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

15 The purpose of this Act is to:

- 16 (1) Enable condominium associations to participate in
17 C-PACER financing;



1 (2) Provide clarity to the definition of a commercial
2 property for purposes of green infrastructure loans;
3 and

4 (3) Delegate all existing administrative responsibilities
5 of the counties under the commercial property assessed
6 financing program to the Hawaii green infrastructure
7 authority.

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

10 "§46-80 Improvement by assessment; financing[~~;~~ ~~commercial~~
11 ~~property assessed financing program~~]. [~~(a)~~] Any county having
12 a charter may enact an ordinance, and may amend the same from
13 time to time, providing for the making and financing of
14 improvement districts in the county, and the improvements may be
15 made and financed under the ordinance. The county may issue and
16 sell bonds to provide funds for the improvements. Bonds issued
17 to provide funds for the improvements may be either bonds when
18 the only security therefor is the properties benefited or
19 improved or the assessments thereon or bonds payable from taxes
20 or secured by the taxing power of the county. If the bonds are
21 secured only by the properties benefited or improved or the



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

13 ~~[(b) There is established a special improvement program to~~
 14 ~~be known as a commercial property assessed financing program,~~
 15 ~~which shall be administered by the Hawaii green infrastructure~~
 16 ~~authority. A commercial property owner may apply to a~~
 17 ~~commercial property assessed financing lender, approved by the~~
 18 ~~authority, for property assessed financing to pay the cost of~~
 19 ~~qualifying improvements and enter into a commercial property~~
 20 ~~assessed financing contract with a commercial property assessed~~
 21 ~~financing lender and the authority. Costs incurred for~~



~~1 qualifying improvements shall be levied and collected by each~~
~~2 county, as provided in section 196 64.5, as a non ad valorem~~
~~3 special tax assessment on the benefitted commercial property.~~
~~4 The authority, on behalf of the State, shall authorize~~
~~5 commercial property assessed financing assessment contracts as~~
~~6 instruments of indebtedness in the form as may be prescribed by~~
~~7 the authority. Commercial property assessed financing~~
~~8 assessment contracts authorized to finance qualifying~~
~~9 improvements, when the only security is the non ad valorem~~
~~10 special tax assessment levied against benefitted or improved~~
~~11 commercial property, shall be excluded from any determination of~~
~~12 the power of the State to issue general obligation bonds or~~
~~13 funded debt for purposes of section 13 of article VII of the~~
~~14 state constitution.~~

~~15 (c) Any county having a charter may enact an ordinance,~~
~~16 and may amend the same from time to time, to establish a special~~
~~17 improvement program containing the same elements as the~~
~~18 commercial property assessed financing program authorized under~~
~~19 chapter 196 and subsection (b), except that any program that is~~
~~20 established shall be administered by the county in lieu of~~
~~21 administration by the authority. The county shall assume all of~~



1 ~~the responsibilities of the authority provided in chapter 196~~
2 ~~and subsection (b), including determining qualifying~~
3 ~~improvements eligible for property assessed financing. A~~
4 ~~commercial property owner may apply to the county for property~~
5 ~~assessed financing to pay the costs of qualifying improvements~~
6 ~~and enter into a commercial property assessed financing~~
7 ~~assessment contract with an approved commercial property~~
8 ~~assessed financing lender and the county. Costs incurred for~~
9 ~~qualifying improvements shall be levied and collected by each~~
10 ~~county, as provided in section 196 64.5, as a non ad valorem~~
11 ~~special tax assessment on the benefitted commercial property.~~
12 ~~The county may issue revenue bonds to finance or refinance the~~
13 ~~improvements, and the form of any revenue bond may be a~~
14 ~~commercial property assessed financing assessment contract or~~
15 ~~other instrument prescribed by the county. Bonds issued to~~
16 ~~finance qualifying improvements, when the only security is the~~
17 ~~non ad valorem special tax assessment levied against benefitted~~
18 ~~or improved commercial property, shall be excluded from any~~
19 ~~determination of the power of the county to issue general~~
20 ~~obligation bonds or funded debt for purposes of article VII,~~
21 ~~section 13, of the state constitution.] "~~



1 SECTION 3. Section 196-61, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding two new definitions to be appropriately
4 inserted and to read:

5 "Assessment" means a financing assessment imposed by the
6 authority on a benefitted commercial property pursuant to
7 section 196-64.5.

