
A BILL FOR AN ACT

RELATED 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 and
12 existing development-related operating costs, such as police,
13 fire protection, and maintenance services, in addition to
14 special improvements and infrastructure.

15 The purpose of this Act is to expand the authority of the
16 counties to use land-based financing to support their operating



1 costs for new and existing developments in improvement districts
2 and community facilities districts.

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

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



1 benefited or improved or the assessments thereon, the bonds
2 shall be issued according and subject to the provisions of the
3 ordinance. If the bonds are payable from taxes or secured by
4 the taxing power, the bonds shall be issued according and
5 subject to chapter 47. Except as is otherwise provided in
6 section 46-80.1, in assessing land for improvements a county
7 shall assess the land within an improvement district according
8 to the special benefits conferred upon the land by the special
9 improvement; these methods include assessment on a frontage
10 basis or according to the area of land within an improvement
11 district, or any other assessment method [~~which~~] that assesses
12 the land according to the special benefit conferred, or any
13 combination thereof.

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;



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

14 An improvement district assessment levied pursuant to this
15 section may finance the services authorized in this subsection
16 for a new or existing improvement district, whether the services
17 were provided in the area constituting the improvement district
18 before the district was created, or to the extent that they are
19 in addition to those services that were provided in the area
20 constituting the improvement district before the district was
21 created; provided that any additional services may not supplant



1 services already available within the area when the improvement
2 district was created."

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

5 "**§46-80.1 Community facilities district.** (a) Any county
6 having a charter may enact an ordinance, and may amend the same
7 from time to time, providing for the creation of community
8 facilities districts to finance special improvements in the
9 county[-] and operating expenses for certain county services,
10 pursuant to subsection (b). The special improvements and county
11 services described in subsection (b) may be provided and
12 financed under the ordinance. The county shall have the power
13 to levy and assess a special tax on property located in a
14 district to finance the special improvements and to pay the debt
15 service on any bonds issued to finance the special improvements.
16 The county may issue and sell bonds to provide funds for the
17 special improvements, or, if requested by the county, the State
18 may issue and sell revenue bonds under section 201H-72[-];
19 provided that bonds may not be issued pursuant to this section
20 to fund any of the county services specified in subsection (b);
21 provided further that bonds may be issued to fund capital



1 facilities to be used in providing the county services specified
2 in subsection (b). Bonds issued to provide funds for the
3 special improvements may be either: bonds secured only by the
4 properties included in the district [~~and/or~~] or the special
5 taxes thereon, or both, or bonds payable from general taxes
6 [~~and/or~~] or secured by the general taxing power of the
7 county[~~-~~], or both. If the bonds are secured only by the
8 properties included in the district [~~and/or~~] or the special
9 taxes thereon, or both, the bonds shall be issued according and
10 subject to the provisions of the ordinance. If the bonds are
11 payable from general taxes or secured by the general taxing
12 power, the bonds shall be issued according and subject to
13 chapter 47.

14 (b) The following types of county services may be provided
15 and financed by a community facilities 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;



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

14 A community facilities district special tax assessed
15 pursuant to this section may finance the services authorized in
16 this subsection for a new or existing community facility
17 district, whether the services were provided in the area
18 constituting the community facilities district before the
19 district was created, or to the extent that they are in addition
20 to those services that were provided in the area constituting
21 the community facilities district before the district was



1 created; provided that any additional services may not supplant
2 services already available within the area when the community
3 facilities district was created.

4 ~~(b)~~ (c) There is no requirement that the special tax
5 imposed by ordinance pursuant to this section be fixed in an
6 amount or apportioned on the basis of special benefit to be
7 conveyed on property by the special improvement, or that the
8 special improvement convey a special benefit on any property in
9 the district. It shall be sufficient that the governing body of
10 the county determines that the property to be subject to the
11 special tax is improved or benefited by the special improvement
12 in a general manner or in any other manner. The special
13 improvement may also benefit property outside the district. The
14 special taxes assessed pursuant to this section shall be a lien
15 upon the property assessed. The lien shall have priority over
16 all other liens except the lien of general real property taxes
17 and the lien of assessments levied under section 46-80. The
18 lien of special taxes assessed pursuant to this section shall be
19 on a parity with the lien of general real property taxes and the
20 lien of assessments levied under section 46-80, except to the
21 extent 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 ~~[(e)]~~ (d) The ordinance shall describe the types of
4 special improvements that may be undertaken and financed. In
5 addition, the ordinance shall include~~[7]~~ but not be limited
6 to~~[7]~~ procedures 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



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~~] the bonds or to
10 pay 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,



1 replenishment of reserves, arbitrage rebate, and a reasonable
2 financing fee.

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

15 ~~(e)~~ (f) This section is a special improvement statute
16 ~~which~~ that implements section 12 of article VII of the state
17 constitution and provides a complete, additional, and
18 alternative method of doing the things authorized herein; and
19 the creation of districts, levying, assessments and collection
20 of special taxes, issuance of bonds and other matters covered by
21 this section, or by the procedural or bond ordinances authorized



1 by this section, need not comply with any other law applicable
2 to these matters. Bonds issued under this section, when the
3 only security for [~~such~~] the bonds is the special taxes or liens
4 on the property in the district subject thereto, shall be
5 excluded from any determination of the power of a county to
6 issue general obligation bonds or funded debt for purposes of
7 section 13 of article VII of the state constitution.

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

19 [~~(g)~~] (h) Bonds issued pursuant to this section and the
20 interest thereon and other income therefrom shall be exempt from
21 any and all taxation by the State or any county or other



1 political subdivision thereof, except inheritance, transfer, and
2 estate taxes.

3 ~~[(h)]~~ (i) Properties of entities of the state, federal, or
4 county governments, except as provided in subsection ~~[(i)]~~, (j),
5 shall be exempt from the special tax. No other properties or
6 entities are exempt from the special tax unless the properties
7 or entities are expressly exempted in the ordinance of formation
8 to establish a district adopted pursuant to this chapter or in
9 an ordinance of consideration to levy a new special tax or
10 special taxes or to alter the rate or method of apportionment of
11 an existing special tax as provided in this section.

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

19 SECTION 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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



Report Title:

Counties; Land-Based Financing; Improvement District; 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. Allows county maintenance of the capital improvements to be land-based financed. (SD1)

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

