



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, March 19, 2024
9:44 a.m.
Conference Room 229 & Via Videoconference

**On the following measure:
H.B. 2801, S.D.1 Proposed, RELATING TO COMMERCIAL PROPERTY
ASSESSED FINANCING.**

Chair Keohokalole and Members of the Committee:

My name is Nadine Ando and I am the Director of the Department of Commerce and Consumer Affairs (Department). The Department supports this bill.

The purpose of this bill is to allow condominiums to be eligible for commercial property assessed financing.

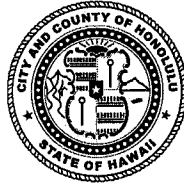
The Department appreciates and supports the intent of the bill to provide financing for projects for condominium associations with six or more units and encourages continued communication between condominium associations and their owners of financing undertaken for projects.

Thank you for the opportunity to testify on this bill.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
KA 'OIHANA MĀLAMA MO'OHĒLU A KĀLĀ
CITY AND COUNTY OF HONOLULU

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ANDREW T. KAWANO
DIRECTOR
PO'O

CARRIE CASTLE
DEPUTY DIRECTOR
HOPE PO'O

March 18, 2024

The Honorable Jarrett Keohokalole, Chair
The Honorable Carol Fukunaga, Vice-Chair
and Members of the Committee on Commerce and Consumer Protection
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Keohokalole, Vice-Chair Fukunaga and Committee Members:

SUBJECT: Testimony in **Support** of Commercial Property Assessed Financing
Proposed SD1 to House Bill No. 2801 HD1 (2024)
Hearing: Tuesday, March 19, 2024, 9:44 a.m., Conference
Room 229 & Videoconference

The Department of Budget and Fiscal Services, City and County of Honolulu ("City") appreciates the opportunity to testify in **support** and provide comments of the Proposed SD1 to House Bill 2801 HD1 (2024) ("Proposed SD1"), relating to commercial property assessed financing. The Proposed SD1 will transition the commercial property assessed financing program from a county-level program to a state-level program, as well as allow condominiums to be eligible for the commercial property assessed financing program.

This financing program will provide owners of eligible commercial property in Honolulu with access to an alternative, voluntary financing tool, with lower rates and longer terms than conventional financing for qualifying improvements, which will promote water conservation, energy efficiency, and resiliency. In addition to the environmental benefits, the affordable financing may stimulate the economy and help create and retain jobs.

The Honorable Jarrett Keohokalole, Chair
The Honorable Carol Fukunaga, Vice-Chair
and Members of the Committee on Commerce and Consumer Protection
March 18, 2024
Page 2


Thank you for this opportunity to provide comments and testify in support of the proposed SD1 version to HB 2801 HD1.

Sincerely,

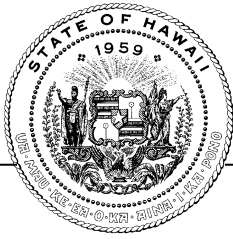


Andrew T. Kawano
Director

APPROVED:



Michael D. Formby
Managing Director



**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARY ALICE EVANS
INTERIM DIRECTOR

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Statement of
MARY ALICE EVANS, Interim Director

before the
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Tuesday, March 19, 2024
9:44 AM
State Capitol, Conference Room 229

in consideration of
BILL NO HB2801, SD1
RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING.

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Senate Committee on Commerce and Consumer Protection:

The Office of Planning and Sustainable Development (OPSD) **supports** HB2801, SD1, which allows condominiums to be eligible for commercial property assessed financing, and delegates all existing administrative responsibilities of the counties under the commercial property assessed financing program to the Hawaii Green Infrastructure Authority.

Use of commercial property-assessed financing (C-PACER) to fund qualified capital improvements was authorized by the Legislature in Act 183, Session Laws of Hawaii 2022. C-PACER financing can help property owners finance the installation of critical fire safety, energy efficiency, renewable energy, water conservation, and resiliency measures at more attractive rates and terms than may be available with conventional financing.

However, the current statute does not clearly specify whether residential condominium properties can be considered commercial properties for the purpose of using C-PACER financing to make these types of improvements. This bill clarifies that intent and eligibility, so that condominium properties can use C-PACER financing to make their buildings safer and more sustainable.

Thank you for the opportunity to testify on this measure.



Testimony of
Gwen Yamamoto Lau
Executive Director
Hawai'i Green Infrastructure Authority
before the
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Tuesday, March 19, 2024, 9:44 AM
State Capitol, Conference Room 229
in consideration of
House Bill No. 2801, HD1, Proposed SD1
RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING

Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee:

Thank you for the opportunity to testify on the proposed SD1 version of HB 2801, relating to commercial property assessed financing. The Hawai'i Green Infrastructure Authority (HGIA) **strongly supports** this bill which will transition the commercial property assessed financing program from a County-level program to a State-level program, as well as allow condominiums to be eligible for the commercial property assessed financing program.

It is important to note the following:

1. **Banks and mortgage holders remain in control** as commercial property owners are required to obtain written consent from existing mortgage holder(s) on its property before C-PACER financing documents can be executed. Additionally, the language in the proposed SD1 version **strengthens this requirement** by stating that the requirement of lender consent must be satisfied in order for the priority of the lien to be valid.
2. Unlike traditional bank financing, **C-PACER financing does not accelerate in foreclosure**. In an event of default, only the past due amounts of the C-PACER financing is senior to the mortgage lender's claim. In an example where a C-PACER lender has a \$1.0 million obligation and the bank has a \$5.0 million mortgage, and the commercial property owner is 12-months in arrears, only the \$72,000 in past due C-PACER assessments (not the full \$1.0 million), is senior to the Bank's \$5.0 million mortgage.
3. Similar to bank and credit union financing, **C-PACER financing is voluntary**.
4. While most of the projects that did not pass Honolulu's fire safety inspection were condominiums, the list also included **twenty-four (24) high-rise, multi-family apartment buildings**. In addition to fire safety measures, C-PACER can help eligible properties, including condos and 5+ multifamily projects, finance the upgrade of water conservation, energy efficiency, resiliency measures and other qualifying improvements.

5. **C-PACER financing can facilitate more affordable multi-family housing projects.** I met with an affordable housing developer last Friday who is working on **four (4) affordable housing projects** in Honolulu. He is interested in working with construction lenders who will consent to C-PACER to replace expensive mezzanine debt to improve project cash flow, especially in today's current high interest rate environment.
6. C-PACER assessments will not be placed on the real property tax bills of individual condo owners; and
7. C-PACE is active in Los Angeles County:
<https://www.bizjournals.com/losangeles/news/2023/05/01/c-pace-financing-program-helps-bridge-la-cre-proje.html>.

We respectfully request the following amendments:

With the addition of a new section (1) in Section 196-64.5(c), the lender consent requirement is now subsection (c)(7). As such, please make the highlighted update to Section 196-64.5(b):

(b) ~~[The]~~ In administering the commercial property assessed financing program, the authority~~[, as the administrator of the commercial property assessed financing program, shall coordinate with each county to bill and collect a non-ad valorem special tax assessment on a benefitted commercial property as a repayment mechanism on the real property tax bill or stand-alone bill. The non-ad valorem special tax]~~ may impose a governmental lien to secure commercial property assessed financing against real property specially benefitted pursuant to the program established by this section. Commercial property assessed financing shall be secured by the voluntary governmental lien and repaid in assessment installments in accordance with the commercial property assessed financing assessment contract and billed and collected by the authority. The principal amount of financing made pursuant to this section shall be a governmental lien against each lot or parcel of the property and assessed for a period beginning on the date of the notice of the assessment and ending once payment is made in full or otherwise satisfied in accordance with the commercial property assessed financing assessment contract; provided that the lien shall have priority over all other liens except the liens for property taxes and assessments lawfully imposed by governmental authority against the property; provided further that for multiple liens of assessments, the earlier lien shall have priority over the later lien. Neither the governmental lien nor the assessment on a benefitted commercial property pursuant to this section shall ~~[not be]~~ constitute a ~~[generally applicable]~~ tax upon the real

property [~~but shall be collected in the same manner as real property taxes as a result of a benefit to the commercial property owners for qualifying improvements.~~] within the meaning of any constitutional or statutory provision. The requirement of lender consent pursuant to subsection (c) [~~(6)~~] (7) shall be satisfied for the priority of the lien to be valid.

One of the important distinctions of C-PACER financing, unlike a mortgage loan, is that foreclosure does not require the principal balance remaining to be paid off. In other words, foreclosure of property taxes and/or mortgages, does not accelerate the remaining term of the C-PACER assessment. As such, please un-strike the highlighted section in 196-64.5(c)(10) as follows:

~~(9)] (10) [Before the execution by the authority of the first commercial property assessed financing assessment contract in a county, the authority shall enter into a contract with the county director of finance or county director of budget and fiscal services to cause the county director to levy and collect any commercial property assessed financing assessment approved and certified by the authority to the director for collection. The county director shall levy]~~ Except as otherwise provided for commercial property assessed financing special assessments under chapter 514B, the authority shall bill and collect any approved commercial property assessed financing assessment [approved by the authority]. Each commercial property assessed financing assessment that is approved for collection shall be [a non-ad valorem special tax assessment and shall be] billed and collected in [the same manner as general real property taxes are collected and be subject to the same] accordance with the commercial property assessed financing lender's amortization schedule. The authority may charge interest or other fees on assessment amounts not paid on a timely basis. The authority shall develop guidelines and procedures providing for the method of undertaking and financing qualifying improvements as well as penalties [and same procedure,], collection processes, sale, and lien priority, [subject to this section,] in the case of delinquency as is provided [by general law for the default of the payment of real property taxes, unless another procedure, including stand-alone billing and collection, is agreed upon by the authority and the county director. The county director may add to any commercial property assessed financing assessment reasonable administrative costs as agreed upon by the authority and the county director.] in this section. The [county director] authority shall remit any commercial property assessed financing assessments collected, less any reasonable

administrative costs [~~added by the county director, to or on the direction of the authority, for further application by the authority~~] to pay each commercial property assessed financing lender [~~and to pay the reasonable administrative costs of the authority~~] in accordance with each commercial property assessed financing assessment contract. [~~The county director shall covenant in a contract or instrument, for~~] For the benefit of any commercial property assessed financing lender [~~or bondholder, to~~], the authority shall commence and diligently pursue to completion the foreclosure of delinquent commercial property assessed financing assessments and any penalty, interest, and costs by advertisement and sale and with the same effect as provided by general law for sales of real property pursuant to [~~default in payment of property taxes. The covenant~~] chapter 667 and in accordance with the terms of the commercial property assessed financing contract. Any guidelines and procedures developed pursuant to this paragraph shall specify a deadline for commencement of the foreclosure sale and any other terms and conditions the [~~county director of finance or county director of budget and fiscal services~~] authority determines reasonable regarding the foreclosure sale. For commercial property assessed financing assessments levied but not paid when due pursuant to a commercial property assessed financing assessment contract, the foreclosure of the lien of the commercial property assessed financing assessment~~†, lien of general real property taxes or any other assessments levied under section 46-80, or any other lien foreclosed,~~† shall not accelerate or extinguish the remaining term of the commercial property assessed financing assessment as approved in the commercial property assessed financing assessment contract~~[†]; and~~ and

Thank you for this opportunity to provide comments and testify in support of the proposed SD1 version of HB 2801.



HAWAII STATE ENERGY OFFICE STATE OF HAWAII

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JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARK B. GLICK
CHIEF ENERGY OFFICER

LATE

Testimony of
MARK B. GLICK, Chief Energy Officer

before the
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Tuesday, March 19, 2024
9:44 AM
State Capitol, Conference Room 229 and Videoconference

In Support of
HB2801, HD1, Proposed SD1

RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING.

Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee, the Hawai'i State Energy Office (HSEO) supports HB 2801, HD1, Proposed SD1, that allows condominiums to be eligible for commercial property assessed financing (C-PACER).

HSEO's testimony is guided by its statutory duties under HRS §196-72, in which the Chief Energy Officer of the Hawaii State Energy Office shall "coordinate the State's energy programs with ... the political subdivisions of the State, departments of the State" and "assist public agencies in the implementation of energy assurance and energy resilience."

HSEO is supportive because increased financing resources made available by this measure could allow participants to improve their commercial facilities with loans for safety and energy upgrades, thus achieving several public objectives more quickly and potentially at a reduced cost. Nationwide, over \$4 billion have been invested in over 2,000 C-PACER projects,¹ and prior to 2019 only one C-PACER project defaulted.²

Thank you for the opportunity to testify.

¹ <https://www.epa.gov/statelocalenergy/commercial-property-assessed-clean-energy>

² <https://eta-publications.lbl.gov/sites/default/files/epace-special-assessmentv3.pdf>

**BOARD OF WATER SUPPLY
KA 'OIHANA WAI
CITY AND COUNTY OF HONOLULU**

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MANAGER AND CHIEF ENGINEER
MANAKIA A ME KAHU WILIKI

ERWIN KAWATA
DEPUTY MANAGER
HOPE MANAKIA



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March 19, 2024

The Honorable Jarrett Keohokalole, Chair
and Members
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 229
Honolulu, Hawaii 96813

Dear Chair Keohokalole and Members:

SUBJECT: House Bill 2801, Proposed SD1: Relating to Commercial Property Assessed Financing

The Honolulu Board of Water Supply (BWS) supports House Bill (HB) 2801, Proposed Senate Draft (SD) 1, relating to Commercial Property Assessed Financing (C-PACE), which allows condominiums to be eligible for commercial property assessed financing.

On December 6, 2023, the City and County of Honolulu (City) passed into law Ordinance 23-34 (Bill 56, CD1, FD1), which allows financing for clean energy improvements, certain infrastructure necessary to upgrade the handling of sewage from cesspools to septic systems, aerobic treatment units, or connections to sewer systems, efficiency technology improvements, resiliency measures, and other improvements approved by the Hawai'i Green Infrastructure Authority (HGIA). C-PACE is a financing mechanism that is a voluntary special assessment that the City may consider as a viable option for owners of a qualifying property to make qualifying improvements. C-PACE may benefit condominiums obtain financing over longer terms to make upgrades and repairs in need of installing fire safety measures. Ordinance 23-34 allows the City to enter into a Memorandum of Agreement with HGIA to help commercial property owners and homeowner associations finance clean energy and resilience improvements.

Thank you for this opportunity to submit testimony on HB 2801, Proposed SD 1.

Very truly yours,

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

OFFICE OF CLIMATE CHANGE SUSTAINABILITY AND RESILIENCY

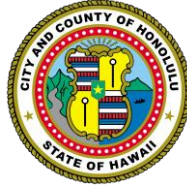
KE KE'ENA LOLI ANIAU MĀLAMA 'ĀINA A ME KE OLA LOA

CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR
MEIA



MATTHEW GONSER, AICP, CFM
EXECUTIVE DIRECTOR &
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PO'O HO'OKŌ & KAHU OLA LOA

BENJAMIN SULLIVAN
DEPUTY DIRECTOR &
DEPUTY CHIEF RESILIENCE OFFICER
HOPE PO'O & HOPE KAHU OLA LOA

TUESDAY, MARCH 19, 2024, 9:44 A.M.

STATE OF HAWAII
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

**TESTIMONY ON HOUSE BILL 2801, HD1, PROPOSED SD1
RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING**

BY,

MATTHEW GONSER
EXECUTIVE DIRECTOR AND CHIEF RESILIENCE OFFICER
OFFICE OF CLIMATE CHANGE, SUSTAINABILITY AND RESILIENCY

Dear Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

The City and County of Honolulu (“City”) Office of Climate Change, Sustainability and Resiliency (CCSR) **supports the Proposed SD1 version of HB2801 HD1**, which allows condominiums to be eligible for commercial property assessed financing, also known as C-PACER, and delegates implementation responsibilities for C-PACER programs to the Hawaii'i Green Infrastructure Authority (HGIA). We offer the following comments in support, however, we defer to the City’s Department of Budget and Fiscal Services as to specific language in the bill.