8 "Property owner" or "owner" means the owner or owners of
9 record of commercial property, except that in the case of a
10 condominium, "owner" shall mean the condominium association and
11 not the owner or owners of individual residential condominium
12 units."

13 2. By amending the definitions of "commercial property"
14 and "commercial property assessed financing assessment" to read:

15 "Commercial property" means [any]:

16 (1) Any existing or new non-residential real property [not
17 defined as a residential property, and shall include],
18 including any property where there is a leasehold or
19 possessory interest in the property [and any];

20 (2) Any multi-family dwelling or townhouse consisting of
21 five or more units [as well as agricultural];



1 (3) Any condominium organized under chapter 514B
 2 consisting of six or more units; provided that
 3 individual residential condominium units shall not be
 4 considered commercial property and shall be ineligible
 5 to apply for commercial property assessed financing
 6 under this part; or

7 (4) Agricultural property.

8 "Commercial property assessed financing assessment" or
 9 "financing assessment" means the [non-ad-valorem special tax]
 10 annual assessment [that secures], secured by a lien on a
 11 property, for the repayment of financing obtained by an owner of
 12 commercial property for a qualifying improvement [~~and that~~
 13 ~~appears on a property tax bill.~~] that is billed and collected by
 14 the authority."

15 3. By amending the definitions of "commercial property
 16 assessed financing lender" and "commercial property assessed
 17 financing program" to read:

18 ""Commercial property assessed financing lender" means a
 19 financial institution as defined pursuant to section 412:1-109,
 20 or a private or public lender approved by the authority, as the
 21 administrator of the commercial property assessed financing



1 program, to originate commercial property assessed financing
2 assessment contracts, and [~~which~~] that may include any successor
3 or assignee of the lender as provided in the commercial property
4 assessed financing assessment contract.

5 "Commercial property assessed financing program" means a
6 program to finance qualifying improvements on commercial
7 properties that are repaid through [~~a non ad valorem special~~
8 ~~tax~~] an assessment imposed by the authority on the commercial
9 property owner's property [~~tax bill~~]."

10 4. By amending the definition of "option to purchase" to
11 read:

12 ""Option to purchase" means a legally binding agreement
13 between a buyer and a seller[~~, which~~] that gives the buyer the
14 option, but not the obligation, to purchase the solar energy
15 system or other installed equipment at an agreed upon price,
16 prior to the maturity date of the power purchase agreement or
17 energy performance contract."

18 5. By repealing the definition of "county director of
19 finance" and "county director of budget and fiscal services".

20 [~~"County director of finance" or "county director of~~
21 ~~budget and fiscal services" means the officer or officers of the~~



1 ~~county charged with the responsibility of administering the real~~
2 ~~property taxation function of the county."]~~

3 6. By repealing the definition of "non-ad valorem special
4 tax assessment".

5 [~~"Non-ad valorem special tax assessment" means a special~~
6 ~~tax assessment or governmental charge levied by the county as~~
7 ~~provided in section 196-64.5 on a benefitted commercial property~~
8 ~~that appears on a property tax bill."]~~

9 SECTION 4. Section 196-64.5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[~~+~~§196-64.5[~~+~~] Commercial property assessed financing
12 program. (a) [~~Any county having a charter may authorize the~~
13 ~~authority, pursuant to this section, to offer a commercial~~
14 ~~property assessed financing program within its jurisdiction and~~
15 ~~may contract with the authority for that purpose, and any county~~
16 ~~having a charter may enact its own commercial property assessed~~
17 ~~financing program pursuant to this section and section 46-80(b)~~
18 ~~and (c).] There is established a commercial property assessed
19 financing program to be administered by the authority to enable
20 owners of qualifying property to access non-traditional
21 financing for qualifying improvements. Program financing shall~~



1 be secured by a voluntary assessment imposed on the benefitted
2 property that is secured by a statutory lien; provided that the
3 statutory lien shall have priority over all other liens except
4 the lien of property taxes and other assessments lawfully
5 imposed by governmental authority against the property.

