
A BILL FOR AN ACT

RELATING TO FINANCING.

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

1 SECTION 1. The legislature finds that the tension between
2 protecting the health and safety of Hawaii's residents and
3 visitors from the coronavirus and its highly contagious
4 variants, while managing the economic health of Hawaii's
5 hospitality industry and small businesses over the past two
6 years has heightened the importance of diversifying Hawaii's
7 economic base while simultaneously investing resources toward
8 recovery efforts. Additionally, while the coronavirus disease
9 2019 pandemic has demonstrated the importance of ensuring the
10 health of our people and economic health, the legislature also
11 finds that it is equally important to invest resources to ensure
12 Hawaii's environmental health.

13 As an example, the legislature finds that the State's
14 streams, groundwater, and ocean are being harmed by nonpoint
15 contamination sources that flow directly off the land, rather
16 than through pipes or ditches. Cesspools are a nonpoint
17 contamination source of great concern. These substandard



1 systems are essentially holes in the ground that do not treat
2 wastewater but merely dispose of polluted wastewater.

3 There are approximately eighty-eight thousand cesspools in
4 the State, with nearly fifty thousand on Hawaii island,
5 approximately fourteen thousand on Kauai, over twelve thousand
6 on Maui, over eleven thousand on Oahu, and approximately one
7 thousand four hundred on Molokai. Collectively, the State's
8 cesspools release more than fifty-three million gallons of
9 untreated sewage into the ground each day. Hawaii relies on
10 groundwater for ninety per cent of its drinking water.

11 In response to the State's cesspool pollution problem,
12 legislation was enacted in 2017 that requires all cesspools not
13 excluded by the director of health to be upgraded or converted
14 to director of health-approved wastewater systems or connected
15 to sewage systems by January 1, 2050; however, cesspool
16 conversions, which are estimated to cost some \$1,300,000,000,
17 have been lagging.

18 The legislature further finds that Hawaii is susceptible to
19 property loss due to hurricanes, tropical storms, and strong
20 winds. The best long-term solution to reducing potential damage
21 is the statewide use of wind resistive devices. While owners



1 should inspect, repair, and reinforce their property to prepare
2 for the possibility of a hurricane making landfall, the
3 inspection, repair, and reinforcement consume resources from the
4 owners' budgets. Improved properties that are not using energy
5 conservation or production strategies contribute to the burden
6 and reliance on fossil fuels. Improved properties not equipped
7 with wind or flood resistant qualifying improvements contribute
8 to the burden affecting all properties resulting from potential
9 wind or flood damage. Improved properties that do not use
10 septic tanks or are not connected to wastewater sewage systems
11 contribute to water quality problems affecting the State, and
12 properties that are not protected from harmful environmental
13 health hazards contribute to the environmental health burdens
14 affecting the State.

15 In order to make qualifying improvements more affordable
16 and assist property owners who wish to undertake such
17 improvements, the legislature finds that there is a compelling
18 state interest in enabling property owners to voluntarily
19 finance such improvements with local government assistance.
20 Innovative, non-traditional financing options and repayment



1 mechanisms help bridge financing gaps, attract private capital,
2 and address specific market failures and institutional barriers.

3 Providing non-traditional financing options to assist
4 eligible commercial property owners for the upgrade, conversion,
5 or connection to municipal or private wastewater systems,
6 installation of energy conservation, renewable energy retrofits,
7 improve a commercial property's resilience and remove health
8 hazards while facilitating other allowable purposes by
9 addressing access to capital obstacles and enabling the
10 financing of qualifying improvements through the execution of
11 commercial property assessment financing contracts. The related
12 imposition of voluntary assessments is reasonable and necessary
13 to serve and achieve a compelling state interest and is
14 necessary for the prosperity and welfare of the State and its
15 commercial property owners.

16 Additionally, leveraging these non-traditional financing
17 options and repayment mechanisms will accelerate economic
18 recovery and economic diversification efforts statewide.

