
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. A county may apply up to
10 five per cent of the assessments or tax revenues to cover the
11 administrative expenses of the counties in creating and
12 administering an improvement district and the associated
13 assessments, fees, and taxes.

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

- 17 (1) Police protection services, including criminal justice
18 services; provided that criminal justice services
19 shall be limited to providing services for jails,
20 detention facilities, and juvenile halls;
21 (2) Fire protection and suppression services;
22 (3) Ambulance and paramedic services;



- 1 (4) Recreation program services;
2 (5) Maintenance and lighting of parks, parkways, streets,
3 roads, and open spaces;
4 (6) Flood and storm protection services, including the
5 operation and maintenance of storm drainage systems;
6 (7) Services with respect to removal or remedial action,
7 as defined in section 128D-1, for the cleanup of any
8 hazardous substance, as defined in section 128D-1,
9 released or threatened to be released into the
10 environment; and
11 (8) Maintenance of the capital improvements that are
12 financed by improvement districts.

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

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



1 " ~~[+]~~§46-80.1~~[+]~~ **Community facilities district.** (a) Any
2 county having a charter may enact an ordinance, and may amend
3 the same from time to time, providing for the creation of
4 community facilities districts to finance special improvements
5 in the county~~[-]~~ and operating expenses for certain county
6 services, pursuant to subsection (b). The special improvements
7 and county services described in subsection (b) may be provided
8 and financed under the ordinance. The county shall have the
9 power to levy and assess a special tax on property located in a
10 district to finance the special improvements and to pay the debt
11 service on any bonds issued to finance the special improvements.
12 The county may issue and sell bonds to provide funds for the
13 special improvements~~[-]~~; provided that bonds may not be issued
14 pursuant to this section to fund any of the county services
15 specified in subsection (b), although bonds may be issued to
16 fund capital facilities to be used in providing those county
17 services. Bonds issued to provide funds for the special
18 improvements may be either: bonds secured only by the
19 properties included in the district and/or the special taxes
20 thereon, or bonds payable from general taxes and/or secured by
21 the general taxing power of the county. If the bonds are
22 secured only by the properties included in the district and/or



1 the special taxes thereon, the bonds shall be issued according
2 and subject to the provisions of the ordinance. If the bonds
3 are payable from general taxes or secured by the general taxing
4 power, the bonds shall be issued according and subject to
5 chapter 47. A county may apply up to five per cent of the
6 special or general tax revenues to cover the administrative
7 expenses of the counties in creating and administering a
8 community facilities district and the associated fees and taxes.

9 (b) The following types of county services may be provided
10 and financed by a community facilities district pursuant to
11 subsection (a):

12 (1) Police protection services, including criminal justice
13 services; provided that criminal justice services
14 shall be limited to providing services for jails,
15 detention facilities, and juvenile halls;

16 (2) Fire protection and suppression services;

17 (3) Ambulance and paramedic services;

18 (4) Recreation program services;

19 (5) Maintenance and lighting of parks, parkways, streets,
20 roads, and open spaces;

21 (6) Flood and storm protection services, including the
22 operation and maintenance of storm drainage systems;



1 (7) Services with respect to removal or remedial action,
2 as defined in section 128D-1, for the cleanup of any
3 hazardous substance, as defined in section 128D-1,
4 released or threatened to be released into the
5 environment; and

6 (8) Maintenance of the capital improvements that are
7 financed by community facilities districts.

8 A community facilities district special tax assessed
9 pursuant to this section may only finance the services
10 authorized in this subsection to the extent that they are in
11 addition to those provided in the territory of the district
12 before the district was created. The additional services may
13 not supplant services already available within that territory
14 when the district was created.

15 [~~(b)~~] (c) There is no requirement that the special tax
16 imposed by ordinance pursuant to this section be fixed in an
17 amount or apportioned on the basis of special benefit to be
18 conveyed on property by the special improvement, or that the
19 special improvement convey a special benefit on any property in
20 the district. It shall be sufficient that the governing body of
21 the county determines that the property to be subject to the
22 special tax is improved or benefited by the special improvement



1 in a general manner or in any other manner. The special
2 improvement may also benefit property outside the district. The
3 special taxes assessed pursuant to this section shall be a lien
4 upon the property assessed. The lien shall have priority over
5 all other liens except the lien of general real property taxes
6 and the lien of assessments levied under section 46-80. The
7 lien of special taxes assessed pursuant to this section shall be
8 on a parity with the lien of general real property taxes and the
9 lien of assessments levied under section 46-80, except to the
10 extent the law or assessment ordinance provides that the lien of
11 assessments levied under section 46-80 shall be subordinate to
12 the lien of general real property taxes.

