
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 as follows:

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



1 "Property owner" or "owner" means the owner or owners of
2 record of commercial property, except that in the case of a
3 condominium, "property owner" or "owner" means the condominium
4 association and not the owner or owners of individual
5 residential condominium units."

6 2. By amending the definition of "commercial property" to
7 read:

8 "Commercial property" means [any]:

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

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

16 (3) Any condominium organized under chapter 514B
17 consisting of six or more units; provided that
18 individual residential condominium units shall not be
19 considered commercial property and shall not be
20 eligible to apply for commercial property assessed
21 financing under this part; or



1 (4) Agricultural property."

2 SECTION 3. Section 196-64.5, Hawaii Revised Statutes, is
3 amended by amending subsections (b) and (c) to read as follows:

4 "(b) The authority, as the administrator of the commercial
5 property assessed financing program, shall coordinate with each
6 county to bill and collect a non-ad valorem special tax
7 assessment on a benefitted commercial property or, in the case
8 of a condominium, an assessment against the condominium
9 association, as a repayment mechanism on the real property tax
10 bill or stand-alone bill. The non-ad valorem special tax
11 assessment on a benefitted commercial property shall not be a
12 generally applicable tax upon the real property but shall be
13 collected in the same manner as real property taxes as a result
14 of a benefit to the commercial property owners for qualifying
15 improvements.

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



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



1 required to be issued by the State, the authority, any
2 county, or any other public entity in order to cause
3 qualifying improvements to be funded through a
4 commercial property assessed financing assessment
5 contract;

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

10 (3) Before entering into a commercial property assessed
11 financing assessment contract, the commercial property
12 assessed financing lender shall reasonably determine
13 that:

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

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



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

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

11 (5) The commercial property assessed financing assessment
12 contract, or summary memorandum of the contract, shall
13 be recorded by the commercial property assessed
14 financing lender in the public records of the State or
15 of the county within which the commercial property is
16 located within five days after execution by the
17 parties to the contract. The recorded contract shall
18 provide constructive notice of the levy of, and
19 obligation of the commercial property owner to pay,
20 the commercial property assessed financing assessment.
21 The commercial property assessed financing assessment



1 to be levied on the commercial property shall be a
2 non-ad valorem special tax assessment and a lien
3 against the commercial property on a parity with the
4 lien of general real property taxes and the lien of
5 any other assessments levied under section 46-80, from
6 the date of recordation entered into pursuant to this
7 section until paid or satisfied in accordance with the
8 commercial property assessed financing assessment
9 contract;

10 (6) Before entering into a commercial property assessed
11 financing assessment contract for any commercial
12 property[~~, the~~]:

13 (A) The commercial property owner shall provide the
14 authority and the commercial property assessed
15 financing lender with evidence of the written
16 consent of each holder or loan servicer of any
17 mortgage that encumbers or otherwise secures the
18 commercial property, where the consent is in the
19 sole and absolute discretion of each holder or
20 loan servicer of a mortgage on the commercial
21 property, at the time of the execution of the



1 commercial property assessed financing assessment
2 contract by the parties; provided that the
3 consents shall be in a form prescribed by the
4 authority; or
5 (B) For a commercial property that is a condominium
6 organized under chapter 514B or preceding state
7 law governing condominium property regimes, as an
8 alternative to subparagraph (A), the condominium
9 association shall provide the authority and the
10 commercial property assessed financing lender
11 with evidence of the written consent of each
12 creditor with a valid Uniform Commercial Code
13 financing statement or mortgage recorded with the
14 bureau of conveyances that encumbers or otherwise
15 secures the condominium, where the consent is in
16 the sole and absolute discretion of each
17 creditor, at the time of the execution of the
18 commercial property assessed financing assessment
19 contract by the parties; provided that the
20 consents shall be in a form prescribed by the
21 authority;



- 1 (7) At or before the time a purchaser executes a contract
2 for the sale and purchase of any commercial property
3 for which a non-ad valorem special tax assessment has
4 been levied under this part and has an unpaid balance
5 due, the seller shall give the prospective purchaser a
6 written disclosure statement notifying the prospective
7 purchaser of the commercial property assessed
8 financing assessment;
- 9 (8) The term of the commercial property assessed financing
10 assessment contract shall not exceed the useful life
11 of the qualifying improvement being installed or the
12 weighted average useful life of all qualifying
13 improvements being financed if multiple qualifying
14 improvements are being financed, as determined by the
15 authority; and
- 16 (9) Before the execution by the authority of the first
17 commercial property assessed financing assessment
18 contract in a county, the authority shall enter into a
19 contract with the county director of finance or county
20 director of budget and fiscal services to cause the
21 county director to levy and collect any commercial



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



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



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

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

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



1 the owner of a single-family dwelling would qualify. Property
2 taxes assessed by the State or any county shall be assessed and
3 collected on the individual units and not on the property as a
4 whole. Commercial property assessed financing program non-ad
5 valorem special tax assessments, pursuant to section 196-64.5,
6 may be imposed upon the project, as described by the project's
7 master deed, declaration, and map pursuant to part III; provided
8 that a commercial property assessed financing contract is
9 entered into by an association with an approved commercial
10 property assessed financing lender and the Hawaii green
11 infrastructure authority. Without limitation of the foregoing,
12 each unit and its appurtenant common interest shall be deemed to
13 be a "parcel" and shall be subject to separate assessment and
14 taxation for all types of taxes authorized by law, including[7]
15 but not limited to[7] other non-commercial property assessed
16 financing program special assessments."