Through the development of the O’ahu Resilience Strategy, O’ahu community leaders identified early on the potential that a property assessed financing program could have in providing financial support to property owners in making critical health and safety and/or energy efficiency and other resiliency improvements. C-PACER loans provide access to low-cost capital with longer repayment terms than many commercial loans today. Additionally, access to C-PACER increases access to federal funding available today to support energy efficiency retrofits. Such improvements will offer significant long-term energy bill savings to building occupants.

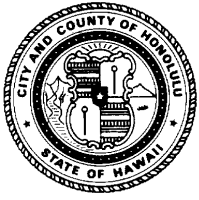
Many condo associations on O’ahu already recognize the pivotal opportunity C-PACER presents in providing assistance to condos to meet the mounting challenges and regulatory demands as a result of climate change impacts, as well as health, fire,

Chair Keohokalole and Vice Chair Fukunaga
HB2801, HD1, Proposed SD1
March 19, 2024
Page 2

and safety requirements. The large majority of occupants in older residential condominiums on O'ahu have incomes at or below 80 percent of the area median income. Expanded access to low-cost financing for condominium projects through C-PACER programs will allow condominium projects to meet their needs for health and safety upgrades while supporting lower costs of living for occupants.

HGIA has been and continues to be a fantastic partner to the City in the implementation of programs that support O'ahu's clean energy transition and lower costs of living for our residents. We are encouraged by the Proposed SD1 providing HGIA with the authority to ensure effective implementation of C-PACER programs statewide and look forward to our engagement with HGIA in support of C-PACER on O'ahu.

Thank you for the opportunity to provide this testimony in support of the Proposed SD1 to HB2801 HD1.



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
530 S. KING ST. STE. 202, HONOLULU, HI 96813

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LATE

March 19, 2024

Senate Committee on Commerce and Consumer Protection

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

RE: HB2801, HD1, RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING.

Chair Keohokalole, Vice Chair Fukunaga, and Committee Members,

Thank you for the opportunity to testify in support of the proposed SD1 version of HB2801, relating to Commercial Property Assessed Financing.

The Honolulu City Council passed Bill 56 (2023), which was approved by the Mayor in December of 2023, in support of Commercial Property Assessed Financing. This financing program will provide eligible commercial property owners in our County access to an optional financing tool, with lower rates and longer terms than conventional financing for qualifying improvements, fire safety improvements, water conservation, energy efficiency, and resilience measures. In addition to the environmental benefits, affordable financing serves as an economic stimulus by creating/retaining jobs and generating tax revenues with a multiplier impact. I support making this program and similar programs as widely available to our community as possible to reduce the burden on our local families and businesses by providing access to financing options.

Therefore, I stand in support of the proposed SD1 for HB2801. Thank you for the opportunity to submit testimony on this matter.

Respectfully,

Matt Weyer
Councilmember, District 2
Honolulu City Council

March 19, 2024

The Honorable Jarett Keohokalole, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Conference Room 229 & Videoconference

RE: House Bill 2801 HD1, Proposed SD1, Relating to Commercial Property Assessed Financing

HEARING: Tuesday, March 19, 2024, at 9:44 a.m.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 11,000 members. HAR **supports** House Bill 2801 HD1, Proposed SD1, which allows condominiums to be eligible for commercial property assessed financing. Delegates all existing administrative responsibilities of the counties under the commercial property assessed financing program to the Hawaii Green Infrastructure Authority. Effective 7/1/3000.

In 2022, Act 183 was passed by the Legislature and signed into law which created a commercial property assessed financing program. This program lets commercial property owners seek financing from a lender to cover the expenses of approved upgrades. They then sign a financing contract with both the lender and the Hawaii Green Infrastructure Authority. The costs for these upgrades are repaid through a special tax assessment collected by each county, separate from property value-based taxes. Under this measure, it transfers this responsibility to the Hawaii Green Infrastructure Authority instead of the counties. This financing program helps make qualifying improvements more affordable and assists property owners who wish to undertake such improvements. Some of the improvements that this financing tool can help are updated water and wastewater infrastructure, fortifying buildings and structures to withstand wind threats from hurricanes and windstorms, installing clean energy technologies, and many other improvements.

In 2018, Honolulu enacted an ordinance mandating fire safety evaluations for all existing high-rise residential buildings within three years, with a requirement to pass within seven years. Buildings must pass a rigorous Life Safety Evaluation (LSE) or install fire sprinklers. Older condominiums, not originally equipped with sprinklers, face significant costs for retrofitting or compliance with the LSE. Extending property assessed financing to condominiums offers a solution to this challenge. Additionally, this measure can assist older condominiums with aging infrastructure, such as pipes.

Mahalo for the opportunity to testify on this measure.



holomua

COLLABORATIVE

OUR MISSION

To support and advance public policies that make Hawai'i affordable for all working families.

OUR VISION

Collaborative, sustainable, and evidence-based public policies that create a diverse and sustainable Hawai'i economy, an abundance of quality job opportunities, and a future where all working families living in Hawai'i can thrive.

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Page 1 of 1

Committee: Senate Committee on Commerce & Consumer Protection
Bill Number: HB 2801, HD1, Proposed SD1, Relating to Commercial Property Assessed Financing
Hearing Date and Time: March 19, 2024 at 9:44am (Room 229)
Re: Testimony of Holomua Collaborative in support

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Committee Members:

We write in support of HB 2801, HD1, Proposed SD1, Relating to Commercial Property Assessed Financing. The purpose of the bill is to allow condominiums to be eligible for Commercial Property Assessed Clean Energy and Resiliency (C-PACER) financing. One of the meaningful impacts of this bill is it has the potential to slash the cost of installing fire sprinklers in older condos by making sprinkler systems eligible for C-PACER financing. Not only will this make these buildings safer, but it will make it more likely residents of these condominiums will be able to *afford* to stay in their homes.

C-PACER is an alternative financing option that finances 100% of qualified capital improvement costs, with terms matching the useful life of the equipment installed. This makes payments more affordable than a typical equipment loan. And while C-PACER financing was passed by the legislature in 2022, this bill would extend C-PACER eligibility to condominiums.

While this will help condominium residents with the financing of a variety of improvements, the most acute issue this will address is the high cost of retrofitting many older condominiums in Hawai'i with fire sprinklers. More than 281 high-rise residential buildings, primarily condominiums developed before 1975, have failed to pass safety evaluations due to the lack of fire sprinklers or other safety requirements.

In some cases, condominiums have seen their annual insurance premiums jump because they have not yet installed fire sprinklers. This in turn hikes condominium assessments, which are passed on to residents to pay. Since the fire sprinkler retrofitting is primarily affecting older condominiums, a disproportionate number of lower-income residents are being affected by it. By using C-PACER financing, the cost of these retrofits can be extended across the useful life of the installed fire sprinkler system, dropping the assessment amounts. This, in turn, lowers the price paid by lower-income residents.

Finally, we note that this is a *commercial* financing program and special assessments under this program will *not* be placed on the real property tax bill of individual condominium owners. Therefore, C-PACER will not interfere with mortgages over those units being sold in the secondary market. This measure will simultaneously improve safety and affordability for local residents, and we are proud to support it.

Sincerely,

Josh Wisch
President & Executive Director



Testimony to the Senate Committee on Commerce and Consumer Protection
Tuesday, March 19, 2024 at 9:44 AM
Conference Room 229

Comments on HB 2801, Relating to Condominiums

LATE

To: The Honorable Jarrett Keohokalole, Chair
The Honorable Carol Fukunaga, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 47 Hawaii credit unions, representing over 864,000 credit union members across the state.

HCUL offers the following comments on HB 2801, Relating to Condominiums. This bill allows condominiums to be eligible for commercial property assessed financing (C-PACE). Our testimony is in reference to the proposed SD1 version of this measure.

While we understand that the intent of this measure is to provide a method of financing for certain improvements, we have been concerned about this particular type of loan being secured by the property itself, which means it is a senior lien. C-PACE, unlike residential PACE, requires written consent by each holder and servicer of existing mortgage loans.

We understand that HB 2801 proposes to use the C-PACE model to apply the loan program to condominium properties. We would like to ensure that the prior written consent provision remains intact, as this would protect the mortgagor and the mortgagee. We would also like clarification that this program applies to condominium associations and not individual condominium units.

Further, we would note that many Hawaii financial institutions, including credit unions, currently offer specialized, low-cost loans for certain home improvements.

We concur with the amendments offered by the Hawaii Bankers Association.

Thank you for the opportunity to provide comments on this issue.

LATE

DATE: March 19, 2024

TO: Senator Jarrett Keohokalole
Chair, Committee on Commerce and Consumer Protection

FROM: Mihoko Ito

RE: **H.B. 2801, H.D.1 – PROPOSED S.D.1**
Relating to Commercial Property Assessed Financing
Hearing Date: Tuesday, March 19, 2024 at 9:44 a.m.
Conference Room: 229

Dear Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee on Commerce and Consumer Protection:

We submit this testimony on behalf of the Hawaii Bankers Association (HBA). HBA represents seven Hawai'i banks and one bank from the continent with branches in Hawai'i.

HBA submits **comments** on H.B. 2801, H.D.1 Proposed S.D.1, Relating to Commercial Property Assessed Financing and suggests amendments as outlined below.

H.B. 2801, H.D.1 allows condominiums to be eligible for commercial property assessed financing (C-PACE), which was established by Act 183, Session Laws of Hawaii 2022 to allow commercial property owners to access financing for qualifying improvements on their property. Repayment of the amounts financed occurs through a voluntary assessment, similar to a real property tax. C-PACE is a non-accelerating, senior lien secured by the property.

We support the intent of this measure which allows condominiums to utilize the C-PACE loan program, and do not take a position on the proposed SD1 goal to move this program under the Green Infrastructure Authority rather than the counties. However, we do suggest several clarifying amendments to ensure that 1) the expansion of the C-PACE program to condominiums is focused on condominium associations rather than individual units, and 2) to clarify the applicability of the written consent provisions for existing lien holders. These amendments are outlined in the attached language.

Thank you for the opportunity to provide comments on this measure.

H.B. 2801, H.D.1 Proposed S.D.1 - additional proposed amendments

RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING.

SECTION 1. The legislature finds that more than two hundred eighty-one high-rise residential buildings, primarily condominiums developed before 1975, have failed to pass safety evaluations due to the lack of fire sprinklers or other safety requirements. According to the state fire council, more than three dozen people died in fires in Honolulu between 2006 and 2019, ninety-eight per cent of those deaths occurred in buildings without sufficient fire safety measures, and ninety-four per cent of the more than two hundred people injured by fire or smoke inhalation were in buildings without sufficient fire safety measures. Further, there have been over two hundred forty high-rise fires since the Marco Polo fire, and over seventy-nine per cent of the buildings that burned did not have sufficient fire safety measures. Some forty thousand individual unit owners may achieve fire safety by meeting fire safety requirements, but doing so has also proven to be a costly endeavor.

Act 183, Session Laws of Hawaii 2022, authorized commercial property assessed financing, also known as commercial property assessed clean energy and resiliency, or C-PACER financing, in

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

The purpose of this Act is to:

- (1) Enable condominiums **associations** to participate in C-PACER financing;
- (2) Provide clarity to the definition of a commercial property for purposes of green infrastructure loans; and
- (3) Delegate all existing administrative responsibilities of the counties under the commercial property assessed financing program to the Hawaii green infrastructure authority.

SECTION 2. Section 46-80, Hawaii Revised Statutes, is amended to read as follows:

"§46-80 Improvement by assessment; financing [~~;~~ ~~commercial property assessed financing program~~]. [~~(a)~~] Any county having a charter may enact an ordinance, and may amend the same from time to time, providing for the making and financing of

improvement districts in the county, and the improvements may be made and financed under the ordinance. The county may issue and sell bonds to provide funds for the improvements. Bonds issued to provide funds for the improvements may be either bonds when the only security therefor is the properties benefited or improved or the assessments thereon or bonds payable from taxes or secured by the taxing power of the county. If the bonds are secured only by the properties benefited or improved or the assessments thereon, the bonds shall be issued according and subject to the provisions of the ordinance. If the bonds are payable from taxes or secured by the taxing power, the bonds shall be issued according and subject to chapter 47. Except as is otherwise provided in section 46-80.1, in assessing land for improvements a county shall assess the land within an improvement district according to the special benefits conferred upon the land by the special improvement; these methods include assessment on a frontage basis or according to the area of land within an improvement district, or any other assessment method that assesses the land according to the special benefit conferred, or any combination thereof.

~~[(b) There is established a special improvement program to be known as a commercial property assessed financing program, which shall be administered by the Hawaii green infrastructure authority. A commercial property owner may apply to a~~

~~commercial property assessed financing lender, approved by the authority, for property assessed financing to pay the cost of qualifying improvements and enter into a commercial property assessed financing contract with a commercial property assessed financing lender and the authority. Costs incurred for qualifying improvements shall be levied and collected by each county, as provided in section 196-64.5, as a non-ad valorem special tax assessment on the benefitted commercial property. The authority, on behalf of the State, shall authorize commercial property assessed financing assessment contracts as instruments of indebtedness in the form as may be prescribed by the authority. Commercial property assessed financing assessment contracts authorized to finance qualifying improvements, when the only security is the non-ad valorem special tax assessment levied against benefitted or improved commercial property, shall be excluded from any determination of the power of the State to issue general obligation bonds or funded debt for purposes of section 13 of article VII of the state constitution.~~

~~(c) Any county having a charter may enact an ordinance, and may amend the same from time to time, to establish a special improvement program containing the same elements as the commercial property assessed financing program authorized under chapter 196 and subsection (b), except that any program that is~~

~~established shall be administered by the county in lieu of administration by the authority. The county shall assume all of the responsibilities of the authority provided in chapter 196 and subsection (b), including determining qualifying improvements eligible for property assessed financing. A commercial property owner may apply to the county for property assessed financing to pay the costs of qualifying improvements and enter into a commercial property assessed financing assessment contract with an approved commercial property assessed financing lender and the county. Costs incurred for qualifying improvements shall be levied and collected by each county, as provided in section 196-64.5, as a non-ad valorem special tax assessment on the benefitted commercial property. The county may issue revenue bonds to finance or refinance the improvements, and the form of any revenue bond may be a commercial property assessed financing assessment contract or other instrument prescribed by the county. Bonds issued to finance qualifying improvements, when the only security is the non-ad valorem special tax assessment levied against benefitted or improved commercial property, shall be excluded from any determination of the power of the county to issue general obligation bonds or funded debt for purposes of article VII, section 13, of the state constitution.]"~~

SECTION 3. Section 196-61, Hawaii Revised Statutes, is amended as follows:

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

"Assessment" means an assessment imposed by the authority on a benefitted commercial property pursuant to section 196-64.5."

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

"Commercial property" means [any]:

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

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

(3) Any long-term care or assisted living facility;

(4) Any condominium property regime consisting of six or more units; provided that the individual condominium units are not considered commercial property; or

(5) Agricultural property.

"Commercial property assessed financing assessment" or "special assessment" means the [non-ad valorem special tax] annual assessment [that secures], secured by a lien on a

property, for the repayment of financing obtained by an owner of commercial property for a qualifying improvement [and that appears on a property tax bill.] that is billed and collected by the authority."

3. By amending the definitions of "commercial property assessed financing lender" and "commercial property assessed financing program" to read:

"Commercial property assessed financing lender" means a financial institution as defined pursuant to section 412:1-109, or a private or public lender approved by the authority, as the administrator of the commercial property assessed financing program, to originate commercial property assessed financing assessment contracts, and [~~which~~] that may include any successor or assignee of the lender as provided in the commercial property assessed financing assessment contract.

