
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~~[-]~~; provided that:



1 (A) A financing agreement by an agency shall provide
2 that all payments due from the agency under the
3 financing agreement shall be deposited to or on
4 the order of the department, or shall be for
5 payment to or at the order of the lender in
6 accordance with the financing agreement~~[+]~~;

7 (B) The sale of certificates of participation shall
8 be, at the option of the director, by negotiation
9 or by competitive sale, in accordance with the
10 procedures set out by section 39-55~~[+]~~;

11 (C) The interest component of the certificates of
12 participation shall be at the rate or rates
13 payable at the time or times as the financing
14 agreement may provide~~[+]~~;

15 (D) The certificates of participation may be in one
16 or more series; may bear the date or dates; may
17 mature at the time or times not exceeding the
18 lesser of:

19 ~~[(A)]~~ (i) The weighted average economic life of the
20 related project or projects; or

21 ~~[(B)]~~ (ii) Thirty years from their date;



1 may be payable in the medium of payment at the
2 place or places within or without the State; may
3 carry registration privileges; may be subject to
4 terms of redemption, to tenders for purchase or
5 to purchase prior to their stated maturity at the
6 option of the department or the agency, or the
7 holder, or both; and may contain terms,
8 covenants, and conditions; and may be in the
9 form, either coupon or registered, as the
10 financing agreement may provide[-];

11 (E) Amounts held by a trustee shall be invested by
12 the trustee at the direction of the department or
13 the agency in investments as are permitted by
14 state law and as shall be specified in the
15 agreement with the trustee[-]; and

16 (F) Interest earned on any investment held by a
17 trustee as security for a financing agreement
18 may[-] be credited, at the option of the
19 department or the agency, [~~be credited~~] to the
20 accounts held by the trustee and applied in



- 1 payment of sums due under the financing
2 agreement;
- 3 (2) Enter into credit enhancement agreements for financing
4 agreements or certificates of participation; provided
5 that the credit enhancement agreements shall be
6 payable solely from available moneys and amounts
7 received from the exercise of property rights granted
8 under the financing agreements;
- 9 (3) Use financing agreements to finance the costs of
10 acquiring or refinancing property, plus the costs of
11 reserves and credit enhancements and costs associated
12 with obtaining the financing;
- 13 (4) Grant leases of real property subject to section
14 37D-2(b)(2) [-]; provided that:
- 15 (A) The leases may be for a term that ends on the
16 date on which all amounts due under a financing
17 agreement have been paid or provision for payment
18 has been made or ten years after the last
19 scheduled payment under a financing agreement,
20 whichever is later[-];



1 (B) The leases may grant the lessor the right to
2 evict the department or the agency[, ~~as the case~~
3 ~~may be,~~] and exclude it from possession of the
4 real property for the term of the lease, if the
5 department or the agency[, ~~as the case may be,~~]
6 fails to appropriate or pay when due the amounts
7 scheduled to be paid under a financing agreement
8 or otherwise defaults under a financing
9 agreement[-]; and

10 (C) Upon failure to pay or default, the lessor may
11 sublease the land to third parties and apply any
12 rentals toward payments scheduled to be made
13 under a financing agreement;

14 (5) Grant security interests in personal property subject
15 to section 37D-2(b)(2) [-]; provided that:

16 (A) The security interests shall attach and be
17 perfected on the date the department or the
18 agency[, ~~as the case may be,~~] takes possession of
19 the personal property, or the date the secured
20 party advances money under a financing agreement,
21 whichever is later[-];



1 (B) A security interest authorized by this section
2 shall have, except as otherwise provided by law,
3 priority over all other liens and claims~~[-]~~;
4 (C) Upon failure to pay or default, the secured party
5 shall have the rights and remedies available to a
6 secured party under chapter 490 or a first,
7 perfected security interest in goods and
8 fixtures~~[-]~~; and
9 (D) No later than ten days after a security interest
10 authorized by this section attaches, the
11 department or the agency~~[, as the case may be,]~~
12 shall cause a financing statement for the
13 security interest to be filed with the bureau of
14 conveyances in the same manner as financing
15 statements are filed for goods;
16 (6) Pledge any amounts that are deposited with a trustee
17 in accordance with a financing agreement~~[-]~~; provided
18 that:
19 (A) The pledge shall be valid and binding from the
20 time it is made~~[-the]~~;



1 (B) The amounts so pledged shall immediately be
2 subject to the lien of the pledge without filing,
3 physical delivery, or other act[~~r~~]; and [~~the~~]

4 (C) The lien of the pledge shall be superior to all
5 other claims and liens of any kind whatsoever;

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

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



1 otherwise to be leased or sold back to the department
2 or the agency.

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

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

8 SECTION 3. This Act shall take effect on July 1, 2022.

9

INTRODUCED BY:



JAN 25 2022



H.B. NO. 2314

Report Title:

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

Description:

Prohibits the Director of Finance from issuing or approving any certificate of participation that exceeds \$10 million.

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