized by this chapter, and nothing
22 in this chapter shall be construed to authorize the



1 sale, lease, or other disposition of property owned by
2 an agency;

3 (4) Except as otherwise provided in this section with
4 respect to the University of Hawaii, the sale,
5 assignment, or other disposition of any financing
6 agreements, including certificates of participation
7 relating thereto, shall require the approval of the
8 director; and

9 (5) The department or the agency proposing to enter into a
10 financing agreement shall not be subject to
11 chapter 103D and any and all other requirements of law
12 for competitive bidding for financing agreements.

13 §37D-3 Related agreements. With the approval of the
14 attorney general as to form and legality, the department may[+],
15 and with the approval of the attorney general as to form and
16 legality and of the director as to fiscal responsibility, an
17 agency may:

18 (1) Enter into agreements with trustees, within or without
19 the State, to hold financing agreement proceeds,
20 payments, and reserves as security for lenders to
21 accept assignments of rights in the financing
22 agreement from, and to enforce [such] the rights of,



1 the lessor or other party thereto, and to issue
2 certificates of participation for the right to receive
3 payments due from the department or agency under a
4 financing agreement. A financing agreement by an
5 agency shall provide that all payments due from the
6 agency under the financing agreement shall be
7 deposited to or on the order of the department, or
8 shall be for payment to or at the order of the lender
9 in accordance with the financing agreement. The sale
10 of certificates of participation shall be, at the
11 option of the director, by negotiation or by
12 competitive sale, in accordance with the procedures
13 set out by section 39-55. The interest component of
14 the certificates of participation shall be at [such]
15 the rate or rates payable at [such] the time or times
16 as the financing agreement may provide. The
17 certificates of participation may be in one or more
18 series; may bear [such] the date or dates; may mature
19 at [such] the time or times not exceeding the lesser
20 of:
21 (A) The weighted average economic life of the related
22 project or projects; or



1 (B) Thirty years from their date;
2 may be payable in [such] the medium of payment at
3 [such] the place or places within or without the
4 State; may carry registration privileges; may be
5 subject to [such] terms of redemption, to tenders for
6 purchase or to purchase prior to their stated maturity
7 at the option of the [State] department or the agency,
8 or the holder, or both; and may contain [such] terms,
9 covenants, and conditions; and may be in [such] the
10 form, either coupon or registered, as the financing
11 agreement may provide. Amounts held by a trustee
12 shall be invested by the trustee at the direction of
13 the department or the agency in [such] investments as
14 are permitted by state law and as shall be specified
15 in the agreement with the trustee. Interest earned on
16 any investment held by a trustee as security for a
17 financing agreement may, at the option of the
18 department [,] or the agency, be credited to the
19 accounts held by the trustee and applied in payment of
20 sums due under [such] the financing agreement;

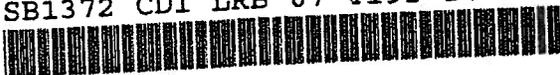
21 (2) Enter into credit enhancement agreements for financing
22 agreements or certificates of participation; provided



1 that the credit enhancement agreements shall be
2 payable solely from available moneys and amounts
3 received from the exercise of property rights granted
4 under ~~[such]~~ the financing agreements;

5 (3) Use financing agreements to finance the costs of
6 acquiring or refinancing property, plus the costs of
7 reserves and credit enhancements and costs associated
8 with obtaining the financing;

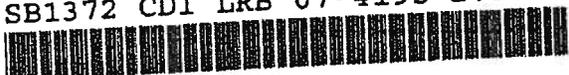
9 (4) Grant leases of real property subject to section
10 37D-2(b)(2). The leases may be for a term that ends
11 on the date on which all amounts due under a financing
12 agreement have been paid or provision for payment has
13 been made or ten years after the last scheduled
14 payment under a financing agreement, whichever is
15 later. The leases may grant the lessor the right to
16 evict the department or the ~~[participating]~~ agency, as
17 the case may be, and exclude it from possession of the
18 real property for the term of the lease, if the
19 department or the ~~[participating]~~ agency, as the case
20 may be, fails to appropriate or pay when due the
21 amounts scheduled to be paid under a financing
22 agreement or otherwise defaults under a financing



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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;