6 (b) [The] In administering the commercial property
7 assessed financing program, the authority[, as the administrator
8 of the commercial property assessed financing program, shall
9 coordinate with each county to bill and collect a non ad valorem
10 special tax assessment on a benefitted commercial property as a
11 repayment mechanism on the real property tax bill or stand alone
12 bill. The non ad valorem special tax] may impose a governmental
13 lien to secure commercial property assessed financing against
14 real property specially benefitted pursuant to the program
15 established by this section. Commercial property assessed
16 financing shall be secured by the voluntary governmental lien
17 and repaid in assessment installments in accordance with the
18 commercial property assessed financing assessment contract and
19 billed and collected by the authority. The principal amount of
20 financing made pursuant to this section shall be a governmental
21 lien against each lot or parcel of the property, or in the case



1 of a condominium, a governmental lien against the condominium
2 association, assessed for a period beginning on the date of the
3 notice of the assessment and ending once payment is made in full
4 or otherwise satisfied in accordance with the commercial
5 property assessed financing assessment contract; provided that
6 the lien shall have priority over all other liens except the
7 liens for property taxes and assessments lawfully imposed by
8 governmental authority against the property; provided further
9 that for multiple liens of assessments, the earlier lien shall
10 have priority over the later lien. Neither the governmental
11 lien nor the assessment for repayment on a benefitted commercial
12 property pursuant to this section shall [not be] constitute a
13 [generally applicable] tax upon the real property [but shall be
14 collected in the same manner as real property taxes as a result
15 of a benefit to the commercial property owners for qualifying
16 improvements.] within the meaning of any constitutional or
17 statutory provision. The requirement of lender consent pursuant
18 to subsection (c)(7) shall be satisfied for the priority of the
19 lien to be valid.

20 (c) The authority shall design [a] the commercial property
21 assessed financing program authorized under this section [and



1 ~~section 46-80(b) that addresses]~~ to address market needs while
2 attracting private capital [~~and that shall,~~]; provided that the
3 program, at [a] minimum, shall include the following elements:

4 (1) A commercial property owner of qualifying property in
5 the State may apply to the authority for approval to
6 use commercial property assessed financing to pay the
7 cost of qualifying improvements and enter into a
8 commercial property assessed financing contract with
9 an approved commercial property assessed financing
10 lender and the authority;

11 ~~[(1)]~~ (2) A commercial property assessed financing lender
12 may enter into a commercial property assessed
13 financing assessment contract to finance or refinance
14 a qualifying improvement only with the [reecorded]
15 owner of the [affected] commercial property and the
16 authority. Each commercial property assessed
17 financing assessment contract shall be executed by the
18 authority as the administrator of the commercial
19 property assessed financing program. A commercial
20 property assessed financing assessment contract shall
21 require the authority to assign, pledge, and transfer



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

16 [~~2~~] (3) Qualifying improvements shall be affixed to a
17 building or facility or affixed to real property,
18 subject to the commercial property assessed financing
19 assessments;

20 [~~3~~] (4) Before entering into a commercial property
21 assessed financing assessment contract, the commercial



1 property assessed financing lender shall reasonably
2 determine that:

3 (A) The commercial property owner is able to borrow
4 the amount of the property assessed financing
5 using reasonable commercial underwriting
6 practices;

7 (B) All property taxes applicable to the commercial
8 property, and any other assessments levied on the
9 same bill as property taxes, are paid; and

10 (C) There are no involuntary liens applicable to the
11 commercial property, including but not limited to
12 construction liens, that will not be paid or
13 satisfied upon the closing of the financing;

14 [~~4~~] (5) The commercial property assessed financing
15 assessment contract shall include the amount of an
16 annual assessment, including interest, over a fixed
17 term that [~~will appear as a non ad valorem special tax~~
18 ~~assessment on the commercial property owner's tax bill~~
19 ~~or stand alone bill annually;~~] shall be billed
20 annually or as otherwise specified by the authority,
21 and collected by the authority in accordance with the



1 commercial property assessed financing lender's
2 amortization schedule;

3 ~~[(5)]~~ (6) The commercial property assessed financing
4 assessment contract, or summary memorandum of the
5 contract, shall be recorded by the commercial property
6 assessed financing lender in the public records of the
7 State ~~[or of the county within which the commercial~~
8 ~~property is located]~~ within five days after execution
9 by the parties to the contract. The recorded contract
10 shall provide constructive notice of the ~~[levy of,~~
11 lien and obligation of the commercial property owner
12 to pay, the commercial property assessed financing
13 assessment. The entire principal amount of the
14 commercial property assessed financing assessment ~~[to~~
15 ~~be levied on the commercial property]~~ contract shall
16 be a ~~[non ad valorem special tax assessment and a]~~
17 governmental statutory lien against the commercial
18 property ~~[on a parity with the lien of general real~~
19 ~~property taxes and the lien of any other assessments~~
20 ~~levied under section 46-80, from]~~ that shall be
21 assessed for a period beginning on the date of

