

ACT 3

H.B. NO. 2500

A Bill for an Act Relating to the State Budget.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. (a) The purpose of this Act is to authorize the issuance of general obligation bonds by the State; authorize the borrowing of moneys from the Municipal Liquidity Facility under section 13(3) of the Federal Reserve Act, 12 U.S.C. §343(3); and declare the legislature's findings with respect to these bond authorizations as required by article VII, section 13 of the Constitution of the State of Hawaii.

The legislature finds that the Federal Reserve has authorized the establishment and operation of the Municipal Liquidity Facility under section 13(3) of the Federal Reserve Act, enumerated in 12 U.S.C. §343(3), to facilitate access to credit and liquidity in order for state, city, and county governments to better manage periods of dislocation related to the coronavirus disease 2019, or COVID-19, pandemic. By enabling the Municipal Liquidity Facility, the Federal Reserve has engaged its full range of tools to support the flow of credit to households, businesses, and communities to counter the economic impact of the COVID-19 pandemic and promote a swift recovery once disruption related to the pandemic abates. The legislature intends that the:

- (1) Municipal Liquidity Facility be utilized at levels that are prudent and do not adversely affect the State; and
- (2) Amount authorized for the Municipal Liquidity Facility contained herein reflects flexibility and balances the executive branch's prerogative to prudently execute the State's economic recovery with the means authorized by the legislature.

Presently, this Act authorizes borrowings in excess of the debt limit. Pursuant to Article VII, Section 13 of the Constitution of the State of Hawaii, the State may exceed the debt limit if an emergency condition is declared by the governor and concurred to by a two-thirds vote of the legislature. This provision is to allow the governor and the legislature by mutual agreement to exceed the debt ceiling when an extraordinary emergency exists. Although the governor issued a proclamation declaring that the effects of the COVID-19 pandemic created an emergency condition in the State and issued nine supplemental emergency proclamations to deal with the pandemic, none of these proclamations address the State's need to exceed the debt limit.

To permit this Act to exceed the State's debt limit, the governor has declared that an emergency condition exists due to the COVID-19 pandemic and has requested that each house of the legislature by a two-thirds vote concur with this declaration.

(b) Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to article VII, section 13, of the state constitution, which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance", the legislature finds and declares as follows:

- (1) The debt limit of the State will be exceeded by the general obligation bonds authorized by this Act;
- (2) Limitation on general obligation debt. The debt limit of the State is set forth in article VII, section 13, of the state constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, section 13, of the state constitution also provides that, in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "[r]eimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year" and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of the bonds does not exceed seven per cent of the principal amount of outstanding gen-

eral obligation bonds not otherwise excluded under article VII, section 13, of the state constitution.

- (3) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2019-2020 and estimated for each fiscal year from 2020-2021 to 2022-2023, is as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
2016-2017	\$7,346,008,625	
2017-2018	7,656,001,540	
2018-2019	7,910,649,595	
2019-2020	7,567,600,000	\$1,412,947,352
2020-2021	6,614,801,000	1,426,612,153
2021-2022	7,333,031,000	1,362,404,787
2022-2023	(not applicable)	1,326,784,973

For fiscal years 2019-2020, 2020-2021, 2021-2022, and 2022-2023, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 2016-2017, 2017-2018, and 2018-2019 are actual, as presented in the Statement of the Debt Limit of the State of Hawaii as of July 1, 2019, dated November 18, 2019. The net general fund revenues for fiscal years 2019-2020 to 2021-2022 are estimates, based on general fund revenue estimates made as of May 28, 2020, by the council on revenues, the body assigned by article VII, section 7, of the state constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts that cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (4) Principal and interest on outstanding bonds applicable to the debt limit.

(A) The total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by article VII, section 13, of the state constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of June 1, 2020, is as follows for fiscal year 2020-2021 to fiscal year 2026-2027:

<u>Fiscal Year</u>	<u>Principal and Interest</u>
2020-2021	\$768,823,622
2021-2022	753,610,056
2022-2023	725,933,034
2023-2024	712,063,283
2024-2025	672,615,397
2025-2026	649,837,432
2026-2027	601,561,400

The amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2027-2028 to fiscal year 2038-2039 when the final installment of \$37,533,250 shall be due and payable.

