
A BILL FOR AN ACT

RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING.

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

1 SECTION 1. The legislature finds that more than two
2 hundred eight-one high-rise residential buildings, primarily
3 condominiums developed before 1975, have failed to pass safety
4 evaluations due to the lack of fire sprinklers or other safety
5 requirements. According to the state fire council, more than
6 three dozen people died in fires in Honolulu between 2006 and
7 2019, ninety-eight per cent of those deaths occurred in
8 buildings without sufficient fire safety measures, and ninety-
9 four per cent of the more than two hundred people injured by
10 fire or smoke inhalation were in buildings without sufficient
11 fire safety measures. Further, there have been over two hundred
12 forty high-rise fires since the Marco Polo fire, and over
13 seventy-nine per cent of the buildings that burned did not have
14 sufficient fire safety measures. Some forty thousand individual
15 unit owners may achieve fire safety by meeting fire safety
16 requirements, but doing so has also proven to be a costly
17 endeavor.



1 Act 183, Session Laws of Hawaii 2022, authorized commercial
2 property assessed financing, also known as C-PACER, in Hawaii.
3 C-PACER is an alternative financing option that finances one
4 hundred per cent of qualified capital improvement costs, with
5 terms matching the useful life of the equipment installed,
6 thereby making payments more affordable than a typical equipment
7 loan. The legislature further finds that C-PACER financing can
8 help condominiums finance the installation of fire safety and
9 other energy efficiency, renewable energy, water conservation,
10 and resiliency measures at more attractive rates and terms than
11 may be currently available with conventional financing.

12 The purpose of this Act is to enable condominiums to
13 participate in C-PACER financing, as well as provide more
14 clarity to the definition of a commercial property for purposes
15 of green infrastructure loans.

16 SECTION 2. Section 196-61, Hawaii Revised Statutes, is
17 amended by amending the definition of "commercial property" to
18 read as follows:

19 ""Commercial property" means any existing or new non-
20 residential real property [~~not defined as a residential~~
21 ~~property, and shall include any~~], including:



- 1 (1) Any property where there is a leasehold or possessory
- 2 interest in the property [~~and any~~];
- 3 (2) Any multi-family dwelling or townhouse consisting of
- 4 five or more units [~~as well as agricultural~~];
- 5 (3) Any condominium property regime consisting of six or
- 6 more units; or
- 7 (4) Agricultural property."

8 SECTION 3. Section 196-64.5, Hawaii Revised Statutes, is
 9 amended by amending subsection (c) to read as follows:

10 "(c) The authority shall design a commercial property
 11 assessed financing program authorized under this section and
 12 section 46-80(b) that addresses market needs while attracting
 13 private capital and that shall, at a minimum, include the
 14 following elements:

- 15 (1) A commercial property assessed financing lender may
- 16 enter into a commercial property assessed financing
- 17 assessment contract to finance or refinance a
- 18 qualifying improvement only with the recorded owner of
- 19 the affected commercial property and the authority.
- 20 Each commercial property assessed financing assessment
- 21 contract shall be executed by the authority as the



1 administrator of the commercial property assessed
2 financing program. A commercial property assessed
3 financing assessment contract shall require the
4 authority to assign, pledge, and transfer revenues to
5 be derived from commercial property assessed financing
6 assessments to one or more commercial property
7 assessed financing lenders as security for their
8 direct financing of qualifying improvements. The
9 obligation of the authority to transfer the revenues
10 to one or more commercial property assessed financing
11 lenders shall be evidenced by the commercial property
12 assessed financing assessment contract as an
13 instrument of indebtedness in a form as may be
14 prescribed by the authority. No other bonds shall be
15 required to be issued by the State, the authority, any
16 county, or any other public entity in order to cause
17 qualifying improvements to be funded through a
18 commercial property assessed financing assessment
19 contract;

20 (2) Qualifying improvements shall be affixed to a building
21 or facility or affixed to real property, subject to



