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January 22, 2010

The Honorable Jon Riki Karamatsu, Chair
and Members
The Committee on Judiciary
House of Representatives
State Capitol, Room 302
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members:

RE: H.B. No. 1205: Proposing Amendments to Article VII, Section 12 and 13, of the Constitution of the State of Hawaii Relating to Tax Increment Financing

This is to express our support of H.B. No. 1205, which would clarify, in the State Constitution, the counties' authority to issue tax increment finance bonds.

Chapter 46-101 through 46-113, Hawaii Revised Statutes, authorizes the counties to issue tax increment finance (TIF) bonds to finance improvements within a designated tax increment district. Briefly, the tax increment program works as follows:

(1) A county establishes a tax increment district with specified boundaries.
(2) The real assessed value of all taxable real property in the tax increment district, on the date of creation of the district, become the basis for allocation of all future real property taxes on that property, referred to as the "assessment base."
(3) Each year, the real property tax produced by applying the tax rate to the assessment base continues to go the county's general fund, but the increment of tax produced by applying the tax rate to the amount by which the current assessed value exceeds the assessment base goes to pay the debt service on tax increment bonds issued to finance improvements in the tax increment district.

TIF bond financing affords the counties a tool to make improvements to areas which may not otherwise enjoy improvements. The policy theory is that, but for the improvements financed with the tax increment, there would be no increase in the assessed value and no tax increment.

Even though the counties have been afforded statutory authority to issue TIF bonds since 1985, the City and County of Honolulu was informed by Bond Counsel that there may be Constitutional cloud on the City's authority to issue TIF bonds. Bond Counsel noted,

> It is unclear whether that statutory authorization is supported by the Hawaii Constitution. Article VII, Section 12, provides that the Legislature will "by general law authorize political subdivisions to issue general obligation bonds, bonds issued under special improvement statues and revenue bonds." TIF bonds are not general obligation bonds and not issued under special improvement statues. This leaves "revenue bonds" which are defined in that same section of the Constitution as bonds payable from "the revenues or user taxes...of a public undertaking, improvement, system or loan program...." Tax increment does not seem to fit easily into any of these categories.

This read by Bond Counsel has created uncertainty over the City's authority to issue TIF bonds. And, it deprives the counties of a critical tool we may use to redevelop communities and enhance the quality of life of families in those communities.

Enactment of H.B. 1205, and the subsequent approval by the public, will put to rest any question regarding the counties' ability to use TIF bonds for the betterment of all counties in Hawaii.

Sincerely,

Mark Ot

Mark Oto, Deputy Director
Department of Budget and Fiscal Services