

JAN 23 2014

A BILL FOR AN ACT

RELATING TO COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY.

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

1 SECTION 1. The legislature finds that the initial capital
2 investment required by property owners to install renewable
3 energy systems and energy efficiency improvements on commercial
4 properties is a significant barrier to reaching the State's
5 clean energy targets. In order for the State to reach energy
6 efficiency and clean energy goals, increased activity in
7 commercial projects is essential. Employing innovative
8 financing to remove known barriers and stimulate enterprise in
9 the clean energy sector is beneficial to the public.

10 A property assessed clean energy bond is a bond, or other
11 form of indebtedness, where the proceeds from its sale to
12 private and institutional investors are loaned to commercial
13 property owners to finance efficiency improvements and small
14 renewable energy systems with the security for the indebtedness
15 being the property upon which the energy improvements are
16 installed. The property owners repay their loans over a
17 prescribed time period via an assessment on their property tax
18 bill. The liability to repay the bond is attached to the



1 property as an assessment on real property, rather than on the
2 individual property owner. Existing mortgage holders are fully
3 protected because they must provide their consent prior to the
4 imposition of the special assessment, which by definition will
5 have a higher priority than mortgage liens. The bonds can be
6 issued by the State or counties and the proceeds can be used to
7 retrofit commercial properties.

8 The legislature further finds that assisting projects and
9 investment in Hawaii can provide jobs and long-term energy,
10 environmental, and economic benefits, including increasing the
11 State's economic competitiveness by reducing the impact of the
12 State's abnormally high electricity costs.

13 This Act is compatible with the goals and objectives of the
14 Hawaii clean energy initiative and is in the public interest.
15 Furthermore, this Act employs existing government services, in
16 the form of the special assessment taxing and revenue collection
17 system, without affecting the coffers of government, since the
18 loaning of proceeds of bonds or other evidences of indebtedness
19 to private and institutional investors privately funds the
20 assessments. This Act will also increase energy security,
21 provide economic diversification and increased career



1 opportunities for Hawaii residents, and attract funding and
2 investment to Hawaii.

3 The purpose of this Act is to establish a commercial
4 property assessed clean energy financing program in the State,
5 which may be implemented by the counties or as part of a
6 statewide program with opt-in by the counties.

7 SECTION 2. Chapter 39, Hawaii Revised Statutes, is amended
8 by adding a new section to be appropriately designated and to
9 read as follows:

10 **"§39- Commercial property assessed clean energy program.**

11 (a) Beginning July 1, 2014, there shall be established a
12 commercial property assessed clean energy program.

13 (b) As used in this section:

14 "Commercial or industrial property" means any real property
15 other than a residential dwelling containing less than five
16 dwelling units.

17 "Energy improvements" means any renovation or retrofitting
18 of qualifying commercial real property to reduce energy or water
19 consumption or installation of a renewable energy system to
20 service qualifying commercial real property; provided such
21 renovation, retrofit or installation is permanently fixed to
22 such qualifying commercial real property; provided further that



1 renovations or retrofits of qualifying commercial real property
2 to reduce energy or water consumption include at least one of
3 the following improvements:

4 (1) Air sealing and ventilation;

5 (2) Insulation;

6 (3) Space heating and cooling;

7 (4) Water heating;

8 (5) Lighting;

9 (6) Daylighting;

10 (7) Windows;

11 (8) Doors and skylights;

12 (9) Reflective roofs;

13 (10) Energy efficiency improvements to swimming pool
14 equipment and landscaping;

15 (11) Showerheads, faucets, irrigation improvements, and
16 other water conservation measures;

17 (12) Motors and controls; and

18 (13) Such other energy efficiency improvements as are
19 designated as such by either:

20 (A) The department of business, economic development,
21 and tourism; or



1 (B) The county in which the qualifying commercial
2 property is located.

3 "Renewable energy system" means a system that produces
4 thermal or electrical energy from renewable sources, including
5 units with an electrical back-up component that are intended for
6 use within the qualifying commercial real property on which it
7 is located. The following systems shall be deemed to be
8 renewable energy systems:

- 9 (1) Solar hot water systems;
- 10 (2) Solar photovoltaic systems;
- 11 (3) Small wind systems;
- 12 (4) Biogas systems;
- 13 (5) Fuel cells;
- 14 (6) Biomass systems; and
- 15 (7) Other renewable energy systems as are designated as
16 such by either the department of business, economic
17 development, and tourism or the county in which the
18 qualifying commercial property is located.

19 "Qualifying commercial real property" means any commercial
20 or industrial property, regardless of ownership, that meets the
21 qualifications established for the commercial sustainable energy
22 program.



1 (c) The State may issue bonds or other forms of
2 indebtedness and, either acting alone or in partnership with a
3 county or counties as authorized under chapter 39 and section
4 46-80, may incur debt for or otherwise finance energy
5 improvements undertaken by owners of qualifying commercial real
6 property within the State.