1 the commercial property assessed financing
2 assessments;
3 (3) Before entering into a commercial property assessed
4 financing assessment contract, the commercial property
5 assessed financing lender shall reasonably determine
6 that:
7 (A) The commercial property owner is able to borrow
8 the amount of the property assessed financing
9 using reasonable commercial underwriting
10 practices;
11 (B) All property taxes applicable to the commercial
12 property, and any other assessments levied on the
13 same bill as property taxes, are paid; and
14 (C) There are no involuntary liens applicable to the
15 commercial property, including but not limited to
16 construction liens, that will not be paid or
17 satisfied upon the closing of the financing;
18 (4) The commercial property assessed financing assessment
19 contract shall include the amount of an annual
20 assessment over a fixed term that will appear as a
21 non-ad valorem special tax assessment on the



1 commercial property owner's tax bill or stand-alone
2 bill annually;

3 (5) The commercial property assessed financing assessment
4 contract, or summary memorandum of the contract, shall
5 be recorded by the commercial property assessed
6 financing lender in the public records of the State or
7 of the county within which the commercial property is
8 located within five days after execution by the
9 parties to the contract. The recorded contract shall
10 provide constructive notice of the levy of, and
11 obligation of the commercial property owner to pay,
12 the commercial property assessed financing assessment.
13 The commercial property assessed financing assessment
14 to be levied on the commercial property shall be a
15 non-ad valorem special tax assessment and a lien
16 against the commercial property on a parity with the
17 lien of general real property taxes and the lien of
18 any other assessments levied under section 46-80, from
19 the date of recordation entered into pursuant to this
20 section until paid or satisfied in accordance with the



1 commercial property assessed financing assessment
2 contract;
3 (6) Before entering into a commercial property assessed
4 financing assessment contract for any commercial
5 property, the commercial property owner shall provide
6 the authority and the commercial property assessed
7 financing lender with evidence of the written consent
8 of each holder or loan servicer of any mortgage that
9 encumbers or otherwise secures the commercial
10 property, where the consent is in the sole and
11 absolute discretion of each holder or loan servicer of
12 a mortgage on the commercial property, at the time of
13 the execution of the commercial property assessed
14 financing assessment contract by the parties; provided
15 that the consents shall be in a form prescribed by the
16 authority;
17 (7) At or before the time a purchaser executes a contract
18 for the sale and purchase of any commercial property
19 for which a non-ad valorem special tax assessment has
20 been levied under this part and has an unpaid balance
21 due, the seller shall give the prospective purchaser a



1 written disclosure statement notifying the prospective
2 purchaser of the commercial property assessed
3 financing assessment;

4 (8) The term of the commercial property assessed financing
5 assessment contract shall not exceed the useful life
6 of the qualifying improvement being installed or the
7 weighted average useful life of all qualifying
8 improvements being financed if multiple qualifying
9 improvements are being financed, as determined by the
10 authority; and

11 (9) Before the execution by the authority of the first
12 commercial property assessed financing assessment
13 contract in a county, the authority shall enter into a
14 contract with the county director of finance or county
15 director of budget and fiscal services to cause the
16 county director to levy and collect any commercial
17 property assessed financing assessment approved and
18 certified by the authority to the director for
19 collection. [~~The~~] Except as provided for commercial
20 property assessed financing special assessments under
21 chapter 514B, the county director shall levy and



1 collect any commercial property assessed financing
2 assessment approved by the authority. Each commercial
3 property assessed financing assessment that is
4 approved for collection shall be a non-ad valorem
5 special tax assessment and shall be collected in the
6 same manner as general real property taxes are
7 collected and be subject to the same penalties and
8 same procedure, sale, and lien priority, subject to
9 this section, in the case of delinquency as is
10 provided by general law for the default of the payment
11 of real property taxes, unless another procedure,
12 including stand-alone billing and collection, is
13 agreed upon by the authority and the county director.
14 The county director may add to any commercial property
15 assessed financing assessment reasonable
16 administrative costs as agreed upon by the authority
17 and the county director. The county director shall
18 remit any commercial property assessed financing
19 assessments collected, less any reasonable
20 administrative costs added by the county director, to
21 or on the direction of the authority, for further