- (B) The outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$233,500,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13, of the state constitution.
- (5) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties.
  - (A) As calculated from the state comptroller's bond fund report as of April 30, 2020, adjusted for:
    - (i) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in Act 40, Session Laws of Hawaii 2019 (the General Improvement Act of 2019) and Act 189, Session Laws of Hawaii 2019, to be expended in fiscal year 2020-2021, adjusted for additional appropriations provided in House Bill No. 2725, H.D. 1, S.D. 1<sup>1</sup> (the Supplemental Improvements Act of 2020), as amended by Senate Bill No. 126 H.D. 1, S.D. 1, C.D. 1,<sup>2</sup> Senate Bill No. 3139, S.D. 1, H.D. 1,<sup>3</sup> as amended by Senate Bill No. 126 H.D. 1, S.D. 1, C.D. 1,<sup>2</sup> Senate Bill No. 75, S.D. 2, H.D. 1,<sup>4</sup> as amended by Senate Bill No. 126 H.D. 1, S.D. 1, C.D. 1,<sup>2</sup> Act 12, Session Laws of Hawaii 2018, as amended by Act 35, Session Laws of Hawaii 2019, as amended by Senate Bill No. 126 H.D. 1, S.D. 1, C.D. 1,<sup>2</sup> and Senate Bill No. 126 H.D. 1, S.D. 1, C.D. 1;<sup>2</sup>
    - (ii) Lapses as provided in House Bill No. 2725, H.D. 1, S.D. 1<sup>1</sup> (the Supplemental Improvements Act of 2020), as amended by Senate Bill No. 126 H.D. 1, S.D. 1, C.D. 1;<sup>2</sup>
    - (iii) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in Act 38, Session Laws of Hawaii 2019 (the Judiciary Appropriations Act of 2019) to be expended in fiscal year 2020-2021, adjusted for additional appropriations provided in Senate Bill No. 3080, S.D. 3, H.D. 1<sup>5</sup> (the Judiciary Supplemental Appropriations Act of 2020); and
    - (iv) Lapses as provided in Senate Bill No. 3080, S.D. 3, H.D. 1<sup>5</sup> (the Judiciary Supplemental Appropriations Act of 2020);

the total amount of authorized but unissued general obligation bonds is \$3,920,402,480. The total amount of general obligation bonds authorized in this Act is \$3,073,991,000. The total amount of general obligation bonds previously authorized and unissued, as adjusted, and the general obligation bonds authorized in this Act is \$6,994,393,480.
  - (B) The outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$233,500,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13, of the state constitution.
- (6) Proposed general obligation bond issuance. As reported therein for the fiscal years 2020-2021, 2021-2022, and 2022-2023, the State proposes to issue \$3,475,000,000 in general obligation bonds (which in-

cludes \$2,100,000,000 in working capital indebtedness or Municipal Liquidity Facility indebtedness) during the first half of fiscal year 2020-2021, \$675,000,000 in general obligation bonds during the second half of fiscal year 2020-2021, \$675,000,000 in general obligation bonds during the first half of fiscal year 2021-2022, \$675,000,000 in general obligation bonds during the second half of fiscal year 2021-2022, \$715,000,000 in general obligation bonds during the first half of fiscal year 2022-2023, and \$815,000,000 in general obligation bonds during the second half of fiscal year 2022-2023. Except for the working capital indebtedness and Municipal Liquidity Facility indebtedness, the State anticipates issuing a combination of twenty-year serial bonds with principal repayments beginning the third and fifth years and ten-year serial bonds with principal repayments beginning the first year, payable in substantially equal annual installments of principal and interest payment with interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds that are proposed to be issued. The working capital indebtedness and Municipal Liquidity Facility indebtedness is anticipated to be for a term of three years, payable in substantially equal annual installments of principal payments, with interest repaid at the end of the three-year term.

- (7) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (6), the total amount of general obligation bonds that the State proposes to issue during the fiscal years 2020-2021 to 2021-2022 is \$5,500,000,000. An additional \$1,530,000,000 is proposed to be issued in fiscal year 2022-2023. The total amount of \$5,500,000,000 that is proposed to be issued through fiscal year 2021-2022 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$6,994,393,480 reported in paragraph (5), except for \$1,494,393,480. It is assumed that the appropriations to which an additional \$1,494,393,480 in bond issuance needs to be applied will have been encumbered as of June 30, 2022. The \$1,530,000,000 that is proposed to be issued in fiscal year 2022-2023 will be sufficient to meet the requirements of the June 30, 2022, encumbrances in the amount of \$1,494,393,480. The amount of assumed encumbrances as of June 30, 2022, is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds proposed to be issued by June 30, 2022, and the amount of June 30, 2022, encumbrances versus the amount of bonds proposed to be issued in fiscal year 2022-2023, the legislature finds that, in the aggregate, the amount of bonds proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.
- (8) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (2), certain bonds are excludable in determining the power of the State to issue general obligation bonds.

- (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds that are excludable from the amount of each proposed bond issued because:
- (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
  - (ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest that is excludable each year from the calculation against the debt limit is 0.74 per cent for approximately ten years from fiscal year 2019-2020 to fiscal year 2028-2029. For the purpose of this declaration, the assumption is made that 0.50 per cent of each bond issue will be excludable from the debt limit, an assumption that the legislature finds to be reasonable and conservative.