(5) Grant security interests in personal property subject to section 37D-2(b)(2). The security interests shall attach and be perfected on the date the department or the ~~[participating]~~ agency, as the case may be, takes possession of the personal property, or the date the ~~[lender]~~ secured party 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 department or the agency, as the case may be, shall cause a financing statement for the security interest

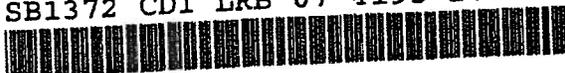


1 to be filed with the bureau of conveyances in the same
2 manner as financing statements are filed for goods;

3 (6) Pledge any amounts that are deposited with a trustee
4 in accordance with a financing agreement. The pledge
5 shall be valid and binding from the time it is made,
6 the amounts so pledged shall immediately be subject to
7 the lien of the pledge without filing, physical
8 delivery, or other act, and the lien of the pledge
9 shall be superior to all other claims and liens of any
10 kind whatsoever;

11 (7) Purchase fire and extended coverage or other casualty
12 insurance, or liability, title, rental interruption,
13 or other insurance for property that is acquired or
14 refinanced with proceeds of a financing agreement,
15 assign the proceeds thereof to a lender or trustee to
16 the extent of its interest, and covenant to maintain
17 [such] the insurance while the financing agreement is
18 unpaid, so long as available funds are sufficient to
19 purchase [such] the insurance; and

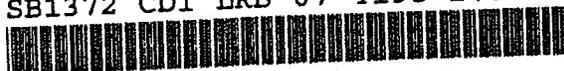
20 (8) In connection with any financing agreement by which
21 the department, on behalf of an agency, leases or
22 purchases property from another party, notwithstanding



1 and without regard to chapter 171 or any other law,
 2 the department or the agency may lease or sell, on
 3 [~~such~~] any terms as the department or the agency shall
 4 determine, to that party the site or property to be
 5 improved or otherwise to be leased or sold back to the
 6 department [-] or the agency.

7 §37D-4 Inclusion of budget request. For each fiscal
 8 period, there shall be included with respect to each
 9 [~~participating~~] agency in the executive budget requests or, in
 10 the case of the judiciary, the judiciary budget request, to the
 11 legislature, amounts sufficient to permit the payment of all
 12 amounts that will be due on unpaid financing agreements during
 13 that fiscal period, including any expenses and replenishment of
 14 any reserve funds up to the balances required by the respective
 15 financing agreements. Amounts so included in the judiciary
 16 budget request and so applied to the payment of [~~such~~] any
 17 amounts due with respect to a judiciary project shall be deemed
 18 to be at all times for purposes of the judiciary budget act
 19 moneys of the judiciary, and not moneys of the department or any
 20 other executive department.

21 §37D-5 Financing agreements not a general obligation of
 22 State. Financing agreements shall:



1 (1) Not be obligations for which the full faith and credit
2 of the State, the department, or any [participating]
3 agency are pledged; and

4 (2) Have no claim or lien on any revenues or other moneys
5 of the State, the department, or any [participating]
6 agency except moneys appropriated or otherwise held in
7 trust for [such] that purpose.

8 Financing agreements entered into under this chapter shall not
9 constitute "bonds" within the meaning of section 12 of article
10 VII of the Constitution of the State. No holder or holders of
11 any financing agreement entered into under this chapter shall
12 have the right to compel any exercise of taxing power of the
13 State, the department, or any [participating] agency to pay
14 [such] the financing agreements or the interest thereon and no
15 moneys other than amounts appropriated or otherwise held in
16 trust for [such] that purpose shall be required to be applied to
17 the payment thereof. Each financing agreement issued under this
18 chapter shall recite in substance that [such] the agreement,
19 including the interest component thereof, shall not be an
20 obligation for which the full faith and credit of the State, the
21 department, or any [participating] agency are pledged, and that
22 [such] the financing agreement shall have no claim or lien on



1 any revenues or other moneys of the State, the department, or
2 any [~~participating~~] agency except moneys appropriated or
3 otherwise held in trust for [~~such~~] that purpose.

4 §37D-6 Federal tax-exempt status; preference; protection.

5 (a) To the extent practicable, financing agreements issued
6 pursuant to this chapter shall be issued to comply with
7 requirements imposed by applicable federal law providing that
8 the interest on financing agreements shall be excluded from
9 gross income for federal income tax purposes, except as certain
10 minimum taxes or environmental taxes may apply. The director
11 and, with the approval of the director, the head of an agency
12 may:

- 13 (1) Enter into agreements;
14 (2) Establish funds or accounts;
15 (3) Make rebate payments to the federal government; and
16 (4) Take any action required to comply with applicable
17 federal tax law.