1 recordation entered into pursuant to this section
 2 [~~until~~] and ending once paid or satisfied in
 3 accordance with the commercial property assessed
 4 financing assessment contract; provided further that
 5 the lien shall have priority over all other liens
 6 except the lien for property taxes and other
 7 assessments lawfully imposed by a governmental
 8 authority against the property;

9 [+6] (7) Before entering into a commercial property
 10 assessed financing assessment contract for any
 11 commercial property, the commercial property owner
 12 shall [provide]:

13 (A) (i) Provide the authority and the commercial
 14 property assessed financing lender with
 15 evidence of the written consent of each
 16 holder or loan servicer of any mortgage that
 17 encumbers or otherwise secures the
 18 commercial property, where the consent is in
 19 the sole and absolute discretion of each
 20 holder or loan servicer of a mortgage on the
 21 commercial property, at the time of the



1 execution of the commercial property
2 assessed financing assessment contract by
3 the parties; provided that the consents
4 shall be in a form prescribed by the
5 authority; and

6 (ii) For a commercial property that is a
7 condominium organized under chapter 514B, or
8 preceding state law governing condominium
9 property regimes, as an alternative to
10 clause (i), the condominium association
11 shall provide the authority and the
12 commercial property assessed financing
13 lender with evidence of the written consent
14 of each creditor with a valid Uniform
15 Commercial Code financing statement or
16 mortgage recorded with the bureau of
17 conveyances that encumbers or otherwise
18 secures the condominium, where the consent
19 is in the sole and absolute discretion of
20 each creditor, at the time of the execution
21 of the commercial property assessed



1 financing assessment contract by the
2 parties; provided that the consents shall be
3 in a form prescribed by the authority; or

4 (B) Agree to the commercial property assessed
5 financing lender's remedies if a default occurs,
6 including foreclosure, in accordance with the
7 terms and conditions of the commercial property
8 assessed financing contract;

9 [~~(7)~~] (8) At or before the time a purchaser executes a
10 contract for the sale and purchase of any commercial
11 property for which a [~~non ad valorem special tax~~
12 ~~assessment has been levied~~] statutory lien has been
13 recorded under this part and has an unpaid balance
14 due, the seller shall give the prospective purchaser a
15 written disclosure statement notifying the prospective
16 purchaser of the commercial property assessed
17 financing assessment;

18 [~~(8)~~] (9) The term of the commercial property assessed
19 financing assessment contract shall not exceed the
20 useful life of the qualifying improvement being
21 installed or the weighted average useful life of all



1 qualifying improvements being financed if multiple
2 qualifying improvements are being financed, as
3 determined by the authority; [~~and~~
4 ~~(9)] (10) [~~Before the execution by the authority of the~~
5 ~~first commercial property assessed financing~~
6 ~~assessment contract in a county, the authority shall~~
7 ~~enter into a contract with the county director of~~
8 ~~finance or county director of budget and fiscal~~
9 ~~services to cause the county director to levy and~~
10 ~~collect any commercial property assessed financing~~
11 ~~assessment approved and certified by the authority to~~
12 ~~the director for collection. The county director~~
13 ~~shall levy]~~ Except as otherwise provided for
14 commercial property assessed financing assessments
15 under chapter 514B, the authority shall bill and
16 collect any approved commercial property assessed
17 financing assessment [~~approved by the authority~~].
18 Each commercial property assessed financing assessment
19 that is approved for collection shall be [~~a non ad~~
20 ~~valorem special tax assessment and shall be]~~ billed
21 and collected in [the same manner as general real~~



1 ~~property taxes are collected and be subject to the~~
2 ~~same]~~ accordance with the commercial property assessed
3 financing lender's amortization schedule. The
4 authority may charge interest or other fees on
5 assessment amounts not paid on a timely basis. The
6 authority shall develop guidelines and procedures
7 providing for the method of undertaking and financing
8 qualifying improvements as well as penalties [and same
9 procedure], collection processes, sale, and lien
10 priority, [subject to this section,] in the case of
11 delinquency as is provided [by general law for the
12 default of the payment of real property taxes, unless
13 another procedure, including stand alone billing and
14 collection, is agreed upon by the authority and the
15 county director. The county director may add to any
16 commercial property assessed financing assessment
17 reasonable administrative costs as agreed upon by the
18 authority and the county director.] in this section.
19 The ~~[county director]~~ authority shall remit any
20 commercial property assessed financing assessments
21 collected, less any reasonable administrative costs