- (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of those guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A); provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law.

According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under article VII, section 13, of the state constitution for the fiscal years 2019-2020, 2020-2021, 2021-2022, and 2022-2023 are as follows:

<u>Fiscal Year</u>	<u>Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13, of the State Constitution</u>
2019-2020	6,704,598,064
2020-2021	10,844,348,064
2021-2022	12,187,598,064
2022-2023	13,709,948,064

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when the guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last

column of the above table and for which reserve funds have been or will have been established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to article VII, section 13, of the state constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on these assumptions and on the determination in paragraph (9), all of the outstanding guaranties can be excluded.

- (9) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (6) will be issued at an interest rate not to exceed 5.75 per cent in fiscal years 2021 through 2023, it can be determined from the following schedule that the bonds that are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds, and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will cause the debt limit to be exceeded at the time of the bond issuance:

<u>Time of Issuance and Amount to be Counted Against Debt Limit</u>	<u>Debt Limit at Time of Issuance</u>	<u>Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties</u>
1st half FY 2020-2021 \$3,468,125,000	1,426,612,153	1,594,188,551 (2021-2022)
2nd half FY 2020-2021 \$671,625,000	1,426,612,153	1,632,806,988 (2021-2022)
1st half FY 2021-2022 \$671,625,000	1,362,404,787	1,652,116,207 (2021-2022)
2nd half FY 2021-2022 \$671,625,000	1,362,404,787	1,682,370,181 (2022-2023)
1st half FY 2022-2023 \$711,425,000	1,326,784,973	1,730,621,623 (2023-2024)
2nd half FY 2022-2023 \$810,925,000	1,326,784,973	1,802,149,811 (2023-2024)

- (10) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act are reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds that will be issued, the amount of principal and interest on reimbursable general obligation bonds that are assumed to be excludable, and the assumed maturity structure

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shall not be deemed to be binding, it being the understanding of the legislature that these matters must remain subject to substantial flexibility.

**SECTION 3.** Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 2725, H.D. 1, S.D. 1<sup>1</sup> (the Supplemental Improvements Act of 2020), as amended by Senate Bill No. 126 H.D. 1, S.D. 1, C.D. 1,<sup>2</sup> Senate Bill No. 3080, S.D. 3, H.D. 1<sup>5</sup> (the Judiciary Supplemental Appropriations Act of 2020), Senate Bill No. 3139, S.D. 1, H.D. 1,<sup>3</sup> as amended by Senate Bill No. 126 H.D. 1, S.D. 1, C.D. 1,<sup>2</sup> Senate Bill No. 75, S.D. 2, H.D. 1,<sup>4</sup> as amended by Senate Bill No. 126 H.D. 1, S.D. 1, C.D. 1,<sup>2</sup> Act 12, Session Laws of Hawaii 2018, as amended by Act 35, Session Laws of Hawaii 2019, as amended by Senate Bill No. 126 H.D. 1, S.D. 1, C.D. 1,<sup>2</sup> and Senate Bill No. 126 H.D. 1, S.D. 1, C.D. 1;<sup>2</sup> passed by the legislature during the regular session of 2020 and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of general obligation bonds issued under the authority established in this section shall not exceed \$3,073,991,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-16, Hawaii Revised Statutes, in a principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

**SECTION 4.** Working capital indebtedness. Instruments of indebtedness may be issued as provided by law in an amount that may be necessary to finance any permitted purpose under House Bill No. 2200, H.D. 1, S.D. 1,<sup>6</sup> passed by the legislature during the regular session of 2020; provided that the sum total of these instruments of indebtedness issued under the authority established in this section, together with any instruments of indebtedness issued under the authority established in section 5, shall not, in the aggregate, exceed \$2,100,000,000.

**SECTION 5.** Municipal liquidity facility. Instruments of indebtedness may be issued as provided by law in an amount that may be necessary to finance any permitted purpose under section 13(3) of the Federal Reserve Act, authorized in House Bill No. 2200, H.D. 1, S.D. 1,<sup>6</sup> passed by the legislature during the regular session of 2020; provided that the sum total of these instruments of indebtedness issued under the authority established in this section, together with any instruments of indebtedness issued under the authority established in section 4, shall not, in the aggregate, exceed \$2,100,000,000.

**SECTION 6.** The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

**SECTION 7.** In printing this Act, the revisor of statutes shall substitute in sections 1, 3, 4, and 5 the corresponding act numbers for bills identified therein.

**SECTION 8.** This Act shall take effect upon its approval.

(Approved July 6, 2020.)

### Notes

1. Act 6.

2. Act 9.

3. Act 4.

- 4. Act 8.
- 5. Act 5.
- 6. Act 7.