"Commercial property assessed financing program" means a program to finance qualifying improvements on commercial properties that are repaid through [~~a non-ad valorem special tax~~] an assessment imposed by the authority on the commercial property owner's property [~~tax bill~~]."

4. By amending the definition of "option to purchase" to read:

"Option to purchase" means a legally binding agreement between a buyer and a seller[~~, which~~] that gives the buyer the

option, but not the obligation, to purchase the solar energy system or other installed equipment at an agreed upon price, prior to the maturity date of the power purchase agreement or energy performance contract."

5. By repealing the definition of "county director of finance" and "county director of budget and fiscal services".

~~["County director of finance" or "county director of budget and fiscal services" means the officer or officers of the county charged with the responsibility of administering the real property taxation function of the county."]~~

6. By repealing the definition of "non-ad valorem special tax assessment".

~~["Non-ad valorem special tax assessment" means a special tax assessment or governmental charge levied by the county as provided in section 196-64.5 on a benefitted commercial property that appears on a property tax bill."]~~

SECTION 4. Section 196-64.5, Hawaii Revised Statutes, is amended to read as follows:

"[+]§196-64.5[+] Commercial property assessed financing program. (a) ~~[Any county having a charter may authorize the authority, pursuant to this section, to offer a commercial property assessed financing program within its jurisdiction and may contract with the authority for that purpose, and any county having a charter may enact its own commercial property assessed~~

~~financing program pursuant to this section and section 46-80(b) and (c).]~~ There is established a commercial property assessed financing program to be administered by the authority to enable owners of qualifying property to access non-traditional financing for qualifying improvements. Program financing shall be secured by a voluntary assessment imposed on the benefitted property that is secured by a statutory lien; provided that the statutory lien shall have priority over all other liens except the lien of property taxes and other assessments lawfully imposed by governmental authority against the property.

(b) ~~[The]~~ In administering the commercial property assessed financing program, the authority~~[, as the administrator of the commercial property assessed financing program, shall coordinate with each county to bill and collect a non-ad valorem special tax assessment on a benefitted commercial property as a repayment mechanism on the real property tax bill or stand-alone bill. The non-ad valorem special tax]~~ may impose a governmental lien to secure commercial property assessed financing against real property specially benefitted pursuant to the program established by this section. Commercial property assessed financing shall be secured by the voluntary governmental lien and repaid in assessment installments in accordance with the commercial property assessed financing assessment contract and billed and collected by the authority. The principal amount of

financing made pursuant to this section shall be a governmental lien ~~each lot or parcel of the property and~~ assessed for a period beginning on the date of the notice of the assessment and ending once payment is made in full or otherwise satisfied in accordance with the commercial property assessed financing assessment contract; provided that the lien shall have priority over all other liens except the liens for property taxes and assessments lawfully imposed by governmental authority against the property; provided further that for multiple liens of assessments, the earlier lien shall have priority over the later lien. Neither the governmental lien nor the assessment on a benefitted commercial property pursuant to this section shall [not be] constitute a [generally applicable] tax upon the real property [but shall be collected in the same manner as real property taxes as a result of a benefit to the commercial property owners for qualifying improvements.] within the meaning of any constitutional or statutory provision. The requirement of lender consent pursuant to subsection (c)(6) shall be satisfied for the priority of the lien to be valid.

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

(1) A commercial property ~~owner who owns qualifying property in the State~~ may apply to the authority for approval to use commercial property assessed financing to pay the cost of qualifying improvements and enter into a commercial property assessed financing contract with an approved commercial property assessed financing lender and the authority;

[~~(1)~~] (2) A commercial property assessed financing lender may enter into a commercial property assessed financing assessment contract to finance or refinance a qualifying improvement only with the recorded owner of the affected commercial property and the authority. Each commercial property assessed financing assessment contract shall be executed by the authority as the administrator of the commercial property assessed financing program. A commercial property assessed financing assessment contract shall require the authority to assign, pledge, and transfer revenues to be derived from commercial property assessed financing assessments to one or more commercial property assessed financing lenders as security for their direct financing of qualifying improvements. The obligation of the authority to transfer the revenues to one or more commercial property assessed financing lenders shall be evidenced by the commercial property assessed financing assessment contract as an instrument of indebtedness in a form as may be prescribed by the authority. No other bonds shall be

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

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

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

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

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

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

~~[(4)]~~ (5) The commercial property assessed financing assessment contract shall include the amount of an annual assessment, including interest, over a fixed term that ~~[will~~

~~appear as a non-ad valorem special tax assessment on the commercial property owner's tax bill or stand-alone bill annually;~~ shall be billed annually or as otherwise specified by the authority, and collected by the authority in accordance with the commercial property assessed financing lender's amortization schedule;

~~[-5)]~~ (6) The commercial property assessed financing assessment contract, or summary memorandum of the contract, shall be recorded by the commercial property assessed financing lender in the public records of the State ~~[or of the county within which the commercial property is located]~~ within five days after execution by the parties to the contract. The recorded contract shall provide constructive notice of the levy of, and obligation of the commercial property owner to pay, the commercial property assessed financing assessment. The entire principal amount of the commercial property assessed financing assessment ~~[to be levied on the commercial property]~~ contract shall be a ~~[non-ad valorem special tax assessment and a]~~ governmental statutory lien against the commercial property ~~[on a parity with the lien of general real property taxes and the lien of any other assessments levied under section 46-80, from]~~ that shall be assessed for a period beginning on the date of recordation entered into pursuant to this section ~~[until]~~ and ending once paid or satisfied in

accordance with the commercial property assessed financing assessment contract; provided further that the lien shall have priority over all other liens except the lien for property taxes and other assessments lawfully imposed by a governmental authority against the property;

[+6)] (7) Before entering into a commercial property assessed financing assessment contract for any commercial property, the commercial property owner shall [provide]:

(A) Provide the authority and the commercial property assessed financing lender with evidence of the written consent of each lien holder (including but not limited to each holder, ~~[or]~~ loan servicer, mortgagee, lender, creditor, pledgee, secured party, assignee, or lienor) of any lien (including but not limited to any mortgage, pledge, security agreement, security interest, financing statement, collateral agreement, agreement, assignment or other lien) that encumbers or otherwise secures the commercial property, where the consent is in the sole and absolute discretion of each lien holder ~~[or loan servicer of a mortgage on the commercial property]~~, at the time of the execution of the commercial property assessed financing assessment

contract by the parties; provided that the consents shall be in a form prescribed by the authority; and

(B) Agree to the commercial property assessed financing lender's remedies if a default occurs, including foreclosure, in accordance with the terms and conditions of the commercial property assessed financing contract;

~~[-7]~~ (8) At or before the time a purchaser executes a contract for the sale and purchase of any commercial property for which a ~~[non-ad valorem special tax assessment has been levied]~~ statutory lien has been recorded under this part and has an unpaid balance due, the seller shall give the prospective purchaser a written disclosure statement notifying the prospective purchaser of the commercial property assessed financing assessment;

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

~~[-9]~~ (10) ~~[Before the execution by the authority of the first commercial property assessed financing assessment contract~~

~~in a county, the authority shall enter into a contract with the county director of finance or county director of budget and fiscal services to cause the county director to levy and collect any commercial property assessed financing assessment approved and certified by the authority to the director for collection. The county director shall levy]~~ Except as otherwise provided for commercial property assessed financing special assessments under chapter 514B, the authority shall bill and collect any approved commercial property assessed financing assessment [approved by the authority]. Each commercial property assessed financing assessment that is approved for collection shall be [a non-ad valorem special tax assessment and shall be] billed and collected in [the same manner as general real property taxes are collected and be subject to the same] accordance with the commercial property assessed financing lender's amortization schedule. The authority may charge interest or other fees on assessment amounts not paid on a timely basis. The authority shall develop guidelines and procedures providing for the method of undertaking and financing qualifying improvements as well as penalties [and same procedure,], collection processes, sale, and lien priority, [subject to this section,] in the case of delinquency as is provided [by general law for the default of the payment of real property taxes, unless another procedure, including stand-alone

~~billing and collection, is agreed upon by the authority and the county director. The county director may add to any commercial property assessed financing assessment reasonable administrative costs as agreed upon by the authority and the county director.] in this section. The [county director] authority shall remit any commercial property assessed financing assessments collected, less any reasonable administrative costs [added by the county director, to or on the direction of the authority, for further application by the authority] to pay each commercial property assessed financing lender [and to pay the reasonable administrative costs of the authority] in accordance with each commercial property assessed financing assessment contract. [The county director shall covenant in a contract or instrument, for] For the benefit of any commercial property assessed financing lender [~~or bondholder, to~~], the authority shall commence and diligently pursue to completion the foreclosure of delinquent commercial property assessed financing assessments and any penalty, interest, and costs by advertisement and sale and with the same effect as provided by general law for sales of real property pursuant to [default in payment of property taxes. The ~~covenant~~] chapter 667 and in accordance with the terms of the commercial property assessed financing contract. Any guidelines and procedures developed pursuant to this paragraph shall~~

specify a deadline for commencement of the foreclosure sale and any other terms and conditions the [~~county director of finance or county director of budget and fiscal services~~] authority determines reasonable regarding the foreclosure sale. For commercial property assessed financing assessments levied but not paid when due pursuant to a commercial property assessed financing assessment contract, the foreclosure of the lien of the commercial property assessed financing assessment [~~, lien of general real property taxes or any other assessments levied under section 46-80, or any other lien foreclosed,~~] shall not accelerate or extinguish the remaining term of the commercial property assessed financing assessment as approved in the commercial property assessed financing assessment contract [~~-~~]; and

(11) All moneys collected for assessments for the commercial property assessed financing program, including any interest accrued and fee revenues collected, shall be deposited in a separate subaccount in the clean energy and energy efficiency revolving loan fund established pursuant to section 196-65.5, and expended only for the administration of the commercial property assessed financing program; provided that any surplus moneys remaining at the end of each fiscal year after the payment of expenses of the commercial property assessed financing program shall be transferred and credited to

the Hawaii green infrastructure special fund established pursuant to section 196-65, and may be expended for the administration of the commercial property assessed financing program."

SECTION 5. Section 196-65.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The authority may establish subaccounts within the fund as necessary~~[-]~~; provided that, in accordance with section 196-64.5(c)(11), the authority shall establish a subaccount within the fund into which shall be deposited all moneys, including any interest accrued and fee revenues, collected as assessments under the commercial property assessed financing program established pursuant to section 196-64.5."

SECTION 6. Section 514B-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

whole. Commercial property assessed financing program special assessments, pursuant to section 196-64.5, may be levied upon the project, as described by the project's master deed, declaration, and map pursuant to part III of this chapter;
provided that a commercial property assessed financing contract is entered into by a condominium association with an approved commercial property assessed financing lender and the authority. Without limitation of the foregoing, each unit and its appurtenant common interest shall be deemed to be a "parcel" and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including[7] but not limited to[7] other non-commercial property assessed financing program special assessments."

SECTION 7. Section 514B-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

bylaws, all limited common element costs and expenses, including but not limited to maintenance, repair, replacement, additions, and improvements, including capital improvements financed by commercial property assessed financing pursuant to section 196-64.5, shall be charged to the owner or owners of the unit or units to which the limited common element is appurtenant in an equitable manner as set forth in the declaration."

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

"§514B-105 Association; limitations on powers. (a) The declaration and bylaws [~~may~~] shall not impose limitations on the power of the association to deal with the developer [~~which~~] that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(b) Unless otherwise permitted by the declaration, bylaws, or this chapter, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:

(1) Prevent any use of a unit [~~which~~] that violates the declaration or bylaws;

(2) Regulate any behavior in or occupancy of a unit [~~which~~] that violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; or

(3) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages.

Otherwise, the association [~~may~~] shall not regulate any use of or behavior in units by means of the rules and regulations.

(c) Any payments made by or on behalf of a unit owner shall first be applied to outstanding common expenses that are assessed to all unit owners in proportion to the common interest appurtenant to their respective units~~[-]~~, including commercial property assessed financing special assessment expenses incurred for improvements financed pursuant to section 196-64.5. Only after [~~said~~] the outstanding common expenses have been paid in full may the payments be applied to other charges owed to the association, including assessed charges to the unit such as ground lease rent, utility sub-metering, storage lockers, parking stalls, boat slips, insurance deductibles, and cable. After these charges are paid, other charges, including unpaid late fees, legal fees, fines, and interest, may be assessed in accordance with an application of payment policy adopted by the board; provided that if a unit owner has designated that any payment is for a specific charge that is not a common expense as described in this subsection, the payment

may be applied in accordance with the unit owner's designation even if common expenses remain outstanding.

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

After being notified of the reasonable cost of providing the information, the unit owner may withdraw the request, in writing. A unit owner who withdraws a request for information shall not be charged for the reasonable cost of providing the information.

(e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the

making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing. In connection with the borrowing, including non-commercial property assessed financing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, the financing of insurance premiums by the association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value.

(f) For special assessments levied upon the project under a commercial property assessed financing program pursuant to section 196-64.5 and due from the association, the cost of the commercial property assessed financing, including all principal, interest, commitment fees, servicing fees, and other expenses

payable with respect to this borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project and the unit owners' proportionate share of the special assessment shall be collected in the same manner as common expenses. The written consent of at least fifty per cent of all unit owners to finance qualifying improvements with commercial property assessed financing shall include an acknowledgment that the annual special assessment required to fund debt service on the commercial property assessed financing shall be included as part of the association's adopted revised budget."

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

1. By amending subsection (a) to read:

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

(1) Liens for real property taxes and assessments lawfully imposed by governmental authority, including commercial property assessed financing special assessments established pursuant to section 196-64.5, against the unit; and

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

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

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure, regardless of the presence or absence of power of sale language in an association's governing documents, by the managing agent or board, acting on behalf of the association and in the name of

the association; provided that no association may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of [~~any such~~] the lien shall be filed in court pursuant to part IA of chapter 667.

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

2. By amending subsection (1) to read:

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

"Completion" means:

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

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

"Regular monthly common assessments" does not include:

(1) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514B-148[~~7~~], including commercial property assessed financing assessments imposed pursuant to section 196-64.5;

(2) Late charges, fines, or penalties;

(3) Interest assessed by the association;

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

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

SECTION 10. Section 514B-157, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

(1) Collecting any delinquent assessments, including commercial property assessed financing assessments imposed pursuant to section 196-64.5, against any owner's unit;

(2) Foreclosing any lien thereon; or

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

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

SECTION 11. Section 667-40, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~667-40[~~]~~] Use of power of sale foreclosure in certain non-mortgage situations. A power of sale foreclosure under this part may be used in certain non-mortgage situations where a law

or a written document contains, authorizes, permits, or provides for a power of sale, a power of sale foreclosure, a power of sale remedy, or a nonjudicial foreclosure. These laws or written documents are limited to those involving time share plans, condominium property regimes, and agreements of sale~~[7]~~, and commercial property assessed financing assessments imposed pursuant to section 196-64.5."

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 3000.



Testimony of **Nicholas Zuba, Deputy Director, C-PACE Alliance, Inc.**
before the

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Tuesday, March 19, 2024; Time: 9:44 AM HT

Conference Room 229 & Videoconference

Hawaii State Capitol

In **SUPPORT** of **House Bill No. 2801, HD 1, Proposed SD 1**
RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee,

Thank you for the opportunity to testify **in support of House Bill No. 2801**, which would allow 1) condominiums to be eligible for Commercial Property Assessed Clean Energy & Resiliency (C-PACER) financing and 2) transfers all responsibilities to administer the C-PACER program from the Counties to the Hawaii Green Infrastructure Authority (HGIA) as a statewide program.

