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# A BILL FOR AN ACT

RELATING TO STATE FINANCES.

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

1           SECTION 1. The legislature finds that the 2008 Housing and  
2 Economic Recovery Act added section 146(i)(6) to the Internal  
3 Revenue Code of 1986, as amended, which authorized the  
4 "recycling" of multifamily private activity bond volume cap to  
5 finance new affordable rental housing projects. Jurisdictions  
6 such as New York City and California have established bond  
7 recycling programs in order to use this existing authority under  
8 the Internal Revenue Code to preserve and more efficiently use  
9 their tax-exempt private activity bond volume by allowing an  
10 authorized private activity bond issuer to secure an instrument  
11 of indebtedness with a trustee, fiscal agent, or bank that holds  
12 the debt for an affordable housing project. The proceeds of  
13 that instrument of indebtedness are then deemed to be used to  
14 repay a prior tax-exempt private activity bond issue, the loan  
15 pursuant to the prior tax-exempt issue is deemed to have been  
16 repaid from an alternative source, and the repayment is deemed  
17 to have been transferred to the issuer to make a new loan to



1 another borrower. Under the bond recycling strategy, the  
2 jurisdiction's volume cap is not spent but can instead be  
3 recycled once, with certain requirements and limitations, to  
4 finance other affordable rental housing projects and leverage  
5 other tax incentives like the low-income housing tax credit.

6 Given the critical need to create more affordable housing  
7 opportunities within the State, the legislature further finds  
8 that laying the foundation for a bond recycling program now is  
9 prudent so that the Hawaii housing finance and development  
10 corporation and the counties can use the bond recycling strategy  
11 when conditions are favorable.

12 While the Internal Revenue Code authorizes bond recycling,  
13 article VII, section 13, of the Hawaii State Constitution  
14 establishes a limit on the total outstanding general obligation  
15 bond indebtedness of the State and on the funded debt of any  
16 political subdivision, unless certain conditions are met, but  
17 also excludes certain bonds from the debt limit, including bonds  
18 constituting instruments of indebtedness under which the State  
19 incurs a contingent liability as a guarantor, but only to the  
20 extent the principal amount of such bonds does not exceed seven  
21 percent of the principal amount of outstanding general



1 obligation bonds not otherwise excluded under this section;  
2 provided that the State establishes and maintains a reserve in  
3 an amount in reasonable proportion to the outstanding loans  
4 guaranteed by the State. Pursuant to this constitutional  
5 provision and in order to ensure the exclusion of any bond debt  
6 incurred for the bond recycling program from the total  
7 outstanding debt limit for the State, the legislature finds that  
8 a reserve fund should be established for any unsecured portion  
9 of the debt used for the bond recycling program.

10 The purpose of this Act is to statutorily establish  
11 authorization for the Hawaii housing finance and development  
12 corporation and the counties to implement a bond recycling  
13 program for affordable rental housing and ensure the exclusion  
14 of any bond debt incurred for the program from the State's total  
15 outstanding debt limit.

16 SECTION 2. Section 39B-2, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§39B-2 Allocation of annual state ceiling.** (a) The  
19 annual state ceiling shall be allocated for each calendar year  
20 in the following proportions:



1 (1) An amount equal to fifty per cent of the annual state  
2 ceiling to the State;

3 (2) An amount equal to 37.55 per cent of the annual state  
4 ceiling to the city and county of Honolulu;

5 (3) An amount equal to 5.03 per cent of the annual state  
6 ceiling to the county of Hawaii;

7 (4) An amount equal to 2.41 per cent of the annual state  
8 ceiling to the county of Kauai; and

9 (5) An amount equal to 5.01 per cent of the annual state  
10 ceiling to the county of Maui.

11 (b) The department, with the approval of the governor, may  
12 assign all or any part of the allocation of the State to any  
13 issuer or any county for a specific calendar year or years. At  
14 the request of the department, any issuer or county to which any  
15 part of the State's allocation has been assigned shall return  
16 all or part of the assignment, in which case the department may  
17 provide for its reassignment.

18 (c) The department may request return of all or any part  
19 of the allocations of one or more counties made pursuant to  
20 subsection (a), and may assign and reassign the allocation to



1 any other county or issuer for a specified calendar year or  
2 years.

3 (d) A county, by resolution of its governing body, or any  
4 issuer, by written certificate of the issuer, may request  
5 additional allocations of the annual state ceiling from, or  
6 assign all or any part of its portion of the allocation of the  
7 annual state ceiling to, the State for a specified calendar year  
8 or years. Before requesting an additional allocation of the  
9 annual state ceiling for a specific calendar year or years under  
10 this subsection, a county shall have applied all of its  
11 allocation of the annual state ceiling for the specified  
12 calendar year or years as evidenced by a certificate of the  
13 issuer or the director of finance of a county, as applicable,  
14 under section 39B-3. If a county assigns all or any part of its  
15 private activity bond allocation for a specific calendar year or  
16 years to the State under this subsection, the assigned portion  
17 shall be applied to a project or projects located in the  
18 assigning county; provided that pursuant to a cooperative  
19 agreement with the department and Hawaii housing finance and  
20 development corporation under subsection (e), the private



1 activity bond allocation may be awarded to projects located in  
2 other counties.