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

19 "(a) The common profits of the property shall be
20 distributed among, and the common expenses shall be charged to,
21 the unit owners, including the developer, in proportion to the



1 common interest appurtenant to their respective units, except as
2 otherwise provided in the declaration or bylaws. In a mixed-use
3 project containing units for both residential and nonresidential
4 use, the charges and distributions may be apportioned in a fair
5 and equitable manner as set forth in the declaration. Except as
6 otherwise provided in subsection (c) or the declaration or
7 bylaws, all limited common element costs and expenses, including
8 but not limited to maintenance, repair, replacement, additions,
9 and improvements, including capital improvements financed by
10 commercial property assessed financing, shall be charged to the
11 owner or owners of the unit or units to which the limited common
12 element is appurtenant in an equitable manner as set forth in
13 the declaration."

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

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

17 "(c) Any payments made by or on behalf of a unit owner
18 shall first be applied to outstanding common expenses that are
19 assessed to all unit owners in proportion to the common interest
20 appurtenant to their respective units[~~+~~], including commercial
21 property assessed financing special assessments. Only after



1 [said] the outstanding common expenses have been paid in full
2 may the payments be applied to other charges owed to the
3 association, including [~~assessed charges to the unit such as~~]
4 ground lease rent, utility sub-metering, storage lockers,
5 parking stalls, boat slips, insurance deductibles, [~~and~~]
6 cable[-], and other assessed charges to the unit. After these
7 charges are paid, other charges, including unpaid late fees,
8 legal fees, fines, and interest, may be assessed in accordance
9 with an application of payment policy adopted by the board;
10 provided that if a unit owner has designated that any payment is
11 for a specific charge that is not a common expense as described
12 in this subsection, the payment may be applied in accordance
13 with the unit owner's designation even if common expenses remain
14 outstanding."

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

16 "(e) Subject to any approval requirements and spending
17 limits contained in the declaration or bylaws, the association
18 may authorize the board to borrow money for the repair,
19 replacement, maintenance, operation, or administration of the
20 common elements and personal property of the project, or the
21 making of any additions, alterations, and improvements thereto;



1 provided that written notice of the purpose and use of the funds
2 is first sent to all unit owners and owners representing fifty
3 per cent of the common interest vote or give written consent to
4 the borrowing. In connection with the borrowing, including
5 non-commercial property assessed financing, the board may grant
6 to the lender the right to assess and collect monthly or special
7 assessments from the unit owners and to enforce the payment of
8 the assessments or other sums by statutory lien and foreclosure
9 proceedings. The cost of the borrowing, including, without
10 limitation, all principal, interest, commitment fees, and other
11 expenses payable with respect to the borrowing or the
12 enforcement of the obligations under the borrowing, shall be a
13 common expense of the project.

14 For non-ad valorem special tax assessments levied upon the
15 project under commercial property assessed financing, pursuant
16 to section 196-64.5, and due from the association, the cost of
17 the commercial property assessed financing, including all
18 principal, interest, commitment fees, servicing fees, and other
19 expenses payable with respect to this borrowing or the
20 enforcement of the obligations under the borrowing, shall be a
21 common expense of the project, and the unit owners'



1 proportionate share of the special assessment shall be collected
 2 in the same manner as common expenses. The written consent of
 3 at least fifty per cent of all unit owners to finance qualifying
 4 improvements with commercial property assessed financing shall
 5 include an acknowledgment that the annual special assessment
 6 required to debt service the commercial property assessed
 7 financing shall be included as part of the association's adopted
 8 revised budget.

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

14 SECTION 7. Section 514B-146, Hawaii Revised Statutes, is
 15 amended by amending subsection (l) to read as follows:

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

19 "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 8. 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~~] the person
14 or persons; provided that if the claims upon which the
15 association takes any action are not substantiated, all costs
16 and expenses, including reasonable attorneys' fees, incurred by
17 any [~~such~~] person or persons as a result of the action of the
18 association, shall be promptly paid on demand to [~~such~~] the
19 person or persons by the association."

20 SECTION 9. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



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



Report Title:

Condominiums; Commercial Property; C-PACER; Commercial Property Assessed Clean Energy and Resiliency

Description:

Allows condominiums to be eligible for commercial property assessed financing. Effective 7/1/3000. (HD2)

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