13 [~~e~~] (d) The ordinance shall describe the types of
14 special improvements that may be undertaken and financed. In
15 addition, the ordinance shall include [~~r~~] but not be limited
16 to [~~r~~] procedures for:

- 17 (1) Creating community facilities districts (and zones
18 therein), including specific time spans for the
19 existence of each district;
- 20 (2) Apportioning special taxes on real properties within a
21 community facilities district;



1 (3) Providing notice to and opportunity to be heard by
2 owners of property proposed to be subject to the
3 special tax (the affected owners), subject to waiver
4 by one hundred per cent of the affected owners,
5 including termination of proceedings if the affected
6 owners of more than fifty-five per cent of the
7 property, or if more than fifty-five per cent of the
8 affected owners of the property, in the community
9 facilities district proposed to be subject to the
10 special tax protest in writing at the hearing. The
11 ordinance shall also provide that if a lease requires
12 the lessee to pay the proposed special tax, the
13 ordinance shall state that the affected owner may
14 waive this requirement in writing and that the
15 affected owner refrain from imposing upon any
16 successor lessee the obligation to pay the special
17 tax. The ordinance shall also provide that if the
18 affected owner fails to waive the requirement that the
19 lessee pay the proposed tax, then all the rights for
20 notice, hearing, and protest contained in this
21 paragraph shall inure to the benefit of the original
22 lessee or any subsequent lessee;



- 1 (4) Provide notice to buyers or lessees of the property
2 who would be required to pay the special tax;
- 3 (5) Fixing, levying, collecting, and enforcing the special
4 taxes against the properties affected thereby
5 (including penalties for delinquent payment and sales
6 for default);
- 7 (6) Making changes in the community facilities district,
8 in the special taxes, or in the special improvements
9 to be financed or provided;
- 10 (7) The acquisition or construction of the special
11 improvements;
- 12 (8) The issuance of bonds to pay all or part of the cost
13 of the special improvements (including costs of
14 issuance, reserves, capitalized interest, credit
15 enhancement, and any other related expenses);
- 16 (9) Refunding bonds previously issued;
- 17 (10) The establishment and handling of a separate special
18 fund or funds to pay or secure such bonds or to pay
19 for acquisition or construction of special
20 improvements or any other related expenses; [and]



1 (11) The provision and financing of operating expenses for
2 certain county services by community facilities
3 districts, pursuant to subsection (b); and

4 [~~(11)~~] (12) Other matters as the council shall determine to
5 be necessary or proper.

6 The amount of special taxes may include amounts determined
7 by the council to be necessary or reasonable to cover
8 administration and collection of the assessments, administration
9 of the bonds or of the program authorized by this section,
10 replenishment of reserves, arbitrage rebate, and a reasonable
11 financing fee.

12 [~~(d)~~] (e) Each issue of bonds shall be authorized by
13 ordinance, separate from the foregoing procedural ordinance, and
14 shall be in such amounts, denominations, forms, executed in such
15 manner, payable at such place or places, at such time or times,
16 at such interest rate or rates (either fixed or variable), with
17 such maturity date or dates and terms of redemption, security
18 (including pledge of proceeds, special taxes and liens
19 therefor), credit enhancement, administration, investment of
20 proceeds and special tax receipts, default, remedy, or other
21 terms and conditions as the council deems necessary or



1 convenient. The bonds shall be sold in the manner and at the
2 price or prices determined by the council.

3 ~~(e)~~ (f) This section is a special improvement statute
4 which implements section 12 of Article VII of the State
5 Constitution and provides a complete, additional, and
6 alternative method of doing the things authorized herein; and
7 the creation of districts, levying, assessments and collection
8 of special taxes, issuance of bonds and other matters covered by
9 this section, or by the procedural or bond ordinances authorized
10 by this section, need not comply with any other law applicable
11 to these matters. Bonds issued under this section, when the
12 only security for such bonds is the special taxes or liens on
13 the property in the district subject thereto, shall be excluded
14 from any determination of the power of a county to issue general
15 obligation bonds or funded debt for purposes of section 13 of
16 Article VII of the State Constitution.

17 ~~(f)~~ (g) Notwithstanding any other law, no action or
18 proceeding to question the validity of or enjoining any
19 ordinance, action, or proceeding undertaken pursuant hereto
20 (including the determination of the amount of any special tax
21 levied with respect to any property or the levy or assessment
22 thereof), or any bonds issued or to be issued pursuant thereto



1 or under this section, shall be maintained unless begun within
2 thirty days of the adoption of the ordinance, determination,
3 levy, assessment or other act, as the case may be, and, in the
4 case of bonds, within thirty days after adoption of the
5 ordinance authorizing the issuance of those bonds.

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

11 [~~h~~] (i) Properties of entities of the state, federal, or
12 county governments, except as provided in subsection (i), shall
13 be exempt from the special tax. No other properties or entities
14 are exempt from the special tax unless the properties or
15 entities are expressly exempted in the ordinance of formation to
16 establish a district adopted pursuant to this chapter or in an
17 ordinance of consideration to levy a new special tax or special
18 taxes or to alter the rate or method of apportionment of an
19 existing special tax as provided in this section.

20 [~~i~~] (j) If a public body owning property, including
21 property held in trust for any beneficiary, which is exempt from
22 a special tax pursuant to subsection (h), grants leasehold or



1 other possessory interest in the property to a nonexempt person
2 or entity, the special tax, notwithstanding subsection (h),
3 shall be levied on the leasehold or possessory interest and
4 shall be payable by the lessee."

5 SECTION 4. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval.

8



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. Adds county maintenance of the capital improvements to be land-based financed. Authorizes counties to use up to five per cent of the assessment or tax revenues to cover administrative expenses in creating and administering the district and the associated assessments, fees, and taxes. (SD1)

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

