

ACT 41

H.B. NO. 2801

A Bill for an Act Relating to Commercial Property Assessed Financing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 183, Session Laws of Hawaii 2022, authorized commercial property assessed financing, also known as commercial property assessed clean energy and resiliency, or C-PACER financing, in Hawaii. C-PACER is an alternative financing option that finances one hundred per cent of qualified capital improvement costs, with terms matching the useful life of the equipment installed, thereby making payments more affordable than a typical equipment loan. The legislature further finds that C-PACER financing can help condominium associations finance the installation of fire safety and other energy efficiency, renewable energy, water conservation, and resiliency

measures at more attractive rates and terms than may be currently available with conventional financing.

The purpose of this Act is to:

- (1) Consolidate the authority to administer a C-PACER financing program under the Hawaii green infrastructure authority by repealing the authority of counties to administer such programs and delegating all existing administrative responsibilities of the counties under the commercial property assessed financing program to the Hawaii green infrastructure authority;
- (2) Enable condominium associations to participate in C-PACER financing; and
- (3) Provide clarity to the definition of a commercial property for purposes of green infrastructure loans.

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

~~§46-80 Improvement by assessment; financing;—commercial property assessed financing program~~. [(a)] Any county having a charter may enact an ordinance, and may amend the same from time to time, providing for the making and financing of improvement districts in the county, and the improvements may be made and financed under the ordinance. The county may issue and sell bonds to provide funds for the improvements. Bonds issued to provide funds for the improvements may be either bonds when the only security therefor is the properties benefited or improved or the assessments thereon or bonds payable from taxes or secured by the taxing power of the county. If the bonds are secured only by the properties benefited or improved or the assessments thereon, the bonds shall be issued according and subject to the provisions of the ordinance. If the bonds are payable from taxes or secured by the taxing power, the bonds shall be issued according and subject to chapter 47. Except as is otherwise provided in section 46-80.1, in assessing land for improvements a county shall assess the land within an improvement district according to the special benefits conferred upon the land by the special improvement; these methods include assessment on a frontage basis or according to the area of land within an improvement district, or any other assessment method that assesses the land according to the special benefit conferred, or any combination thereof.

[(b)] ~~There is established a special improvement program to be known as a commercial property assessed financing program, which shall be administered by the Hawaii green infrastructure authority. A commercial property owner may apply to a commercial property assessed financing lender, approved by the authority, for property assessed financing to pay the cost of qualifying improvements and enter into a commercial property assessed financing contract with a commercial property assessed financing lender and the authority. Costs incurred for qualifying improvements shall be levied and collected by each county, as provided in section 196-64.5, as a non-ad valorem special tax assessment on the benefitted commercial property. The authority, on behalf of the State, shall authorize commercial property assessed financing assessment contracts as instruments of indebtedness in the form as may be prescribed by the authority. Commercial property assessed financing assessment contracts authorized to finance qualifying improvements, when the only security is the non-ad valorem special tax assessment levied against benefitted or improved commercial property, shall be excluded from any determination of the power of the State to issue general obligation bonds or funded debt for purposes of section 13 of article VII of the state constitution.~~

~~(c) Any county having a charter may enact an ordinance, and may amend the same from time to time, to establish a special improvement program containing the same elements as the commercial property assessed financing program authorized under chapter 196 and subsection (b), except that any program that is established shall be administered by the county in lieu of administration by the authority. The county shall assume all of the responsibilities of the authority provided in chapter 196 and subsection (b), including determining qualifying improvements eligible for property assessed financing. A commercial property owner may apply to the county for property assessed financing to pay the costs of qualifying improvements and enter into a commercial property assessed financing assessment contract with an approved commercial property assessed financing lender and the county. Costs incurred for qualifying improvements shall be levied and collected by each county, as provided in section 196-64.5, as a non-ad valorem special tax assessment on the benefitted commercial property. The county may issue revenue bonds to finance or refinance the improvements, and the form of any revenue bond may be a commercial property assessed financing assessment contract or other instrument prescribed by the county. Bonds issued to finance qualifying improvements, when the only security is the non-ad valorem special tax assessment levied against benefitted or improved commercial property, shall be excluded from any determination of the power of the county to issue general obligation bonds or funded debt for purposes of article VII, section 13, of the state constitution.]”~~

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

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

“Assessment” means a financing assessment imposed by the authority on a benefitted commercial property pursuant to section 196-64.5.