My name is Nicholas Zuba, and I am the Deputy Director of C-PACE Alliance, Inc., a nonprofit business association that advocates for best practices in C-PACE programs. More than 30 U.S. states and the District of Columbia have adopted a C-PACE statute, facilitating over \$5 billion in financing from private entities for more than 3,000 properties.

Act 183, Session Laws of Hawaii 2022, which authorized C-PACER, was signed into law on June 27, 2022. C-PACER is a voluntary program that helps commercial property owners finance clean energy and resiliency improvements for their commercial properties (which includes multifamily properties of five (5) or more units) in Hawaii. The financing provides several benefits to commercial property owners in making these improvements, including long term repayment, lower interest rates, and non-accelerating financing. Before an assessment can be placed on the commercial property, lender consent by the mortgage holder(s) is required, which is already stipulated in the current statute. The proposed amendments do not change the control that banks and mortgage holders have on C-PACER projects moving forward in Hawaii.

The Hawaii Legislature has previously given its strong support to establishing the C-PACER Program in Hawaii. These amendments shouldn't change this strong support. The amendments ensure that any property owner can apply for C-PACER financing in Hawaii, and that it accommodates the requests we received from Hawaii counties, which was not to be involved in the administration, billing, collection, or enforcement of the program's assessments. Should these amendments be enacted, we would fulfill their request.

No additional changes are being made in terms of eligibility improvements or eligible properties, other than the underlying amendment to allow condominium associations, not condominium owners, to apply for C-PACER financing. C-PACER can permit non-profit associations, such as homeowner associations, to use C-PACER. In this scenario, the individual unit owners will not be assessed assessments on their properties; rather, it will be assessed upon the association, therefore not interfering with any mortgagees on those individual properties. The associations will be responsible to assess and collect the C-PACER assessment with the unit owners.

Condominiums appear to have a great need and can benefit tremendously from C-PACER. This amendment would allow C-PACER to be utilized to help solve the state's most important safety issue – fire protection – while also providing the association and unit owners with an affordable financing option to enhance the sustainability and resiliency of their properties throughout Hawaii.

Regarding the transferal of the administration of the C-PACER Program from Counties to HGIA as a statewide program, this will allow HGIA to administer the program in its entirety. Though the Counties will not be involved with any aspect of the administration of the program (which is responsible for financing only), Counties will still have control over how a building is designed and granting permit approvals for the construction of such buildings.

Thank you for the opportunity to testify in support of House Bill No. 2801. We urge this committee to expedite its passage.



In Alliance with **Apollo**

300 Colorado St., Suite 2000, Austin, Texas 78701

O: 512.599.9037 ♦ **FAX:** 512.532.0792

Testimony of
Michael Yaki
Senior Vice President & Sr. Counsel
Petros PACE Finance LLC
before the
COMMITTEE ON COMMERCE & CONSUMER PROTECTION
Tuesday, March 19, 2024, 2:44 pm
State Capitol, Conference Room 229
in consideration of
HB 2801, HD1, proposed SD1
RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING

Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

Thank you for the opportunity to testify on HB 2801, HD1 and the proposed SD1, relating to commercial property assessed financing. I am writing on behalf of Petros PACE Finance, the nation's largest originator of commercial PACE financing in the country, and a leader in developing and innovating commercial PACE policy and programs.

We are writing in strong support of the principles underlying HB 2801, HD1 and the proposed SD1. We thank you for your strong support in approving the C-PACER program in 2022 and urge you to reaffirm that support today by supporting SD1.

We stand on our prior testimony in favor of the changes in HB 2801, HD1 which allow for condominium associations – not condominium owner or units – to apply for CPACER to address the substantial infrastructure needs – fire sprinkler safety, hurricane resilience – that they required.

This testimony, however, focuses more on proposed SD1 and the changes that would move administration of the C-PACER program from the Counties to HGIA.

The City & County of Honolulu passed Bill 56 on December 6, 2023, authorizing C-PACER to finance qualifying improvements on eligible properties. As the bill was being heard by the Committees and City Council, it became evident that this financing program could also benefit Condominiums in need of installing fire safety measures or upgrading resiliency, energy and/or water efficiency measures, by providing longer terms over the useful life of the equipment being installed, thereby making this financing option more affordable to condo owners.

Honolulu made it clear in the ordinance that the County will only allow the program if it can delegate all responsibilities under the program, including enforcement, to HGIA. It appears that Kaua'i County has similar views. After consulting with the attorneys from the State Attorney General's office, there were very real concerns raised whether this delegation was allowed under the Hawaii Constitution.

To avoid any such issues, the proposed SD1 will amend the statute to give HGIA the authority to accept and approve applications, and upon approval, administer the billing, collection, and enforcement directly. No county involvement will be necessary.

No changes to eligible improvements or eligible property – except the addition of condominium associations – are made to the program. In effect, nothing changes from the way that the CPACER program was intended to operate under the current statute. Under the statute, HGIA was the administrator – it would receive applications, determine whether they are approved, and work with the property owner and capital provider to finalize all the documents required. Under the statute, HGIA would bill and collect the assessment. And under current law and in SD1, lender consent is required to validate the assessment and priority lien status. The only changes are (a) removing the County lien and (b) replacing it with a statutory lien imposed by and enforced by HGIA.

I want to address an issue that was previously decided by the Hawaii legislature – that multifamily (rental) construction of 5 units or more is eligible for CPACER. These are rental buildings under single-entity ownership. Buildings with 5 units or more are deemed by FHA and FHFA – and every bank and lending institution -- as commercial buildings, and commercial underwriting, not residential, is utilized. Lending is on commercial, not residential, terms. This is the standard throughout the country, and is the standard nationally for every CPACE program, and no stakeholder in any state has ever made a proposal to remove them from eligibility given how these buildings benefit from the lower interest and longer payment terms that CPACE provides for retrofits and new construction. And, to reiterate again, lender consent is required for CPACER for multifamily buildings as well – no exceptions.

Yet, some stakeholders want a second bite at the apple and propose to remove and revoke eligibility for CPACE for 5+ unit buildings. This makes no sense, especially with the lender consent requirement. There simply is no precedent.

In addition, C-PACER on FHFA or FHA multifamily properties requires the approval of FHFA or FHA. Thus, even if a lender approved CPACER on a multifamily building, it would still require federal approval. Removing all multifamily buildings from eligibility is misinformed, misguided, and removes a critical element of Hawaii's housing – multifamily -- from the benefits of CPACER financing. **HUD has issued guidance to allow CPACER** (attached) which shows there is no reason at all to remove multifamily housing from eligibility on these grounds. And it is also important to note that most multifamily housing is not HUD-insured by FHA or FHFA.

Finally, I wish to address the mistaken and wholly misplaced concerns raised by some who are invoking Los Angeles County's ("LAC") repeal of their PACE program as evidence of "issues" with commercial PACE.

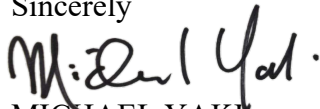
First, the LAC program was *residential* only. There was *no commercial program*. Secondly, the LAC program was its own program where LAC used their own bonding authority under California law.

To the contrary, Commercial PACE has continuously operated throughout LAC to the current day. Over 78 individual cities inside of LAC have authorized CPACE programs to operate. Our company has financed multiple projects, including just last year, within the boundaries of Los Angeles County. So have many of our colleagues.

Simply put, any reference to Los Angeles County's revocation of their residential PACE program is irrelevant to this discussion. As stated many times before, this legislation will only allow a CPACER lien to be attached to the condominium association, not individual condominium units or their owners.

Thank you for your attention, and we are available to assist in any way.

Sincerely



MICHAEL YAKI

Senior Vice President & Sr. Counsel
Policy and Programs
Petros PACE Finance, LLC



OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

Special Attention of:

Notice: H 2017-01

Multifamily Regional Center Directors
Multifamily Regional Satellite Directors
Supervisory Housing Project Managers
Housing Project Managers
Contract Administrators
Multifamily Owners and Management Agents

Issued: January 11, 2017

Expires: This notice remains in effect until
amended, revoked, or superseded.

Subject: Administrative Guidance for Multifamily Property Assessed Clean Energy (PACE)

I. PURPOSE

This notice provides guidance to owners and management agents (O/As) for determining if the PACE program in their locality meets the standards for compatibility (Assessment Procedures) with the Department of Housing and Urban Development's (HUD) multifamily housing programs. The specific Assessment Procedures are discussed below in Section IV. For those properties in jurisdictions located in areas with acceptable PACE programs, the Notice provides further guidance on obtaining HUD approval for property participation in PACE.

II. APPLICABILITY

This notice is applicable for the following programs:

- A. Project-based Section 8
 - a. New Construction Part 880 Contracts
 - b. State Agency Financed Part 883 Contracts
 - c. Substantial Rehabilitation Part 881 contracts
 - d. Section 202/8 Part 891 Contracts
 - e. Loan Management Set-Aside (LMSA) Part 886, Subpart A Contracts
 - f. Property Disposition Set-Aside (PDSA) Part 886, Subpart C Contracts
- B. Section 101 Rent Supplement Contracts
- C. Section 202 Direct Loan Mortgages
- D. Section 202/162 Project Assistance Contract (PAC)
- E. Section 202 Project Rental Assistance Contract (PRAC)
- F. Section 202 Senior Preservation Rental Assistance Contracts (SPRAC)
- G. Section 811 PRAC
- H. Section 236 Insured and Non-Insured Projects
- I. Section 236 Rental Assistance Payments (RAP) Contracts
- J. Section 221(d)(3) Rental and Cooperative Housing
- K. Section 221(d)(4) Rental Housing
- L. Section 220 Rental Housing for Urban Renewal and Concentrated Development Areas

- M. Section 223f Purchase or Refinance of Existing Rental and Cooperative Projects
- N. Section 231 Rental Housing for the Elderly
- O. Section 241(a) Supplemental Loan Insurance for Multifamily Rental Housing
- P. Section 542 Risk Sharing Program
- Q. Section 213 Cooperative Projects
- R. Section 207 Manufactured Home Parks

III. BACKGROUND

PACE-enabling legislation has been passed in 31 states and the District of Columbia. PACE is a means of financing energy efficiency upgrades or renewable energy installation in a building and the concept has been in use since 2001.

Consistent with the President's Climate Action Plan, the Department has entered into initiatives such as streamlining the utility analyses process, promoting the Better Buildings Challenge, and increasing minimum construction standards to comply with federal legislation. The Department's Office of Multifamily Housing Programs, Office of Housing, is constantly exploring additional ways to make the Multifamily portfolio more energy and water efficient, to reduce owner's and agent's operating costs and reduce HUD outlays for utilities, and has been identifying alternative sources of capital investment as part of such effort. PACE financing may be a viable way to achieve such efficiencies, however in order to protect a mortgagee's and FHA's interest, a mortgagor must receive written consent from its mortgagee and HUD to enter into a PACE special assessment or special assessment.

PACE Program special assessments allow property owners to finance the upfront costs of energy saving installations by entering into a special assessment contract with the participating PACE locality, which stipulates that the property owner will repay the cost of the energy improvements through a property special assessment, typically over 20 years with semi-annual payments. PACE is premised on an analysis that demonstrates that the cost of the energy and water improvements will be paid in full on a one-to-one basis over time by the savings generated from the improvements. This arrangement spreads the cost of clean energy improvements – such as energy efficient boilers, upgraded insulation, new windows, or solar installations – over the expected life of the measure. Because the payment is tied to the property tax bill, a secure payment stream, PACE financing is seen as less risky to the financing provider than typical loans for energy efficiency upgrades, and low interest capital can be raised from the private sector with no government financing required. This Notice recognizes the lack of energy efficiency financing tools and the potential benefits of PACE for the multifamily portfolio and includes clarifying information regarding the processes under which HUD insured and assisted properties located in qualifying localities may receive support for energy and water efficiency improvements by entering into PACE agreements.

IV. PACE PROGRAM ASSESSMENT PROCEDURES

The Owner must provide a satisfactory letter to the Regional Director from, or on behalf of, the locality/ PACE administrator, which confirms the following operational elements of the PACE program (Assessment Procedures):

- A. The PACE special assessment will be assessed by a state, county or municipality pursuant to state law and sent with tax bills;
- B. Payments are collected with tax bills;
- C. At any given time the only obligation is the semi-annual/annual payment(s) then or past due and payable, with no acceleration of the entire assessment amount;
- D. In the event of a default on payment of the assessment, the mortgagee receives timely notice and a reasonable opportunity to cure the non-payment; and
- E. An opinion from the state's attorney general that the obligations are special assessments and treated in a similar matter as the real estate taxes.

If the owner is unable to obtain the above letter from the locality/PACE administrator, an opinion from its counsel that confirms the four above operational elements (A through D) will be accepted for review. The submission of a counsel opinion must also provide evidence of the owner's efforts to obtain the locality letter. **A locality may send the letter directly to the Regional Director.**

HUD staff will review the submission, in conjunction with Field Counsel, and make a determination on whether the locality PACE program meets HUD's required Assessment Procedures. PACE subject matter experts (noted at the bottom of this Notice) in both Housing and the Office of General Counsel are available to assist field staff in reviewing these submissions. A letter will be issued to the owner and locality providing HUD's determination on the PACE program compliance.

V. PACE APPROVAL CONDITIONS

In accordance with the various business agreements (regulatory agreement, mortgage note, housing assistance payment contract, use agreement), owners shall not enter into a PACE assessment without the Department's consent and approval. Once a local PACE program has received notice from HUD that the locality's PACE program meets HUD's required Assessment Procedures in accordance with Section IV above, HUD will consider granting consent to owners of projects participating in one of the programs enumerated above under the following minimum required conditions (PACE Approval Conditions):

1. The owner must be in compliance with all business agreements on the affected property.
2. The property is not located in a Special Flood Hazard Area designated on the latest Flood Insurance Rate Map or Flood Insurance Study or identified in interim flood hazard data provided by the Federal Emergency Management Agency, and is not located on a wetland.
3. The property must have received a REAC score of at least 60 or an MOR of satisfactory or above. This may be waived by the Regional Director if the owner is under an approved CDE plan with appropriate owner certifications as to exigent health and safety repairs. Note the property must have a current score, in accordance with 24 CFR Part 200.857.
4. An energy audit, in compliance with ASHRAE Level II, must be completed or have been completed within the past year. A property seeking PACE financing for renewable energy installations only is exempt from the energy audit requirement if it meets one of three criteria: the property has a recent, independently verified benchmarking score of 75 or higher from EPA's Portfolio Manager; the property has completed an ASHRAE Level II energy audit within

- the past three years; or the property has 20 units or fewer. If the local PACE program requires an energy audit different from the ASHRAE Level II, HUD will review that requirement.
5. The property owner must provide written evidence that the mortgage holder (or holders) consents to the PACE assessment.
 6. A project financed under the PACE program must have a savings to investment ratio of one or greater, as determined by the energy audit as specified in number 4 above, meaning that projected annual savings from the total project, not the individual components, exceed the assessment, except in the first year. When feasible, savings calculations should consider the monetized utility bill savings for energy and water services, avoided labor and maintenance costs, avoided capital investments in the future, and equity financing benefits. The underwriting should be based on up to 75% accuracy in savings estimates. If underwriting is based on greater than 75% accuracy, there must be a loss reserve in place, to serve as additional collateral for the FHA-insured loan, with disbursements therefrom subject to the approval of the FHA lender or HUD. The amount of the loss reserve would be based on the difference between 75% of the estimated savings and the actual underwritten amount multiplied by three (representing three years for the project to demonstrate savings results that justify release, or retainage, of the reserve). If the project does not achieve savings to meet its obligations, the reserve will continue to be held and available to meet project needs in the event of a shortfall. The reserve account must be held or controlled by the FHA insured lender, the lender that holds the reserve for replacement account, or for non-insured projects without reserve for replacement accounts, another institution approved by HUD.
 7. Any shortfalls in the first year may be funded by residual receipts or reserve for replacement funds, so long as use of those funds meet all other applicable programmatic requirements.
 8. Properties with HUD Multifamily Housing Section 8 Project Based Rental Assistance or a Project Rental Assistance Contract (PRAC) may not include the PACE special assessment in Section 6700: Taxes and Insurance line items of the budget worksheet HUD Form 92547-A, in the budget year after the initial pace assessment. The PACE assessment should be included in subsequent budget years; however, staff should ensure that the commensurate savings are reflected in the appropriate utilities (Section 6400) line items. Note that the property will not be eligible for a rent increase to cover utility line item increases in subsequent years that are result of underperforming improvements funded by PACE. Note that the second and subsequent year budgets must reflect achieved first year savings and utility allowances should be adjusted to reflect actual savings.
 9. For properties subject to FHA insured and/or HUD-held mortgages, maximum total property debt, when added to the PACE special assessment, must not exceed 85% to 90% (depending on the section of the National Housing Act) of the property's value, or 83.3% to 90% (depending on the section of the Act) for HUD assisted and subsidized properties, as currently appraised or assessed. See applicable loan ratios in ML 2010-21 or current guidance, as updated. The owner may submit a current appraisal or market assessment (e.g. a rent comparability study) to address this condition. HUD may require the owner to submit a market assessment of comparable sales if this condition comes into question. The cost of procuring the assessment is a project expense.
 10. The energy and water saving measures proposed for the project must be permanently fixed to the property (i.e. the PACE improvements cannot be removed from the property in the event of a change of ownership). Examples of permanently fixed improvements include, but are not limited to upgraded insulation, solar hot water preheating and energy efficient heating

equipment, solar photovoltaic (PV) rooftop systems, fuel cells, and natural gas piping installed underneath the property owner's land.

