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# A BILL FOR AN ACT

RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING.

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

1           SECTION 1. The legislature finds that more than two  
2 hundred eighty-one high-rise residential buildings, primarily  
3 condominiums developed before 1975, have failed to pass safety  
4 evaluations due to the lack of fire sprinklers or other safety  
5 requirements. According to the state fire council, more than  
6 three dozen people died in fires in Honolulu between 2006 and  
7 2019, ninety-eight per cent of those deaths occurred in  
8 buildings without sufficient fire safety measures, and ninety-  
9 four per cent of the more than two hundred people injured by  
10 fire or smoke inhalation were in buildings without sufficient  
11 fire safety measures. Further, there have been over two hundred  
12 forty high-rise fires since the Marco Polo fire, and over  
13 seventy-nine per cent of the buildings that burned did not have  
14 sufficient fire safety measures. Some forty thousand individual  
15 unit owners may achieve fire safety by meeting fire safety  
16 requirements, but doing so has also proven to be a costly  
17 endeavor.



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

14 The purpose of this Act is to:

- 15 (1) Enable condominiums to participate in C-PACER  
16 financing;
- 17 (2) Provide clarity to the definition of a commercial  
18 property for purposes of green infrastructure loans;  
19 and
- 20 (3) Delegate all existing administrative responsibilities  
21 of the counties under the commercial property assessed



1 financing program to the Hawaii green infrastructure  
2 authority.

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

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



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

8 ~~[(b) There is established a special improvement program to~~  
9 ~~be known as a commercial property assessed financing program,~~  
10 ~~which shall be administered by the Hawaii green infrastructure~~  
11 ~~authority. A commercial property owner may apply to a~~  
12 ~~commercial property assessed financing lender, approved by the~~  
13 ~~authority, for property assessed financing to pay the cost of~~  
14 ~~qualifying improvements and enter into a commercial property~~  
15 ~~assessed financing contract with a commercial property assessed~~  
16 ~~financing lender and the authority. Costs incurred for~~  
17 ~~qualifying improvements shall be levied and collected by each~~  
18 ~~county, as provided in section 196-64.5, as a non-ad valorem~~  
19 ~~special tax assessment on the benefitted commercial property.~~  
20 ~~The authority, on behalf of the State, shall authorize~~  
21 ~~commercial property assessed financing assessment contracts as~~



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

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



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

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

19 1. By adding a new definition to be appropriately inserted  
20 and to read:



1        "Assessment" means an assessment imposed by the authority  
2 on a benefitted commercial property pursuant to section 196-  
3 64.5."

4        2. By amending the definition of "commercial property" to  
5 read:

6        "Commercial property" means [any]:

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

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

13        (3) Any long-term care or assisted living facility;

14        (4) Any condominium property regime consisting of six or  
15 more units; or

16        (5) Agricultural property.

17        "Commercial property assessed financing assessment" or

18 "special assessment" means the [non-ad valorem special tax]

19 annual assessment [that secures], secured by a lien on a

20 property, for the repayment of financing obtained by an owner of

21 commercial property for a qualifying improvement [and that



1 ~~appears on a property tax bill.]~~ that is billed and collected by  
2 the authority."

3 3. By amending the definitions of "commercial property  
4 assessed financing lender" and "commercial property assessed  
5 financing program" to read:

6 "Commercial property assessed financing lender" means a  
7 financial institution as defined pursuant to section 412:1-109,  
8 or a private or public lender approved by the authority, as the  
9 administrator of the commercial property assessed financing  
10 program, to originate commercial property assessed financing  
11 assessment contracts, and ~~which~~ that may include any successor  
12 or assignee of the lender as provided in the commercial property  
13 assessed financing assessment contract.

14 "Commercial property assessed financing program" means a  
15 program to finance qualifying improvements on commercial  
16 properties that are repaid through ~~[a non-ad-valorem special~~  
17 ~~tax]~~ an assessment imposed by the authority on the commercial  
18 property owner's property ~~[tax bill]."~~

19 4. By amending the definition of "option to purchase" to  
20 read:



1        "Option to purchase" means a legally binding agreement  
2 between a buyer and a seller[~~, which~~] that gives the buyer the  
3 option, but not the obligation, to purchase the solar energy  
4 system or other installed equipment at an agreed upon price,  
5 prior to the maturity date of the power purchase agreement or  
6 energy performance contract."

