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

12 The purpose of this Act is to enable condominiums to  
13 participate in C-PACER financing, as well as provide more  
14 clarity to the definition of a commercial property.

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

18 ""Commercial property" means any existing or new non-  
19 residential real property [~~not defined as a residential~~  
20 ~~property, and shall include any~~], including:



- 1        (1) Any property where there is a leasehold or possessory
- 2                interest in the property [~~and any~~];
- 3        (2) Any multi-family dwelling or townhouse consisting of
- 4                five or more units [~~as well as agricultural~~];
- 5        (3) Any condominium property regime consisting of six or
- 6                more units; or
- 7        (4) Agricultural property."

8                SECTION 3. 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 be rendered against any common

13 elements. The laws relating to home exemptions from state

14 property taxes are applicable to individual units, which shall

15 have the benefit of home exemption in those cases where the

16 owner of a single-family dwelling would qualify. Property taxes

17 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 non-ad

20 valorem special assessments, pursuant to section 196-64.5, may

21 be levied upon the project, as described by the project's master



1 deed, 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 4. 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, shall be charged to the  
2 owner or owners of the unit or units to which the limited common  
3 element is appurtenant in an equitable manner as set forth in  
4 the declaration."

5 SECTION 5. 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 financing assessments. Only after said outstanding  
16 common expenses have been paid in full may the payments be  
17 applied to other charges owed to the association, including  
18 assessed charges to the unit such as ground lease rent, utility  
19 sub-metering, storage lockers, parking stalls, boat slips,  
20 insurance deductibles, and cable. After these charges are paid,  
21 other charges, including unpaid late fees, legal fees, fines,



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

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

19 After being notified of the reasonable cost of providing  
20 the information, the unit owner may withdraw the request, in  
21 writing. A unit owner who withdraws a request for information



1 shall not be charged for the reasonable cost of providing the  
2 information.

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



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

6 (f) For non-ad valorem special assessments levied upon the  
7 project under a commercial property assessed financing program  
8 pursuant to section 196-64.5 and due from the association, the  
9 cost of the commercial property assessed financing, including  
10 but not limited to all principal, interest, commitment fees,  
11 servicing fees, and other expenses payable with respect to this  
12 borrowing or the enforcement of the obligations under such  
13 borrowings, shall be a common expense of the project and unit  
14 holders proportionate share of said special assessment shall be  
15 collected in the same manner as common expenses. The written  
16 consent of at least fifty per cent of all unit owners and owners  
17 to finance qualifying improvements with commercial property  
18 assessed financing shall include an acknowledgment that the  
19 annual special assessment required to fund debt service on the  
20 commercial property assessed financing shall be included as part  
21 of the association's adopted revised budget."



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

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

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

8 (1) Liens for real property taxes and assessments lawfully  
9 imposed by governmental authority, including  
10 commercial property assessed financing non-ad valorem  
11 special assessments, against the unit; and

12 (2) Except as provided in subsection (j), all sums unpaid  
13 on any mortgage of record that was recorded prior to  
14 the recordation of a notice of a lien by the  
15 association, and costs and expenses including  
16 attorneys' fees provided in such mortgages;  
17 provided that a lien recorded by an association for unpaid  
18 assessments shall expire six years from the date of recordation  
19 unless proceedings to enforce the lien are instituted prior to  
20 the expiration of the lien; provided further that the expiration  
21 of a recorded lien shall in no way affect the association's



1 automatic lien that arises pursuant to this subsection or the  
2 declaration or bylaws. Any proceedings to enforce an  
3 association's lien for any assessment shall be instituted within  
4 six years after the assessment became due; provided that if the  
5 owner of a unit subject to a lien of the association files a  
6 petition for relief under the United States Bankruptcy Code (11  
7 U.S.C. §101 et seq.), the period of time for instituting  
8 proceedings to enforce the association's lien shall be tolled  
9 until thirty days after the automatic stay of proceedings under  
10 section 362 of the United States Bankruptcy Code (11 U.S.C.  
11 §362) is lifted.

12 The lien of the association may be foreclosed by action or  
13 by nonjudicial or power of sale foreclosure, regardless of the  
14 presence or absence of power of sale language in an  
15 association's governing documents, by the managing agent or  
16 board, acting on behalf of the association and in the name of  
17 the association; provided that no association may exercise the  
18 nonjudicial or power of sale remedies provided in chapter 667 to  
19 foreclose a lien against any unit that arises solely from fines,  
20 penalties, legal fees, or late fees, and the foreclosure of any



1 such lien shall be filed in court pursuant to part IA of chapter  
2 667.

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

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

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

21 "Completion" means:



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

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

6 "Regular monthly common assessments" does not include:

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

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

13 (3) Interest assessed by the association;

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

15 (5) Any fees or costs related to the collection or  
16 enforcement of the assessment, including attorneys'  
17 fees and court costs."

18 SECTION 7. Section 514B-157, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:



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

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

7           (2) Foreclosing any lien thereon; or

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

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

20           SECTION 8. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



# S.B. NO. 2533

1 SECTION 9. This Act shall take effect on July 1, 2024.

2

INTRODUCED BY: 



# S.B. NO. 2533

**Report Title:**

Condominiums; Commercial Property Assessed Financing; C-PACER

**Description:**

Allows condominiums to be eligible for commercial property assessed financing.

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