“Property owner” or “owner” means the owner or owners of record of commercial property, except that in the case of a condominium, “owner” shall mean the condominium association and not the owner or owners of individual residential condominium units.”

2. By amending the definitions of “commercial property” and “commercial property assessed financing assessment” to read:

“Commercial property” means [any];

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

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

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

(4) Agricultural property.

“Commercial property assessed financing assessment” or “financing assessment” means the [non-ad valorem special tax] annual assessment [that secures], secured by a lien on a property, for the repayment of financing obtained by an owner of commercial property for a qualifying improvement [and that appears on a property tax bill.] that is billed and collected by the authority.”

3. By amending the definitions of “commercial property assessed financing lender” and “commercial property assessed financing program” to read:
 ““Commercial property assessed financing lender” means a financial institution as defined pursuant to section 412:1-109, or a private or public lender approved by the authority, as the administrator of the commercial property assessed financing program, to originate commercial property assessed financing assessment contracts, and ~~[which]~~ that may include any successor or assignee of the lender as provided in the commercial property assessed financing assessment contract.

“Commercial property assessed financing program” means a program to finance qualifying improvements on commercial properties that are repaid through ~~[a non-ad valorem special tax]~~ an assessment imposed by the authority on the commercial property owner’s property [tax bill].”

4. By amending the definition of “option to purchase” to read:
 ““Option to purchase” means a legally binding agreement between a buyer and a seller~~[-, which]~~ that gives the buyer the option, but not the obligation, to purchase the solar energy system or other installed equipment at an agreed upon price, prior to the maturity date of the power purchase agreement or energy performance contract.”

5. By deleting the definition of “county director of finance” or “county director of budget and fiscal services”.

~~[““County director of finance” or “county director of budget and fiscal services” means the officer or officers of the county charged with the responsibility of administering the real property taxation function of the county.”]~~

6. By deleting the definition of “non-ad valorem special tax assessment”.

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

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

~~“[§196-64.5] Commercial property assessed financing program. (a) [Any county having a charter may authorize the authority, pursuant to this section, to offer a commercial property assessed financing program within its jurisdiction and may contract with the authority for that purpose, and any county having a charter may enact its own commercial property assessed financing program pursuant to this section and section 46-80(b) and (c).] There is established a commercial property assessed financing program to be administered by the authority to enable owners of qualifying property to access non-traditional financing for qualifying improvements. Program financing shall be secured by a voluntary assessment imposed on the benefitted property that is secured by a statutory lien; provided that the statutory lien shall have priority over all other liens except the liens for property taxes and other assessments lawfully imposed by a governmental authority against the property.~~

~~(b) [The] In administering the commercial property assessed financing program, the authority~~[-, as the administrator of the commercial property assessed financing program,~~ shall coordinate with each county to bill and collect a non-ad valorem special tax assessment on a benefitted commercial property as a repayment mechanism on the real property tax bill or stand-alone bill. The non-ad valorem special tax] may impose a governmental lien to secure commercial property assessed financing against real property specially benefitted pursuant to the program established by this section. Commercial property assessed financing shall be secured by the voluntary governmental lien and repaid in assessment~~