7        5. By repealing the definition of "county director of  
8 finance" and "county director of budget and fiscal services".

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

13        6. By repealing the definition of "non-ad valorem special  
14 tax assessment".

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

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



1           " ~~[§]196-64.5[§]~~ **Commercial property assessed financing**  
2 **program.** (a) ~~[Any county having a charter may authorize the~~  
3 ~~authority, pursuant to this section, to offer a commercial~~  
4 ~~property assessed financing program within its jurisdiction and~~  
5 ~~may contract with the authority for that purpose, and any county~~  
6 ~~having a charter may enact its own commercial property assessed~~  
7 ~~financing program pursuant to this section and section 46-80(b)~~  
8 ~~and (c).]~~ There is established a commercial property assessed  
9 financing program to be administered by the authority to enable  
10 owners of qualifying property to access non-traditional  
11 financing for qualifying improvements. Program financing shall  
12 be secured by a voluntary assessment imposed on the benefitted  
13 property that is secured by a statutory lien; provided that the  
14 statutory lien shall have priority over all other liens except  
15 the lien of property taxes and other assessments lawfully  
16 imposed by governmental authority against the property.  
17           (b) ~~[The]~~ In administering the commercial property  
18 assessed financing program, the authority~~[, as the administrator~~  
19 ~~of the commercial property assessed financing program, shall~~  
20 ~~coordinate with each county to bill and collect a non-ad valorem~~  
21 ~~special tax assessment on a benefitted commercial property as a~~



1 ~~repayment mechanism on the real property tax bill or stand-alone~~  
2 ~~bill. The non-ad valorem special tax]~~ may impose a governmental  
3 lien to secure commercial property assessed financing against  
4 real property specially benefitted pursuant to the program  
5 established by this section. Commercial property assessed  
6 financing shall be secured by the voluntary governmental lien  
7 and repaid in assessment installments in accordance with the  
8 commercial property assessed financing assessment contract and  
9 billed and collected by the authority. The principal amount of  
10 financing made pursuant to this section shall be a governmental  
11 lien against each lot or parcel of the property and assessed for  
12 a period beginning on the date of the notice of the assessment  
13 and ending once payment is made in full or otherwise satisfied  
14 in accordance with the commercial property assessed financing  
15 assessment contract; provided that the lien shall have priority  
16 over all other liens except the liens for property taxes and  
17 assessments lawfully imposed by governmental authority against  
18 the property; provided further that for multiple liens of  
19 assessments, the earlier lien shall have priority over the later  
20 lien. Neither the governmental lien nor the assessment on a  
21 benefitted commercial property pursuant to this section shall



1 ~~[not be]~~ constitute a ~~[generally applicable]~~ tax upon the real  
2 property ~~[but shall be collected in the same manner as real~~  
3 ~~property taxes as a result of a benefit to the commercial~~  
4 ~~property owners for qualifying improvements.]~~ within the meaning  
5 of any constitutional or statutory provision. The requirement  
6 of lender consent pursuant to subsection (c)(6) shall be  
7 satisfied for the priority of the lien to be valid.

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

13 (1) A commercial property owner who owns qualifying  
14 property in the State may apply to the authority for  
15 approval to use commercial property assessed financing  
16 to pay the cost of qualifying improvements and enter  
17 into a commercial property assessed financing contract  
18 with an approved commercial property assessed  
19 financing lender and the authority;

20 ~~[(1)]~~ (2) A commercial property assessed financing lender  
21 may enter into a commercial property assessed



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



1           qualifying improvements to be funded through a  
2           commercial property assessed financing assessment  
3           contract;

4       ~~[(+2)]~~ (3)   Qualifying improvements shall be affixed to a  
5           building or facility or affixed to real property,  
6           subject to the commercial property assessed financing  
7           assessments;

8       ~~[(+3)]~~ (4)   Before entering into a commercial property  
9           assessed financing assessment contract, the commercial  
10          property assessed financing lender shall reasonably  
11          determine that:

