

JAN 25 2023

A BILL FOR AN ACT

PROPOSING AMENDMENTS TO ARTICLE VII, SECTIONS 12 AND 13, OF THE HAWAII CONSTITUTION TO EXPRESSLY PROVIDE THAT THE LEGISLATURE MAY AUTHORIZE THE COUNTIES TO ISSUE TAX INCREMENT BONDS AND TO EXCLUDE TAX INCREMENT BONDS FROM DETERMINATIONS OF THE FUNDED DEBT OF THE COUNTIES.

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

1 SECTION 1. The purpose of this Act is to propose
2 amendments to article VII, sections 12 and 13, of the
3 Constitution of the State of Hawaii to:

4 (1) Expressly provide that the legislature may authorize
5 political subdivisions, such as the counties, to issue
6 tax increment bonds; and

7 (2) Exclude tax increment bonds from determinations of the
8 funded debt of the political subdivisions.

9 SECTION 2. Article VII, section 12, of the Constitution of
10 the State of Hawaii is amended to read as follows:

11 **"DEFINITIONS; ISSUANCE OF INDEBTEDNESS**

12 Section 12. For the purposes of this article:

13 1. The term "bonds" shall include bonds, notes and other
14 instruments of indebtedness.

15 2. The term "general obligation bonds" means all bonds for
16 the payment of the principal and interest of which the full

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1 faith and credit of the State or a political subdivision are
2 pledged and, unless otherwise indicated, includes reimbursable
3 general obligation bonds.

4 3. The term "net revenues" or "net user tax receipts"
5 means the revenues or receipts derived from:

6 a. A public undertaking, improvement or system remaining
7 after the costs of operation, maintenance and repair of
8 the public undertaking, improvement or system, and the
9 required payments of the principal of and interest on
10 all revenue bonds issued therefor, have been made; or

11 b. Any payments or return on security under a loan program
12 or a loan thereunder, after the costs of operation and
13 administration of the loan program, and the required
14 payments of the principal of and interest on all revenue
15 bonds issued therefor, have been made.

16 4. The term "dam and reservoir owner" means any person who
17 has a right to, title to, or an interest in, a dam, a reservoir,
18 or the property upon which a dam, a reservoir, or appurtenant
19 work is located or proposed to be located.

20 5. The term "person" means an individual, firm,
21 partnership, corporation, association, cooperative or other
22 legal entity, governmental body or agency, board, bureau or

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1 other instrumentality thereof, or any combination of the
2 foregoing.

3 6. The term "rates, rentals and charges" means all
4 revenues and other moneys derived from the operation or lease of
5 a public undertaking, improvement or system, or derived from any
6 payments or return on security under a loan program or a loan
7 thereunder; provided that insurance premium payments,
8 assessments and surcharges, shall constitute rates, rentals and
9 charges of a state property insurance program.

10 7. The term "reimbursable general obligation bonds" means
11 general obligation bonds issued for a public undertaking,
12 improvement or system from which revenues, or user taxes, or a
13 combination of both, may be derived for the payment of the
14 principal and interest as reimbursement to the general fund and
15 for which reimbursement is required by law, and, in the case of
16 general obligation bonds issued by the State for a political
17 subdivision, general obligation bonds for which the payment of
18 the principal and interest as reimbursement to the general fund
19 is required by law to be made from the revenue of the political
20 subdivision.

21 8. The term "revenue bonds" means all bonds payable from
22 the revenues, or user taxes, or any combination of both, of a

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1 public undertaking, improvement, system or loan program and any
2 loan made thereunder and secured as may be provided by law,
3 including a loan program to provide loans to a state property
4 insurance program providing hurricane insurance coverage to the
5 general public.

6 9. The term "special purpose revenue bonds" means all
7 bonds payable from rental or other payments made to an issuer by
8 a person pursuant to contract and secured as may be provided by
9 law.

10 10. The term "tax increment bonds" means all bonds, the
11 principal of and interest on which are payable from and secured
12 solely by all real property taxes levied by a political
13 subdivision, such as a county, on the assessed valuation of the
14 real property in a tax increment district established by the
15 political subdivision that is in excess of the assessed
16 valuation of the real property for the fiscal year prior to the
17 effective date specified by resolution of the political
18 subdivision of the specified public works, public improvements
19 or other actions by the political subdivision within the tax
20 increment district.

21 [~~10.~~] 11. The term "user tax" means a tax on goods or
22 services or on the consumption thereof, the receipts of which

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1 are substantially derived from the consumption, use or sale of
2 goods and services in the utilization of the functions or
3 services furnished by a public undertaking, improvement or
4 system; provided that mortgage recording taxes shall constitute
5 user taxes of a state property insurance program.

