

JAN 24 2018

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# A BILL FOR AN ACT

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RELATED TO LAND-SECURED FINANCING.

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

1       SECTION 1. The legislature finds that with budgets  
2       tightening, the counties are finding it more difficult to  
3       support their annual operating costs. In some jurisdictions,  
4       the use of land-secured financing has been used by various  
5       government agencies to fund infrastructure and other  
6       improvements. The counties are authorized under existing  
7       statutes to create improvement districts and community  
8       facilities districts to finance special improvements; however,  
9       these types of land-secured financing are used sparingly in  
10      Hawaii. The legislature finds that land-secured financing  
11      provides an opportunity for the counties to support new and  
12      existing development-related operating costs, such as police,  
13      fire protection, and maintenance services, in addition to  
14      special improvements and infrastructure.

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



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

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

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



1 by the properties benefited or improved or the assessments  
2 thereon, the bonds shall be issued according and subject to the  
3 provisions of the ordinance. If the bonds are payable from  
4 taxes or secured by the taxing power, the bonds shall be issued  
5 according and subject to chapter 47. Except as is otherwise  
6 provided in section 46-80.1, in assessing land for improvements  
7 a county shall assess the land within an improvement district  
8 according to the special benefits conferred upon the land by the  
9 special improvement; these methods include assessment on a  
10 frontage basis or according to the area of land within an  
11 improvement district, or any other assessment method [~~which~~]  
12 that assesses the land according to the special benefit  
13 conferred, or any combination thereof. A county may apply up to  
14 \_\_\_\_\_ per cent of the assessments or tax revenues to cover the  
15 administrative expenses of the counties in creating and  
16 administering an improvement district and the associated  
17 assessments, fees, and taxes.

18 (b) The following types of county services may be provided  
19 within and financed by an improvement district pursuant to  
20 subsection (a):



(1) Police protection services, including criminal justice services; provided that criminal justice services shall be limited to providing services for jails, detention facilities, and juvenile halls;

(2) Fire protection and suppression services;

(3) Ambulance and paramedic services;

(4) Recreation program services;

(5) Maintenance and lighting of parks, parkways, streets, roads, and open spaces;

(6) Flood and storm protection services, including the operation and maintenance of storm drainage systems;

(7) Services with respect to removal or remedial action, as defined in section 128D-1, for the cleanup of any hazardous substance, as defined in section 128D-1, released or threatened to be released into the environment; and

(8) Maintenance of the capital improvements that are financed by improvement districts.

An improvement district assessment levied pursuant to this section may finance the services authorized in this subsection for a new or existing improvement district, whether the services



1 were provided in the area constituting the improvement district  
2 before the district was created, or to the extent that they are  
3 in addition to those services that were provided in the area  
4 constituting the improvement district before the district was  
5 created; provided that any additional services may not supplant  
6 services already available within the area when the improvement  
7 district was created."

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

10 "§46-80.1 Community facilities district. (a) Any county  
11 having a charter may enact an ordinance, and may amend the same  
12 from time to time, providing for the creation of community  
13 facilities districts to finance special improvements in the  
14 county[-] and operating expenses for certain county services,  
15 pursuant to subsection (b). The special improvements and county  
16 services described in subsection (b) may be provided and  
17 financed under the ordinance. The county shall have the power  
18 to levy and assess a special tax on property located in a  
19 district to finance the special improvements and to pay the debt  
20 service on any bonds issued to finance the special improvements.  
21 The county may issue and sell bonds to provide funds for the



1 special improvements, or, if requested by the county, the State  
2 may issue and sell revenue bonds under section 201H-72 [-];  
3 provided that bonds may not be issued pursuant to this section  
4 to fund any of the county services specified in subsection (b);  
5 provided however that bonds may be issued to fund capital  
6 facilities to be used in providing the county services specified  
7 in subsection (b). Bonds issued to provide funds for the  
8 special improvements may be either: bonds secured only by the  
9 properties included in the district [~~and/or~~] or the special  
10 taxes thereon, or both, or bonds payable from general taxes  
11 [~~and/or~~] or secured by the general taxing power of the  
12 county[-], or both. If the bonds are secured only by the  
13 properties included in the district [~~and/or~~] or the special  
14 taxes thereon, or both, the bonds shall be issued according and  
15 subject to the provisions of the ordinance. If the bonds are  
16 payable from general taxes or secured by the general taxing  
17 power, the bonds shall be issued according and subject to  
18 chapter 47. A county may apply up to \_\_\_\_\_ per cent of the  
19 special or general tax revenues to cover the administrative  
20 expenses of the counties in creating and administering a  
21 community facilities district and the associated fees and taxes.