installments in accordance with the commercial property assessed financing assessment contract and billed and collected by the authority. The principal amount of financing made pursuant to this section shall be a governmental lien against each lot or parcel of the property, or in the case of a condominium, a governmental lien against the condominium association, assessed for a period beginning on the date of the notice of the assessment and ending once payment is made in full or otherwise satisfied in accordance with the commercial property assessed financing assessment contract; provided that the lien shall have priority over all other liens except the liens for property taxes and other assessments lawfully imposed by governmental authority against the property; provided further that for multiple liens of assessments, the earlier lien shall have priority over the later lien. Neither the governmental lien nor the assessment for repayment on a benefitted commercial property pursuant to this section shall [not be] constitute a [generally applicable] tax upon the real property [but shall be collected in the same manner as real property taxes as a result of a benefit to the commercial property owners for qualifying improvements.] within the meaning of any constitutional or statutory provision. The requirement of lender consent pursuant to subsection (c)(7) shall be satisfied for the priority of the lien to be valid.

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

- (1) A commercial property owner of qualifying property in the State may apply to the authority for approval to use commercial property assessed financing to pay the cost of qualifying improvements and enter into a commercial property assessed financing contract with an approved commercial property assessed financing lender and the authority;
- (+)(2) A commercial property assessed financing lender may enter into a commercial property assessed financing assessment contract to finance or refinance a qualifying improvement only with the [~~re-~~recorded] owner of the [~~affected~~] commercial property and the authority. Each commercial property assessed financing assessment contract shall be executed by the authority as the administrator of the commercial property assessed financing program. A commercial property assessed financing assessment contract shall require the authority to assign, pledge, and transfer revenues to be derived from commercial property assessed financing assessments to one or more commercial property assessed financing lenders as security for their direct financing of qualifying improvements. The obligation of the authority to transfer the revenues to one or more commercial property assessed financing lenders shall be evidenced by the commercial property assessed financing assessment contract as an instrument of indebtedness in a form as may be prescribed by the authority. No other bonds shall be required to be issued by the State, the authority, any county, or any other public entity in order to cause qualifying improvements to be funded through a commercial property assessed financing assessment contract;
- (-)(3) Qualifying improvements shall be affixed to a building or facility or affixed to real property, subject to the commercial property assessed financing assessments;
- (-)(3) (4) Before entering into a commercial property assessed financing assessment contract, the commercial property assessed financing lender shall reasonably determine that:

- (A) The commercial property owner is able to borrow the amount of the property assessed financing using reasonable commercial underwriting practices;
- (B) All property taxes applicable to the commercial property, and any other assessments levied on the same bill as property taxes, are paid; and
- (C) There are no involuntary liens applicable to the commercial property, including but not limited to construction liens, that will not be paid or satisfied upon the closing of the financing;
- [(4)] (5) The commercial property assessed financing assessment contract shall include the amount of an annual assessment, including interest, over a fixed term that ~~[will appear as a non-ad valorem special tax assessment on the commercial property owner's tax bill or stand-alone bill annually;]~~ shall be billed annually or as otherwise specified by the authority and collected by the authority in accordance with the commercial property assessed financing lender's amortization schedule;
- [(5)] (6) The commercial property assessed financing assessment contract, or summary memorandum of the contract, shall be recorded by the commercial property assessed financing lender in the public records of the State ~~[or of the county within which the commercial property is located]~~ within five days after execution by the parties to the contract. The recorded contract shall provide constructive notice of the ~~[levy of;]~~ lien and obligation of the commercial property owner to pay~~[-]~~ the commercial property assessed financing assessment. ~~The entire principal amount of the commercial property assessed financing assessment [to be levied on the commercial property]~~ contract shall be a [non-ad valorem special tax assessment and a] governmental statutory lien against the commercial property [on a parity with the lien of general real property taxes and the lien of any other assessments levied under section 46-80, from] that shall be assessed for a period beginning on the date of recordation entered into pursuant to this section [until] and ending once paid or satisfied in accordance with the commercial property assessed financing assessment contract; provided that the lien shall have priority over all other liens except the liens for property taxes and other assessments lawfully imposed by a governmental authority against the property;
- [(6)] (7) Before entering into a commercial property assessed financing assessment contract for any commercial property, the commercial property owner shall ~~[provide]~~:
- (A) (i) Provide the authority and the commercial property assessed financing lender with evidence of the written consent of each holder or loan servicer of any mortgage that encumbers or otherwise secures the commercial property, where the consent is in the sole and absolute discretion of each holder or loan servicer of a mortgage on the commercial property, at the time of the execution of the commercial property assessed financing assessment contract by the parties; provided that the consents shall be in a form prescribed by the authority; and
- (ii) For a commercial property that is a condominium organized under chapter 514B, or preceding state law governing condominium property regimes, as an alternative to clause (i), the condominium association shall provide