11. The HUD Account Executive will review the financial performance of the project to determine the following minimum criteria:
 - a. Positive operating profit and net income in the previous three audited fiscal years.
 - b. Current debt service coverage ratio of at least 1.00:1.10.
 - c. Interim statements disclose no material adverse change in financial condition.

The criteria in number 11 a and b may be waived by the Regional Director on a case by case basis for those properties that may not meet each criterion, but would benefit from PACE participation.

12. The term of the PACE special assessment must not exceed the weighted average expected useful life of the measures as determined by the energy audit.
13. The owner must have provided the PACE program a copy of their market assessment letter establishing comparable sales value, etc. or an appraisal.
14. The owner must contractually agree to provide the lender and HUD with a variety of post assessment information from time to time such as mortgage and assessment amounts; benchmarking data utilizing EPA Portfolio Manager; and prompt notice of a PACE special assessment delinquency.

VI. PACE APPROVAL PROCESS

The locality's PACE program must receive approval from HUD as described in Section IV above. After the owner of a property has received preliminary PACE approval from the locality, they should contact their FHA lender and provide the lender with all of the below referenced submissions. For an owner to participate in PACE, its lender must agree to be responsible for reviewing the PACE Program and special assessment documents, all other submissions, any related property improvements, and the impact on income and expenses. After review of the documents, improvements, and expenses, the lender should respond to the owner with their conditional approval, which will remain contingent upon HUD review and approval. Owners and lenders should be cautioned to not enter into any agreements without prior HUD review and approval. Owners will then forward their request to their HUD Account Executive for review.

For projects where HUD is the lender, or for 202/811s, or HUD's only involvement with the project is rental assistance, the owner's request will be sent directly to their HUD Account Executive. The review should take no longer than 60 days.

Submission Requirements:

For HUD's consideration of the owner's request, the owner should provide HUD with the following documents:

1. Cover letter addressing each of the above PACE Approval Conditions.
2. PACE locality Approval letter.
3. All PACE agreements, unexecuted.
4. Lender Conditional Approval (not applicable to HUD held mortgages).
5. Energy audit. This must be performed by an independent third party.

6. Energy audit analysis indicating projected annual savings of energy/water saving enhancements commensurate with annual assessment. This must be performed by an independent third party.
7. The market assessment letter of comparable sales or appraisal.
8. Owner's Counsel Opinion or letter from or on behalf of the locality/PACE administrator that provides satisfactory assurances of compliance with the Assessment Procedures.

Review Process:

The Account Executive will complete the following steps: (1) The locality/ PACE administrator letter or the opinion of owner's counsel on the Assessment Procedures should be sent to field counsel for a sufficiency review to confirm HUD approval of the locality PACE program. (2) Perform a completeness check to ensure that all required submission requirements are in the package, including conditional lender consent and all unexecuted PACE agreements. (3) The Account Executive will review the package to ensure that the project is in compliance with the PACE Approval Conditions noted in Section V above. (4) The assistance of an appraiser may be needed to review an appraisal or other submitted valuation information. After the Account Executive determines that all conditions are met and OGC determines that the Assessment Procedures have been satisfactorily addressed, (5) an approval letter should be issued to the owner under the signature of the Regional Director.

Substantial Rehabilitation/Refinance Underwriting:

As stated above, it is anticipated that the PACE program will be largely applicable to multifamily properties with existing FHA-insured loans. However, in the event that an owner seeks a substantial rehabilitation or refinance loan using FHA mortgage insurance the PACE special assessment will need to be included in the lender's underwriting and addressed in the processing for the firm commitment issuance and closing. For MAP transactions, the lender will perform their required underwriting of the PACE documents, improvements and expenses, and include their conclusions in their underwriting summary to be forwarded to HUD as part of the application. HUD Production staff will review the application under normal MAP processing and it is not anticipated that a review of the PACE assessment, improvements and corresponding obligations will unduly impact review or timeliness. It is not anticipated that any waivers will be required. For Section 223f loan applications, PACE special assessment funds should not be included in calculating the dollar amount of the improvements or major systems being replaced that could preclude a 223f and require a substantial rehabilitation loan.

The FHA lender should include the owner's intent to enter into the PACE program, or current inclusion in the program for refinance transactions, in the Concept Meeting package. This will enable HUD staff to ensure that the lender and owner are aware of the Department's basic PACE requirements and underwriting considerations, as set forth in this Notice.

The cost savings analysis derived from the energy audit and the special assessment payment obligations need to be supplied to the third party appraiser and contained in the FHA MAP application. A detailed description of the energy retrofit items, and the cost associated with each, needs to be supplied to the PCNA analyst and contained within the application.

Prior to the submission of the application for mortgage insurance, the FHA lender will have reviewed the owner's request to enter into the PACE program, including plans and specifications (where applicable) that reflect the energy/water saving devices. The appraisal will take into account the energy saving measures, the expense associated with the assessment, and any impact of the energy savings on valuation as well as remaining economic life. The PCNA (where applicable) will provide a third party review and will reflect the projected needs; critical and non-critical repairs and reserve schedule; and the appropriateness of costs associated with energy/water saving devices. The lender should also review the acceptability of any repayment terms associated with the PACE special assessment. The lender must include a section in their underwriting summary specifically addressing the property's inclusion in the PACE program including the energy saving measures, costs, and their analysis.

FHA staff will then have the lender's summary and third party reviews reflecting the impact of the PACE program on the project underwriting. Staff should perform the standard underwriting review, focusing on highlights as discussed below. It is not anticipated that inclusion of the PACE program will require additional review time.

The Architectural and Engineering review should ensure that the building envelope (windows, doors, roofs, and walls) is addressed in any energy efficiency measures. All energy retro-fit items need to be included in the PCNA as non-critical repairs and need to be completed within one-year of endorsement. The PCNA will need to take into account the energy upgrades to accurately set the projected reserve for replacement schedule and amount, as well as set critical and non-critical repairs. Assuming the retro-fit timing is in-line with the non-critical repairs timing (i.e. within one-year of endorsement), the appraiser and the underwriter can forecast the applicable utility expense(s) based on the cost savings analysis while also taking into account the historic operations.

The Valuation review should include the special assessment payment obligations associated with the energy retro-fit as an expense line item on line 26 or 27 in Section E of the 92264 (i.e. the special assessment needs to be separated from the taxes; such as, real estate). After the assessment repayment ends, the property will receive the benefit of decreased expenses. If the market-at-large recognizes energy efficiency as a value driver, then this can and would be reflected in the capitalization rate. As usual, the capitalization rate selected needs to be supported and the primary support would be comparable sales. The selection of a lower capitalization rate should not be based on an increased NOI or a decreased expense ratio, rather should be based on the fact that the Project is energy efficient.

Any specific approvals related to PACE will be addressed in the Firm Commitment letter. The PACE assessment agreement can be executed at closing.

VII. USE OF EPA'S ENERGY STAR PORTFOLIO MANAGER

Number 13, under Section III, PACE Approval Conditions above, requires the periodic submission of data. The Energy Star Portfolio Manager is the required submission tool. ENERGY STAR Portfolio Manager is a no-cost, secure online resource that enables O/As to benchmark, track, and manage energy and water consumption at the property and portfolio level. O/As can use EPA's ENERGY STAR Portfolio Manager to identify under-performing buildings, set investment

priorities, monitor and verify efficiency improvements, receive EPA recognition for superior energy performance, and report out on building and portfolio performance.

For more information on the use of the EPA Portfolio Manager, please contact Michael Zatz at zatz.michael@epa.gov or go to <http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager>.

VIII. INFORMATION COLLECTION

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0352. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Owners should note that HUD will require submission of periodic data on actual property energy usage in comparison to the baseline of the energy audit and subsequent year's usage.

IX. CONTACT

The Office of Multifamily Housing Programs seeks feedback regarding PACE and other alternative sources of capital that support energy and water efficiency. Please send any questions and comments to MFBBC@hud.gov.

For more information on utilizing PACE in HUD properties or questions about this Notice, please contact Robert Iber at Robert.G.Iber@hud.gov.

Edward L. Golding
Principal Deputy Assistant Secretary for Housing

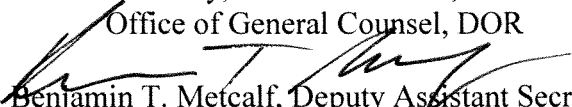


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

JAN 29 2015

MEMORANDUM FOR: Tom Azumbrado, San Francisco Hub Director, 9AHMLAP

COPY TO: Harriet Tregoning, Director, Office of Economic Resilience
Helen Kanovsky, General Counsel,
Office of General Counsel, DOR

FROM: 
Benjamin T. Metcalf, Deputy Assistant Secretary,
For Multifamily Housing Programs, HT

SUBJECT: Administrative Guidance for Multifamily Property Assessed Clean
Energy (PACE) in California

PACE-enabling legislation has been passed in 31 states. PACE is a means of financing energy efficiency upgrades or renewable energy installation in a building and the concept has been in use in California since 2001.

Consistent with the President's Climate Action Plan, the Department has entered into initiatives such as streamlining the utility analyses process, promoting the Better Buildings Challenge, and increasing minimum construction standards to comply with federal legislation. The Department's Office of Multifamily Housing Programs, Office of Housing, is constantly exploring additional ways to make the Multifamily portfolio more energy and water efficient, to reduce owner's and agent's operating costs and reduce HUD outlays for utilities, and has been identifying alternative sources of capital investment as part of such effort. PACE may be a viable way to achieve such efficiencies, however a mortgagee must receive written consent from its mortgagee and HUD to enter into a PACE assessment.

PACE assessments allow property owners to avoid the upfront costs of energy saving installations by entering into an assessment contract with the participating PACE locality, which stipulates that the property owner will repay the cost of improvements through a property tax assessment, typically over 20 years with semi-annual payments. PACE is premised on an analysis that demonstrates that the cost of the energy and water improvements will be paid in full on a one-to-one basis over time by the savings generated from the improvements. The funding is provided by local government funding or private capital channeled through a bond issuance. This memo recognizes the potential benefits of PACE for the multifamily portfolio and includes clarifying information regarding the processes under which HUD insured and assisted properties located in California may receive support for energy and water efficiency improvements by entering into PACE agreements.

BACKGROUND

California passed the first legislation for PACE financing in 2008. PACE financing programs for rooftop solar, and more broadly the financing of any eligible renewable technology, energy efficiency, or water efficiency investment, can be set up and administered under either of two different California statutory frameworks: the Improvement Act of 1911 (Improvement Act) as amended by AB 811 or the Mello-Roos Act under a city's charter authority or as amended under SB 555. Both the Improvement Act and Mello-Roos Act authorize creation of special tax districts, contractual agreements for financing between an authorized entity and the property owner, use of available funding from any source including existing bond issuing statutes, and attachment of the assessment to the property (as opposed to the individual owner) for repayment. Additionally, several programs were created by charter cities under their Mello-Roos Act authority before the passage of SB 555.

PACE was originally implemented in Berkeley, California as a means to help achieve the Bay Area's climate goals for homeowners. California's program allows multifamily property owners to finance energy saving equipment such as insulation, lighting, HVAC systems, onsite renewable energy (wind turbines, fuel cells, etc.) and water-saving upgrades such as low-flow plumbing fixtures and grey water systems. After an audit identifies the energy and water saving opportunities, the property owner enters into an assessment contract with the financing agency. The contract requires reimbursement of the cost of improvements through an annual property tax assessment lasting up to 20 years. The PACE obligation remains with the property through sale or transfer.

So far, local jurisdictions, within the State of California participate in the PACE program through multiple entities which can be found at <http://www.pacenow.org/resources/all-programs/>. Additionally, Los Angeles County, the City and County of San Francisco, and the City of Sacramento have PACE programs.

MULTIFAMILY HOUSING GUIDANCE

The FHA insurance programs are governed by the National Housing Act and the Act requires that the FHA insured mortgage be in first lien position as such first liens "are commonly given . . . under the laws of the State in which the real estate is located . . .". HUD's Office of General Counsel has received confirmation from the California Attorney General as to the nature and impact of the PACE special assessment; specifically that under California law, PACE assessments are treated in the same manner as property taxes and other assessments and delinquencies must be paid before any mortgage. While this impacts an FHA loan, PACE assessments are compatible with the Act because the FHA mortgage remains a first lien as is commonly given in California. Multifamily property owners will need approval from their lenders and the Department, however, to consent to a PACE program assessment because such participation will result in an increased, or additional, tax assessment, with corresponding ongoing obligations against the property and such approval is required under the owner's mortgage loan documents. Once HUD staff is made aware of an owner's desire to enter into a PACE program, the contents of this memorandum should be reviewed to ensure compliance with

the Department's guidance for the minimum conditions under which the Department will approve a PACE assessment.

HUD Programs under which a PACE Assessment may be considered:

- A. Project-based Section 8
 - a. New Construction Part 880 Contracts
 - b. State Agency Financed Part 883 Contracts
 - c. Substantial Rehabilitation Part 881 contracts
 - d. Section 202/8 Part 891 Contracts
 - e. Rural Housing Services (RHS) Section 515/8 Part 884 Contracts
 - f. Loan Management Set-Aside (LMSA) Part 886, Subpart A Contracts
 - g. Property Disposition Set-Aside (PDSA) Part 886, Subpart C Contracts
- B. Section 101 Rent Supplement Contracts
- C. Section 202 Direct Loan Mortgages
- D. Section 202/162 Project Assistance Contract (PAC)
- E. Section 202 Project Rental Assistance Contract (PRAC)
- F. Section 202 Senior Preservation Rental Assistance Contracts (SPRAC)
- G. Section 811 PRAC
- H. Section 236 Insured and Non-Insured Projects
- I. Section 236 Rental Assistance Payments (RAP) Contracts
- J. Section 221(d)(3) Rental and Cooperative Housing
- K. Section 221(d)(4) Rental Housing
- L. Section 220 Rental Housing for Urban Renewal and Concentrated Development Areas
- M. Section 223f Purchase or Refinance of Existing Rental and Cooperative Projects
- N. Section 231 Rental Housing for the Elderly
- O. Section 241(a) Supplemental Loan Insurance for Multifamily Rental Housing
- P. Section 542 Risk Sharing Program
- Q. Section 213 Cooperative Projects
- R. Section 207 Manufactured Home Parks

PACE APPROVAL CONDITIONS

Owners shall not enter into a PACE assessment without the Department's consent. The Department will consider granting such consent to owners of projects participating in one of the programs enumerated above under the following minimum required conditions (PACE Approval Conditions):

1. The owner must be in compliance with all business agreements on the affected property.
2. The property must have received a REAC score of at least 60. This may be waived by the Hub Director if the owner is under an approved CDE plan with appropriate owner certifications as to exigent health and safety repairs. Note the property must have a current score, in accordance with 24 CFR Part 200.857.
3. An energy audit, in compliance with ASHRAE Level II, must be completed within the past year.