1        (b) The following types of county services may be provided  
2 and financed by a community facilities district pursuant to  
3 subsection (a):

4        (1) Police protection services, including criminal justice  
5 services; provided that criminal justice services  
6 shall be limited to providing services for jails,  
7 detention facilities, and juvenile halls;

8        (2) Fire protection and suppression services;

9        (3) Ambulance and paramedic services;

10       (4) Recreation program services;

11       (5) Maintenance and lighting of parks, parkways, streets,  
12 roads, and open spaces;

13       (6) Flood and storm protection services, including the  
14 operation and maintenance of storm drainage systems;

15       (7) Services with respect to removal or remedial action,  
16 as defined in section 128D-1, for the cleanup of any  
17 hazardous substance, as defined in section 128D-1,  
18 released or threatened to be released into the  
19 environment; and

20       (8) Maintenance of the capital improvements that are  
21 financed by community facilities districts.



1       A community facilities district special tax assessed  
2 pursuant to this section may finance the services authorized in  
3 this subsection for a new or existing community facility  
4 district, whether the services were provided in the area  
5 constituting the community facilities district before the  
6 district was created, or to the extent that they are in addition  
7 to those services that were provided in the area constituting  
8 the community facilities district before the district was  
9 created; provided that any additional services may not supplant  
10 services already available within the area when the community  
11 facilities district was created.

12       ~~[(b)]~~ (c) There is no requirement that the special tax  
13 imposed by ordinance pursuant to this section be fixed in an  
14 amount or apportioned on the basis of special benefit to be  
15 conveyed on property by the special improvement, or that the  
16 special improvement convey a special benefit on any property in  
17 the district. It shall be sufficient that the governing body of  
18 the county determines that the property to be subject to the  
19 special tax is improved or benefited by the special improvement  
20 in a general manner or in any other manner. The special  
21 improvement may also benefit property outside the district. The





1 special taxes assessed pursuant to this section shall be a lien  
2 upon the property assessed. The lien shall have priority over  
3 all other liens except the lien of general real property taxes  
4 and the lien of assessments levied under section 46-80. The  
5 lien of special taxes assessed pursuant to this section shall be  
6 on a parity with the lien of general real property taxes and the  
7 lien of assessments levied under section 46-80, except to the  
8 extent the law or assessment ordinance provides that the lien of  
9 assessments levied under section 46-80 shall be subordinate to  
10 the lien of general real property taxes.

11 ~~[(e)]~~ (d) The ordinance shall describe the types of  
12 special improvements that may be undertaken and financed. In  
13 addition, the ordinance shall include, but not be limited to,  
14 procedures for:

- 15 (1) Creating community facilities districts (and zones  
16 therein), including specific time spans for the  
17 existence of each district;
- 18 (2) Apportioning special taxes on real properties within a  
19 community facilities district;
- 20 (3) Providing notice to and opportunity to be heard by  
21 owners of property proposed to be subject to the



1 special tax (the affected owners), subject to waiver  
2 by one hundred per cent of the affected owners,  
3 including termination of proceedings if the affected  
4 owners of more than fifty-five per cent of the  
5 property, or if more than fifty-five per cent of the  
6 affected owners of the property, in the community  
7 facilities district proposed to be subject to the  
8 special tax protest in writing at the hearing. The  
9 ordinance shall also provide that if a lease requires  
10 the lessee to pay the proposed special tax, the  
11 ordinance shall state that the affected owner may  
12 waive this requirement in writing and that the  
13 affected owner refrain from imposing upon any  
14 successor lessee the obligation to pay the special  
15 tax. The ordinance shall also provide that if the  
16 affected owner fails to waive the requirement that the  
17 lessee pay the proposed tax, then all the rights for  
18 notice, hearing, and protest contained in this  
19 paragraph shall inure to the benefit of the original  
20 lessee or any subsequent lessee;



- 1       (4) Provide notice to buyers or lessees of the property
- 2           who would be required to pay the special tax;
- 3       (5) Fixing, levying, collecting, and enforcing the special
- 4           taxes against the properties affected thereby
- 5           (including penalties for delinquent payment and sales
- 6           for default);
- 7       (6) Making changes in the community facilities district,
- 8           in the special taxes, or in the special improvements
- 9           to be financed or provided;
- 10       (7) The acquisition or construction of the special
- 11           improvements;
- 12       (8) The issuance of bonds to pay all or part of the cost
- 13           of the special improvements (including costs of
- 14           issuance, reserves, capitalized interest, credit
- 15           enhancement, and any other related expenses);
- 16       (9) Refunding bonds previously issued;
- 17       (10) The establishment and handling of a separate special
- 18           fund or funds to pay or secure ~~[such]~~ the bonds or to
- 19           pay for acquisition or construction of special
- 20           improvements or any other related expenses; ~~[and]~~



1        (11) The provision and financing of operating expenses for  
2                    certain county services by community facilities  
3                    districts, pursuant to subsection (b); and

4        ~~[(11)]~~ (12) Other matters as the council shall determine to  
5                    be necessary or proper.