- the authority and the commercial property assessed financing lender with evidence of the written consent of each creditor with a valid Uniform Commercial Code financing statement or mortgage recorded with the bureau of conveyances that encumbers or otherwise secures the condominium, where the consent is in the sole and absolute discretion of each creditor, at the time of the execution of the commercial property assessed financing assessment contract by the parties; provided that the consents shall be in a form prescribed by the authority; or
- (B) Agree to the commercial property assessed financing lender's remedies if a default occurs, including foreclosure, in accordance with the terms and conditions of the commercial property assessed financing contract;
- (7) (8) At or before the time a purchaser executes a contract for the sale and purchase of any commercial property for which a ~~[non-ad valorem special tax assessment has been levied]~~ statutory lien has been recorded under this part and has an unpaid balance due, the seller shall give the prospective purchaser a written disclosure statement notifying the prospective purchaser of the commercial property assessed financing assessment;
- (8) (9) The term of the commercial property assessed financing assessment contract shall not exceed the useful life of the qualifying improvement being installed or the weighted average useful life of all qualifying improvements being financed if multiple qualifying improvements are being financed, as determined by the authority;
[and
- (9) (10) [Before the execution by the authority of the first commercial property assessed financing assessment contract in a county, the authority shall enter into a contract with the county director of finance or county director of budget and fiscal services to cause the county director to levy and collect any commercial property assessed financing assessment approved and certified by the authority to the director for collection. The county director shall levy] Except as otherwise provided for commercial property assessed financing assessments under chapter 514B, the authority shall bill and collect any approved commercial property assessed financing assessment [approved by the authority]. Each commercial property assessed financing assessment that is approved for collection shall be ~~[a non-ad valorem special tax assessment and shall be]~~ billed and collected in [the same manner as general real property taxes are collected and be subject to the same] accordance with the commercial property assessed financing lender's amortization schedule. The authority may charge interest or other fees on assessment amounts not paid on a timely basis. The authority shall develop guidelines and procedures providing for the method of undertaking and financing qualifying improvements as well as penalties [and same procedure], collection processes, sale, and lien priority, [subject to this section,] in the case of delinquency as is provided [by general law for the default of the payment of real property taxes, unless another procedure, including stand-alone billing and collection, is agreed upon by the authority and the county director. The county director may add to any commercial property assessed financing assessment reasonable administrative costs as agreed upon by the authority and the county

~~director.] in this section. The [county director] authority shall remit any commercial property assessed financing assessments collected, less any reasonable administrative costs [added by the county director, to or on the direction of the authority, for further application by the authority] to pay each commercial property assessed financing lender [and to pay the reasonable administrative costs of the authority] in accordance with each commercial property assessed financing assessment contract. [The county director shall covenant in a contract or instrument, for] For the benefit of any commercial property assessed financing lender [or bondholder, to], the authority shall commence and diligently pursue to completion the foreclosure of delinquent commercial property assessed financing assessments and any penalty, interest, and costs by advertisement and sale and with the same effect as provided by general law for sales of real property pursuant to [default in payment of property taxes. The covenant] chapter 667 and in accordance with the terms of the commercial property assessed financing contract. Any guidelines and procedures developed pursuant to this paragraph shall specify a deadline for commencement of the foreclosure sale and any other terms and conditions the [county director of finance or county director of budget and fiscal services] authority determines reasonable regarding the foreclosure sale. For commercial property assessed financing assessments levied but not paid when due pursuant to a commercial property assessed financing assessment contract, the foreclosure of the lien of the commercial property assessed financing assessment, lien of general real property taxes or any other assessments levied under section 46-80, or any other lien foreclosed, shall not accelerate or extinguish the remaining term of the commercial property assessed financing assessment as approved in the commercial property assessed financing assessment contract[-]; and~~

