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# A BILL FOR AN ACT

RELATING TO CERTIFICATES OF PARTICIPATION.

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

1 SECTION 1. Section 37D-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§37D-3 Related agreements. (a) With [~~the approval of~~  
4 ~~the attorney general as to form and legality, the department~~  
5 ~~may, and with]~~ the approval of the attorney general as to form  
6 and legality and of the director as to fiscal responsibility, an  
7 agency may:

8 (1) Enter into agreements with trustees, within or without  
9 the State, to hold financing agreement proceeds,  
10 payments, and reserves as security for lenders to  
11 accept assignments of rights in the financing  
12 agreement from, and to enforce the rights of, the  
13 lessor or other party thereto, and to issue  
14 certificates of participation for the right to receive  
15 payments due from the department or agency under a  
16 financing agreement. A financing agreement by an  
17 agency shall provide that all payments due from the



1 agency under the financing agreement shall be  
2 deposited to or on the order of the department, or  
3 shall be for payment to or at the order of the lender  
4 in accordance with the financing agreement. The sale  
5 of certificates of participation shall be, at the  
6 option of the director, by negotiation or by  
7 competitive sale, in accordance with the procedures  
8 set out by section 39-55. The interest component of  
9 the certificates of participation shall be at the rate  
10 or rates payable at the time or times as the financing  
11 agreement may provide. The certificates of  
12 participation may be in one or more series; may bear  
13 the date or dates; may mature at the time or times not  
14 exceeding the lesser of:

15 (A) The weighted average economic life of the related  
16 project or projects; or

17 (B) Thirty years from their date;

18 may be payable in the medium of payment at the place  
19 or places within or without the State; may carry  
20 registration privileges; may be subject to terms of  
21 redemption, to tenders for purchase or to purchase



1 prior to their stated maturity at the option of the  
2 department or the agency, or the holder, or both; and  
3 may contain terms, covenants, and conditions; and may  
4 be in the form, either coupon or registered, as the  
5 financing agreement may provide. Amounts held by a  
6 trustee shall be invested by the trustee at the  
7 direction of the department or the agency in  
8 investments as are permitted by state law and as shall  
9 be specified in the agreement with the trustee.  
10 Interest earned on any investment held by a trustee as  
11 security for a financing agreement may, at the option  
12 of the department or the agency, be credited to the  
13 accounts held by the trustee and applied in payment of  
14 sums due under the financing agreement;

15 (2) Enter into credit enhancement agreements for financing  
16 agreements or certificates of participation; provided  
17 that the credit enhancement agreements shall be  
18 payable solely from available moneys and amounts  
19 received from the exercise of property rights granted  
20 under the financing agreements;



- 1           (3) Use financing agreements to finance the costs of  
2           acquiring or refinancing property, plus the costs of  
3           reserves and credit enhancements and costs associated  
4           with obtaining the financing;
- 5           (4) Grant leases of real property subject to section  
6           37D-2(b)(2). The leases may be for a term that ends  
7           on the date on which all amounts due under a financing  
8           agreement have been paid or provision for payment has  
9           been made or ten years after the last scheduled  
10          payment under a financing agreement, whichever is  
11          later. The leases may grant the lessor the right to  
12          evict the department or the agency, as the case may  
13          be, and exclude it from possession of the real  
14          property for the term of the lease, if the department  
15          or the agency, as the case may be, fails to  
16          appropriate or pay when due the amounts scheduled to  
17          be paid under a financing agreement or otherwise  
18          defaults under a financing agreement. Upon failure to  
19          pay or default, the lessor may sublease the land to  
20          third parties and apply any rentals toward payments  
21          scheduled to be made under a financing agreement;



- 1           (5) Grant security interests in personal property subject  
2           to section 37D-2(b)(2). The security interests shall  
3           attach and be perfected on the date the department or  
4           the agency, as the case may be, takes possession of  
5           the personal property, or the date the secured party  
6           advances money under a financing agreement, whichever  
7           is later. A security interest authorized by this  
8           section shall have, except as otherwise provided by  
9           law, priority over all other liens and claims. Upon  
10          failure to pay or default, the secured party shall  
11          have the rights and remedies available to a secured  
12          party under chapter 490 or a first, perfected security  
13          interest in goods and fixtures. No later than ten  
14          days after a security interest authorized by this  
15          section attaches, the department or the agency, as the  
16          case may be, shall cause a financing statement for the  
17          security interest to be filed with the bureau of  
18          conveyances in the same manner as financing statements  
19          are filed for goods;
- 20          (6) Pledge any amounts that are deposited with a trustee  
21          in accordance with a financing agreement. The pledge



1 shall be valid and binding from the time it is made,  
2 the amounts so pledged shall immediately be subject to  
3 the lien of the pledge without filing, physical  
4 delivery, or other act, and the lien of the pledge  
5 shall be superior to all other claims and liens of any  
6 kind whatsoever;

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

16 (8) In connection with any financing agreement by which  
17 the department, on behalf of an agency, leases or  
18 purchases property from another party, notwithstanding  
19 and without regard to chapter 171 or any other law,  
20 the department or the agency may lease or sell, on any  
21 terms as the department or the agency shall determine,



1 to that party the site or property to be improved or  
2 otherwise to be leased or sold back to the department  
3 or the agency.

4 (b) The department shall not issue a certificate of  
5 participation under this chapter for which the principal amount  
6 exceeds \$10,000,000."

7 SECTION 2. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

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



**Report Title:**

Financing Agreements; Certificates of Participation; Limitation;  
Department of Budget and Finance

**Description:**

Prohibits the department of budget and finance from issuing any  
certificate of participation that exceeds \$10 million. (SD1)

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not legislation or evidence of legislative intent.*