6            The amount of special taxes may include amounts determined  
7 by the council to be necessary or reasonable to cover  
8 administration and collection of the assessments, administration  
9 of the bonds or of the program authorized by this section,  
10 replenishment of reserves, arbitrage rebate, and a reasonable  
11 financing fee.

12        ~~[(d)]~~ (e) Each issue of bonds shall be authorized by  
13 ordinance, separate from the foregoing procedural ordinance, and  
14 shall be in ~~[such]~~ the amounts, denominations, forms, executed  
15 in ~~[such]~~ a manner, payable at ~~[such]~~ a place or places, at  
16 ~~[such]~~ the time or times, at ~~[such]~~ an interest rate or rates  
17 (either fixed or variable), with ~~[such]~~ a maturity date or dates  
18 and terms of redemption, security (including pledge of proceeds,  
19 special taxes and liens therefor), credit enhancement,  
20 administration, investment of proceeds and special tax receipts,  
21 default, remedy, or other terms and conditions as the council



1 deems necessary or convenient. The bonds shall be sold in the  
2 manner and at the price or prices determined by the council.

3       ~~[(e)]~~ (f) This section is a special improvement statute  
4 ~~[which]~~ that implements section 12 of article VII of the state  
5 constitution and provides a complete, additional, and  
6 alternative method of doing the things authorized herein; and  
7 the creation of districts, levying, assessments and collection  
8 of special taxes, issuance of bonds and other matters covered by  
9 this section, or by the procedural or bond ordinances authorized  
10 by this section, need not comply with any other law applicable  
11 to these matters. Bonds issued under this section, when the  
12 only security for ~~[such]~~ the bonds is the special taxes or liens  
13 on the property in the district subject thereto, shall be  
14 excluded from any determination of the power of a county to  
15 issue general obligation bonds or funded debt for purposes of  
16 section 13 of article VII of the state constitution.

17       ~~[(f)]~~ (g) Notwithstanding any other law, no action or  
18 proceeding to question the validity of or enjoining any  
19 ordinance, action, or proceeding undertaken pursuant hereto  
20 (including the determination of the amount of any special tax  
21 levied with respect to any property or the levy or assessment



1 thereof), or any bonds issued or to be issued pursuant thereto  
2 or under this section, shall be maintained unless begun within  
3 thirty days of the adoption of the ordinance, determination,  
4 levy, assessment or other act, as the case may be, and, in the  
5 case of bonds, within thirty days after adoption of the  
6 ordinance authorizing the issuance of those bonds.

7       ~~[(g)]~~ (h) Bonds issued pursuant to this section and the  
8 interest thereon and other income therefrom shall be exempt from  
9 any and all taxation by the State or any county or other  
10 political subdivision thereof, except inheritance, transfer, and  
11 estate taxes.

12       ~~[(h)]~~ (i) Properties of entities of the state, federal, or  
13 county governments, except as provided in subsection ~~[(i)]~~ (j),  
14 shall be exempt from the special tax. No other properties or  
15 entities are exempt from the special tax unless the properties  
16 or entities are expressly exempted in the ordinance of formation  
17 to establish a district adopted pursuant to this chapter or in  
18 an ordinance of consideration to levy a new special tax or  
19 special taxes or to alter the rate or method of apportionment of  
20 an existing special tax as provided in this section.

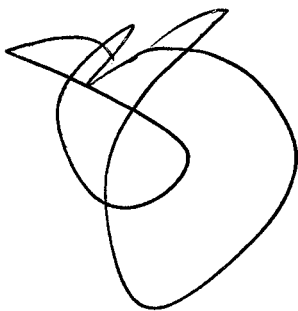


1        [~~(i)~~] (j) If a public body owning property, including  
 2 property held in trust for any beneficiary, which is exempt from  
 3 a special tax pursuant to subsection [~~(h)~~], (i), grants  
 4 leasehold or other possessory interest in the property to a  
 5 nonexempt person or entity, the special tax, notwithstanding  
 6 subsection [~~(h)~~], (i), shall be levied on the leasehold or  
 7 possessory interest and shall be payable by the lessee."

8        SECTION 4. Statutory material to be repealed is bracketed  
 9 and stricken. New statutory material is underscored.

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

11        INTRODUCED BY:



David J. [Signature]  
Francis J. [Signature]  
Dennis DeLo [Signature]  
[Signature]  
Michelle Kudani  
[Signature]



# S.B. NO. 3057

**Report Title:**

Counties; Land-Based Financing; Improvement District; Community Facilities District

**Description:**

Expands the authority of counties to use land-based financing to support operating costs for certain county services provided within improvement districts and community facilities districts. Adds county maintenance of the capital improvements to be land-based financed. Authorizes counties to use up to            per cent of the assessment or tax revenues to cover administrative expenses in creating and administering the district and the associated assessments, fees, and taxes.

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

