



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1100, PROPOSING AMENDMENTS TO ARTICLE VII, SECTION 12, OF THE HAWAII CONSTITUTION TO AUTHORIZE THE COUNTIES TO ISSUE TAX INCREMENT BONDS..

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Friday, February 3, 2023

**TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Randall S. Nishiyama, Deputy Attorney General

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill proposes to amend Article VII, section 12, of the Hawaii State Constitution to permit the counties to issue tax increment bonds. Tax increment bonds can be used to finance public improvements for redevelopment and for economic development within a designated tax increment area.

Tax increment bonds work as follows:

1. The county establishes a tax increment district with specified boundaries.
2. When the tax increment district is formed, the total assessed value of the taxable real property in the tax increment district becomes the basis for allocating future real property taxes on that property (the "assessment base").
3. Each year, the real property tax generated by applying the tax rate to the assessment base is deposited into the county's general fund. The increment of tax generated by applying the tax rate to the amount by which the then current assessed value exceeds the assessment base is used to pay the tax increment bonds.

The function of tax increment bonds is to use the incremental real property taxes (which the private developer or property owner would be paying in any event) to pay for qualifying project costs, and not to use any county moneys to fund such improvements.

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, we note that tax increment bonds do not neatly fit within the categories of bonds that the Legislature may authorize a political subdivision such as a county to issue under article VII, section 12, of the Hawaii State Constitution.

In addressing the ability of a county to issue bonds, article VII, section 12, of the Hawaii State Constitution provides that "[t]he legislature by general law shall authorize political subdivisions to issue general obligation bonds, bonds issued under special improvement statutes and revenue bonds and shall prescribe the manner and procedure for such issuance."

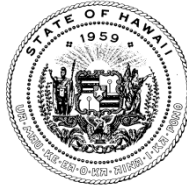
In this instance, tax increment bonds are not general obligation bonds, that is, bonds supported by the full faith and credit of a county. See section 46-106(i), HRS. Further, tax increment bonds do not appear to be special improvement bonds within the scope of sections 46-80.1 and 46-80.5, HRS. Also, tax increment bonds do not fit within the category of revenue bonds under article VII, section 12, of the Hawaii State Constitution, which are "bonds payable from the revenues, or user taxes, or any combination of both, of a public undertaking, improvement, system or loan program." Moneys collected from tax increments under section 46-105, HRS, are not revenues as defined by section 49-1, HRS, nor are they user taxes, as also defined in section 49-1. Consequently, we believe that this bill's amendment to article VII, section 12, of the Hawaii State Constitution, is necessary to authorize tax increment bonds for the counties.

Further, we note that tax increment bonds do not fit within the categories of bonds that the Legislature may authorize a county to exclude for debt limit purposes under article VII, section 13, of the Hawaii State Constitution.

Consequently, an amendment to article VII, section 13, of the Hawaii State Constitution, is needed to remove this constitutional infirmity. However, because

the title of this bill restricts such amendments to article VII, section 12, of the Hawaii State Constitution, this bill cannot be amended to permit a county to exclude tax increment bonds from its debt limit. We note that S.B. No. 1295 and H.B. No. 997, both titled "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", have appropriate bill titles to effectuate amendments to article VII, sections 12 and 13, of the Hawaii State Constitution, to authorize the counties to issue tax increment bonds and to exclude such tax increment bonds from the debt limit of the counties. We suggest that the Committee use those two bills as vehicles for this matter.

We respectfully asked the Committee to consider our comments.



**TESTIMONY BY:**  
EDWIN H. SNIFFEN  
DIRECTOR  
  
Deputy Directors  
DREANALEE K. KALILI  
TAMMY L. LEE  
ROBIN K. SHISHIDO  
JAMES KUNANE TOKIOKA

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 3, 2023  
9:30 A.M.

State Capitol Conference Room 016 & Videoconference

**S.B. 1100**  
**RELATING TO TAX INCREMENT BONDS**

Senate Committee on Judiciary

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The Hawaii Department of Transportation (DOT) **supports** this measure that proposes amendments to the Constitution of the State of Hawaii to expressly provide that the Legislature may authorize the Counties to issue tax increment bonds.

The DOT receives Federal Highway Administration (FHWA) federal funds for its Capital Improvement Projects (CIP). Additionally, the DOT issues Revenue Bonds for the State match to the FHWA federal funds in support of its CIP program. Tax Increment Financing (TIF) and Tax Increment Bonds differs greatly from Revenue Bonds and the DOT is interested in TIF as an innovative financing strategy to complement federal funds, and Revenue Bond proceeds as appropriate.

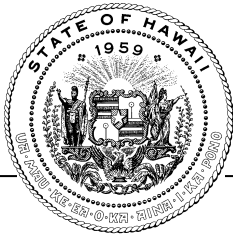
The DOT understands that implementing Tax Increment Financing (TIF) and Tax Increment Bonds is complicated, however, this innovative financing may be another financing tool to provide for infrastructure improvements under the purview of the DOT as guidance from the FHWA states, "Although TIF has not been used extensively to fund transportation infrastructure, some state laws specifically authorize the use of TIF for transportation purposes."<sup>1</sup>

The DOT supports housing and have been working with developers to fulfill our infrastructure requirements and see TIF as an opportunity for the State and Counties to collaborate on areas that have been historically difficult to develop.

