

JAN 19 2024

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. The legislature finds that city and county of
2 Honolulu Ordinance 18-14 amended the county fire code to require
3 that existing high-rise residential buildings built on Oahu
4 before 1975 without automatic fire sprinkler systems must
5 undergo a building fire and life safety evaluation code
6 assessment, which evaluates building safety features and fire
7 systems in accordance with the city and county of Honolulu's
8 fire code and building code.

9 Subsequent amendments to the law by city and county of
10 Honolulu Ordinances 19-4 and 22-2 offered flexibility in meeting
11 the life safety evaluation building safety and fire systems
12 requirements and extended the timeframe for compliance.
13 However, since the enactment of those two ordinances, concerns
14 and challenges to the law have been raised by residential
15 high-rise building unit owners regarding the difficulty of
16 achieving compliance with the fire sprinkler retrofit or



1 alternative life safety evaluation requirements without some
2 form of government financial assistance.

3 The legislature further finds that in August 2023, among
4 the three hundred three remaining condominium properties that
5 submitted life safety evaluations to comply with Ordinance 22-2,
6 two hundred eighty-one properties have not yet obtained passing
7 scores while twenty-two properties have been awarded acceptable
8 scores, as reported in city department communication 582,
9 August 7, 2023.

10 Earlier city and county of Honolulu tax credits and
11 financial assistance programs were identified as being too
12 limited to address the degree of financial assistance or public
13 investment needed to retrofit properties for fire sprinklers or
14 install other fire safety upgrades (Ordinance 22-2, committee
15 report 44, March 16, 2022). At the same time, residential
16 high-rise property insurance premiums have increased by roughly
17 one hundred sixteen per cent between 2020 and 2023 for affected
18 properties, according to the department of commerce and consumer
19 affairs interim report for S.C.R. No. 48, S.D. 1, October 20,
20 2023, which has made traditional bank financing for normal



1 repairs, maintenance, and other reserve requirements even more
2 difficult to obtain.

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

15 The purpose of this Act is to enable residential high-rise
16 condominium properties, including those subject to county fire
17 safety requirements and those suffering damages from the Maui
18 wildfires, to participate in C-PACER financing and provide more
19 clarity to the definition of a commercial property.



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

4 ""Commercial property" means any existing or new
5 non-residential real property [~~not defined as a residential~~
6 ~~property, and shall include~~], including any property where there
7 is a leasehold or possessory interest in the property [~~and~~], any
8 multi-family dwelling or townhouse consisting of five or more
9 units, and any condominium regime consisting of six or more
10 units, as well as agricultural property."

11 SECTION 3. Section 514B-4, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) If there is any unit owner other than a developer,
14 each unit shall be separately taxed and assessed, and no
15 separate tax or assessment may be rendered against any common
16 elements. The laws relating to home exemptions from state
17 property taxes are applicable to individual units, which shall
18 have the benefit of home exemption in those cases where the
19 owner of a single-family dwelling would qualify. Property taxes
20 assessed by the State or any county shall be assessed and
21 collected on the individual units and not on the property as a



1 whole[-]; provided that commercial property assessed financing
2 program non-ad valorem special assessments, pursuant to section
3 196-64.5, may be levied upon the project, as described by the
4 project's master deed, declaration, and map pursuant to part III
5 of this chapter. Without limitation of the foregoing, each unit
6 and its appurtenant common interest shall be deemed to be a
7 "parcel" and shall be subject to separate assessment and
8 taxation for all types of taxes authorized by law, including,
9 but not limited to, other non-commercial property assessed
10 financing program special assessments."

11 SECTION 4. Section 514B-41, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) The common profits of the property shall be
14 distributed among, and the common expenses shall be charged to,
15 the unit owners, including the developer, in proportion to the
16 common interest appurtenant to their respective units, except as
17 otherwise provided in the declaration or bylaws. In a mixed-use
18 project containing units for both residential and nonresidential
19 use, the charges and distributions may be apportioned in a fair
20 and equitable manner as set forth in the declaration. Except as
21 otherwise provided in subsection (c) or the declaration or



1 bylaws, all limited common element costs and expenses, including
2 but not limited to maintenance, repair, replacement, additions,
3 and improvements, including capital improvements financed by
4 commercial property assessed financing, shall be charged to the
5 owner or owners of the unit or units to which the limited common
6 element is appurtenant in an equitable manner as set forth in
7 the declaration."