6 The legislature, by a majority vote of the members to which
7 each house is entitled, shall authorize the issuance of all
8 general obligation bonds, bonds issued under special improvement
9 statutes and revenue bonds issued by or on behalf of the State
10 and shall prescribe by general law the manner and procedure for
11 such issuance. The legislature by general law shall authorize
12 political subdivisions to issue general obligation bonds, bonds
13 issued under special improvement statutes [~~and~~], revenue bonds
14 and tax increment bonds and shall prescribe the manner and
15 procedure for such issuance. All such bonds issued by or on
16 behalf of a political subdivision shall be authorized by the
17 governing body of such political subdivision.

18 Special purpose revenue bonds shall only be authorized or
19 issued to finance facilities of or for, or to loan the proceeds
20 of such bonds to assist:

- 21 1. Manufacturing, processing or industrial enterprises;
- 22 2. Utilities serving the general public;

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- 1 3. Health care facilities provided to the general public
- 2 by not-for-profit corporations;
- 3 4. Early childhood education and care facilities provided
- 4 to the general public by not-for-profit corporations;
- 5 5. Low and moderate income government housing programs;
- 6 6. Not-for-profit private nonsectarian and sectarian
- 7 elementary schools, secondary schools, colleges and
- 8 universities;
- 9 7. Agricultural enterprises; or
- 10 8. Dam and reservoir owners; provided that the bonds are
- 11 issued for and the proceeds are used to offer loans to
- 12 assist dam and reservoir owners to improve their
- 13 facilities to protect public safety and provide
- 14 significant benefits to the general public as
- 15 important water sources,
- 16 each of which is hereinafter referred to in this paragraph as a
- 17 special purpose entity.

18 The legislature, by a two-thirds vote of the members to
19 which each house is entitled, may enact enabling legislation for
20 the issuance of special purpose revenue bonds separately for
21 each special purpose entity, and, by a two-thirds vote of the
22 members to which each house is entitled and by separate

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1 legislative bill, may authorize the State to issue special
2 purpose revenue bonds for each single project or multi-project
3 program of each special purpose entity; provided that the
4 issuance of such special purpose revenue bonds is found to be in
5 the public interest by the legislature; and provided further
6 that the State may combine into a single issue of special
7 purpose revenue bonds two or more proposed issues of special
8 purpose revenue bonds to assist:

9 (1) Not-for-profit private nonsectarian and sectarian
10 elementary schools, secondary schools, colleges, and
11 universities;

12 (2) Dam and reservoir owners; or

13 (3) Agricultural enterprises,

14 separately authorized as aforesaid, in the total amount not
15 exceeding the aggregate of the proposed separate issues of
16 special purpose revenue bonds. The legislature may enact
17 enabling legislation to authorize political subdivisions to
18 issue special purpose revenue bonds. If so authorized, a
19 political subdivision by a two-thirds vote of the members to
20 which its governing body is entitled and by separate ordinance
21 may authorize the issuance of special purpose revenue bonds for
22 each single project or multi-project program of each special

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1 purpose entity; provided that the issuance of such special
2 purpose revenue bonds is found to be in the public interest by
3 the governing body of the political subdivision. No special
4 purpose revenue bonds shall be secured directly or indirectly by
5 the general credit of the issuer or by any revenues or taxes of
6 the issuer other than receipts derived from payments by a person
7 or persons under contract or from any security for such contract
8 or contracts or special purpose revenue bonds and no moneys
9 other than such receipts shall be applied to the payment
10 thereof. The governor shall provide the legislature in November
11 of each year with a report on the cumulative amount of all
12 special purpose revenue bonds authorized and issued, and such
13 other information as may be necessary."

14 SECTION 3. Article VII, section 13, of the Constitution of
15 the State of Hawaii is amended to read as follows:

16 **"DEBT LIMIT; EXCLUSIONS**

17 **Section 13.** General obligation bonds may be issued by the
18 State; provided that such bonds at the time of issuance would
19 not cause the total amount of principal and interest payable in
20 the current or any future fiscal year, whichever is higher, on
21 such bonds and on all outstanding general obligation bonds to
22 exceed: a sum equal to twenty percent of the average of the

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1 general fund revenues of the State in the three fiscal years
2 immediately preceding such issuance until June 30, 1982; and
3 thereafter, a sum equal to eighteen and one-half percent of the
4 average of the general fund revenues of the State in the three
5 fiscal years immediately preceding such issuance. Effective
6 July 1, 1980, the legislature shall include a declaration of
7 findings in every general law authorizing the issuance of
8 general obligation bonds that the total amount of principal and
9 interest, estimated for such bonds and for all bonds authorized
10 and unissued and calculated for all bonds issued and
11 outstanding, will not cause the debt limit to be exceeded at the
12 time of issuance. Any bond issue by or on behalf of the State
13 may exceed the debt limit if an emergency condition is declared
14 to exist by the governor and concurred to by a two-thirds vote
15 of the members to which each house of the legislature is
16 entitled. For the purpose of this paragraph, general fund
17 revenues of the State shall not include moneys received as
18 grants from the federal government and receipts in reimbursement
19 of any reimbursable general obligation bonds which are excluded
20 as permitted by this section.

