

JAN 21 2011

A BILL FOR AN ACT

RELATING TO LAND-SECURED FINANCING.

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

1 SECTION 1. The legislature finds that with budgets
2 tightening, the counties are finding it more difficult to
3 support their annual operating costs. In some jurisdictions,
4 the use of land-secured financing has been used by various
5 government agencies to fund infrastructure and other
6 improvements. The counties are authorized under existing
7 statutes to create improvement districts and community
8 facilities districts to finance special improvements; however,
9 these types of land-secured financing are used sparingly in
10 Hawaii. The legislature finds that land-secured financing
11 provides an opportunity for the counties to support new
12 development-related operating costs, such as police, fire
13 protection, and maintenance services, in addition to special
14 improvements and infrastructure.

15 The purpose of this Act is to expand the authority of
16 counties to use land-based financing to support their operating
17 costs due to new development in improvement districts and
18 community facilities districts.



1 SECTION 2. Section 46-80, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§46-80 Improvement by assessment; financing. (a) Any
4 county having a charter may enact an ordinance, and may amend
5 the same from time to time, providing for the making and
6 financing of improvement districts in the county, and [~~such~~] the
7 improvements and operating expenses for certain county services,
8 pursuant to subsection (b), may be made and financed under
9 [~~such~~] the ordinance. The county may issue and sell bonds to
10 provide funds for [~~such~~] the improvements[-]; provided that
11 bonds may not be issued pursuant to this section to fund any of
12 the county services specified in subsection (b), although bonds
13 may be issued to fund capital facilities to be used in providing
14 those county services. Bonds issued to provide funds for [~~such~~]
15 improvements within the district may be either bonds when the
16 only security therefor is the properties benefited or improved
17 or the assessments thereon or bonds payable from taxes or
18 secured by the taxing power of the county. If the bonds are
19 secured only by the properties benefited or improved or the
20 assessments thereon, the bonds shall be issued according and
21 subject to the provisions of the ordinance. If the bonds are
22 payable from taxes or secured by the taxing power, the bonds



1 shall be issued according and subject to chapter 47. Except as
2 is otherwise provided in section 46-80.1, in assessing land for
3 improvements a county shall assess the land within an
4 improvement district according to the special benefits conferred
5 upon the land by the special improvement; these methods include
6 assessment on a frontage basis or according to the area of land
7 within an improvement district, or any other assessment method
8 which assesses the land according to the special benefit
9 conferred, or any combination thereof.

10 (b) The following types of county services may be provided
11 within and financed by an improvement district pursuant to
12 subsection (a):

- 13 (1) Police protection services, including criminal justice
14 services; provided that criminal justice services
15 shall be limited to providing services for jails,
16 detention facilities, and juvenile halls;
- 17 (2) Fire protection and suppression services;
- 18 (3) Ambulance and paramedic services;
- 19 (4) Recreation program services;
- 20 (5) Maintenance and lighting of parks, parkways, streets,
21 roads, and open spaces;



- 1 (6) Flood and storm protection services, including the
2 operation and maintenance of storm drainage systems;
3 and
- 4 (7) Services with respect to removal or remedial action,
5 as defined in section 128D-1, for the cleanup of any
6 hazardous substance, as defined in section 128D-1,
7 released or threatened to be released into the
8 environment.

9 An improvement district assessment levied pursuant to this
10 section may only finance the services authorized in this
11 subsection to the extent that they are in addition to those
12 provided in the territory of the district before the district
13 was created. The additional services may not supplant services
14 already available within that territory when the district was
15 created."

16 SECTION 3. Section 46-80.1, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**[+]§46-80.1[+]** **Community facilities district.** (a) Any
19 county having a charter may enact an ordinance, and may amend
20 the same from time to time, providing for the creation of
21 community facilities districts to finance special improvements
22 in the county[-] and operating expenses for certain county



1 services, pursuant to subsection (b). The special improvements
2 and county services described in subsection (b) may be provided
3 and financed under the ordinance. The county shall have the
4 power to levy and assess a special tax on property located in a
5 district to finance the special improvements and to pay the debt
6 service on any bonds issued to finance the special improvements.
7 The county may issue and sell bonds to provide funds for the
8 special improvements[-]; provided that bonds may not be issued
9 pursuant to this section to fund any of the county services
10 specified in subsection (b), although bonds may be issued to
11 fund capital facilities to be used in providing those county
12 services. Bonds issued to provide funds for the special
13 improvements may be either: bonds secured only by the
14 properties included in the district and/or the special taxes
15 thereon, or bonds payable from general taxes and/or secured by
16 the general taxing power of the county. If the bonds are
17 secured only by the properties included in the district and/or
18 the special taxes thereon, the bonds shall be issued according
19 and subject to the provisions of the ordinance. If the bonds
20 are payable from general taxes or secured by the general taxing
21 power, the bonds shall be issued according and subject to
22 chapter 47.