4. The property owner must provide written evidence that the mortgage holder (or holders) consents to the PACE assessment.
5. A project financed under the PACE program must have a savings to investment ratio of one or greater, meaning that projected annual savings from the total project, not the individual components, exceed the assessment, except in the first year. The underwriting should be based on up to 70% accuracy in savings estimates. If underwriting is based on greater than 70% accuracy, then there must be a loss reserve in place.
6. Any shortfalls in the first year may be funded by residual receipts or reserve for replacement funds, so long as use of those funds meets all applicable programmatic requirements.
7. Properties with HUD Multifamily Housing Section 8 Project Based Rental Assistance or a Project Rental Assistance Contract (PRAC) may not include the PACE assessment in Section 6700: Taxes and Insurance line items of the budget worksheet HUD Form 92547-A, in the budget year after the initial pace assessment.
8. For properties subject to FHA insured and/or HUD-held mortgages, maximum total property debt, when added to the PACE assessment, must not exceed 85% to 90% (depending on the section of the Act) of the property's value, or 83.3% to 90% (depending on the section of the Act) for HUD assisted and subsidized properties, as currently appraised or assessed. See applicable loan ratios in ML 2010-21 or current guidance as updated. The owner may submit a current appraisal or market assessment (e.g. a rent comparability study) to address this condition. HUD may require the owner to submit a market assessment of comparable sales if this condition comes into question. The cost of procuring the assessment is a project expense.
9. The measures proposed for the project must be permanently fixed to the property (i.e. the PACE improvements cannot be removed from the property in the event of a change of ownership). Examples of permanently fixed improvements include, but are not limited to upgraded insulation, solar hot water preheating and energy efficient heating equipment, solar photovoltaic (PV) rooftop systems, fuel cells, natural gas piping installed underneath the property owner's land
10. The HUD Project Manager should review the financial performance of the project to determine the following minimum criteria:
 - a. Positive operating profit and net income in the previous 3 audited fiscal years.
 - c. Current debt service coverage ratio of at least 1.00:1.10.
 - d. Interim statements disclose no material adverse change in financial condition.

The criteria in number 10 may be waived by the Hub Director on a case by case basis for those properties that may not meet each of the criteria, but would benefit from PACE participation.

11. The term of the PACE assessment must not exceed the weighted average expected useful life of the measures as determined by the energy audit.

12. The owner must have provided the PACE program a copy of their market assessment letter establishing comparable sales value, etc. or an appraisal.
13. Owner must agree to provide Lender and HUD with a variety of post assessment information from time to time such as mortgage and assessment amounts; benchmarking data; and prompt notice of a PACE assessment delinquency.

In addition to the submission of documents that evidence the satisfaction of the PACE Approval Conditions, the Owner must provide i) copies of all PACE assessment documents submitted on its behalf to, and those received from, the locality/PACE administrator, and ii) either an opinion of its counsel or a satisfactory letter from or on behalf of the locality/PACE administrator, which confirms the following operational elements of the PACE program (Assessment Procedures):

- A. The PACE assessment will be assessed by a state, county or municipality pursuant to state law and sent with tax bills;
- B. Payments are collected with tax bills;
- C. At any given time the only obligation is the semi-annual/annual payment(s) then or past due and payable, with no acceleration of the entire assessment amount;
- D. In the event of a default on payment of the assessment, the mortgagee receives notice and an opportunity to cure the non-payment; and
- E. Allows prepayment of the entire outstanding assessment.

PACE APPROVAL PROCESS

After the owner of a property has received preliminary PACE approval from the locality, they should contact their lender and provide the lender with all of the above referenced submissions. The lender is responsible for reviewing the PACE Program and assessment documents, all other submissions, any related property improvements, and the impact on income and expenses. After review of the documents, improvements, and expenses, the lender should respond to the owner with their conditional approval, which will remain contingent upon HUD review and approval. Owners and lenders should be cautioned to not enter into any agreements without prior HUD review and approval. Owners will then forward their request to their HUD Project Manager/Account Executive for review.

For projects where HUD is the lender, or 202/811s, or where there is only rental assistance, the owner's request will be sent directly to their HUD Project Manager/Account Executive. The review should take no longer than 60 days.

Submission Requirements:

For HUD's consideration of the owner's request, the owner should provide HUD with the following documents:

1. Cover letter addressing each of the above PACE Approval Conditions.
2. PACE Entity/locality Approval letter.

3. All PACE agreements, unexecuted.
4. Lender Conditional Approval (not applicable to HUD held mortgages).
5. Energy audit. This must be performed by an independent third party.
6. Energy audit analysis indicating projected annual savings of energy/water saving enhancements commensurate with annual assessment. This must be performed by an independent third party.
7. The market assessment letter of comparable sales or appraisal.
8. Owner's Counsel Opinion or letter from or on behalf of the locality/PACE administrator that provides satisfactory assurances of compliance with the Assessment Procedures.

Review Process:

The Project Manager/Account Executive will complete the following steps: (1) perform a completeness check to ensure that all required submission requirements are in the package, including conditional lender consent and all unexecuted PACE agreements. (2) The opinion of owner's counsel or letter from or on behalf of the locality/PACE administrator on the Assessment Procedures should be sent to field counsel for a sufficiency review. (3) The Project Manager/Account Executive will review the package to ensure that the project is in compliance with the approval conditions noted above. (4) The assistance of an appraiser may be needed to review an appraisal or other submitted valuation information. After determining that all conditions are met and OGC determines that the Assessment Procedures have been satisfactorily addressed, (5) an approval letter should be issued to the owner under the signature of the Hub Director.

Substantial Rehabilitation/Refinance Underwriting:

As stated above, it is anticipated that the PACE program will be largely applicable to multifamily properties with existing FHA-insured loans. However, in the event that an owner seeks a substantial rehabilitation or refinance using FHA mortgage insurance the PACE assessment will need to be included in the lender's underwriting and addressed in the processing, firm commitment issuance and closing. For MAP transactions, the lender will perform their required underwriting of the PACE documents, improvements and expenses, and include their conclusions in their underwriting summary to be forwarded to HUD as part of the application. HUD Production staff will review the application under normal MAP processing and it is not anticipated that a review of the PACE assessment, improvements and corresponding obligations will unduly impact review or timeliness. It is not anticipated that any waivers will be required.

The FHA lender should include the owner's intent to enter into the PACE program, or current inclusion in the program for refinance transactions, in the Concept Meeting package. This will enable HUD staff to provide the Department's basic PACE requirements and underwriting considerations, as set forth in this memorandum, to the lender and owner.

The cost savings analysis derived from the Energy Audit, and the increase to the taxes, need to be supplied to the third party appraiser and contained in the FHA MAP application. A detailed description of the energy retrofit items, and the cost associated with each, needs to be supplied to the PCNA analyst and contained within the application.

The FHA lender will have reviewed the owner's request to enter into the PACE program, including plans and specifications (where applicable) that reflect the energy/water saving devices. The appraisal will take into account the energy saving measures, the expense associated with the assessment, and any impact of the energy savings on valuation as well as remaining economic life. The PCNA (where applicable) will provide a third party review and will reflect the projected needs; critical and non-critical repairs and reserve schedule; and the appropriateness of costs associated with energy/water saving devices. The lender should also review the acceptability of any repayment terms associated with the PACE assessment. It is recommended that the lender include a section in their underwriting summary specifically addressing the property's inclusion in the PACE program including the energy saving measures, costs, and their analysis.

FHA staff will then have the lender's summary and third party reviews reflecting the impact of the PACE program on the project underwriting. Staff should perform the standard underwriting review, focusing on highlights as discussed below. It is not anticipated that inclusion of the PACE program will require additional review time.

The Architectural and Engineering review should ensure that the building envelope (windows, doors, roofs, and walls) is addressed in any energy efficiency measures. All energy retro-fit items need to be included in the PCNA as non-critical repairs and need to be completed within one-year of endorsement. The PCNA will need to take into account the energy upgrades to accurately set the projected reserve for replacement schedule and amount, as well as set critical and non-critical repairs. Assuming the retro-fit timing is in-line with the non-critical repairs timing (i.e. within one-year of endorsement), the appraiser and the underwriter can forecast the applicable utility expense(s) based on the cost savings analysis while also taking into account the historic operations.

The Valuation review should include the additional taxes associated with the energy retro-fit as an expense line item on line 26 or 27 in Section E of the 92264 (i.e. this tax needs to be separated from the other taxes; such as, real estate). After the assessment repayment ends, the property will receive the benefit of decreased expenses. If the market-at-large recognizes energy efficiency as a value driver, then this can and would be reflected in the capitalization rate. As usual, the capitalization rate selected needs to be supported and the primary support would be comparable sales. The selection of a lower capitalization rate should not be based on an increased NOI or a decreased expense ratio, rather should be based on the fact that the Project is energy efficient.

Any specific approvals related to PACE will be addressed in the Firm Commitment letter. The financing agreement can be executed at closing.

REQUEST FOR FEEDBACK

The Office of Multifamily Housing Programs seeks feedback regarding PACE and other alternative sources of capital that support energy and water efficiency. Please send any questions and comments to Bob Iber at Robert.G.Iber@hud.gov.



1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877

Alison H. Ueoka
President

TESTIMONY OF ALISON UEOKA

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

Tuesday, March 19, 2024
9:44 a.m.

HB 2801, HD1

Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee on Commerce and Consumer Protection, my name is Alison Ueoka, President of Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **supports** the intent of the bill which is to allow condominium buildings to access C-PACER loans for the purpose of making their building more resilient. This can include installing fire sprinklers in individual units or re-piping their buildings. We believe that hundreds of condominium buildings are in need of such updates and repairs. Providing AOAOs financing options to improve their buildings will enhance insurability and can reduce insurance costs in the long run.

Thank you for the opportunity to testify.



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST

650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300

March 15, 2024

To: **State Senate Committee on Commerce & Consumer Protection (CPN)**

Re: **Testimony on HB2801 SD1, Relating to Commercial Property Assessed Financing**
For CPN hearing on Tuesday, March 19, 2024 at 9:44 am in Conference Room 229

Aloha Honorable **Chair Keohokalole, Vice Chair Fukunaga**, and Senate Consumer Protection Committee Members,

The **Hawaii Laborers & Employers Cooperation and Education Trust Fund** (Hawaii LECET) is a labor + management partnership established in 1992 between the 5,000 statewide members of the Hawaii Laborers Union and over 250 construction contractor members of the *General Contractors Association* and the *Building Industry Association*. The Laborers International is the largest construction trade union in North America, and Hawaii LECET is part of a network of 38 labor-management LECET Funds across the country.

Hawaii LECET supports the amendments in the proposed HB2801 SD1, Relating to a Commercial Property Assessed Financing (C-PACER), to establish an alternative financing program to fund certain qualifying property improvements under the Hawaii Green Infrastructure Authority.

HB2801 SD1 opens up more affordable vehicles for financing a wide range of clean-energy, environmental, resiliency, and green infrastructure projects, including state mandated cesspool conversions, retrofits for fire, flood, wind and other life safety improvements.

Thank you for this opportunity to offer our support for the amendments in the proposed SD1 for HB2801.

Mahalo,

**Hawai'i Laborers & Employers
Cooperation and Education Trust Fund**



Founded 1889

PLUMBERS AND FITTERS LOCAL 675 UNITED ASSOCIATION



THE SENATE
KA 'AHA KENEKOA

THE THIRTY-SECOND LEGISLATURE
REGULAR SESSION OF 2024

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair

Senator Carol Fukunaga, Vice Chair

Tuesday, March 19, 2024, 9:44 am
Conference Room 229
State Capitol, 415 South Beretania Street

Re: Testimony in Support of HB2801

Chair Keohokalole, Vice Chair Fukunaga, and members of the committee:

HB 2801 allows condominiums to be eligible for commercial property assessed financing. The Plumbers & Fitters UA Local 675 **strongly supports HB2801** as a program that can benefit our community in protection against fire hazards and helping our City and State mitigate greenhouse gas.

My name is Valentino Ceria. I am the Business Manager, Financial Secretary for the UNITED ASSOCIATION OF PLUMBERS AND FITTERS OF HAWAII, Local 675. Our organization represents over 2,000 members working in the Plumbing, Pipefitting, Air Conditioning, and Fire Sprinkler construction and building trades industry in Hawaii. We are in support of Bill 2801 urging the City Administration to enter negotiations with the Hawaii Green Infrastructure Authority to establish a commercial property assessed financing program (also known as "C-PACE") for the City and County of Honolulu.

Act 183, Session Laws of Hawaii 2022, authorized commercial 2 property assessed financing, also known as C-PACER, in Hawaii. Recently, Honolulu County passed CPACE (Bill 56 of 2023).

These resiliency projects can assist in the safety issue that Honolulu County needs to mitigate for fire issues in more than 281 high rise buildings.

Thank you for giving us this opportunity to testify in strong support of HB2801.

Respectfully,
Valentino Ceria
Business Manager / Financial Secretary - Treasurer
Plumbers and Fitters Local 675

1109 Bethel St., Lower Level • Honolulu, HI 96813 • Ph.: (808) 536-5454 • Fax: (808) 528-2629 • www.plumbershawaii.com

"UA Skilled Craftsmen — No Ka Oi"





LIUNA!

THE SENATE
KA 'AHA KENEKOA

THE THIRTY-SECOND LEGISLATURE
REGULAR SESSION OF 2024

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

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Senator Carol Fukunaga, Vice Chair

PETER A. GANABAN
*Business Manager/
Secretary-Treasurer*

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JOSEPH YAW
Executive Board

ESTHER AILA
Auditor

RUSSELL NAPIHAA
Auditor

MARK TRAVALINO
Auditor

YUGAN HOTTENDORF
Sergeant-At-Arms

Tuesday, March 19, 2024, 9:44 am
Conference Room 229
State Capitol, 415 South Beretania Street

Re: Testimony in Support of HB2801

Chair Keohokalole, Vice Chair Fukunaga, and members of the committee,

The Laborer's International Union Local 368 represents 5000+ members working in construction, environmental remediation, maintenance, food service, health care, clerical, and other occupations, as well as in state, local, and municipal government jobs and as mail handlers in the U.S. Postal Service across the State.

The Laborers' International Union Local 368 **supports HB2801** which allows condominiums to be eligible for commercial property assessed financing.

This measure will help protect our citizens by making it easier to finance fire mitigation safety technology in high rises. These resiliency projects can assist not just in the safety issue, but it can also help to harden other infrastructure and energy efficiency improvements in those buildings, saving on electric, water, and insurance rates.

Thank you for the opportunity to testify in strong support of HB2801.