21 A sum equal to fifteen percent of the total of the assessed
22 values for tax rate purposes of real property in each political

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1 subdivision, as determined by the last tax assessment rolls
2 pursuant to law, is established as the limit of the funded debt
3 of such political subdivision that is outstanding and unpaid at
4 any time.

5 All general obligation bonds for a term exceeding two years
6 shall be in serial form maturing in substantially equal
7 installments of principal, or maturing in substantially equal
8 installments of both principal and interest. The first
9 installment of principal of general obligation bonds and of
10 reimbursable general obligation bonds shall mature not later
11 than five years from the date of issue of such series. The last
12 installment on general obligation bonds shall mature not later
13 than twenty-five years from the date of such issue and the last
14 installment on general obligation bonds sold to the federal
15 government, on reimbursable general obligation bonds and on
16 bonds constituting instruments of indebtedness under which the
17 State or a political subdivision incurs a contingent liability
18 as a guarantor shall mature not later than thirty-five years
19 from the date of such issue. The interest and principal
20 payments of general obligation bonds shall be a first charge on
21 the general fund of the State or political subdivision, as the
22 case may be.

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1 In determining the power of the State to issue general
2 obligation bonds or the funded debt of any political subdivision
3 under section 12, the following shall be excluded:

4 1. Bonds that have matured, or that mature in the then
5 current fiscal year, or that have been irrevocably called for
6 redemption and the redemption date has occurred or will occur in
7 the then fiscal year, or for the full payment of which moneys or
8 securities have been irrevocably set aside.

9 2. Revenue bonds, if the issuer thereof is obligated by
10 law to impose rates, rentals and charges for the use and
11 services of the public undertaking, improvement or system or the
12 benefits of a loan program or a loan thereunder or to impose a
13 user tax, or to impose a combination of rates, rentals and
14 charges and user tax, as the case may be, sufficient to pay the
15 cost of operation, maintenance and repair, if any, of the public
16 undertaking, improvement or system or the cost of maintaining a
17 loan program or a loan thereunder and the required payments of
18 the principal of and interest on all revenue bonds issued for
19 the public undertaking, improvement or system or loan program,
20 and if the issuer is obligated to deposit such revenues or tax
21 or a combination of both into a special fund and to apply the
22 same to such payments in the amount necessary therefor.

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1 3. Special purpose revenue bonds, if the issuer thereof is
2 required by law to contract with a person obligating such person
3 to make rental or other payments to the issuer in an amount at
4 least sufficient to make the required payment of the principal
5 of and interest on such special purpose revenue bonds.

6 4. Bonds issued under special improvement statutes when
7 the only security for such bonds is the properties benefited or
8 improved or the assessments thereon.

9 5. General obligation bonds issued for assessable
10 improvements, but only to the extent that reimbursements to the
11 general fund for the principal and interest on such bonds are in
12 fact made from assessment collections available therefor.

13 6. Reimbursable general obligation bonds issued for a
14 public undertaking, improvement or system but only to the extent
15 that reimbursements to the general fund are in fact made from
16 the net revenue, or net user tax receipts, or combination of
17 both, as determined for the immediately preceding fiscal year.

18 7. Reimbursable general obligation bonds issued by the
19 State for any political subdivision, whether issued before or
20 after the effective date of this section, but only for as long
21 as reimbursement by the political subdivision to the State for
22 the payment of principal and interest on such bonds is required

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1 by law; provided that in the case of bonds issued after the
2 effective date of this section, the consent of the governing
3 body of the political subdivision has first been obtained; and
4 provided further that during the period that such bonds are
5 excluded by the State, the principal amount then outstanding
6 shall be included within the funded debt of such political
7 subdivision.

8 8. Bonds constituting instruments of indebtedness under
9 which the State or any political subdivision incurs a contingent
10 liability as a guarantor, but only to the extent the principal
11 amount of such bonds does not exceed seven percent of the
12 principal amount of outstanding general obligation bonds not
13 otherwise excluded under this section; provided that the State
14 or political subdivision shall establish and maintain a reserve
15 in an amount in reasonable proportion to the outstanding loans
16 guaranteed by the State or political subdivision as provided by
17 law.

