

JAN 21 2022

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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 ~~[+]~~; provided that:





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

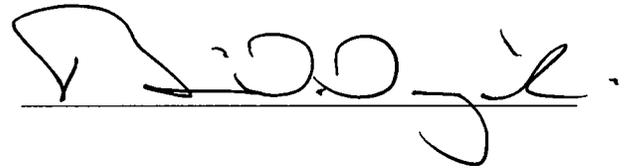
3 (b) The director shall not issue or approve a certificate  
4 of participation under this chapter for which the principal  
5 amount exceeds \$10,000,000."

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:



# S.B. NO. 2712

**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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