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# 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 existing high-rise residential buildings built on  
4 Oahu before 1975 without automatic fire sprinkler systems must  
5 undergo a building fire and life safety evaluation code  
6 assessment that 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 Revised Ordinances of Honolulu  
10 by city and county of Honolulu Ordinance Nos. 19-4 and 22-2  
11 offered flexibility in meeting the evaluation requirements and  
12 extended the timeframe for compliance. However, since the  
13 enactment of the two ordinances, concerns and challenges to the  
14 ordinances have been raised by residential high-rise building  
15 unit owners regarding the difficulty of achieving compliance  
16 with the fire sprinkler retrofit or alternative life safety



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

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

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



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

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

18           SECTION 2. Section 196-61, Hawaii Revised Statutes, is  
19 amended by amending the definition of "commercial property" to  
20 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~~], including any property where there  
4        is a leasehold or possessory interest in the property [~~and~~], any  
5        multi-family dwelling or townhouse consisting of five or more  
6        units, and any condominium regime consisting of six or more  
7        units, as well as agricultural property."

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

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

15        (1) A commercial property assessed financing lender may  
16        enter into a commercial property assessed financing  
17        assessment contract to finance or refinance a  
18        qualifying improvement only with the recorded owner of  
19        the affected commercial property and the authority.  
20        Each commercial property assessed financing assessment  
21        contract shall be executed by the authority as the



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

20 (2) Qualifying improvements shall be affixed to a building  
21 or facility or affixed to real property, subject to



1 the commercial property assessed financing  
2 assessments;

3 (3) Before entering into a commercial property assessed  
4 financing assessment contract, the commercial property  
5 assessed financing lender shall reasonably determine  
6 that:

7 (A) The commercial property owner is able to borrow  
8 the amount of the property assessed financing  
9 using reasonable commercial underwriting  
10 practices;

11 (B) All property taxes applicable to the commercial  
12 property, and any other assessments levied on the  
13 same bill as property taxes, are paid; and

14 (C) There are no involuntary liens applicable to the  
15 commercial property, including but not limited to  
16 construction liens, that will not be paid or  
17 satisfied upon the closing of the financing;

18 (4) The commercial property assessed financing assessment  
19 contract shall include the amount of an annual  
20 assessment over a fixed term that will appear as a  
21 non-ad valorem special tax assessment on the



1 commercial property owner's tax bill or stand-alone  
2 bill annually;

3 (5) The commercial property assessed financing assessment  
4 contract, or summary memorandum of the contract, shall  
5 be recorded by the commercial property assessed  
6 financing lender in the public records of the State or  
7 of the county within which the commercial property is  
8 located within five days after execution by the  
9 parties to the contract. The recorded contract shall  
10 provide constructive notice of the levy of, and  
11 obligation of the commercial property owner to pay,  
12 the commercial property assessed financing assessment.  
13 The commercial property assessed financing assessment  
14 to be levied on the commercial property shall be a  
15 non-ad valorem special tax assessment and a lien  
16 against the commercial property on a parity with the  
17 lien of general real property taxes and the lien of  
18 any other assessments levied under section 46-80, from  
19 the date of recordation entered into pursuant to this  
20 section until paid or satisfied in accordance with the



1 commercial property assessed financing assessment  
2 contract;

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

17 (7) At or before the time a purchaser executes a contract  
18 for the sale and purchase of any commercial property  
19 for which a non-ad valorem special tax assessment has  
20 been levied under this part and has an unpaid balance  
21 due, the seller shall give the prospective purchaser a



1 written disclosure statement notifying the prospective  
2 purchaser of the commercial property assessed  
3 financing assessment;

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

11 (9) Before the execution by the authority of the first  
12 commercial property assessed financing assessment  
13 contract in a county, the authority shall enter into a  
14 contract with the county director of finance or county  
15 director of budget and fiscal services to cause the  
16 county director to levy and collect any commercial  
17 property assessed financing assessment approved and  
18 certified by the authority to the director for  
19 collection. ~~[The]~~ Except as provided for commercial  
20 property assessed financing assessments in chapter  
21 514B, the county director shall levy and collect any