1 application by the authority to pay each commercial
2 property assessed financing lender and to pay the
3 reasonable administrative costs of the authority in
4 accordance with each commercial property assessed
5 financing assessment contract. The county director
6 shall covenant in a contract or instrument, for the
7 benefit of any commercial property assessed financing
8 lender or bondholder, to commence and diligently
9 pursue to completion the foreclosure of delinquent
10 commercial property assessed financing assessments and
11 any penalty, interest, and costs by advertisement and
12 sale and with the same effect as provided by general
13 law for sales of real property pursuant to default in
14 payment of property taxes. The covenant shall specify
15 a deadline for commencement of the foreclosure sale
16 and any other terms and conditions the county director
17 of finance or county director of budget and fiscal
18 services determines reasonable regarding the
19 foreclosure sale. For commercial property assessed
20 financing assessments levied but not paid when due
21 pursuant to a commercial property assessed financing



1 assessment contract, the foreclosure of the lien of
2 the commercial property assessed financing assessment,
3 lien of general real property taxes or any other
4 assessments levied under section 46-80, or any other
5 lien foreclosed, shall not accelerate or extinguish
6 the remaining term of the commercial property assessed
7 financing assessment as approved in the commercial
8 property assessed financing assessment contract."

9 SECTION 4. Section 514B-4, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) If there is any unit owner other than a developer,
12 each unit shall be separately taxed and assessed, and no
13 separate tax or assessment [~~may~~] shall be rendered against any
14 common elements. The laws relating to home exemptions from
15 state property taxes are applicable to individual units, which
16 shall have the benefit of home exemption in those cases where
17 the owner of a single-family dwelling would qualify. Property
18 taxes assessed by the State or any county shall be assessed and
19 collected on the individual units and not on the property as a
20 whole. Commercial property assessed financing program non-ad
21 valorem special assessments, pursuant to section 196-64.5, may



1 be levied upon the project, as described by the project's master
2 deed, declaration, and map pursuant to part III. Without
3 limitation of the foregoing, each unit and its appurtenant
4 common interest shall be deemed to be a "parcel" and shall be
5 subject to separate assessment and taxation for all types of
6 taxes authorized by law, including[7] but not limited to[7]
7 other non-commercial property assessed financing program special
8 assessments."

9 SECTION 5. Section 514B-41, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) The common profits of the property shall be
12 distributed among, and the common expenses shall be charged to,
13 the unit owners, including the developer, in proportion to the
14 common interest appurtenant to their respective units, except as
15 otherwise provided in the declaration or bylaws. In a mixed-use
16 project containing units for both residential and nonresidential
17 use, the charges and distributions may be apportioned in a fair
18 and equitable manner as set forth in the declaration. Except as
19 otherwise provided in subsection (c) or the declaration or
20 bylaws, all limited common element costs and expenses, including
21 but not limited to maintenance, repair, replacement, additions,



1 and improvements, including capital improvements financed by
2 commercial property assessed financing, shall be charged to the
3 owner or owners of the unit or units to which the limited common
4 element is appurtenant in an equitable manner as set forth in
5 the declaration."

6 SECTION 6. Section 514B-105, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§514B-105 Association; limitations on powers.** (a) The
9 declaration and bylaws [~~may~~] shall not impose limitations on the
10 power of the association to deal with the developer [~~which~~] that
11 are more restrictive than the limitations imposed on the power
12 of the association to deal with other persons.

13 (b) Unless otherwise permitted by the declaration, bylaws,
14 or this chapter, an association may adopt rules and regulations
15 that affect the use of or behavior in units that may be used for
16 residential purposes only to:

17 (1) Prevent any use of a unit [~~which~~] that violates the
18 declaration or bylaws;

19 (2) Regulate any behavior in or occupancy of a unit
20 [~~which~~] that violates the declaration or bylaws or
21 unreasonably interferes with the use and enjoyment of



1 other units or the common elements by other unit
2 owners; or

3 (3) Restrict the leasing of residential units to the
4 extent those rules are reasonably designed to meet
5 underwriting requirements of institutional lenders who
6 regularly lend money secured by first mortgages on
7 units in condominiums or regularly purchase those
8 mortgages.

9 Otherwise, the association [~~may~~] shall not regulate any use of
10 or behavior in units by means of the rules and regulations.