Respectfully,

Peter A. Ganaban

Business Manager/Secretary Treasurer
Laborers International Union of North America - Local 368
1617 Palama Street
Honolulu, HI 96817

LiUNA Local 368
1617 Palama Street
Honolulu, HI 96817
Phone: (808) 841-5877
Fax: (808) 847-7829
www.local368.org

Feel the Power

HB-2801-HD-1

Submitted on: 3/15/2024 3:10:39 PM

Testimony for CPN on 3/19/2024 9:44:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|--|---------------------------|------------------------|
| Richard Emery | Testifying for Hawaii First Realty LLC | Support | Written Testimony Only |

Comments:

Expands loan options for an association. Support.

HB-2801-HD-1

Submitted on: 3/15/2024 9:32:39 PM

Testimony for CPN on 3/19/2024 9:44:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|--|---------------------------|------------------------|
| Brandon Madix | Testifying for Palehua Townhouse Association | Support | Written Testimony Only |

Comments:

Our association supports HB2801. Please pass this bill.

Mike Golojuch, Sr



Email: communications@ulupono.com

SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION
Tuesday, March 19, 2024 — 9:44 a.m.

Ulupono Initiative supports HB 2801 HD1 Proposed SD1, Relating to Commercial Property Assessed Financing

Dear Chair Keohokalole and Members of the Committee:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve the quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food, renewable energy and clean transportation choices, and better management of freshwater resources.

Ulupono supports HB 2801 HD1 Proposed SD1, which allows condominiums to be eligible for commercial property assessed financing (CPACE) and delegates all existing administrative responsibilities of the counties under the commercial property assessed financing program to the Hawaii Green Infrastructure Authority (HGIA).

Ulupono believes that HGIA is well positioned to support the state with an expanded CPACE program, which will provide an additional tool for condominiums and commercial entities to finance infrastructure such as renewable energy projects, cesspool conversions, and agricultural water systems. Property owners can use this financing to cover costs of projects using no public dollars or taxpayer funds for said financing. According to the U.S. Department of Energy, more than 37 states plus the District of Columbia have CPACE-enabling legislation and more than \$2 billion in projects have been financed.

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs

Investing in a Sustainable Hawai'i



Testimony of

CastleGreen Finance, LLC

before the

COMMITTEE ON COMMERCE & CONSUMER PROTECTION

March 19, 2024, Time: 9:44 A.M.
State Capitol, Conference Room 229

In **SUPPORT** of

HB 2801, HD1, SD1

RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Thank you for the opportunity to testify in support of HB 2801, HD1, SD1 relating to commercial property assessed financing. We urge the Committee to pass this bill which will allow condominiums to be eligible for the Hawaii commercial property assessed financing program and which will allow delegation of administrative responsibilities of the counties under the commercial property assessed financing program to the Hawaii Green Infrastructure Authority.

Act 183, SLH 2022 authorizing commercial property assessed financing, also known as Commercial Property Assessed Clean Energy & Resiliency (C-PACER) in Hawaii was signed into law on June 27, 2022.

This unique financing mechanism is a voluntary assessment to facilitate financing which can provide public benefits by allowing property owners to implement building designs which help reduce carbon emissions, harden buildings from natural disasters and provide safety measures related to fire suppression and mitigation. Resiliency improvements, in locations subject to increased risk for seismic activity, flooding or wildfires, help save lives, reduce damage from severe weather or other environmental events, and minimize economic loss. C-PACER is a commercial financing program, and the statute requires existing lien holders to provide consent. The private financing obtained through C-PACER helps create jobs, strengthen local economic development and allows for the creation of more sustainable buildings.

Each county must pass an ordinance approving C-PACER. The City & County of Honolulu passed Bill 56 on December 6, 2023 authorizing C-PACER to finance qualifying improvements on eligible commercial properties. Since that time it has become evident that condominiums could also benefit from C-PACER financing, given the existing need of such properties to make fire safety upgrades or other resiliency, energy, or water efficiency measure upgrades. Having a financing option like C-PACER available provides condominium owners, including the developer, with a financing option that may provide more attractive financing terms than conventional financing. C-PACER was passed by the Hawaii Legislature in 2022, however this SD1 addresses features necessary to implement C-PACER for condominiums, especially for fire safety installations. C-PACER assessments can be levied for all common area capital improvements however the assessments will not be placed on the real property tax bills of the individual condo owners. Equally important, this SD1 enables implementation by a centralized entity, HGIA, to allow for consistency across the counties of Hawaii. Importantly, these implementation amendments are in response to the counties desire to have the state implement the program.



As a C-PACE origination firm operating nationwide, in all areas with legislated and active C-PACE programs, CastleGreen provides access to private capital for energy efficiency, resiliency and renewable improvements that support the development of cleaner, safer and more efficient building stock. C-PACE financing has provided billions of dollars of private capital to property owners across the U.S.

Thank you for this opportunity to support HB 2801, HD1, SD1 relating to commercial property assessed financing.



AOAO at Pat's at Punalu'u

53-567 Kamehameha Hwy, #100
Punalu'u, Hawai'i 96717

Testimony of

J. Allen DeLaney-Kolby

President for the AOAO at Pat's at Punalu'u
before the

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Tuesday, March 19, 2024, Time: 9:44 A.M.
State Capitol Conference Room 229 and Videoconference

In support of

House Bill No. 2801, SD1

RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Mahalo for the opportunity to testify to provide comments on HB 2801, SD1.

The Association of Apartment Owners at Pat's at Punalu'u, affectionately known as Pat's at Punalu'u, extends our heartfelt gratitude for granting us the privilege to provide testimony and offer our enthusiastic support for H B 2801, SD1. This bill will allow condominiums to be eligible for Commercial Property Assessed Financing Program (also known as C-PACER), administered by the Hawaii Green Infrastructure Authority. We assert that C-PACER represents a pivotal opportunity to assist condominium association owners in meeting the mounting challenges and regulatory demands caused by climate change and health, fire, and safety requirements.

We aspire to restore Pat's at Punalu'u to its former glory and contribute to revitalizing our neighboring communities. However, the path to achieving this vision is fraught with substantial costs associated in complying with evolving standards and regulations. Pat's at Punalu'u is currently grappling with insurance premiums that have soared by over 25%, necessitating costly upgrades to our windows, roof, elevators, and electrical systems to meet stringent hurricane code requirements. We have diligently assessed and secured loans to replace our aging wastewater treatment system with an environmentally friendly state-of-the-art alternative. While we do our utmost to shoulder these financial burdens, the relentless rise in inflation, surging construction costs in Hawaii, supply chain disruptions, and rapidly escalating insurance rates threaten our progress. Furthermore, insurance companies press us to expedite our efforts, threatening to withdraw coverage if we do not meet their timelines. Adding to our concerns are the imperative fire safety regulations and the potential requirement for sprinkler systems.

☎: 833-808-Pats (7287)

✉: president@patsatpunaluu.com

🌐: www.patsatpunaluu.com

a place to dream awhile...



AOAO at Pat's at Punalu'u

53-567 Kamehameha Hwy, #100
Punalu'u, Hawai'i 96717

The availability of funding "Equipment Financing" via special assessments similar to property tax payments, over an extended term, as facilitated by C-PACER, would significantly alleviate the financial strain on our owners. Among our community are numerous long-standing, fixed income kupuna whose dreams of living out their retirement at Pat's at Punalu'u hang in the balance. Without additional financing options like C-PACER, their dreams may be shattered.

As an AOAO on Oahu, we recognize that we are not alone in grappling with these formidable challenges. For example, the recent Maui wildfires and financial pressures on insurance companies and HECO will likely lead to substantial rate hikes that will impact the entire state. We express our gratitude for considering this initiative, which offers respite and viable avenues for us to explore.

In addition to the evident environmental advantages, the broad implementation of C-PACER has the potential to generate higher-paying jobs and yield a substantial positive economic impact on our North Shore community. The State's forward-thinking stance in adopting this financially sound method of financing will undoubtedly position the Legislature as conscientious leaders providing relief to condo owners.

We extend our most profound appreciation for this opportunity to wholeheartedly endorse this Bill. Pat's at Punalu'u enthusiastically supports this initiative, which promises a brighter, more sustainable future for our community, neighbors, and our beloved State. We urge the Legislature to do the same.

With utmost aloha,

FOR THE BOARD OF DIRECTORS'
OF AOAO OF PAT'S AT PUNALU'U

J Allen DeLaney-Kolby
President



Before the Senate Committee on Commerce and Consumer Protection
Tuesday, March 19, 2024 at 9:44 a.m.

Testimony in Support of HB2801 HD1 Proposed SD1: Relating to Commercial Property Assessed Financing

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Thank you for the opportunity to testify in support and provide comments on House Bill 2801 HD1 Proposed SD1.

Hawai'i Energy works to empower island families and businesses on behalf of the Hawai'i Public Utilities Commission (PUC) to make smart energy choices to reduce energy consumption, save money, and pursue a 100% clean energy future. Energy efficiency – the energy we do not use – is the cheapest option to help us achieve our 100% clean energy goal by eliminating waste and being more efficient.

This bill would allow condominiums to benefit from Commercial Property Assessed Clean Energy & Resiliency (C-PACER) financing, a voluntary program authorized by Act 183, Session Laws of Hawaii 2022, that helps commercial property owners finance qualified capital improvement projects. C-PACER financing can be utilized to install critical fire safety, renewable energy, water conservation, energy efficiency, and resiliency measures at more attractive rates and terms than might be available through conventional financing. What became clear, however, during the necessary City & County of Honolulu process last year to approve the use of C-PACER financing, is that the current statute does not clearly specify whether residential condominium properties can utilize C-PACER financing. House Bill 2801 HD1 Proposed SD1 makes that specification clear. It also delegates all existing C-PACER related administrative responsibilities of the counties to the Hawaii Green Infrastructure Authority to ensure the counties' limited resources are not unnecessarily burdened.

House Bill 2801 HD1 Proposed SD1 has the potential to simultaneously improve both safety and affordability for our residents, and we are thankful for the opportunity to support it.

Sincerely,
Caroline Carl
Executive Director
Hawai'i Energy



Testimony in Support of HB 2801, HD1, Proposed SD1, Relating to the Commercial Property Assessed Financing

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Committee Members:

We write in support HB 2801, HD1, Proposed SD1, which allows condominiums to qualify for Commercial Property Assessed Clean Energy and Resiliency (C-PACER) financing. This will reduce the cost of installing fire sprinklers in older condominiums.

aio is a locally owned company with holdings across a broad range of industries. Our companies are purpose-driven and firmly rooted in local values. At aio, Hawai'i is at our core, and through our products and services, we work hard to make Hawai'i a better place for future generations. To do that, we need to make sure that future generations can afford to live in Hawaii. Hawaii has the highest housing costs in the country and alternative financing options make payments more affordable.

C-PACER financing covers 100% of improvement costs, with terms matching the equipment's life, making payments more affordable than typical loans. Extending C-PACER financing to condominiums helps finance a variety of improvements, including addressing the high cost of retrofitting older condominiums with fire sprinklers. This benefits lower-income residents, as these retrofits can now be paid over the sprinkler system's life, reducing assessment amounts.

It's important to note that C-PACER is a commercial financing program that can permit non-profit associations, such as homeowner associations, to use C-PACER. When used this way, as envisioned in this bill, individual unit owners will not be assessed special assessments on their real property bills; rather, it will be assessed upon the association to administer with unit owners.

Mahalo for the opportunity to submit testimony in support,

A handwritten signature in black ink that reads 'Brandon H. Kurisu'.

Brandon Kurisu
aio Family of Companies





**Testimony to
Senate Committee on Commerce and Consumer Protection
March 19, 2024
9:44am
Conference Room 229 & VIA videoconference
Hawaii State Capitol
HB 2801, HD1, Proposed SD1**

Aloha Chair Keohokalole, Vice Chair Fukukanga, and members of the Committee,

We write in support of HB 2801, HD1, Proposed SD1, which extends Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) financing to condominiums. This allows them to cover 100% of improvement costs, with repayment terms aligned to the equipment’s lifespan. One of the most immediate benefits of this would be a significant reduction in the expense of installing fire sprinklers in older condominiums. This cost reduction directly benefits lower-income residents by spreading the retrofit expenses over the sprinkler system’s operational life, ultimately lowering assessment amounts.

Established in 1904, Hawaii Gas serves over 70,000 customers on all islands through its utility pipeline infrastructure and propane business, all of whom depend on the company for sustainable, reliable, and affordable gas for water heating, cooking, drying, and other commercial and industrial applications. The company employs some 350 professionals, over 75% of whom are under collective bargaining. As an organization well-versed in the infrastructure required to keep older buildings throughout our state operating, we understand the importance of fire sprinkler systems. And we understand the expense of retrofitting older condominiums with them.

Notably, some older condominiums have faced rising annual insurance premiums due to the absence of fire sprinklers. Consequently, these increased costs are passed on to residents through condominium assessments. Since retrofitting predominantly impacts older condominiums, a disproportionate number of lower-income residents bear the burden. By leveraging C-PACER financing, the cost of fire sprinkler retrofits can be minimized, thus alleviating the assessment burden for these residents.

An essential point to note is that C-PACER, a commercial financing program, allows non-profit associations (such as homeowner associations) to utilize it. When employed in this manner, as outlined in HB 2801, individual unit owners will not face special assessments on their real property bills. Instead, the assessment will be placed upon the association, ensuring it does not impact any existing mortgages on those individual properties. The associations will assume responsibility for assessing and collecting the C-PACER assessment from the unit owners.

In summary, HB 2801 represents an intelligent and innovative solution, aimed at retaining local residents in Hawai’i by ensuring their continued affordability.



HAWAI'I COMMUNITY FOUNDATION

Testimony in Support of HB 2801, HD1, Proposed SD1, Relating to Commercial Property Assessed Financing

From: Micah Kāne, Chief Executive Officer & President - Hawai'i Community Foundation

Re: Support for Commercial Property Assessed Financing

The Hawai'i Community Foundation supports HB 2801, HD1, Proposed SD1, which extends Commercial Property Assessed Clean Energy and Resiliency ("C-PACER") financing to high-rise condominiums, aiming to reduce the cost of installing fire sprinklers in older condos. This measure not only enhances building safety but also increases the likelihood that residents can afford to stay in their homes.

Providing housing for local families is a key area within HCF's CHANGE Framework under the "C" sector of Community and Economy. Among households that accumulate wealth in Hawai'i, 60.3% own their own homes, underscoring how critical home ownership is to local families being able to afford to stay in their home state. Of course, homeownership is just part of the challenge we face. 54.7% of local *renters* are burdened by housing costs as well. And for our local resident living in older condominiums, a particular challenge they face is the high cost of retrofitting those condominiums with fire sprinkler systems.

C-PACER provides an alternative financing option covering 100% of capital improvement costs, with repayment terms aligned to the equipment's lifespan, making payments more manageable than typical loans. It addresses the immediate challenge of the high expense of retrofitting older Hawai'i condominiums with fire sprinklers. Over 281 high-rise residential buildings, primarily developed before 1975, lack fire sprinklers or other safety features and have failed safety evaluations. Some condominiums face rising annual insurance premiums due to this, leading to increased assessments passed on to residents. C-PACER financing can spread retrofit costs over the sprinkler system's useful life, reducing assessment amounts and benefiting lower-income residents.

Importantly, C-PACER is a commercial financing program that can also be utilized by non-profit associations, such as homeowner associations. This bill ensures that individual unit owners are not directly assessed on their property bills; instead, the assessment is placed on the association, avoiding interference with any mortgages on the individual properties.

HB 2801 is a smart solution that contributes to a more affordable housing market for our community, and HCF is happy to support it.



March 19, 2024

Committee: Senate Committee on Commerce and Consumer Protection
Bill Number: HB 2801, HD1, Proposed SD1, Relating to a Commercial Property Assessed Financing
Hearing Date and Time: March 19, 2024, 9:44am
Re: Testimony of HPM Building Supply in Support

Aloha Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee,

We support HB 2801, HD1, Proposed SD1, which expands Commercial Property Assessed Clean Energy and Resiliency (C-PACER) financing to condominiums. This bill aims to reduce the cost of installing fire sprinklers in older condos by making sprinkler systems eligible for C-PACER financing. Not only will this enhance building safety, but it will also increase the likelihood that residents can afford to remain in their homes.

