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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1           SECTION 1. The legislature finds that city and county of  
2 Honolulu Ordinance No. 18-14 amended the county fire code to  
3 require that each high-rise residential building built on Oahu  
4 before 1975 without an automatic fire sprinkler system must  
5 undergo an assessment that evaluates building safety features  
6 and fire systems in accordance with the city and county of  
7 Honolulu's fire code and building code.

8           Subsequent amendments to the Revised Ordinances of Honolulu  
9 by city and county of Honolulu Ordinance Nos. 19-4 and 22-2  
10 offered flexibility in meeting the evaluation requirements and  
11 extended the timeframe for compliance. However, since the  
12 enactment of the two ordinances, concerns and challenges to the  
13 ordinances have been raised by residential high-rise building  
14 unit owners regarding the difficulty of achieving compliance  
15 with the fire sprinkler retrofit or alternative life safety  
16 evaluation requirements without some form of government  
17 financial assistance.



1           The legislature further finds that, according to recent  
2 reports, among the three hundred three remaining condominium  
3 properties that submitted life safety evaluations to comply with  
4 city and county of Honolulu Ordinance No. 22-2, two hundred  
5 eighty-one properties have not yet obtained passing scores while  
6 twenty-two properties have been awarded acceptable scores.

7           Earlier city and county of Honolulu tax credits and  
8 financial assistance programs were identified as being too  
9 limited to address the degree of financial assistance or public  
10 investment needed to retrofit properties for fire sprinklers or  
11 install other fire safety upgrades (Ordinance No. 22-2,  
12 committee report 44, March 16, 2022). At the same time,  
13 residential high-rise property insurance premiums have increased  
14 by approximately one hundred sixteen per cent between 2020 and  
15 2023 for affected properties, according to the department of  
16 commerce and consumer affairs interim report for S.C.R. No. 48,  
17 S.D. 1 (2023). These premium increases have made traditional  
18 bank financing for normal repairs, maintenance, and other  
19 reserve requirements even more difficult to obtain.

20           The legislature also finds that Act 183, Session Laws of  
21 Hawaii 2022, authorized within the State commercial property



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

12 The purpose of this Act is to enable residential high-rise  
13 condominium properties, including those subject to county fire  
14 safety requirements and those suffering damages from the Maui  
15 wildfires, to participate in C-PACER financing and provide more  
16 clarity to the definition of a commercial property.

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

20 "Commercial property" means any existing or new  
21 non-residential real property [~~not defined as a residential~~



1 ~~property, and shall include]~~, including any property where there  
2 is a leasehold or possessory interest in the property [~~and~~], any  
3 multi-family dwelling or townhouse consisting of five or more  
4 units, and any condominium regime having units in a building  
5 that is not less than                    feet in height, as well as  
6 agricultural property."

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

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

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



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

- 19 (2) Qualifying improvements shall be affixed to a building  
20 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~~  
16 ~~to~~] 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 assessments in  
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 be rendered against any common  
 14 elements. The laws relating to home exemptions from state  
 15 property taxes are applicable to individual units, which shall  
 16 have the benefit of home exemption in those cases where the  
 17 owner of a single-family dwelling would qualify. Property taxes  
 18 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[-]; provided that commercial property assessed financing  
 21 program non-ad valorem special tax assessments, pursuant to



1 section 196-64.5, may be levied upon the project, as described  
2 by the project's master deed, declaration, and map pursuant to  
3 part III of this chapter. Without limitation of the foregoing,  
4 each unit and its appurtenant common interest shall be deemed to  
5 be a "parcel" and shall be subject to separate assessment and  
6 taxation for all types of taxes authorized by law, including[~~7~~  
7 ~~but not limited to,~~] other non-commercial property assessed  
8 financing program special 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 as follows:

8 1. By amending subsection (c) to read:

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



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

6 2. By amending subsection (e) to read:

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



1 limitation, all principal, interest, commitment fees, and other  
2 expenses payable with respect to the borrowing or the  
3 enforcement of the obligations under the borrowing, shall be a  
4 common expense of the project.

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





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

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

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

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

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

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



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

17       The lien of the association may be foreclosed by action or  
18 by nonjudicial or power of sale foreclosure, regardless of the  
19 presence or absence of power of sale language in an  
20 association's governing documents, by the managing agent or  
21 board, acting on behalf of the association and in the name of



1 the association; provided that no association may exercise the  
2 nonjudicial or power of sale remedies provided in chapter 667 to  
3 foreclose a lien against any unit that arises solely from fines,  
4 penalties, legal fees, or late fees, and the foreclosure of any  
5 [~~such~~] lien shall be filed in court pursuant to part IA of  
6 chapter 667.

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

21 2. By amending subsection (1) to read:



1        "(1) For purposes of subsections (j) and (k), the  
2 following definitions shall apply, unless the context requires  
3 otherwise:

4        "Completion" means:

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

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

10       "Regular monthly common assessments" does not include:

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

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

17       (3) Interest assessed by the association;

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

19       (5) Any fees or costs related to the collection or  
20 enforcement of the assessment, including attorneys'  
21 fees and court costs."



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

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

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

9 (2) Foreclosing any lien thereon; or

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

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



1 SECTION 9. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 10. This Act shall take effect on July 1, 2024.



**Report Title:**

Condominiums; Conservation and Resources; Commercial Property;  
C-PACER

**Description:**

Allows high-rise residential condominium properties to be  
eligible for commercial property assessed financing. (SD2)

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not legislation or evidence of legislative intent.*