3 (e) In order to facilitate the construction of new rental  
4 housing projects, the department and Hawaii housing finance and  
5 development corporation may enter into a cooperative agreement  
6 with a county to coordinate the award of private activity bonds  
7 and low-income housing tax credits for new rental housing  
8 projects in the county. The agreement shall, except as provided  
9 under federal law, be exempt from all statutes, ordinances,  
10 charter provisions, and rules of any government agency relating  
11 to the award of private activity bonds and low-income housing  
12 tax credits.

13 (f) The Hawaii housing finance and development corporation  
14 or a county may establish a bond recycling program pursuant to  
15 section 146(i)(6) of the Internal Revenue Code of 1986, as  
16 amended. Under the program, if, during the six-month period  
17 beginning on the date of a repayment of a loan financed by an  
18 issue ninety-five per cent or more of the net proceeds of which  
19 are used to provide projects described in section 142(d) of the  
20 Internal Revenue Code of 1986, as amended, such repayment is  
21 used to provide a new loan for any project so described, any



# H.B. NO. 1760

1 bond that is issued to refinance such issue shall be treated as  
2 a refunding issue to the extent the principal amount of such  
3 refunding issue does not exceed the principal amount of the  
4 bonds refunded.

5 (g) The Hawaii housing finance and development corporation  
6 or a county may secure a line of credit or other instrument of  
7 indebtedness for a bond recycling program.

8 If the Hawaii housing finance and development corporation  
9 secures a line of credit or other instrument of indebtedness  
10 under this subsection, the Hawaii housing finance and  
11 development corporation shall maintain in a separate subaccount  
12 of the rental housing revolving fund a reserve in an amount in  
13 reasonable proportion to the outstanding balance of the  
14 instrument of indebtedness that is not secured by cash or short-  
15 term investments described in section 36-21(a).

16 If a county secures a line of credit or other instrument of  
17 indebtedness under this subsection, the county shall maintain in  
18 a separate fund a reserve in an amount in reasonable proportion  
19 to the outstanding balance of the instrument of indebtedness  
20 that is not secured by cash or short-term investments described  
21 in section 36-21(a).



1        (h) The department and Hawaii housing finance and  
2 development corporation may enter into a cooperative agreement  
3 with a county to facilitate and coordinate the establishment and  
4 implementation of a bond recycling program. The agreement shall  
5 be exempt from all statutes, ordinances, charter provisions, and  
6 rules of any government agency relating to the award of private  
7 activity bonds except federal law, subsections (f) and (g), and  
8 section 39B-5(2)."

9        SECTION 3. Section 39B-5, Hawaii Revised Statutes, is  
10 amended to read as follows:

11        "[~~f~~]**\$39B-5**[~~]~~ **Semi-annual report status or use of**  
12 **allocation.** In addition to the report required by section 39B-  
13 4, within thirty days of the end of each fiscal and calendar  
14 year, each county or any issuer shall submit a report to the  
15 department and the Hawaii housing finance and development  
16 corporation on ~~the~~:

17        (1) The status or use of its portion of the allocation of  
18        the annual state ceiling, including any carryforward  
19        allocation, that has not been applied to an issuance  
20        of a qualified private bond[~~7~~]; and





1       (2) The status or use of its portion of the allocation of  
2       the annual state ceiling previously applied to an  
3       issuance of a qualified private bond and used to  
4       provide a new loan under the bond recycling program  
5       pursuant to section 39B-2(f) and section 146(i)(6) of  
6       the Internal Revenue Code of 1986, as amended,  
7 as evidenced by a certificate of the issuer or the director of  
8 finance of a county, as applicable."

9       SECTION 4. Section 201H-202, Hawaii Revised Statutes, is  
10 amended by amending subsection (d) to read as follows:

11       "(d) The fund shall be used to provide loans or grants for  
12 the development, pre-development, construction, acquisition,  
13 preservation, and substantial rehabilitation of rental housing  
14 units. Permitted uses of the fund may include but are not  
15 limited to planning, design, land acquisition, costs of options,  
16 agreements of sale, downpayments, equity financing, capacity  
17 building of nonprofit housing developers, or other housing  
18 development services or activities as provided in rules adopted  
19 by the corporation pursuant to chapter 91. The rules may  
20 provide for a means of recapturing loans or grants made from the  
21 fund if a rental housing project financed under the fund is



# H.B. NO. 1760

1 refinanced or sold at a later date. The rules may also provide  
2 that moneys from the fund shall be leveraged with other  
3 financial resources to the extent possible.

4 There is established within the rental housing revolving  
5 fund a bond recycling program subaccount. The bond recycling  
6 program subaccount shall be maintained as a reserve pursuant to  
7 section 39B-2(f)."

8 SECTION 5. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval.

11

INTRODUCED BY: *Lee A. Cici*

JAN 18 2024

# H.B. NO. 1760

**Report Title:**

HHFDC; Bond Recycling Program; Affordable Rental Housing; Rental Housing Revolving Fund; Bond Recycling Program Subaccount; State Debt Limit Exclusion; Private Activity Bonds

**Description:**

Allows HHFDC or a county to establish a bond recycling program authorized by federal law. Allows HHFDC or a county to secure a line of credit or other instrument of indebtedness for the bond recycling program. Allows the Department of Budget and Finance and HHFDC to enter into an agreement with a county for bond recycling. Requires a county or issuer to submit a report to the Department of Budget and Finance and HHFDC on the status or use of its portion of the volume cap that is being recycled. Requires a reserve to be maintained for the unsecured portion of debt incurred for the bond recycling program and establishes a reserve for HHFDC as a subaccount of the rental housing revolving fund.

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