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



1 authority to pay each commercial property assessed  
2 financing lender and to pay the reasonable  
3 administrative costs of the authority in accordance  
4 with each commercial property assessed financing  
5 assessment contract. The county director shall  
6 covenant in a contract or instrument, for the benefit  
7 of any commercial property assessed financing lender  
8 or bondholder, to commence and diligently pursue to  
9 completion the foreclosure of delinquent commercial  
10 property assessed financing assessments and any  
11 penalty, interest, and costs by advertisement and sale  
12 and with the same effect as provided by general law  
13 for sales of real property pursuant to default in  
14 payment of property taxes. The covenant shall specify  
15 a deadline for commencement of the foreclosure sale  
16 and any other terms and conditions the county director  
17 of finance or county director of budget and fiscal  
18 services determines reasonable regarding the  
19 foreclosure sale. For commercial property assessed  
20 financing assessments levied but not paid when due  
21 pursuant to a commercial property assessed financing



1           assessment contract, the foreclosure of the lien of  
2           the commercial property assessed financing assessment,  
3           lien of general real property taxes or any other  
4           assessments levied under section 46-80, or any other  
5           lien foreclosed, shall not accelerate or extinguish  
6           the remaining term of the commercial property assessed  
7           financing assessment as approved in the commercial  
8           property assessed financing assessment contract."

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

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



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

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

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



1 and improvements, including capital improvements financed by  
2 commercial property assessed financing, shall be charged to the  
3 owner or owners of the unit or units to which the limited common  
4 element is appurtenant in an equitable manner as set forth in  
5 the declaration."

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

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

9 "(c) Any payments made by or on behalf of a unit owner  
10 shall first be applied to outstanding common expenses that are  
11 assessed to all unit owners in proportion to the common interest  
12 appurtenant to their respective units[-], including commercial  
13 property financing assessments. Only after said outstanding  
14 common expenses have been paid in full may the payments be  
15 applied to other charges owed to the association, including  
16 assessed charges to the unit such as ground lease rent, utility  
17 sub-metering, storage lockers, parking stalls, boat slips,  
18 insurance deductibles, and cable. After these charges are paid,  
19 other charges, including unpaid late fees, legal fees, fines,  
20 and interest, may be assessed in accordance with an application  
21 of payment policy adopted by the board; provided that if a unit



1 owner has designated that any payment is for a specific charge  
2 that is not a common expense as described in this subsection,  
3 the payment may be applied in accordance with the unit owner's  
4 designation even if common expenses remain outstanding."

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

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  
16 non-commercial property assessed financing, the board may grant  
17 to 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.

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

20 For purposes of this section, the financing of insurance  
21 premiums by the association within the policy period shall not



1 be deemed a loan and no lease shall be deemed a loan if it  
2 provides that at the end of the lease the association may  
3 purchase the leased equipment for its fair market value."

4 SECTION 7. 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 non-ad valorem  
14 special assessments, against the unit; and

15 (2) Except as provided in subsection (j), all sums unpaid  
16 on any mortgage of record that was recorded [~~prior to~~]  
17 before the recordation of a notice of a lien by the  
18 association, and costs and expenses including  
19 attorneys' fees provided in [~~such~~] the mortgages;

20 provided that a lien recorded by an association for unpaid  
21 assessments shall expire six years from the date of recordation



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

15       The lien of the association may be foreclosed by action or  
16 by nonjudicial or power of sale foreclosure, regardless of the  
17 presence or absence of power of sale language in an  
18 association's governing documents, by the managing agent or  
19 board, acting on behalf of the association and in the name of  
20 the association; provided that no association may exercise the  
21 nonjudicial or power of sale remedies provided in chapter 667 to



1 foreclose a lien against any unit that arises solely from fines,  
2 penalties, legal fees, or late fees, and the foreclosure of any  
3 [~~such~~] lien shall be filed in court pursuant to part IA of  
4 chapter 667.

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

19 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 [7], 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 8. 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~~] the person  
16 or persons; provided that if the claims upon which the  
17 association takes any action are not substantiated, all costs  
18 and expenses, including reasonable attorneys' fees, incurred by  
19 any [~~such~~] person or persons as a result of the action of the  
20 association, shall be promptly paid on demand to [~~such~~] the  
21 person or persons by the association."



1 SECTION 9. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 10. This Act shall take effect on July 1, 2040.



**Report Title:**

Condominiums; C-PACER

**Description:**

Allows high-rise residential condominium properties to be eligible for commercial property assessed financing. Takes effect 7/1/2040. (SD1)

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