- (11) All moneys collected for assessments for the commercial property assessed financing program, including any interest accrued and fee revenues collected, shall be deposited in a separate subaccount in the clean energy and energy efficiency revolving loan fund established pursuant to section 196-65.5 and expended only for the administration of the commercial property assessed financing program; provided that any surplus moneys remaining at the end of each fiscal year after the payment of expenses of the commercial property assessed financing program shall be transferred and credited to the Hawaii green infrastructure special fund established pursuant to section 196-65 and may be expended for the administration of the commercial property assessed financing program.”

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

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

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

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

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

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

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

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

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

- (1) Prevent any use of a unit [~~which~~] that violates the declaration or bylaws;
- (2) Regulate any behavior in or occupancy of a unit [~~which~~] that violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; or
- (3) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages.

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

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

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

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

(e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing. In connection with the borrowing, including non-commercial property assessed financing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, the financing of insurance premiums by the association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value.

(f) For financing assessments imposed upon the project under a commercial property assessed financing program pursuant to section 196-64.5 and due from the association, the cost of the commercial property assessed financing, including all principal, interest, commitment fees, servicing fees, and other expenses payable with respect to this borrowing or the enforcement of the obli-

gations under the borrowing, shall be a common expense of the project and the unit owners' proportionate share of the financing assessment shall be collected in the same manner as common expenses. The written consent of at least fifty per cent of all unit owners to finance qualifying improvements with commercial property assessed financing shall include an acknowledgment that the annual financing assessment required to fund debt service on the commercial property assessed financing shall be included as part of the association's adopted revised budget."

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

1. By amending subsection (a) to read:

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

- (1) Liens for real property taxes and assessments lawfully imposed by governmental authority against the unit; and
- (2) Except as provided in subsection (j), all sums unpaid on any mortgage of record that was recorded ~~[prior to]~~ before the recordation of a notice of a lien by the association, and costs and expenses including attorneys' fees provided in ~~[such]~~ the mortgages;

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

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

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

2. By amending subsection (l) to read:

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

“Completion” means:

- (1) In a nonjudicial power of sale foreclosure, when the affidavit after public sale is recorded pursuant to section 667-33; and
- (2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

“Regular monthly common assessments” does not include:

- (1) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514B-148[;], including commercial property assessed financing assessments imposed pursuant to section 196-64.5;
- (2) Late charges, fines, or penalties;
- (3) Interest assessed by the association;
- (4) Any lien arising out of the assessment; or
- (5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys’ fees and court costs.”

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

“(a) All costs and expenses, including reasonable attorneys’ fees, incurred by or on behalf of the association for:

- (1) Collecting any delinquent assessments, including commercial property assessed financing assessments imposed pursuant to section 196-64.5, against any owner’s unit;
- (2) Foreclosing any lien thereon; or
- (3) Enforcing any provision of the declaration, bylaws, house rules, and this chapter, or the rules of the real estate commission;

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

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

“~~§667-40~~ Use of power of sale foreclosure in certain non-mortgage situations. A power of sale foreclosure under this part may be used in certain non-mortgage situations where a law or a written document contains, authorizes, permits, or provides for a power of sale, a power of sale foreclosure, a power of sale remedy, or a nonjudicial foreclosure. These laws or written documents are limited to those involving time share plans, condominium property regimes, and agreements of sale[-], and commercial property assessed financing assessments imposed pursuant to section 196-64.5.”

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

SECTION 13. This Act shall take effect on July 1, 2024.

(Approved May 30, 2024.)