12           (A)   The commercial property owner is able to borrow  
13           the amount of the property assessed financing  
14           using reasonable commercial underwriting  
15           practices;

16           (B)   All property taxes applicable to the commercial  
17           property, and any other assessments levied on the  
18           same bill as property taxes, are paid; and

19           (C)   There are no involuntary liens applicable to the  
20           commercial property, including but not limited to



1 construction liens, that will not be paid or  
2 satisfied upon the closing of the financing;  
3 ~~[(4)]~~ (5) The commercial property assessed financing  
4 assessment contract shall include the amount of an  
5 annual assessment, including interest, over a fixed  
6 term that ~~[will appear as a non-ad valorem special tax~~  
7 ~~assessment on the commercial property owner's tax bill~~  
8 ~~or stand alone bill annually;]~~ shall be billed  
9 annually or as otherwise specified by the authority,  
10 and collected by the authority in accordance with the  
11 commercial property assessed financing lender's  
12 amortization schedule;  
13 ~~[(5)]~~ (6) The commercial property assessed financing  
14 assessment contract, or summary memorandum of the  
15 contract, shall be recorded by the commercial property  
16 assessed financing lender in the public records of the  
17 State ~~[or of the county within which the commercial~~  
18 ~~property is located]~~ within five days after execution  
19 by the parties to the contract. The recorded contract  
20 shall provide constructive notice of the levy of, and  
21 obligation of the commercial property owner to pay,



1 the commercial property assessed financing assessment.  
2 The entire principal amount of the commercial property  
3 assessed financing assessment [~~to be levied on the~~  
4 ~~commercial property~~] contract shall be a [~~non-ad~~  
5 ~~valorem special tax assessment and a~~] governmental  
6 statutory lien against the commercial property [~~on a~~  
7 ~~parity with the lien of general real property taxes~~  
8 ~~and the lien of any other assessments levied under~~  
9 ~~section 46-80, from~~] that shall be assessed for a  
10 period beginning on the date of recordation entered  
11 into pursuant to this section [~~until~~] and ending once  
12 paid or satisfied in accordance with the commercial  
13 property assessed financing assessment contract;  
14 provided further that the lien shall have priority  
15 over all other liens except the lien for property  
16 taxes and other assessments lawfully imposed by a  
17 governmental authority against the property;  
18 [+6] (7) Before entering into a commercial property  
19 assessed financing assessment contract for any  
20 commercial property, the commercial property owner  
21 shall [~~provide~~]:



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

13          (B) Agree to the commercial property assessed  
14          financing lender's remedies if a default occurs,  
15          including foreclosure, in accordance with the  
16          terms and conditions of the commercial property  
17          assessed financing contract;

18          ~~[+7+]~~ (8) At or before the time a purchaser executes a  
19          contract for the sale and purchase of any commercial  
20          property for which a ~~[non-ad-valorem special tax~~  
21          ~~assessment has been levied]~~ statutory lien has been



1           recorded under this part and has an unpaid balance  
2           due, the seller shall give the prospective purchaser a  
3           written disclosure statement notifying the prospective  
4           purchaser of the commercial property assessed  
5           financing assessment;

6        ~~[(8)]~~ (9) The term of the commercial property assessed  
7           financing assessment contract shall not exceed the  
8           useful life of the qualifying improvement being  
9           installed or the weighted average useful life of all  
10          qualifying improvements being financed if multiple  
11          qualifying improvements are being financed, as  
12          determined by the authority; ~~[and~~

13        ~~+(9)]~~ (10) ~~[Before the execution by the authority of the~~  
14          ~~first commercial property assessed financing~~  
15          ~~assessment contract in a county, the authority shall~~  
16          ~~enter into a contract with the county director of~~  
17          ~~finance or county director of budget and fiscal~~  
18          ~~services to cause the county director to levy and~~  
19          ~~collect any commercial property assessed financing~~  
20          ~~assessment approved and certified by the authority to~~  
21          ~~the director for collection. The county director~~