18 9. Bonds issued by or on behalf of the State or by any
19 political subdivision to meet appropriations for any fiscal
20 period in anticipation of the collection of revenues for such
21 period or to meet casual deficits or failures of revenue, if
22 required to be paid within one year, and bonds issued by or on

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1 behalf of the State to suppress insurrection, to repel invasion,
2 to defend the State in war or to meet emergencies caused by
3 disaster or act of God.

4 10. Tax increment bonds, but only to the extent that the
5 principal of and interest on the bonds are in fact paid from the
6 real property taxes levied by a political subdivision, such as a
7 county, on the assessed valuation of the real property in a tax
8 increment district established by the political subdivision that
9 is in excess of the assessed valuation of the real property for
10 the fiscal year prior to the effective date specified by
11 resolution of the political subdivision of the specified public
12 works, public improvements or other actions by the political
13 subdivision within the tax increment district.

14 The total outstanding indebtedness of the State or funded
15 debt of any political subdivision and the exclusions therefrom
16 permitted by this section shall be made annually and certified
17 by law or as provided by law. For the purposes of section 12
18 and this section, amounts received from on-street parking may be
19 considered and treated as revenues of a parking undertaking.

20 Nothing in section 12 or in this section shall prevent the
21 refunding of any bond at any time."

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1 SECTION 4. The question to be printed on the ballot shall
2 be as follows:

3 "Shall the Constitution be amended to expressly provide
4 that the legislature may authorize political subdivisions, such
5 as the counties, to issue tax increment bonds to pay for
6 specified public works, public improvements or other actions by
7 the political subdivision within the tax increment district and
8 also be amended to exclude tax increment bonds in determining
9 the funded debt of the political subdivisions, such as the
10 counties?"

11 SECTION 5. Constitutional material to be repealed is
12 bracketed and stricken. New constitutional material is
13 underscored.

14 SECTION 6. This amendment shall take effect upon
15 compliance with article XVII, section 3, of the Constitution of
16 the State of Hawaii.

17

18

INTRODUCED BY: *M. P. U.*

19

BY REQUEST

20

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Report Title:

Tax Increment Bonds; Constitutional Amendment

Description:

Proposes amendments to the Constitution of the State of Hawaii to expressly provide that the legislature may authorize political subdivisions, such as counties, to issue tax increment bonds and to exclude tax increment bonds in calculating the debt limit of the political subdivisions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT PROPOSING AMENDMENTS TO ARTICLE VII, SECTIONS 12 AND 13, OF THE HAWAII CONSTITUTION TO EXPRESSLY PROVIDE THAT THE LEGISLATURE MAY AUTHORIZE THE COUNTIES TO ISSUE TAX INCREMENT BONDS AND TO EXCLUDE TAX INCREMENT BONDS FROM DETERMINATIONS OF THE FUNDED DEBT OF THE COUNTIES.

PURPOSE: To amend the Constitution of the State of Hawaii to expressly provide that the Legislature may authorize the counties to issue tax increment bonds and to exclude tax increment bonds in calculating the debt limit of the political subdivisions, such as the counties.

MEANS: Amend article VII, sections 12 and 13, of the Hawaii State Constitution.

JUSTIFICATION: Tax increment financing is a method through which a portion of property taxes in excess of a base assessed value may be dedicated to finance costs of a project through the issuance of bonds. While section 46-103, Hawaii Revised Statutes (HRS), permits a county council to provide for tax increment financing, and section 46-104(2), HRS, grants a county the power to issue tax increment bonds, tax increment bonds do not fit neatly within the types of bonds that counties may issue under Hawaii's Constitution. This constitutional cloud can be cleared through this bill, which could enable use of this method to finance costly infrastructure upgrades in smart growth and transit-oriented development areas.

Impact on the public: No direct impacts to the public. Allows bonds to be issued to fund public infrastructure from increases in property taxes attributable to higher

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density and mixed-use development in transit areas.

Impact on the department and other agencies:

Redirects property tax revenues to fund public infrastructure in areas that have experienced increased property valuations due to increased density and transit proximity. County concerns could arise from the diversion of future revenues that could restrict the county's ability to pay for basic services such as police, fire, and parks. Agencies with development interests would benefit from this financing tool that helps fund needed infrastructure.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BED-144 PL.

OTHER AFFECTED
AGENCIES: County of Kauai, City and County of Honolulu, County of Maui, and County of Hawaii.

EFFECTIVE DATE: Upon compliance with section 3 of article XVII of the Hawaii State Constitution.