
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 No. 18-14 amended the county fire code to
3 require that each high-rise residential building built on Oahu
4 before 1975 without an automatic fire sprinkler system must
5 undergo an assessment that evaluates building safety features
6 and fire systems in accordance with the city and county of
7 Honolulu's fire code and building code.

8 Subsequent amendments to the Revised Ordinances of Honolulu
9 by city and county of Honolulu Ordinance Nos. 19-4 and 22-2
10 offered flexibility in meeting the evaluation requirements and
11 extended the timeframe for compliance. However, since the
12 enactment of the two ordinances, concerns and challenges to the
13 ordinances have been raised by residential high-rise building
14 unit owners regarding the difficulty of achieving compliance
15 with the fire sprinkler retrofit or alternative life safety
16 evaluation requirements without some form of government
17 financial assistance.



1 The legislature further finds that, according to recent
2 reports, among the three hundred three remaining condominium
3 properties that submitted life safety evaluations to comply with
4 city and county of Honolulu Ordinance No. 22-2, two hundred
5 eighty-one properties have not yet obtained passing scores while
6 twenty-two properties have been awarded acceptable scores.

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

20 The legislature also finds that Act 183, Session Laws of
21 Hawaii 2022, authorized within the State commercial property



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

12 The purpose of this Act is to enable residential
13 condominiums, including those subject to county fire safety
14 requirements and those suffering damages from the Maui
15 wildfires, to participate in C-PACER financing and provide more
16 clarity to the definition of a commercial property.

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



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

4 (1) Any property where there is a leasehold or possessory
5 interest in the property [~~and any~~];

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

8 (3) Any condominium property regime consisting of six or
9 more units; and

10 (4) Agricultural property."

11 SECTION 3. Section 196-64.5, Hawaii Revised Statutes, is
12 amended by amending subsection (c) to read as follows:

13 "(c) The authority shall design a commercial property
14 assessed financing program authorized under this section and
15 section 46-80(b) that addresses market needs while attracting
16 private capital and that shall, at [a] minimum, include the
17 following elements:

18 (1) A commercial property assessed financing lender may
19 enter into a commercial property assessed financing
20 assessment contract to finance or refinance a
21 qualifying improvement only with the recorded owner of



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



1 commercial property assessed financing assessment
2 contract;

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

7 (3) Before entering into a commercial property assessed
8 financing assessment contract, the commercial property
9 assessed financing lender shall reasonably determine
10 that:

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

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

18 (C) There are no involuntary liens applicable to the
19 commercial property, including ~~[but not limited~~
20 ~~to]~~ construction liens, that will not be paid or
21 satisfied upon the closing of the financing;



1 (4) The commercial property assessed financing assessment
2 contract shall include the amount of an annual
3 assessment over a fixed term that will appear as a
4 non-ad valorem special tax assessment on the
5 commercial property owner's tax bill or stand-alone
6 bill annually;

7 (5) The commercial property assessed financing assessment
8 contract, or summary memorandum of the contract, shall
9 be recorded by the commercial property assessed
10 financing lender in the public records of the State or
11 of the county within which the commercial property is
12 located within five days after execution by the
13 parties to the contract. The recorded contract shall
14 provide constructive notice of the levy of, and
15 obligation of the commercial property owner to pay,
16 the commercial property assessed financing assessment.
17 The commercial property assessed financing assessment
18 to be levied on the commercial property shall be a
19 non-ad valorem special tax assessment and a lien
20 against the commercial property on a parity with the
21 lien of general real property taxes and the lien of



1 any other assessments levied under section 46-80, from
2 the date of recordation entered into pursuant to this
3 section until paid or satisfied in accordance with the
4 commercial property assessed financing assessment
5 contract;

6 (6) Before entering into a commercial property assessed
7 financing assessment contract for any commercial
8 property, the commercial property owner shall provide
9 the authority and the commercial property assessed
10 financing lender with evidence of the written consent
11 of each holder or loan servicer of any mortgage that
12 encumbers or otherwise secures the commercial
13 property, where the consent is in the sole and
14 absolute discretion of each holder or loan servicer of
15 a mortgage on the commercial property, at the time of
16 the execution of the commercial property assessed
17 financing assessment contract by the parties; provided
18 that the consents shall be in a form prescribed by the
19 authority;