18 Nothing in this chapter shall prohibit the issuance of financing
19 agreements, the interest on which may be included in gross
20 income for federal income tax purposes.

21 (b) To ensure that interest on a financing agreement
22 issued pursuant to this chapter that is excluded from gross



1 income for federal income tax purposes, except as provided in
2 subsection (a), on the date of issuance shall continue to be
3 excluded, no state officer or employee shall authorize or allow
4 any change, amendment, or modification to a financing agreement
5 ~~[which]~~ that would affect the exclusion of interest on ~~[such]~~
6 the financing agreement from gross income for federal income tax
7 purposes unless the change, amendment, or modification shall
8 have received the prior approval of the director. Failure to
9 receive the approval of the director shall render any change,
10 amendment, or modification void.

11 **§37D-7 Financing agreements legal investments.** All public
12 officers and agencies, ~~[all]~~ political subdivisions, ~~[all]~~
13 insurance companies and associations, ~~[all]~~ banks, savings
14 banks, and savings institutions, including building or savings
15 and loan associations, ~~[all]~~ credit unions, ~~[all]~~ trust
16 companies, ~~[all]~~ personal representatives, guardians, trustees,
17 and ~~[all]~~ other persons and fiduciaries in the State who are
18 regulated by law as to the character of their investment, may
19 legally invest moneys within their control and available for
20 investment in financing agreements of the department ~~[or]~~ or any
21 agency. The purpose of this section is to authorize any person,
22 firm, corporation, association, political subdivision, body, or



1 officer, public or private, to use any funds or moneys owned or
2 controlled by them, including[7] without prejudice to the
3 generality of the foregoing[7] sinking, insurance, investment,
4 retirement, compensation, pension and trust funds, and moneys
5 held on deposit, for the purchase of any financing agreements of
6 the department[-] or any agency.

7 §37D-8 Exemption from taxation. All real and personal
8 property owned or operated by the State, the department, or any
9 [~~participating~~] agency, and any interests created in or transfer
10 or recording of the property or any interest in the property,
11 and payments made under the financing agreements to which the
12 property is subject shall be exempt from all state, county, and
13 municipal taxation, and fees and charges of every kind.
14 Financing agreements issued pursuant to this chapter and the
15 income therefrom, including[7] without limitation[7] the
16 interest component of any lease payments, shall be exempt from
17 all taxation by the State or any county or other political
18 subdivision thereof, except inheritance, transfer, and estate
19 taxes.

20 §37D-9 Line of credit. The department or, with the
21 approval of the director, an agency may contract with a
22 financial institution for one or more lines of credit in [~~such~~]



1 amounts and for [~~sueh~~] periods as the legislature shall from
2 time to time determine. The department, an agency, or the
3 department [~~r~~] on behalf of a requesting agency, may borrow under
4 a line of credit and use the amount or amounts borrowed to pay
5 the cost of the improvements, use, or acquisition of real or
6 personal property comprising a project. Upon the execution and
7 delivery of a financing agreement to refinance the amount or
8 amounts borrowed under [~~sueh~~] the line of credit, the department
9 or the agency that is party to the financing agreement shall
10 apply the proceeds thereof to the repayment of [~~sueh~~] any amount
11 or amounts.

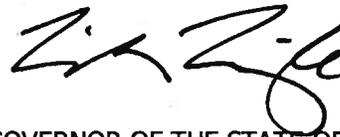
12 **§37D-10 Litigation; jurisdiction; appeal.** The director
13 may petition the circuit court of the first circuit for an
14 opinion as to the validity of any financing or related agreement
15 entered into pursuant to this chapter. The petition shall
16 constitute a civil proceeding for purposes of section
17 603-21.5(a)(3), and the circuit court of the first circuit shall
18 have exclusive and original jurisdiction to receive and
19 determine the question presented in the petition, irrespective
20 of an actual controversy or dispute regarding the agreement or
21 its validity. Any party aggrieved by the decision of the



1 circuit court may appeal in accordance with part I of chapter
2 641 and the appeal shall be given priority."

3 SECTION 2. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

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



GOVERNOR OF THE STATE OF HAWAII

Approved this day: JUN 4 2007