11 (c) Any payments made by or on behalf of a unit owner
12 shall first be applied to outstanding common expenses that are
13 assessed to all unit owners in proportion to the common interest
14 appurtenant to their respective units~~(-)~~, including commercial
15 property assessed financing special assessments. Only after
16 [~~said~~] the outstanding common expenses have been paid in full
17 may the payments be applied to other charges owed to the
18 association, including assessed charges to the unit such as
19 ground lease rent, utility sub-metering, storage lockers,
20 parking stalls, boat slips, insurance deductibles, and cable.
21 After these charges are paid, other charges, including unpaid



1 late fees, legal fees, fines, and interest, may be assessed in
2 accordance with an application of payment policy adopted by the
3 board; provided that if a unit owner has designated that any
4 payment is for a specific charge that is not a common expense as
5 described in this subsection, the payment may be applied in
6 accordance with the unit owner's designation even if common
7 expenses remain outstanding.

8 (d) No unit owner who requests legal or other information
9 from the association, the board, the managing agent, or their
10 employees or agents, shall be charged for the reasonable cost of
11 providing the information unless the association notifies the
12 unit owner that it intends to charge the unit owner for the
13 reasonable cost. The association shall notify the unit owner in
14 writing at least ten days prior to incurring the reasonable cost
15 of providing the information, except that no prior notice shall
16 be required to assess the reasonable cost of providing
17 information on delinquent assessments or in connection with
18 proceedings to enforce the law or the association's governing
19 documents.

20 After being notified of the reasonable cost of providing
21 the information, the unit owner may withdraw the request, in



1 writing. A unit owner who withdraws a request for information
2 shall not be charged for the reasonable cost of providing the
3 information.

4 (e) Subject to any approval requirements and spending
5 limits contained in the declaration or bylaws, the association
6 may authorize the board to borrow money for the repair,
7 replacement, maintenance, operation, or administration of the
8 common elements and personal property of the project, or the
9 making of any additions, alterations, and improvements thereto;
10 provided that written notice of the purpose and use of the funds
11 is first sent to all unit owners and owners representing fifty
12 per cent of the common interest vote or give written consent to
13 the borrowing. In connection with the borrowing, including non-
14 commercial property assessed financing, the board may grant to
15 the lender the right to assess and collect monthly or special
16 assessments from the unit owners and to enforce the payment of
17 the assessments or other sums by statutory lien and foreclosure
18 proceedings. The cost of the borrowing, including, without
19 limitation, all principal, interest, commitment fees, and other
20 expenses payable with respect to the borrowing or the
21 enforcement of the obligations under the borrowing, shall be a



1 common expense of the project. For purposes of this section,
2 the financing of insurance premiums by the association within
3 the policy period shall not be deemed a loan and no lease shall
4 be deemed a loan if it provides that at the end of the lease the
5 association may purchase the leased equipment for its fair
6 market value.

7 (f) For non-ad valorem special assessments levied upon the
8 project under a commercial property assessed financing program
9 pursuant to section 196-64.5 and due from the association, the
10 cost of the commercial property assessed financing, including
11 but not limited to all principal, interest, commitment fees,
12 servicing fees, and other expenses payable with respect to this
13 borrowing or the enforcement of the obligations under the
14 borrowings, shall be a common expense of the project and unit
15 owners' proportionate share of the special assessment shall be
16 collected in the same manner as common expenses. The written
17 consent of at least fifty per cent of all unit owners and owners
18 to finance qualifying improvements with commercial property
19 assessed financing shall include an acknowledgment that the
20 annual special assessment required to fund debt service on the



1 commercial property assessed financing shall be included as part
2 of the association's adopted revised budget."

3 SECTION 7. Section 514B-146, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) All sums assessed by the association but unpaid for
7 the share of the common expenses chargeable to any unit shall
8 constitute a lien on the unit with priority over all other
9 liens, except:

10 (1) Liens for real property taxes and assessments lawfully
11 imposed by governmental authority, including
12 commercial property assessed financing non-ad valorem
13 special assessments, against the unit; and

14 (2) Except as provided in subsection (j), all sums unpaid
15 on any mortgage of record that was recorded prior to
16 the recordation of a notice of a lien by the
17 association, and costs and expenses including
18 attorneys' fees provided in such mortgages;

19 provided that a lien recorded by an association for unpaid
20 assessments shall expire six years from the date of recordation
21 unless proceedings to enforce the lien are instituted prior to