1 ~~shall levy]~~ Except as otherwise provided for  
2 commercial property assessed financing special  
3 assessments under chapter 514B, the authority shall  
4 bill and collect any approved commercial property  
5 assessed financing assessment [approved by the  
6 authority]. Each commercial property assessed  
7 financing assessment that is approved for collection  
8 shall be [a non-ad valorem special tax assessment and  
9 shall be] billed and collected in [the same manner as  
10 general real property taxes are collected and be  
11 subject to the same] accordance with the commercial  
12 property assessed financing lender's amortization  
13 schedule. The authority may charge interest or other  
14 fees on assessment amounts not paid on a timely basis.  
15 The authority shall develop guidelines and procedures  
16 providing for the method of undertaking and financing  
17 qualifying improvements as well as penalties [and same  
18 procedure], collection processes, sale, and lien  
19 priority, [subject to this section,] in the case of  
20 delinquency as is provided [by general law for the  
21 default of the payment of real property taxes, unless



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



1 financing assessments and any penalty, interest, and  
2 costs by advertisement and sale and with the same  
3 effect as provided by general law for sales of real  
4 property pursuant to ~~[default in payment of property~~  
5 ~~taxes. The covenant]~~ chapter 667 and in accordance  
6 with the terms of the commercial property assessed  
7 financing contract. Any guidelines and procedures  
8 developed pursuant to this paragraph shall specify a  
9 deadline for commencement of the foreclosure sale and  
10 any other terms and conditions the ~~[county director of~~  
11 ~~finance or county director of budget and fiscal~~  
12 ~~services]~~ authority determines reasonable regarding  
13 the foreclosure sale. For commercial property  
14 assessed financing assessments levied but not paid  
15 when due pursuant to a commercial property assessed  
16 financing assessment contract, the foreclosure of the  
17 lien of the commercial property assessed financing  
18 assessment ~~[, lien of general real property taxes or~~  
19 ~~any other assessments levied under section 46-80, or~~  
20 ~~any other lien foreclosed,]~~ shall not accelerate or  
21 extinguish the remaining term of the commercial



1 property assessed financing assessment as approved in  
2 the commercial property assessed financing assessment  
3 contract[-]; and

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

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



1           "(e) The authority may establish subaccounts within the  
2 fund as necessary~~[-]~~; provided that, in accordance with section  
3 196-64.5(c)(11), the authority shall establish a subaccount  
4 within the fund into which shall be deposited all moneys,  
5 including any interest accrued and fee revenues, collected as  
6 assessments under the commercial property assessed financing  
7 program established pursuant to section 196-64.5."

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

10           "(b) If there is any unit owner other than a developer,  
11 each unit shall be separately taxed and assessed, and no  
12 separate tax or assessment [~~may~~] shall be rendered against any  
13 common elements. The laws relating to home exemptions from  
14 state property taxes are applicable to individual units, which  
15 shall have the benefit of home exemption in those cases where  
16 the owner of a single-family dwelling would qualify. Property  
17 taxes assessed by the State or any county shall be assessed and  
18 collected on the individual units and not on the property as a  
19 whole. Commercial property assessed financing program special  
20 assessments, pursuant to section 196-64.5, may be levied upon  
21 the project, as described by the project's master deed,



1 declaration, and map pursuant to part III of this chapter.

2 Without limitation of the foregoing, each unit and its  
3 appurtenant common interest shall be deemed to be a "parcel" and  
4 shall be subject to separate assessment and taxation for all  
5 types of taxes authorized by law, including[7] but not limited  
6 to[7] other non-commercial property assessed financing program  
7 special assessments."

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

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



1 commercial property assessed financing pursuant to section 196-  
2 64.5, shall be charged to the owner or owners of the unit or  
3 units to which the limited common element is appurtenant in an  
4 equitable manner as set forth in the declaration."

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

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

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

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

18 (2) Regulate any behavior in or occupancy of a unit  
19 [~~which~~] that violates the declaration or bylaws or  
20 unreasonably interferes with the use and enjoyment of



1 other units or the common elements by other unit  
2 owners; or  
3 (3) Restrict the leasing of residential units to the  
4 extent those rules are reasonably designed to meet  
5 underwriting requirements of institutional lenders who  
6 regularly lend money secured by first mortgages on  
7 units in condominiums or regularly purchase those  
8 mortgages.