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

10 1. By amending subsection (c) to read:

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 2. By amending subsection (e) to read:

8 "(e) Subject to any approval requirements and spending
9 limits contained in the declaration or bylaws, the association
10 may authorize the board to borrow money for the repair,
11 replacement, maintenance, operation, or administration of the
12 common elements and personal property of the project, or the
13 making of any additions, alterations, and improvements thereto;
14 provided that written notice of the purpose and use of the funds
15 is first sent to all unit owners and owners representing fifty
16 per cent of the common interest vote or give written consent to
17 the borrowing. In connection with the borrowing, including
18 non-commercial property assessed financing, the board may grant
19 to the lender the right to assess and collect monthly or special
20 assessments from the unit owners and to enforce the payment of
21 the assessments or other sums by statutory lien and foreclosure



1 proceedings. The cost of the borrowing, including, without
2 limitation, all principal, interest, commitment fees, and other
3 expenses payable with respect to the borrowing or the
4 enforcement of the obligations under the borrowing, shall be a
5 common expense of the project.

6 For non-ad valorem special assessments levied upon the
7 project under a commercial property assessed financing, pursuant
8 to section 196-64.5 and due from the association, the cost of
9 the commercial property assessed financing, including, without
10 limitation, all principal, interest, commitment fees, servicing
11 fees, and other expenses payable with respect to this borrowing
12 or the enforcement of the obligations under such borrowings,
13 shall be a common expense of the project and unit owners
14 proportionate share of the special assessment shall be collected
15 in the same manner as common expenses. The written consent of
16 at least fifty per cent of all unit owners and owners to finance
17 qualifying improvements with commercial property assessed
18 financing shall include an acknowledgement that the annual
19 special assessment required to debt service the commercial
20 property assessed financing shall be included as part of the
21 association's adopted revised budget.



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

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

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

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

13 (1) Liens for real property taxes and assessments lawfully
14 imposed by governmental authority, including
15 commercial property assessed financing non-ad valorem
16 special assessments, against the unit; and

17 (2) Except as provided in subsection (j), all sums unpaid
18 on any mortgage of record that was recorded prior to
19 the recordation of a notice of a lien by the
20 association, and costs and expenses including
21 attorneys' fees provided in such 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 the expiration of the lien; provided further that the expiration
5 of a recorded lien shall in no way affect the association's
6 automatic lien that arises pursuant to this subsection or the
7 declaration or bylaws. Any proceedings to enforce an
8 association's lien for any assessment shall be instituted within
9 six years after the assessment became due; provided that if the
10 owner of a unit subject to a lien of the association files a
11 petition for relief under the United States Bankruptcy Code
12 (11 U.S.C. §101 et seq.), the period of time for instituting
13 proceedings to enforce the association's lien shall be tolled
14 until thirty days after the automatic stay of proceedings under
15 section 362 of the United States Bankruptcy Code (11 U.S.C.
16 §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 lien shall be filed in court pursuant to part IA of
6 chapter 667.

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

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



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

4 "Completion" means:

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

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

10 "Regular monthly common assessments" does not include:

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

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

17 (3) Interest assessed by the association;

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

19 (5) Any fees or costs related to the collection or
20 enforcement of the assessment, including attorneys'
21 fees and court costs."



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

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

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

9 (2) Foreclosing any lien thereon; or

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

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



S.B. NO. 2727

1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

4

INTRODUCED BY: *Carol Furumaga*



S.B. NO. 2727

Report Title:

Condominiums; C-PACER

Description:

Allows high-rise residential condominium properties to be eligible for commercial property assessed financing.

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