7 (d) The State shall utilize an existing loan program, or
8 create a new program or mechanism, to lend the proceeds of the
9 property assessed clean energy bonds to the owners of the
10 qualified commercial real property being so benefitted and
11 assessed. The bonds shall be considered revenue bonds, and the
12 principal and interest thereon shall not be a general obligation
13 of the State or any political subdivision thereof. The bonds
14 shall be secured by special assessments on the qualified
15 commercial real property within the participating county or
16 counties and, upon agreement between the State and the county or
17 counties, shall be applied to service the debt on the bonds or
18 other forms of indebtedness.

19 The special assessments shall have priority over other
20 encumbrances on the qualified commercial real property as
21 specified for assessments funding special improvements in



1 section 46-80.1. The financing provided for in this section
2 shall include the costs of:

- 3 (1) Energy improvements;
- 4 (2) Related energy audits;
- 5 (3) Renewable energy system feasibility studies; and
- 6 (4) Verification reports of the installation and
7 effectiveness of such improvements.

8 No financing under this section shall occur without the written
9 consent of any existing mortgage holder on the parcel of the
10 qualified commercial real property.

11 (e) The department of business, economic development, and
12 tourism may contract with a third-party administrator to manage
13 and administer the commercial property assessed clean energy
14 program under this section. Such third-party program
15 administrator's duties and responsibilities shall be established
16 by the department of business, economic development, and tourism
17 by rule and may include:

- 18 (1) Establishing criteria and procedures for the
19 qualification of technologies and systems, and
20 performing energy audits, including identifying the
21 energy efficiency improvements and renewable energy
22 systems that qualify for commercial property assessed



- 1 clean energy financing and developing appropriate
2 procedures for the qualification of these improvements
3 and systems;
- 4 (2) Calculating a property's current energy consumption
5 and energy costs when an application is submitted by
6 the property owner and estimating the potential cost
7 benefits that could be realized through energy
8 efficiency improvements or installation of renewable
9 energy systems on the subject property;
- 10 (3) Providing education and training on energy efficiency
11 improvements to applicants, including education and
12 training on the selection and use of improvements to
13 maximize energy efficiency;
- 14 (4) Prescribing the loan repayment periods and providing
15 projected property tax assessment estimates when the
16 applicant opts to take advantage of the financing made
17 available under this section, including establishing
18 deadlines for loan repayments and providing applicant
19 property owners with the projected property tax
20 assessment estimates that will be due and collected
21 along with the ad valorem property tax bill; provided
22 that the time allowed for the property owner to repay



1 the assessment shall not exceed the life expectancy of
2 the systems or improvements;

3 (5) Assisting the counties with administrative duties
4 related to the execution of this program, including
5 the following:

6 (A) Initiation and authorship of all written
7 agreements between participating property owners
8 and the counties or funding institutions;

9 (B) Public outreach and program promotion within the
10 counties, including community informational
11 briefings and making available information
12 relating to the program; and

13 (C) Revision to existing county documents needed to
14 efficiently collect property tax assessment
15 payments from participating property owners;

16 (6) Distributing revenue bond proceeds for this program to
17 participating property owners or funding institutions,
18 including responsibility for ensuring loan repayment
19 to the State from revenues generated by property tax
20 assessments of participating counties as described in
21 this section; and



1 (7) Collecting, compiling, and reporting all data and
2 information relating to the commercial property
3 assessed clean energy program to the State, department
4 of business, economic development, and tourism, and
5 the department of budget and finance; provided that
6 the criteria, qualifications, procedures, and
7 lifetimes of projects described in paragraphs (1) and
8 (4) shall be determined with approval from the
9 department of business, economic development, and
10 tourism.

11 (f) For a county to access funding generated by the sale
12 of bonds or other debt instruments issued by the State under
13 this section, the county shall voluntarily agree to participate
14 in the program authorized under this section by enacting an
15 ordinance or other legally binding action. County participation
16 shall constitute an agreement to institute and collect property
17 tax payments, through the ad valorem real property tax
18 collection schedule, in connection with the repayment of each
19 individual loan financed by the bond or other indebtedness
20 proceeds under this chapter.



1 (g) This section shall take precedence over any
2 conflicting provisions contained in any other section of this
3 chapter."

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

6 "[+]§46-80.1[+] **Community facilities district.** (a) Any
7 county having a charter may enact an ordinance, and may amend
8 the same from time to time, providing for the creation of
9 community facilities districts to finance special improvements
10 in the county. The special improvements may be provided and
11 financed under the ordinance. The county shall have the power
12 to levy and assess a special tax on property located in a
13 district to finance the special improvements and to pay the debt
14 service on any bonds issued to finance the special improvements.
15 The county may issue and sell bonds to provide funds for the
16 special improvements. Bonds issued to provide funds for the
17 special improvements may be either: bonds secured only by the
18 properties included in the district and/or the special taxes
19 thereon, or bonds payable from general taxes and/or secured by
20 the general taxing power of the county. If the bonds are
21 secured only by the properties included in the district and/or
22 the special taxes thereon, the bonds shall be issued according



1 and subject to the provisions of the ordinance. If the bonds
2 are payable from general taxes or secured by the general taxing
3 power, the bonds shall be issued according and subject to
4 chapter 47.

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



1 assessments levied under section 46-80 shall be subordinate to
2 the lien of general real property taxes.