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

11 (c) Any payments made by or on behalf of a unit owner  
12 shall first be applied to outstanding common expenses that are  
13 assessed to all unit owners in proportion to the common interest  
14 appurtenant to their respective units~~(-)~~, including commercial  
15 property assessed financing special assessment expenses incurred  
16 for improvements financed pursuant to section 196-64.5. Only  
17 after [~~said~~] the outstanding common expenses have been paid in  
18 full may the payments be applied to other charges owed to the  
19 association, including assessed charges to the unit such as  
20 ground lease rent, utility sub-metering, storage lockers,  
21 parking stalls, boat slips, insurance deductibles, and cable.



1 After these charges are paid, other charges, including unpaid  
2 late fees, legal fees, fines, and interest, may be assessed in  
3 accordance with an application of payment policy adopted by the  
4 board; provided that if a unit owner has designated that any  
5 payment is for a specific charge that is not a common expense as  
6 described in this subsection, the payment may be applied in  
7 accordance with the unit owner's designation even if common  
8 expenses remain outstanding.

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



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

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



1 expenses payable with respect to the borrowing or the  
2 enforcement of the obligations under the borrowing, shall be a  
3 common expense of the project. For purposes of this section,  
4 the financing of insurance premiums by the association within  
5 the policy period shall not be deemed a loan and no lease shall  
6 be deemed a loan if it provides that at the end of the lease the  
7 association may purchase the leased equipment for its fair  
8 market value.

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



1 fund debt service on the commercial property assessed financing  
2 shall be included as part of the association's adopted revised  
3 budget."

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

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

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

11 (1) Liens for real property taxes and assessments lawfully  
12 imposed by governmental authority, including  
13 commercial property assessed financing special  
14 assessments established pursuant to section 196-64.5,  
15 against the unit; and

16 (2) Except as provided in subsection (j), all sums unpaid  
17 on any mortgage of record that was recorded [~~prior to~~]  
18 before the recordation of a notice of a lien by the  
19 association, and costs and expenses including  
20 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~~] the lien shall be filed in court pursuant to part IA of  
6 chapter 667.

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



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

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

5           "Completion" means:

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

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

11          "Regular monthly common assessments" does not include:

12          (1) Any other special assessment, except for a special  
13 assessment imposed on all units as part of a budget  
14 adopted pursuant to section 514B-148[+], including  
15 commercial property assessed financing assessments  
16 imposed pursuant to section 196-64.5;

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

18          (3) Interest assessed by the association;

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



1 (5) Any fees or costs related to the collection or  
2 enforcement of the assessment, including attorneys'  
3 fees and court costs."

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

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

9 (1) Collecting any delinquent assessments, including  
10 commercial property assessed financing assessments  
11 imposed pursuant to section 196-64.5, against any  
12 owner's unit;

13 (2) Foreclosing any lien thereon; or

14 (3) Enforcing any provision of the declaration, bylaws,  
15 house rules, and this chapter, or the rules of the  
16 real estate commission;

17 against an owner, occupant, tenant, employee of an owner, or any  
18 other person who may in any manner use the property, shall be  
19 promptly paid on demand to the association by [~~such~~] the person  
20 or persons; provided that if the claims upon which the  
21 association takes any action are not substantiated, all costs



1 and expenses, including reasonable attorneys' fees, incurred by  
2 any [~~such~~] applicable person or persons as a result of the  
3 action of the association, shall be promptly paid on demand to  
4 [~~such~~] the person or persons by the association."

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

7 "[+]§667-40[+] **Use of power of sale foreclosure in certain**  
8 **non-mortgage situations.** A power of sale foreclosure under this  
9 part may be used in certain non-mortgage situations where a law  
10 or a written document contains, authorizes, permits, or provides  
11 for a power of sale, a power of sale foreclosure, a power of  
12 sale remedy, or a nonjudicial foreclosure. These laws or  
13 written documents are limited to those involving time share  
14 plans, condominium property regimes, and agreements of sale[-],  
15 and commercial property assessed financing assessments imposed  
16 pursuant to section 196-64.5."

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

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



**Report Title:**

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

**Description:**

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

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