1 ~~[added by the county director, to or on the direction~~
2 ~~of the authority, for further application by the~~
3 ~~authority]~~ to pay each commercial property assessed
4 financing lender ~~[and to pay the reasonable~~
5 ~~administrative costs of the authority]~~ in accordance
6 with each commercial property assessed financing
7 assessment contract. ~~[The county director shall~~
8 ~~covenant in a contract or instrument, for]~~ For the
9 benefit of any commercial property assessed financing
10 lender ~~[or bondholder, to]~~, the authority shall
11 commence and diligently pursue to completion the
12 foreclosure of delinquent commercial property assessed
13 financing assessments and any penalty, interest, and
14 costs by advertisement and sale and with the same
15 effect as provided by general law for sales of real
16 property pursuant to ~~[default in payment of property~~
17 ~~taxes. The covenant]~~ chapter 667 and in accordance
18 with the terms of the commercial property assessed
19 financing contract. Any guidelines and procedures
20 developed pursuant to this paragraph shall specify a
21 deadline for commencement of the foreclosure sale and



1 any other terms and conditions the [~~county director of~~
2 ~~finance or county director of budget and fiscal~~
3 ~~services~~] authority determines reasonable regarding
4 the foreclosure sale. For commercial property
5 assessed financing assessments levied but not paid
6 when due pursuant to a commercial property assessed
7 financing assessment contract, the foreclosure of the
8 lien of the commercial property assessed financing
9 assessment, lien of general real property taxes or any
10 other assessments levied under section 46-80, or any
11 other lien foreclosed, shall not accelerate or
12 extinguish the remaining term of the commercial
13 property assessed financing assessment as approved in
14 the commercial property assessed financing assessment
15 contract [-]; and

16 (11) All moneys collected for assessments for the
17 commercial property assessed financing program,
18 including any interest accrued and fee revenues
19 collected, shall be deposited in a separate subaccount
20 in the clean energy and energy efficiency revolving
21 loan fund established pursuant to section 196-65.5,



1 and expended only for the administration of the
2 commercial property assessed financing program;
3 provided that any surplus moneys remaining at the end
4 of each fiscal year after the payment of expenses of
5 the commercial property assessed financing program
6 shall be transferred and credited to the Hawaii green
7 infrastructure special fund established pursuant to
8 section 196-65, and may be expended for the
9 administration of the commercial property assessed
10 financing program."

11 SECTION 5. Section 196-65.5, Hawaii Revised Statutes, is
12 amended by amending subsection (e) to read as follows:

13 "(e) The authority may establish subaccounts within the
14 fund as necessary[~~-~~]; provided that, in accordance with section
15 196-64.5(c)(11), the authority shall establish a subaccount
16 within the fund into which shall be deposited all moneys,
17 including any interest accrued and fee revenues, collected as
18 assessments under the commercial property assessed financing
19 program established pursuant to section 196-64.5."

20 SECTION 6. Section 514B-4, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) If there is any unit owner other than a developer,
2 each unit shall be separately taxed and assessed, and no
3 separate tax or assessment [~~may~~] shall be rendered against any
4 common elements. The laws relating to home exemptions from
5 state property taxes are applicable to individual units, which
6 shall have the benefit of home exemption in those cases where
7 the owner of a single-family dwelling would qualify. Property
8 taxes assessed by the State or any county shall be assessed and
9 collected on the individual units and not on the property as a
10 whole. Commercial property assessed financing program
11 assessments, pursuant to section 196-64.5, may be imposed upon
12 the project, as described by the project's master deed,
13 declaration, and map pursuant to part III of this chapter;
14 provided that a commercial property assessed financing contract
15 is entered into by a condominium association with an approved
16 commercial property assessed financing lender and the authority.
17 Without limitation of the foregoing, each unit and its
18 appurtenant common interest shall be deemed to be a "parcel" and
19 shall be subject to separate assessment and taxation for all
20 types of taxes authorized by law, including[7] but not limited



1 to ~~[r]~~ other non-commercial property assessed financing program
2 special assessments."