1 (b) The following types of county services may be provided
2 and financed by a community facilities district pursuant to
3 subsection (a):

4 (1) Police protection services, including criminal justice
5 services; provided that criminal justice services
6 shall be limited to providing services for jails,
7 detention facilities, and juvenile halls;

8 (2) Fire protection and suppression services;

9 (3) Ambulance and paramedic services;

10 (4) Recreation program services;

11 (5) Maintenance and lighting of parks, parkways, streets,
12 roads, and open spaces;

13 (6) Flood and storm protection services, including the
14 operation and maintenance of storm drainage systems;
15 and

16 (7) Services with respect to removal or remedial action,
17 as defined in section 128D-1, for the cleanup of any
18 hazardous substance, as defined in section 128D-1,
19 released or threatened to be released into the
20 environment.

21 A community facilities district special tax assessed
22 pursuant to this section may only finance the services



1 authorized in this subsection to the extent that they are in
2 addition to those provided in the territory of the district
3 before the district was created. The additional services may
4 not supplant services already available within that territory
5 when the district was created.

6 ~~[-(b)-]~~ (c) There is no requirement that the special tax
7 imposed by ordinance pursuant to this section be fixed in an
8 amount or apportioned on the basis of special benefit to be
9 conveyed on property by the special improvement, or that the
10 special improvement convey a special benefit on any property in
11 the district. It shall be sufficient that the governing body of
12 the county determines that the property to be subject to the
13 special tax is improved or benefited by the special improvement
14 in a general manner or in any other manner. The special
15 improvement may also benefit property outside the district. The
16 special taxes assessed pursuant to this section shall be a lien
17 upon the property assessed. The lien shall have priority over
18 all other liens except the lien of general real property taxes
19 and the lien of assessments levied under section 46-80. The
20 lien of special taxes assessed pursuant to this section shall be
21 on a parity with the lien of general real property taxes and the
22 lien of assessments levied under section 46-80, except to the



1 extent the law or assessment ordinance provides that the lien of
2 assessments levied under section 46-80 shall be subordinate to
3 the lien of general real property taxes.

4 ~~[-e-]~~ (d) The ordinance shall describe the types of
5 special improvements that may be undertaken and financed. In
6 addition, the ordinance shall include~~[-]~~ but not be limited
7 to~~[-]~~ procedures for:

- 8 (1) Creating community facilities districts (and zones
9 therein), including specific time spans for the
10 existence of each district;
- 11 (2) Apportioning special taxes on real properties within a
12 community facilities district;
- 13 (3) Providing notice to and opportunity to be heard by
14 owners of property proposed to be subject to the
15 special tax (the affected owners), subject to waiver
16 by one hundred per cent of the affected owners,
17 including termination of proceedings if the affected
18 owners of more than fifty-five per cent of the
19 property, or if more than fifty-five per cent of the
20 affected owners of the property, in the community
21 facilities district proposed to be subject to the
22 special tax protest in writing at the hearing. The



1 ordinance shall also provide that if a lease requires
2 the lessee to pay the proposed special tax, the
3 ordinance shall state that the affected owner may
4 waive this requirement in writing and that the
5 affected owner refrain from imposing upon any
6 successor lessee the obligation to pay the special
7 tax. The ordinance shall also provide that if the
8 affected owner fails to waive the requirement that the
9 lessee pay the proposed tax, then all the rights for
10 notice, hearing, and protest contained in this
11 paragraph shall inure to the benefit of the original
12 lessee or any subsequent lessee;

13 (4) Provide notice to buyers or lessees of the property
14 who would be required to pay the special tax;

15 (5) Fixing, levying, collecting, and enforcing the special
16 taxes against the properties affected thereby
17 (including penalties for delinquent payment and sales
18 for default);

19 (6) Making changes in the community facilities district,
20 in the special taxes, or in the special improvements
21 to be financed or provided;