19 The purpose of this Act is to:

20 (1) Establish a commercial property assessed financing
21 program; and



1 (2) Authorize property assessed financing for commercial
2 properties.

3 SECTION 2. Chapter 196, Hawaii Revised Statutes, is
4 amended by adding a new section to part IV to be appropriately
5 designated and to read as follows:

6 "§196- Commercial property assessed financing program.

7 (a) Any county having a charter may authorize the authority,
8 pursuant to this section, to offer a commercial property
9 assessed financing program within its jurisdiction and may
10 contract with the authority for that purpose, and any county
11 having a charter may enact its own commercial property assessed
12 financing program pursuant to this section and section 46-80(b)
13 and (c).

14 (b) The authority, as the administrator of the commercial
15 property assessed financing program, shall coordinate with each
16 county to bill and collect a non-ad valorem special tax
17 assessment on a benefitted commercial property as a repayment
18 mechanism on the real property tax bill or stand-alone bill.

19 The non-ad valorem special tax assessment on a benefitted
20 commercial property shall not be a generally applicable tax upon
21 the real property but shall be collected in the same manner as



1 real property taxes as a result of a benefit to the commercial
2 property owners for qualifying improvements.

3 (c) The authority shall design a commercial property
4 assessed financing program authorized under this section and
5 section 46-80(b) that addresses market needs while attracting
6 private capital and that shall, at a minimum, include the
7 following elements:

8 (1) A commercial property assessed financing lender may
9 enter into a commercial property assessed financing
10 assessment contract to finance or refinance a
11 qualifying improvement only with the recorded owner of
12 the affected commercial property and the authority.
13 Each commercial property assessed financing assessment
14 contract shall be executed by the authority as the
15 administrator of the commercial property assessed
16 financing program. A commercial property assessed
17 financing assessment contract shall require the
18 authority to assign, pledge, and transfer revenues to
19 be derived from commercial property assessed financing
20 assessments to one or more commercial property
21 assessed financing lenders as security for their



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

13 (2) Qualifying improvements shall be affixed to a building
14 or facility or affixed to real property, subject to
15 the commercial property assessed financing
16 assessments;

17 (3) Before entering into a commercial property assessed
18 financing assessment contract, the commercial property
19 assessed financing lender shall reasonably determine
20 that:



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



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

17 (6) Before entering into a commercial property assessed
18 financing assessment contract for any commercial
19 property, the commercial property owner shall provide
20 the authority and the commercial property assessed
21 financing lender with evidence of the written consent



1 of each holder or loan servicer of any mortgage that
2 encumbers or otherwise secures the commercial
3 property, where the consent is in the sole and
4 absolute discretion of each holder or loan servicer of
5 a mortgage on the commercial property, at the time of
6 the execution of the commercial property assessed
7 financing assessment contract by the parties; provided
8 that the consents shall be in a form prescribed by the
9 authority;

10 (7) At or before the time a purchaser executes a contract
11 for the sale and purchase of any commercial property
12 for which a non-ad valorem special tax assessment has
13 been levied 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) The term of the commercial property assessed financing
19 assessment contract shall not exceed the useful life
20 of the qualifying improvement being installed or the
21 weighted average useful life of all qualifying



1 improvements being financed if multiple qualifying
2 improvements are being financed, as determined by the
3 authority; and

4 (9) Before the execution by the authority of the first
5 commercial property assessed financing assessment
6 contract in a county, the authority shall enter into a
7 contract with the county director of finance or county
8 director of budget and fiscal services to cause the
9 county director to levy and collect any commercial
10 property assessed financing assessment approved and
11 certified by the authority to the director for
12 collection. The county director shall levy and
13 collect any commercial property assessed financing
14 assessment approved by the authority. Each commercial
15 property assessed financing assessment that is
16 approved for collection shall be a non-ad valorem
17 special tax assessment and shall be collected in the
18 same manner as general real property taxes are
19 collected and be subject to the same penalties and
20 same procedure, sale, and lien priority, subject to
21 this section, in the case of delinquency as is