3 SECTION 7. Section 514B-41, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The common profits of the property shall be
6 distributed among, and the common expenses shall be charged to,
7 the unit owners, including the developer, in proportion to the
8 common interest appurtenant to their respective units, except as
9 otherwise provided in the declaration or bylaws. In a mixed-use
10 project containing units for both residential and nonresidential
11 use, the charges and distributions may be apportioned in a fair
12 and equitable manner as set forth in the declaration. Except as
13 otherwise provided in subsection (c) or the declaration or
14 bylaws, all limited common element costs and expenses, including
15 but not limited to maintenance, repair, replacement, additions,
16 and improvements, including capital improvements financed by
17 commercial property assessed financing pursuant to section
18 196-64.5, shall be charged to the owner or owners of the unit or
19 units to which the limited common element is appurtenant in an
20 equitable manner as set forth in the declaration."



1 SECTION 8. Section 514B-105, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§514B-105 Association; limitations on powers. (a) The
4 declaration and bylaws [~~may~~] shall not impose limitations on the
5 power of the association to deal with the developer [~~which~~] that
6 are more restrictive than the limitations imposed on the power
7 of the association to deal with other persons.

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

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

14 (2) Regulate any behavior in or occupancy of a unit
15 [~~which~~] that violates the declaration or bylaws or
16 unreasonably interferes with the use and enjoyment of
17 other units or the common elements by other unit
18 owners; or

19 (3) Restrict the leasing of residential units to the
20 extent those rules are reasonably designed to meet
21 underwriting requirements of institutional lenders who



1 regularly lend money secured by first mortgages on
2 units in condominiums or regularly purchase those
3 mortgages.

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

6 (c) Any payments made by or on behalf of a unit owner
7 shall first be applied to outstanding common expenses that are
8 assessed to all unit owners in proportion to the common interest
9 appurtenant to their respective units[-], including commercial
10 property assessed financing assessment expenses incurred for
11 improvements financed pursuant to section 196-64.5. Only after
12 [~~said~~] the outstanding common expenses have been paid in full
13 may the payments be applied to other charges owed to the
14 association, including assessed charges to the unit such as
15 ground lease rent, utility sub-metering, storage lockers,
16 parking stalls, boat slips, insurance deductibles, and cable.
17 After these charges are paid, other charges, including unpaid
18 late fees, legal fees, fines, and interest, may be assessed in
19 accordance with an application of payment policy adopted by the
20 board; provided that if a unit owner has designated that any
21 payment is for a specific charge that is not a common expense as



1 described in this subsection, the payment may be applied in
2 accordance with the unit owner's designation even if common
3 expenses remain outstanding.

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

16 After being notified of the reasonable cost of providing
17 the information, the unit owner may withdraw the request, in
18 writing. A unit owner who withdraws a request for information
19 shall not be charged for the reasonable cost of providing the
20 information.



1 (e) Subject to any approval requirements and spending
2 limits contained in the declaration or bylaws, the association
3 may authorize the board to borrow money for the repair,
4 replacement, maintenance, operation, or administration of the
5 common elements and personal property of the project, or the
6 making of any additions, alterations, and improvements thereto;
7 provided that written notice of the purpose and use of the funds
8 is first sent to all unit owners and owners representing fifty
9 per cent of the common interest vote or give written consent to
10 the borrowing. In connection with the borrowing, including non-
11 commercial property assessed financing, the board may grant to
12 the lender the right to assess and collect monthly or special
13 assessments from the unit owners and to enforce the payment of
14 the assessments or other sums by statutory lien and foreclosure
15 proceedings. The cost of the borrowing, including, without
16 limitation, all principal, interest, commitment fees, and other
17 expenses payable with respect to the borrowing or the
18 enforcement of the obligations under the borrowing, shall be a
19 common expense of the project. For purposes of this section,
20 the financing of insurance premiums by the association within
21 the policy period shall not be deemed a loan and no lease shall



1 be deemed a loan if it provides that at the end of the lease the
2 association may purchase the leased equipment for its fair
3 market value.

4 (f) For financing assessments imposed upon the project
5 under a commercial property assessed financing program pursuant
6 to section 196-64.5 and due from the association, the cost of
7 the commercial property assessed financing, including all
8 principal, interest, commitment fees, servicing fees, and other
9 expenses payable with respect to this borrowing or the
10 enforcement of the obligations under the borrowing, shall be a
11 common expense of the project and the unit owners' proportionate
12 share of the financing assessment shall be collected in the same
13 manner as common expenses. The written consent of at least
14 fifty per cent of all unit owners to finance qualifying
15 improvements with commercial property assessed financing shall
16 include an acknowledgment that the annual financing assessment
17 required to fund debt service on the commercial property
18 assessed financing shall be included as part of the
19 association's adopted revised budget."