- 1 (7) The acquisition or construction of the special
- 2 improvements;
- 3 (8) The issuance of bonds to pay all or part of the cost
- 4 of the special improvements (including costs of
- 5 issuance, reserves, capitalized interest, credit
- 6 enhancement, and any other related expenses);
- 7 (9) Refunding bonds previously issued;
- 8 (10) The establishment and handling of a separate special
- 9 fund or funds to pay or secure such bonds or to pay
- 10 for acquisition or construction of special
- 11 improvements or any other related expenses; [and]
- 12 (11) The provision and financing of operating expenses for
- 13 certain county services by community facilities
- 14 districts, pursuant to subsection (b); and
- 15 ~~[(11)]~~ (12) Other matters as the council shall determine to
- 16 be necessary or proper.

17 The amount of special taxes may include amounts determined
18 by the council to be necessary or reasonable to cover
19 administration and collection of the assessments, administration
20 of the bonds or of the program authorized by this section,
21 replenishment of reserves, arbitrage rebate, and a reasonable
22 financing fee.



1 [~~(d)~~] (e) Each issue of bonds shall be authorized by
2 ordinance, separate from the foregoing procedural ordinance, and
3 shall be in such amounts, denominations, forms, executed in such
4 manner, payable at such place or places, at such time or times,
5 at such interest rate or rates (either fixed or variable), with
6 such maturity date or dates and terms of redemption, security
7 (including pledge of proceeds, special taxes and liens
8 therefor), credit enhancement, administration, investment of
9 proceeds and special tax receipts, default, remedy, or other
10 terms and conditions as the council deems necessary or
11 convenient. The bonds shall be sold in the manner and at the
12 price or prices determined by the council.

13 [~~(e)~~] (f) This section is a special improvement statute
14 which implements section 12 of Article VII of the State
15 Constitution and provides a complete, additional, and
16 alternative method of doing the things authorized herein; and
17 the creation of districts, levying, assessments and collection
18 of special taxes, issuance of bonds and other matters covered by
19 this section, or by the procedural or bond ordinances authorized
20 by this section, need not comply with any other law applicable
21 to these matters. Bonds issued under this section, when the
22 only security for such bonds is the special taxes or liens on



1 the property in the district subject thereto, shall be excluded
2 from any determination of the power of a county to issue general
3 obligation bonds or funded debt for purposes of section 13 of
4 Article VII of the State Constitution.

5 ~~[(f)]~~ (g) Notwithstanding any other law, no action or
6 proceeding to question the validity of or enjoining any
7 ordinance, action, or proceeding undertaken pursuant hereto
8 (including the determination of the amount of any special tax
9 levied with respect to any property or the levy or assessment
10 thereof), or any bonds issued or to be issued pursuant thereto
11 or under this section, shall be maintained unless begun within
12 thirty days of the adoption of the ordinance, determination,
13 levy, assessment or other act, as the case may be, and, in the
14 case of bonds, within thirty days after adoption of the
15 ordinance authorizing the issuance of those bonds.

16 ~~[(g)]~~ (h) Bonds issued pursuant to this section and the
17 interest thereon and other income therefrom shall be exempt from
18 any and all taxation by the State or any county or other
19 political subdivision thereof, except inheritance, transfer, and
20 estate taxes.

21 ~~[(h)]~~ (i) Properties of entities of the state, federal, or
22 county governments, except as provided in subsection (i), shall



1 be exempt from the special tax. No other properties or entities
 2 are exempt from the special tax unless the properties or
 3 entities are expressly exempted in the ordinance of formation to
 4 establish a district adopted pursuant to this chapter or in an
 5 ordinance of consideration to levy a new special tax or special
 6 taxes or to alter the rate or method of apportionment of an
 7 existing special tax as provided in this section.

8 ~~[(+i)]~~ (j) If a public body owning property, including
 9 property held in trust for any beneficiary, which is exempt from
 10 a special tax pursuant to subsection (h), grants leasehold or
 11 other possessory interest in the property to a nonexempt person
 12 or entity, the special tax, notwithstanding subsection (h),
 13 shall be levied on the leasehold or possessory interest and
 14 shall be payable by the lessee."

15 SECTION 4. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.
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INTRODUCED BY:

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Report Title:

Counties; Land-Based Financing; Community Facilities District

Description:

Expands the authority of counties to use land-based financing to support operating costs for certain county services provided within improvement districts and community facilities districts.

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