1 provided by general law for the default of the payment
2 of real property taxes, unless another procedure,
3 including stand-alone billing and collection, is
4 agreed upon by the authority and the county director.
5 The county director may add to any commercial property
6 assessed financing assessment reasonable
7 administrative costs as agreed upon by the authority
8 and the county director. The county director shall
9 remit any commercial property assessed financing
10 assessments collected, less any reasonable
11 administrative costs added by the county director, to
12 or on the direction of the authority, for further
13 application by the authority to pay each commercial
14 property assessed financing lender and to pay the
15 reasonable administrative costs of the authority in
16 accordance with each commercial property assessed
17 financing assessment contract. The county director
18 shall covenant in a contract or instrument, for the
19 benefit of any commercial property assessed financing
20 lender or bondholder, to commence and diligently
21 pursue to completion the foreclosure of delinquent



1 commercial property assessed financing assessments and
2 any penalty, interest, and costs by advertisement and
3 sale and with the same effect as provided by general
4 law for sales of real property pursuant to default in
5 payment of property taxes. The covenant shall specify
6 a deadline for commencement of the foreclosure sale
7 and any other terms and conditions the county director
8 of finance or county director of budget and fiscal
9 services determines reasonable regarding the
10 foreclosure sale. For commercial property assessed
11 financing assessments levied but not paid when due
12 pursuant to a commercial property assessed financing
13 assessment contract, the foreclosure of the lien of
14 the commercial property assessed financing assessment,
15 lien of general real property taxes or any other
16 assessments levied under section 46-80, or any other
17 lien foreclosed, shall not accelerate or extinguish
18 the remaining term of the commercial property assessed
19 financing assessment as approved in the commercial
20 property assessed financing assessment contract."



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

3 "**§46-80 Improvement by assessment; financing[-];**
4 **commercial property assessed financing program.** (a) Any county
5 having a charter may enact an ordinance, and may amend the same
6 from time to time, providing for the making and financing of
7 improvement districts in the county, and [~~such~~] the improvements
8 may be made and financed under [~~such~~] the ordinance. The county
9 may issue and sell bonds to provide funds for [~~such~~] the
10 improvements. Bonds issued to provide funds for [~~such~~] the
11 improvements may be either bonds when the only security therefor
12 is the properties benefited or improved or the assessments
13 thereon or bonds payable from taxes or secured by the taxing
14 power of the county. If the bonds are secured only by the
15 properties benefited or improved or the assessments thereon, the
16 bonds shall be issued according and subject to the provisions of
17 the ordinance. If the bonds are payable from taxes or secured
18 by the taxing power, the bonds shall be issued according and
19 subject to chapter 47. Except as is otherwise provided in
20 section 46-80.1, in assessing land for improvements a county
21 shall assess the land within an improvement district according



1 to the special benefits conferred upon the land by the special
2 improvement; these methods include assessment on a frontage
3 basis or according to the area of land within an improvement
4 district, or any other assessment method [~~which~~] that assesses
5 the land according to the special benefit conferred, or any
6 combination thereof.

7 (b) There is established a special improvement program to
8 be known as a commercial property assessed financing program,
9 which shall be administered by the Hawaii green infrastructure
10 authority. A commercial property owner may apply to a
11 commercial property assessed financing lender, approved by the
12 authority, for property assessed financing to pay the cost of
13 qualifying improvements and enter into a commercial property
14 assessed financing contract with a commercial property assessed
15 financing lender and the authority. Costs incurred for
16 qualifying improvements shall be levied and collected by each
17 county, as provided in section 196- , as a non-ad valorem
18 special tax assessment on the benefitted commercial property.
19 The authority, on behalf of the State, shall authorize
20 commercial property assessed financing assessment contracts as
21 instruments of indebtedness in the form as may be prescribed by



1 the authority. Commercial property assessed financing
2 assessment contracts authorized to finance qualifying
3 improvements, when the only security is the non-ad valorem
4 special tax assessment levied against benefitted or improved
5 commercial property, shall be excluded from any determination of
6 the power of the State to issue general obligation bonds or
7 funded debt for purposes of section 13 of article VII of the
8 state constitution.