20 SECTION 9. Section 514B-146, Hawaii Revised Statutes, is
21 amended as follows:



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

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

6 (1) Liens for real property taxes and assessments lawfully
7 imposed by governmental authority against the unit;
8 and

9 (2) Except as provided in subsection (j), all sums unpaid
10 on any mortgage of record that was recorded [~~prior to~~]
11 before the recordation of a notice of a lien by the
12 association, and costs and expenses including
13 attorneys' fees provided in [~~such~~] the mortgages;

14 provided that a lien recorded by an association for unpaid
15 assessments shall expire six years from the date of recordation
16 unless proceedings to enforce the lien are instituted [~~prior to~~]
17 before the expiration of the lien; provided further that the
18 expiration of a recorded lien shall in no way affect the
19 association's automatic lien that arises pursuant to this
20 subsection or the declaration or bylaws. Any proceedings to
21 enforce an association's lien for any assessment shall be



1 instituted within six years after the assessment became due;
2 provided that if the owner of a unit subject to a lien of the
3 association files a petition for relief under the United States
4 Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for
5 instituting proceedings to enforce the association's lien shall
6 be tolled until thirty days after the automatic stay of
7 proceedings under section 362 of the United States Bankruptcy
8 Code (11 U.S.C. §362) is lifted.

9 The lien of the association may be foreclosed by action or
10 by nonjudicial or power of sale foreclosure, regardless of the
11 presence or absence of power of sale language in an
12 association's governing documents, by the managing agent or
13 board, acting on behalf of the association and in the name of
14 the association; provided that no association may exercise the
15 nonjudicial or power of sale remedies provided in chapter 667 to
16 foreclose a lien against any unit that arises solely from fines,
17 penalties, legal fees, or late fees, and the foreclosure of [~~any~~
18 ~~such~~] the lien shall be filed in court pursuant to part IA of
19 chapter 667.

20 In any [~~such~~] foreclosure[~~r~~] described in this section, the
21 unit owner shall be required to pay a reasonable [~~rental~~] rent



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

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

15 "(l) For purposes of subsections (j) and (k), the
16 following definitions shall apply, unless the context requires
17 otherwise:

18 "Completion" means:

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



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

3 "Regular monthly common assessments" does not include:

4 (1) Any other special assessment, except for a special
5 assessment imposed on all units as part of a budget
6 adopted pursuant to section 514B-148 [7], including
7 commercial property assessed financing assessments
8 imposed pursuant to section 196-64.5;

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

10 (3) Interest assessed by the association;

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

12 (5) Any fees or costs related to the collection or
13 enforcement of the assessment, including attorneys'
14 fees and court costs."

15 SECTION 10. Section 514B-157, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

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

20 (1) Collecting any delinquent assessments, including
21 commercial property assessed financing assessments



1 imposed pursuant to section 196-64.5, against any
2 owner's unit;

3 (2) Foreclosing any lien thereon; or

4 (3) Enforcing any provision of the declaration, bylaws,
5 house rules, and this chapter, or the rules of the
6 real estate commission;

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

16 SECTION 11. Section 667-40, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "~~[§667-40]~~ **Use of power of sale foreclosure in certain**
19 **non-mortgage situations.** A power of sale foreclosure under this
20 part may be used in certain non-mortgage situations where a law
21 or a written document contains, authorizes, permits, or provides



1 for a power of sale, a power of sale foreclosure, a power of
2 sale remedy, or a nonjudicial foreclosure. These laws or
3 written documents are limited to those involving time share
4 plans, condominium property regimes, and agreements of sale[-],
5 and commercial property assessed financing assessments imposed
6 pursuant to section 196-64.5."

7 SECTION 12. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 13. This Act shall take effect on July 1, 3000.



Report Title:

Hawaii Green Infrastructure Authority; Condominiums; Commercial Property Assessed Financing; C-PACER

Description:

Allows condominium associations to be eligible for commercial property assessed financing. Delegates all existing administrative responsibilities of the counties under the commercial property assessed financing program to the Hawaii Green Infrastructure Authority. Effective 7/1/3000. (SD1)

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