Thank you for the opportunity to provide testimony.

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<sup>1</sup> [https://www.fhwa.dot.gov/ipd/value\\_capture/defined/tax\\_increment\\_financing.aspx](https://www.fhwa.dot.gov/ipd/value_capture/defined/tax_increment_financing.aspx)



**STATE OF HAWAII  
OFFICE OF PLANNING  
& SUSTAINABLE DEVELOPMENT**

**JOSH GREEN, M.D.**  
GOVERNOR

**SCOTT J. GLENN**  
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Statement of  
**SCOTT GLENN, Director**

before the  
**SENATE COMMITTEE ON JUDICIARY**  
Friday, February 3, 2023, 9:30 AM  
State Capitol, Conference Room 016

in consideration of  
**SB 1100**  
**PROPOSING AMENDMENTS TO ARTICLE VII, SECTION 12, OF THE HAWAII  
CONSTITUTION TO AUTHORIZE THE COUNTIES TO ISSUE TAX  
INCREMENT BONDS.**

Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary, the Office of Planning and Sustainable Development (OPSD) **supports with comments** SB 1100 which proposes amendments to Article VII, Section 12, of the Hawaii Constitution to expressly provide that the Legislature may authorize the counties to issue tax increment bonds.

Tax increment financing (TIF) is a useful tool to help finance regional public infrastructure to facilitate transit-oriented development on state and private lands. It allows a portion of property taxes in excess of a base assessed value to be dedicated to finance costs of a project through issuance of bonds.

While Hawaii Revised Statutes (HRS) §46-103 permits a county council to provide for tax increment financing, and HRS §46-104(2) 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. The constitutional amendment proposed by this bill would clarify that use of TIF is authorized.

A related bill, SB 1101, would amend HRS §39-92 to include both issuance of tax increment bonds and exclude tax increment bonds in calculating the debt limit of the counties. The OSPD notes that SB 1295 proposes language to amend Article VII, Section 12 of the Hawaii Constitution to conform state debt limit statements law to include tax increment bonds. This language could be suitable for inclusion in SB 1100 to more closely align SB 1100 and SB 1101.

Thank you for the opportunity to testify on this measure.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** CONSTITUTIONAL AMENDMENT, Allows Counties to Issue Tax Increment Bonds

**BILL NUMBER:** SB 1100, HB 1457

**INTRODUCED BY:** SB by KEITH-AGARAN, AQUINO, MCKELVEY, Kidani, Wakai; HB by SAIKI

**EXECUTIVE SUMMARY:** Proposes amendments to the Constitution of the State of Hawai'i to expressly provide that the Legislature may authorize the Counties to issue tax increment bonds.

**SYNOPSIS:** Amends Article VII, Section 12 of the Constitution to add the definition of "tax increment bonds" as all bonds, the principal of and interest on which are payable from and secured solely by all real property taxes levied by a political subdivision, such as a county, for a period not to exceed \_\_\_ years, on the assessed valuation of the real property in a tax increment district established by the political subdivision that is in excess of the assessed valuation of the real property for the fiscal year prior to the effective date specified by resolution of the political subdivision of the specified public works, public improvements or other actions by the political subdivision within the tax increment district.

Authorizes counties to issue tax increment bonds.

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

**STAFF COMMENTS:** The proposed measure would allow each of the counties to issue tax increment bonds and utilize the concept of tax increment financing as another means of financing capital improvements. The concept of tax increment financing is based on increased property tax revenue generated from rising property tax assessments which result from the improvements. Under a tax increment financing plan, a specific geographic area would be designated as a tax increment district for which tax increment bonds would be sold to cover capital improvement project costs within that district.

Upon the designation of a tax increment district an "assessment base" is established, based on the total assessed value of taxable real property in a tax increment district at that time. A "tax increment," which is the amount by which the current valuation of the real property exceeds the assessment base, is then determined. The revenues derived from the assessment base would be paid into the county's general fund while the revenues derived from the tax increment would be deposited into the tax increment fund. In addition to the revenues derived from the determination of the tax increment, the proceeds of tax increment bonds are also to be deposited into the tax increment fund. The total revenues in the tax increment fund are then be used to finance capital improvements including debt repayment made to the tax increment district which, in turn, will

result in increased property valuations due to renovation and increased capital improvements within the designated district.

While this concept provides another means for the financing of capital improvements, caution should be exercised to ensure that the amount of revenues generated within a tax increment district will be enough to cover the debt service of the tax increment bonds issued. Provisions should be made to ensure that this method of financing is not abused as it has been in other states. Specifically, it should be provided that once a tax increment financing district has been designated and the project costs estimated, such districts may not be enlarged nor shall expenditures exceed projections to include purposes other than originally authorized without specific local government approval.

In other words, in designating such districts, certification of assessment values should be done to ensure that valuations of properties within the tax increment district will increase sufficiently to generate enough revenues to repay the cost of the bonds sold. Conversely, specific provisions should be made to ensure that any excess revenues are returned to the county general fund.

Digested: 1/30/2023