9 (c) Any county having a charter may enact an ordinance,
10 and may amend the same from time to time, to establish a special
11 improvement program containing the same elements as the
12 commercial property assessed financing program authorized under
13 chapter 196 and subsection (b), except that any program that is
14 established shall be administered by the county in lieu of
15 administration by the authority. The county shall assume all of
16 the responsibilities of the authority provided in chapter 196
17 and subsection (b), including determining qualifying
18 improvements eligible for property assessed financing. A
19 commercial property owner may apply to the county for property
20 assessed financing to pay the costs of qualifying improvements
21 and enter into a commercial property assessed financing



1 assessment contract with an approved commercial property
2 assessed financing lender and the county. Costs incurred for
3 qualifying improvements shall be levied and collected by each
4 county, as provided in section 196- , as a non-ad valorem
5 special tax assessment on the benefitted commercial property.
6 The county may issue revenue bonds to finance or refinance the
7 improvements, and the form of any revenue bond may be a
8 commercial property assessed financing assessment contract or
9 other instrument prescribed by the county. Bonds issued to
10 finance qualifying improvements, when the only security is the
11 non-ad valorem special tax assessment levied against benefitted
12 or improved commercial property, shall be excluded from any
13 determination of the power of the county to issue general
14 obligation bonds or funded debt for purposes of article VII,
15 section 13, of the state constitution."

16 SECTION 4. Section 196-61, Hawaii Revised Statutes, is
17 amended by adding eight new definitions to be appropriately
18 inserted and to read as follows:

19 "Commercial property" means any existing or new real
20 property not defined as a residential property, and shall
21 include any property where there is a leasehold or possessory



1 interest in the property and any multi-family dwelling or
2 townhouse consisting of five or more units as well as
3 agricultural property.

4 "Commercial property assessed financing assessment" means
5 the non-ad valorem special tax assessment that secures the
6 repayment of financing obtained by an owner of commercial
7 property for a qualifying improvement and that appears on a
8 property tax bill.

9 "Commercial property assessed financing assessment
10 contract" means the financing contract, under the commercial
11 property assessed financing program, by and among one or more
12 commercial property assessed financing lenders, one or more
13 commercial property owners, and the authority as the
14 administrator of the commercial property assessed financing
15 program for the acquisition or installation of qualifying
16 improvements.

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



1 assessment contracts, and which may include any successor or
2 assignee of the lender as provided in the commercial property
3 assessed financing assessment contract.

4 "Commercial property assessed financing program" means a
5 program to finance qualifying improvements on commercial
6 properties that are repaid through a non-ad valorem special tax
7 assessment on the commercial property owner's property tax bill.

8 "County director of finance" or "county director of budget
9 and fiscal services" means the officer or officers of the county
10 charged with the responsibility of administering the real
11 property taxation function of the county.

12 "Non-ad valorem special tax assessment" means a special tax
13 assessment or governmental charge levied by the county as
14 provided in section 196- on a benefitted commercial property
15 that appears on a property tax bill.

16 "Qualifying improvement" means a septic system or aerobic
17 treatment unit system or connection to sewer systems, clean
18 energy technology, efficiency technology, resiliency measure, or
19 other improvement approved by the authority."

20 SECTION 5. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held



1 invalid, the invalidity does not affect other provisions or
2 applications of the Act that can be given effect without the
3 invalid provision or application, and to this end the provisions
4 of this Act are severable.

5 SECTION 6. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 7. This Act shall take effect upon its approval.



Report Title:

Hawaii Green Infrastructure Authority; Counties; Property Assessed Financing; Cesspool Upgrade and Conversion; Property Resilience

Description:

Creates a commercial property assessed financing program under the administration of the Hawaii Green Infrastructure Authority. Allows commercial property owners to finance qualifying improvements through a non-ad valorem special property tax assessment. (SD2)

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