1 the expiration of the lien; provided further that the expiration
2 of a recorded lien shall in no way affect the association's
3 automatic lien that arises pursuant to this subsection or the
4 declaration or bylaws. Any proceedings to enforce an
5 association's lien for any assessment shall be instituted within
6 six years after the assessment became due; provided that if the
7 owner of a unit subject to a lien of the association files a
8 petition for relief under the United States Bankruptcy Code (11
9 U.S.C. §101 et seq.), the period of time for instituting
10 proceedings to enforce the association's lien shall be tolled
11 until thirty days after the automatic stay of proceedings under
12 section 362 of the United States Bankruptcy Code (11 U.S.C.
13 §362) is lifted.

14 The lien of the association may be foreclosed by action or
15 by nonjudicial or power of sale foreclosure, regardless of the
16 presence or absence of power of sale language in an
17 association's governing documents, by the managing agent or
18 board, acting on behalf of the association and in the name of
19 the association; provided that no association may exercise the
20 nonjudicial or power of sale remedies provided in chapter 667 to
21 foreclose a lien against any unit that arises solely from fines,



1 penalties, legal fees, or late fees, and the foreclosure of any
2 such lien shall be filed in court pursuant to part IA of chapter
3 667.

4 In any such foreclosure, the unit owner shall be required
5 to pay a reasonable rental for the unit, if so provided in the
6 bylaws or the law, and the plaintiff in the foreclosure shall be
7 entitled to the appointment of a receiver to collect the rental
8 owed by the unit owner or any tenant of the unit. If the
9 association is the plaintiff, it may request that its managing
10 agent be appointed as receiver to collect the rent from the
11 tenant. The managing agent or board, acting on behalf of the
12 association and in the name of the association, unless
13 prohibited by the declaration, may bid on the unit at
14 foreclosure sale, and acquire and hold, lease, mortgage, and
15 convey the unit. Action to recover a money judgment for unpaid
16 common expenses shall be maintainable without foreclosing or
17 waiving the lien securing the unpaid common expenses owed."

18 2. By amending subsection (l) to read:

19 "(l) For purposes of subsections (j) and (k), the
20 following definitions shall apply, unless the context requires
21 otherwise:



1 "Completion" means:

2 (1) In a nonjudicial power of sale foreclosure, when the
3 affidavit after public sale is recorded pursuant to
4 section 667-33; and

5 (2) In a judicial foreclosure, when a purchaser is deemed
6 to acquire title pursuant to subsection (b).

7 "Regular monthly common assessments" does not include:

8 (1) Any other special assessment, except for a special
9 assessment imposed on all units as part of a budget
10 adopted pursuant to section 514B-148[~~7~~], including
11 commercial property assessed financing special
12 assessments;

13 (2) Late charges, fines, or penalties;

14 (3) Interest assessed by the association;

15 (4) Any lien arising out of the assessment; or

16 (5) Any fees or costs related to the collection or
17 enforcement of the assessment, including attorneys'
18 fees and court costs."

19 SECTION 8. Section 514B-157, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) All costs and expenses, including reasonable
2 attorneys' fees, incurred by or on behalf of the association
3 for:

4 (1) Collecting any delinquent assessments, including
5 commercial property assessed financing special
6 assessments, against any owner's unit;

7 (2) Foreclosing any lien thereon; or

8 (3) Enforcing any provision of the declaration, bylaws,
9 house rules, and this chapter, or the rules of the
10 real estate commission;

11 against an owner, occupant, tenant, employee of an owner, or any
12 other person who may in any manner use the property, shall be
13 promptly paid on demand to the association by such person or
14 persons; provided that if the claims upon which the association
15 takes any action are not substantiated, all costs and expenses,
16 including reasonable attorneys' fees, incurred by any such
17 person or persons as a result of the action of the association,
18 shall be promptly paid on demand to such person or persons by
19 the association."

20 SECTION 9. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 10. This Act shall take effect on July 1, 3000.



H.B. NO. 2801 H.D. 1

Report Title:

Condominiums; Commercial Property Assessed Financing; C-PACER

Description:

Allows condominiums to be eligible for commercial property assessed financing. Effective 7/1/3000. (HD1)

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