3 (c) The ordinance shall describe the types of special
4 improvements that may be undertaken and financed. In addition,
5 the ordinance shall include, but not be limited to, procedures
6 for:

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



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

- 12 (4) Provide notice to buyers or lessees of the property
13 who would be required to pay the special tax;
- 14 (5) Fixing, levying, collecting, and enforcing the special
15 taxes against the properties affected thereby
16 (including penalties for delinquent payment and sales
17 for default);
- 18 (6) Making changes in the community facilities district,
19 in the special taxes, or in the special improvements
20 to be financed or provided;
- 21 (7) The acquisition or construction of the special
22 improvements;



- 1 (8) The issuance of bonds to pay all or part of the cost
- 2 of the special improvements (including costs of
- 3 issuance, reserves, capitalized interest, credit
- 4 enhancement, and any other related expenses);
- 5 (9) Refunding bonds previously issued;
- 6 (10) The establishment and handling of a separate special
- 7 fund or funds to pay or secure such bonds or to pay
- 8 for acquisition or construction of special
- 9 improvements or any other related expenses; and
- 10 (11) Other matters as the council shall determine to be
- 11 necessary or proper.

12 The amount of special taxes may include amounts determined

13 by the council to be necessary or reasonable to cover

14 administration and collection of the assessments, administration

15 of the bonds or of the program authorized by this section,

16 replenishment of reserves, arbitrage rebate, and a reasonable

17 financing fee.

18 (d) Each issue of bonds shall be authorized by ordinance,

19 separate from the foregoing procedural ordinance, and shall be

20 in such amounts, denominations, forms, executed in such manner,

21 payable at such place or places, at such time or times, at such

22 interest rate or rates (either fixed or variable), with such



1 maturity date or dates and terms of redemption, security
2 (including pledge of proceeds, special taxes and liens
3 therefor), credit enhancement, administration, investment of
4 proceeds and special tax receipts, default, remedy, or other
5 terms and conditions as the council deems necessary or
6 convenient. The bonds shall be sold in the manner and at the
7 price or prices determined by the council.

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



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

12 (g) Bonds issued pursuant to this section and the interest
13 thereon and other income therefrom shall be exempt from any and
14 all taxation by the State or any county or other political
15 subdivision thereof, except inheritance, transfer, and estate
16 taxes.

17 (h) Properties of entities of the state, federal, or
18 county governments, except as provided in subsection (i), shall
19 be exempt from the special tax. No other properties or entities
20 are exempt from the special tax unless the properties or
21 entities are expressly exempted in the ordinance of formation to
22 establish a district adopted pursuant to this chapter or in an



1 ordinance of consideration to levy a new special tax or special
2 taxes or to alter the rate or method of apportionment of an
3 existing special tax as provided in this section.

4 (i) If a public body owning property, including property
5 held in trust for any beneficiary, which is exempt from a
6 special tax pursuant to subsection (h), grants leasehold or
7 other possessory interest in the property to a nonexempt person
8 or entity, the special tax, notwithstanding subsection (h),
9 shall be levied on the leasehold or possessory interest and
10 shall be payable by the lessee.

11 (j) The ordinance shall provide for the creation of
12 special energy improvement districts comprising one or more
13 commercial properties at the request of the owners of such
14 commercial properties. Such districts shall be constituted to
15 finance energy improvements on such properties; provided that
16 energy improvements shall be deemed to be special improvements
17 for purposes of this section.

18 (k) The financing provided for in this section shall be
19 available to cover all of the costs of:

20 (1) Energy improvements;

21 (2) Related energy audits;

22 (3) Renewable energy system feasibility studies; and



1 (4) Verification reports of the installation and
2 effectiveness of such improvements.

3 (1) The ordinance shall provide that no financing under
4 this section shall occur without the written consent of any
5 existing mortgage holder on the parcel of the qualifying
6 commercial real property.

7 (m) Special energy improvement districts established
8 pursuant to this section shall not be required to comply with
9 subsection (c)(3).

10 (n) For purposes of this section:
11 "Commercial or industrial property" shall have the same
12 meaning as in section 39-_____.

13 "Energy improvements" shall have the same meaning as in
14 section 39-_____.

15 "Qualifying commercial real property" shall have the same
16 meaning as in section 39-_____."

17 SECTION 4. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the
21 invalid provision or application, and to this end the provisions
22 of this Act are severable.



S.B. NO. 3110

1 SECTION 5. This Act does not in any way prohibit or limit
 2 the counties to institute a property assessed clean energy or
 3 similar financing program for and within their respective
 4 county, independent of state partnership or involvement.

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

7 SECTION 7. This Act shall take effect on July 1, 2014;
 8 provided that this Act shall be repealed on December 31, 2034,
 9 and section 46-80.1, Hawaii Revised Statutes, shall be reenacted
 10 in the form in which it read on the day before the effective
 11 date of this Act.

12

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S.B. NO. 3110

Report Title:

Commercial Property Assessed Clean Energy

Description:

Establishes a commercial property assessed clean energy financing program to assist owners of qualifying commercial real property in financing energy improvements. Allows counties to create special energy improvement districts.

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