20 (7) At or before the time a purchaser executes a contract
21 for the sale and purchase of any commercial property



1 for which a non-ad valorem special tax assessment has
2 been levied under this part and has an unpaid balance
3 due, the seller shall give the prospective purchaser a
4 written disclosure statement notifying the prospective
5 purchaser of the commercial property assessed
6 financing assessment;

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

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



1 collection. [~~The~~] Except as provided for commercial
2 property assessed financing special assessments in
3 chapter 514B, the county director shall levy and
4 collect any commercial property assessed financing
5 assessment approved by the authority. Each commercial
6 property assessed financing assessment that is
7 approved for collection shall be a non-ad valorem
8 special tax assessment and shall be collected in the
9 same manner as general real property taxes are
10 collected and be subject to the same penalties and
11 same procedure, sale, and lien priority, subject to
12 this section, in the case of delinquency as is
13 provided by general law for the default of the payment
14 of real property taxes, unless another procedure,
15 including stand-alone billing and collection, is
16 agreed upon by the authority and the county director.
17 The county director may add to any commercial property
18 assessed financing assessment reasonable
19 administrative costs as agreed upon by the authority
20 and the county director. The county director shall
21 remit any commercial property assessed financing



1 assessments collected, less any reasonable
2 administrative costs added by the county director, to
3 or on the direction of the authority, for further
4 application by the authority to pay each commercial
5 property assessed financing lender and to pay the
6 reasonable administrative costs of the authority in
7 accordance with each commercial property assessed
8 financing assessment contract. The county director
9 shall covenant in a contract or instrument, for the
10 benefit of any commercial property assessed financing
11 lender or bondholder, to commence and diligently
12 pursue to completion the foreclosure of delinquent
13 commercial property assessed financing assessments and
14 any penalty, interest, and costs by advertisement and
15 sale and with the same effect as provided by general
16 law for sales of real property pursuant to default in
17 payment of property taxes. The covenant shall specify
18 a deadline for commencement of the foreclosure sale
19 and any other terms and conditions the county director
20 of finance or county director of budget and fiscal
21 services determines reasonable regarding the



1 foreclosure sale. For commercial property assessed
2 financing assessments levied but not paid when due
3 pursuant to a commercial property assessed financing
4 assessment contract, the foreclosure of the lien of
5 the commercial property assessed financing assessment,
6 lien of general real property taxes or any other
7 assessments levied under section 46-80, or any other
8 lien foreclosed, shall not accelerate or extinguish
9 the remaining term of the commercial property assessed
10 financing assessment as approved in the commercial
11 property assessed financing assessment contract."

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

14 "(b) If there is any unit owner other than a developer,
15 each unit shall be separately taxed and assessed, and no
16 separate tax or assessment [~~may~~] shall be rendered against any
17 common elements. The laws relating to home exemptions from
18 state property taxes are applicable to individual units, which
19 shall have the benefit of home exemption in those cases where
20 the owner of a single-family dwelling would qualify. Property
21 taxes assessed by the State or any county shall be assessed and



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

12 SECTION 5. Section 514B-41, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

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



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

9 SECTION 6. Section 514B-105, Hawaii Revised Statutes, is
10 amended as follows:

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

12 "(c) Any payments made by or on behalf of a unit owner
13 shall first be applied to outstanding common expenses that are
14 assessed to all unit owners in proportion to the common interest
15 appurtenant to their respective units~~[-]~~, including commercial
16 property assessed financing special assessments. Only after
17 ~~[said]~~ the outstanding common expenses have been paid in full
18 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]~~



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

10 2. By amending subsection (e) to read:

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



1 to the lender the right to assess and collect monthly or special
2 assessments from the unit owners and to enforce the payment of
3 the assessments or other sums by statutory lien and foreclosure
4 proceedings. The cost of the borrowing, including, without
5 limitation, all principal, interest, commitment fees, and other
6 expenses payable with respect to the borrowing or the
7 enforcement of the obligations under the borrowing, shall be a
8 common expense of the project.

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



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

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

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

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

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

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

20 (2) Except as provided in subsection (j), all sums unpaid
21 on any mortgage of record that was recorded [~~prior to~~]



1 before the recordation of a notice of a lien by the
2 association, and costs and expenses including
3 attorneys' fees provided in [~~such~~] the mortgages;
4 provided that a lien recorded by an association for unpaid
5 assessments shall expire six years from the date of recordation
6 unless proceedings to enforce the lien are instituted [~~prior to~~]
7 before the expiration of the lien; provided further that the
8 expiration of a recorded lien shall in no way affect the
9 association's automatic lien that arises pursuant to this
10 subsection or the declaration or bylaws. Any proceedings to
11 enforce an association's lien for any assessment shall be
12 instituted within six years after the assessment became due;
13 provided that if the owner of a unit subject to a lien of the
14 association files a petition for relief under the United States
15 Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for
16 instituting proceedings to enforce the association's lien shall
17 be tolled until thirty days after the automatic stay of
18 proceedings under section 362 of the United States Bankruptcy
19 Code (11 U.S.C. §362) is lifted.

20 The lien of the association may be foreclosed by action or
21 by nonjudicial or power of sale foreclosure, regardless of the



1 presence or absence of power of sale language in an
2 association's governing documents, by the managing agent or
3 board, acting on behalf of the association and in the name of
4 the association; provided that no association may exercise the
5 nonjudicial or power of sale remedies provided in chapter 667 to
6 foreclose a lien against any unit that arises solely from fines,
7 penalties, legal fees, or late fees, and the foreclosure of any
8 [~~such~~] lien shall be filed in court pursuant to part IA of
9 chapter 667.

10 In any [~~such~~] foreclosure, the unit owner shall be required
11 to pay a reasonable rental for the unit, if so provided in the
12 bylaws or the law, and the plaintiff in the foreclosure shall be
13 entitled to the appointment of a receiver to collect the
14 [~~rental~~] rent owed by the unit owner or any tenant of the unit.
15 If the association is the plaintiff, it may request that its
16 managing agent be appointed as receiver to collect the rent from
17 the tenant. The managing agent or board, acting on behalf of
18 the association and in the name of the association, unless
19 prohibited by the declaration, may bid on the unit at
20 foreclosure sale, and acquire and hold, lease, mortgage, and
21 convey the unit. Action to recover a money judgment for unpaid



1 common expenses shall be maintainable without foreclosing or
2 waiving the lien securing the unpaid common expenses owed."

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

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

7 "Completion" means:

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

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

13 "Regular monthly common assessments" does not include:

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

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

20 (3) Interest assessed by the association;

21 (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 8. 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 special
11 assessments, against any owner's unit;
 - 12 (2) Foreclosing any lien thereon; or
 - 13 (3) Enforcing any provision of the declaration, bylaws,
14 house rules, and this chapter, or the rules of the
15 real estate commission;
- 16 against an owner, occupant, tenant, employee of an owner, or any
17 other person who may in any manner use the property, shall be
18 promptly paid on demand to the association by [~~such~~] the person
19 or persons; provided that if the claims upon which the
20 association takes any action are not substantiated, all costs
21 and expenses, including reasonable attorneys' fees, incurred by



1 any [~~such~~] person or persons as a result of the action of the
2 association, shall be promptly paid on demand to [~~such~~] the
3 person or persons by the association."

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

6 SECTION 10. This Act shall take effect on July 1, 3000.



S.B. NO. 2727
S.D. 2
H.D. 1

Report Title:

Condominiums; Conservation and Resources; Commercial Property;
C-PACER

Description:

Allows condominiums to be eligible for commercial property
assessed financing. Effective 7/1/3000. (HD1)

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