HPM Building Supply is a 100% employee-owned company serving Hawaii's home improvement market and building industry for over 100 years since 1921. With 18 locations across Hawaii and Washington State, HPM offers various services and products, including retail stores, building supply and lumber yards, home design centers, drafting and design services, and manufacturing facilities. HPM is dedicated to enhancing homes, improving lives, and transforming communities one home at a time. As an organization dedicated to connecting local families with housing, we know how dire the housing cost situation in Hawai'i has become for local families.

This bill could reduce home costs, especially for residents in older condominiums. C-PACER offers an alternative financing option covering 100% of capital improvement costs, with repayment terms aligned to the equipment's lifespan, making payments more manageable than typical loans. It will provide immediate help with the high expense of retrofitting older Hawai'i condominiums with fire sprinklers. Over 281 high-rise residential buildings, primarily developed before 1975, lack fire sprinklers or other safety features and have failed safety evaluations. Some condominiums face rising annual insurance premiums due to this, leading to increased assessments passed on to residents. C-PACER financing can spread retrofit costs over the sprinkler system's useful life, reducing assessment amounts and benefiting lower-income residents.

This bill also aligns with HPM's values of Heart, Character, and Growth. By supporting our communities' families, we invest in our future. We show that we care about the future generations and our current workforce shaping it. Our company's value of Heart is caring for one another as a community.

Sincerely,

Dennis Lin
Community Relations Administrator



Statement of
Meli James
President
HVCA

HB 2801, HD1, Proposed SD1, Relating to Commercial Property Assessed Financing

Aloha,

We support HB 2801, HD1, Proposed SD1, which extends Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) financing to high-rise condominiums, covering 100% of improvement costs with repayment terms aligned to the equipment’s lifespan. This significantly reduces the cost of installing fire sprinklers in older condominiums, benefiting lower-income residents by spreading the retrofit expenses over the sprinkler system’s operational life and lowering assessment amounts.

The Hawaii Venture Capital Association (HVCA) is a local nonprofit that stands as a nexus for entrepreneurs, capital foundation, and networking opportunities in Hawaii. Our organization helps to foster entrepreneurship through education and exposure to key members in our business community in order to support our islands’ emerging entrepreneurs, all while sustaining a vibrant and successful business community. To keep these types of entrepreneurs in Hawai’i and even expand our entrepreneurial ecosystem, though, these entrepreneurs need a place to live that they can afford. Sometimes that means older condominiums, where they are faced with the costs of retrofitting them.

Specifically, some older condominiums face rising annual insurance premiums due to the absence of fire sprinklers, passing these costs on to residents through condominium assessments. Since retrofitting primarily impacts older condominiums, a disproportionate number of lower-income residents bear the burden. By using C-PACER financing, the cost of fire sprinkler retrofits can be minimized, alleviating the assessment burden for these residents.

Importantly, C-PACER allows non-profit associations, like homeowner associations, to utilize it. When used this way, individual unit owners will not face special assessments on their real property bills. Instead, the assessment will be placed upon the association, ensuring it does not affect existing mortgages on those properties. The associations will be responsible for assessing and collecting the C-PACER assessment from the unit owners.

HB 2801 is a good solution to keep local residents in Hawai’i by making sure they can afford to stay.



President
HVCA

TORI RICHARD

March 19, 2024

Aloha Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee,

I am writing in support of HB 2801, HD1, Proposed SD1, which extends Commercial Property Assessed Clean Energy and Resiliency (C-PACER) financing to condominiums. This bill is crucial for reducing the cost of installing fire sprinklers in older condominiums, which is vital for ensuring future generations in Hawaii have affordable housing options.

Tori Richard has manufactured in Honolulu for over 60 years, and we continue to proudly do so today. As a long-time medium-sized Hawaii employer, we recognize the challenge high housing costs pose to everyone working to make ends meet in Hawaii, including our employees. This bill is a good way to address those housing costs and keep local working families in Hawaii.

Hawaii's high housing costs are a significant challenge, and the expense of retrofitting older condominiums with fire sprinklers has exacerbated this issue. C-PACER financing, covering 100% of improvement costs with terms aligned to the equipment's lifespan, offers a more affordable payment structure than typical loans. This financing option will not only help address the high cost of fire sprinkler retrofitting but also benefit lower-income residents by spreading the costs over the sprinkler system's life, reducing assessment amounts.

It's worth noting that C-PACER is a commercial financing program that can also be used by non-profit associations, such as homeowner associations. Under this bill, individual unit owners will not be directly assessed special assessments on their real property bills. Instead, the assessment will be placed upon the association, ensuring it does not impact any existing mortgages on those individual properties. The associations will be responsible for assessing and collecting the C-PACER assessment from the unit owners.

We appreciate the opportunity to submit testimony in support of this bill.

Sincerely,



Josh Feldman
President & CEO
Tori Richard, Ltd.

1891 NORTH KING STREET
HONOLULU, HAWAII 96819



Statement of
Meli James
Cofounder
Mana Up

HB 2801, HD1, Proposed SD1, Relating to Commercial Property Assessed Financing

Aloha,

We support HB 2801, HD1, Proposed SD1, which extends Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) financing to condominiums, covering 100% of improvement costs with repayment terms aligned to the equipment’s lifespan. This significantly reduces the cost of installing fire sprinklers in older condominiums, benefiting lower-income residents by spreading the retrofit expenses over the sprinkler system’s operational life and lowering assessment amounts.

Mana Up is a statewide initiative that helps provide entrepreneurs in Hawai‘i with the resources and tools to grow their business and scale globally. As these entrepreneurs continue to grow, they also help contribute to our expanding our local economy. As part of our mission, we aim to sustain the local economy through economic diversification, local job creation, community giveback, investment, and a regenerative culture of entrepreneurship – providing a better future for generations to come here in Hawai‘i. To keep these types of entrepreneurs in Hawai‘i and even expand our entrepreneurial ecosystem, though, these entrepreneurs need a place to live that they can afford. Sometimes that means older condominiums, where they are faced with the costs of retrofitting them.

Specifically, some older condominiums face rising annual insurance premiums due to the absence of fire sprinklers, passing these costs on to residents through condominium assessments. Since retrofitting primarily impacts older condominiums, a disproportionate number of lower-income residents bear the burden. By using C-PACER financing, the cost of fire sprinkler retrofits can be minimized, alleviating the assessment burden for these residents.

Importantly, C-PACER allows non-profit associations, like homeowner associations, to utilize it. When used this way, individual unit owners will not face special assessments on their real property bills. Instead, the assessment will be placed upon the association, ensuring it does not affect existing mortgages on those properties. The associations will be responsible for assessing and collecting the C-PACER assessment from the unit owners.

Being that at Mana Up, we help local entrepreneurs grow their product companies and scale globally with the mission to expand the economy and create jobs for locals so they can support the high cost of living here, we are happy to support this bill. HB 2801 is a good solution to keep local residents in Hawai‘i by making sure they can afford to stay.

Sincerely,

Meli James | Cofounder, Mana Up



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

LATE

March 18, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Senate Committee on Commerce & Consumer Protection

Hearing Date: March 19, 2024
Hearing Time: 9:44 am

Re: HB 2801-HD1 relating to Commercial Property Assessed Financing

I am Victor Brock, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

The MBAH supports the requested clarifying amendments to the Bill as submitted by Mihoko Ito of San Hi Government Strategies on behalf of Hawaii Bankers Association.

Thank you for the opportunity to present this commentary.

Victor Brock
Mortgage Bankers Association of Hawaii

The Senate
The Thirty-Second Legislature
Committee on Commerce and Consumer Protection
Tuesday, March 19, 2024
9:44 AM

TO: Senator Jarrett Keohokaole, Chair
TO: Senator Carol Fukunaga, Vice Chair

Aloha Chair Jarrett Keohokaole, Vice Chair Carol Fukunaga and Members of the Committee,

I am opposed to HB2804 due to the unanswered questions related to C-PACE loans.

I am, Lourdes Scheibert, retired partner of Scheibert Energy Company (SECO). I am an owner of a Kakaako Condominium. My representatives are House Leader Scott Saiki and Senator Sharon Moriwaki.

SECO was engaged as a subcontractor to carry out maintenance tasks on equipment at U.S. Army Garrison Schofield Barracks, Wahiawa. This project gained Federal acknowledgment and published in September 1999 Energy User News¹. Following this, SECO was granted a maintenance contract at Schofield Barracks as part of a FEMP program. In this arrangement, the main contractor was in possession of a 25-year contract, commonly known as 'shared savings'.

I understand the purpose of HB2804 Property Financing. However, it seems to me that this program, C-PACE bears a striking resemblance to the Federal Energy Management Program (FEMP) from the early 2000s. This program, known as shared-savings, was rolled out on military bases. Major engineering firms competed for 25-year contracts to save money by installing and replacing outdated equipment with new, energy-efficient alternatives. The idea was that the difference between the original energy expenditure and the new, reduced energy cost would cover the cost of these improvements. However, a challenge arose with the upkeep of the new equipment. The maintenance costs for the new equipment ended up being higher than the savings generated or the revenue from renewable energy.

¹ September 1999 Energy User News_Scheibert

Moreover, while I was serving as a maintenance subcontractor, the primary contractor, who had been awarded the contract, was responsible for maintaining the equipment. The expenses associated with this maintenance exceeded his share of the cost savings. The situation concluded unfavorably for the primary contractor, who suffered financial losses and failed to achieve profitability. The program ultimately failed and was not successful.

The questions to ask for C-PACE program:

- Who holds the responsibility for the upkeep of the enhancements funded by the C-PACE program?
- If the Association is indeed responsible for upkeep, then the success of the C-PACE program could be in doubt, given the historical issue of deferred maintenance.
- Should the lifespan of the new upgrades not last the duration of the C-PACE 20-year loan, is it the Association's responsibility to fund the repair or replacement of these upgrades from their operating funds or Reserve funds, while still having an outstanding balance on the C-PACE 20-year loan?
- Are the investors of the C-PACE loans allowed to transfer or sell these loans to a different entity?
- Is it possible that any foreclosures and resale resulting from these C-PACE loans could surpass the loan's own value? What are the potential hazards linked to such foreclosures?

The Committee should review the concerns raised in the testimony given by Lila Mower on February 6, 2024, regarding SB2727, which pertains to Condominiums. Her comments highlighted questions about the absence of consumer protections.²

² Feb 6, 2024 Mower testimony SB2727

The following details draw parallels between the C-PACE and the FEMP programs from 2000.

Energy Resources for State and Local Governments Commercial Property Assessed Clean Energy

One of the main benefits of PACE for property owners is that it can be used to cover 100% of the upfront cost of an energy or resilience upgrade. The investments are then repaid over the useful life of the installed equipment. The longer payback period – and lower annual or semi-annual payments – can make upgrades more affordable for property owners. The assessment stays with the property in the event of a sale (assuming the buyer agrees to the transfer).² Therefore, if the property is sold, the buyer can assume the PACE (C-PACE) payments and the benefits from the upgrades. If the buyer does not agree to a transfer, the seller may have to pay off the outstanding amount of the PACE (C-PACE) assessment. Because property taxes have high rates of payment, there may be lower interest rates, longer loan terms, or a combination of the two. PACE interest rates are usually between 5% and 10% of the total funded amount and allow for flexible payback terms of up to 20 years.

Mahalo for the opportunity to address my concerns for HB2804 and SB2727, I oppose both measure with the questions I present to the Committee on Commerce and Consumer Protection.

Lourdes Scheibert
Condominium Owner
Former owner of Scheibert Energy Company

**The Senate
The Thirty-Second Legislature
Committee on Commerce and Consumer Protection
Tuesday, February 6, 2024
9:30 a.m.**

To: Senator Jarrett Keohokalole, Chair
Re: SB 2727, Relating to Condominiums

Aloha Chair Jarrett Keohokalole, Vice-Chair Carol Fukunaga, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups with over 800 members and affiliates in Hawaii and I serve on the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 retirees.

I also serve as the leader of a coalition of hundreds of property owners, mostly seniors, who own and/or reside in associations throughout Hawaii and I have served as an officer on three condominium associations' boards.

Mahalo for allowing me to submit testimony in **support of the intent of SB2727** to provide an alternative financing option for qualified capital improvement costs.

Having retired from a career in banking, specifically in real estate financing, I have these concerns about the proposed C-PACER financing option:

LACK OF CONSUMER PROTECTIONS

- (1)** Because C-PACER is structured as a tax assessment instead of a loan, borrowers may not have the same consumer protections of disclosures about financing costs that traditional lenders must provide.
- (2)** Without those disclosures, directors, community association managers, and other advisors, who are not experienced in or may only have superficial knowledge of financing, may not know what to ask, including inquiring if the rates and terms that are offered are competitive (and may not know how to compare), about penalties, restrictions, and other limitations.
- (3)** Unlike traditional financing, most C-PACER programs do not require a third-party assessment of the costs of improvements (i.e., appraisal).
- (4)** Those who are naïve may have a false sense of security about C-PACER, wrongly assuming that it is a federal (or state) loan program and wrongly believing that there are consumer protective terms that may not exist.

- (5) Additionally, there may be individuals who influence the board's decision to borrow who may have undisclosed conflicts of interests, including pecuniary interests which may be hidden in the undisclosed financing costs, or financial interests in the capital improvements that are to be funded by C-PACER. These include contractors who use C-PACER as a sales tactic to lure business and use the financing option to generate more business (greater and additional improvements) than needed. There is also the possibility of "kickbacks."

ADVERSE AFFECT ON THE REAL ESTATE MARKET

- (6) Because C-PACER runs with the land (i.e., property), C-PACER may make it more difficult for owners who desire to sell or purchasers who desire to purchase in an already difficult real estate market. Sellers may have to discount their units compared to comparable units in associations without C-PACER.
- (7) Because C-PACER takes priority over other lienholders except for government tax liens, those lienholders (mostly mortgagors) will have to consent. In the past, Fannie Mae (FNMA) and Freddie Mac (FLMC) indicated that they will not purchase mortgages with C-PACER superior liens. If this is still correct, the marketability of properties with C-PACER will be affected, reversing the purpose of utilizing C-PACER to fund needed improvements for borrowers and their properties to qualify for Fannie Mae or Freddie Mac mortgage financing.

Based on allegations from hundreds of Hawaii condominium unit owners¹ regarding voting integrity and conflicts of interest, any consent to finance capital improvement should be by ballot, whether in person vote or mail-in ballot, and not by proxy-voting. (Florida, which has the second most associations in the nation, prohibits the use of proxies and allows only directed limited proxies in few instances.² And the former Chair of the Condominium Advisory Board in Illinois, which has the fourth most associations in the nation, said, "voting by proxy – in which a unit owner gives up his or her vote to someone else – is 'the single most abused concept' in the Illinois Condominium Property Act...Although admittedly cumbersome, mail-in voting, says Shifrin, which is allowed by law even if not mentioned in an association's bylaws, 'is still the viable alternative for owners to vote who cannot attend the meeting, proper.'"³)

Mahalo for the opportunity to address my concerns regarding SB 2727, a measure whose *intent* I support.

¹ See Exhibit A

² <https://www.flsenate.gov/Laws/Statutes/2023/718.112>

³ <https://www.loopnorth.com/news/proxy1013.htm>

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Army Slashes Energy Bills

Controllers help military installation meet energy goals with time to spare

By ALISON OTTO

WAHIAWA, HAWAII—The energy mandate facing the Army—reduce building energy consumption by 30 percent by 2005—is no small challenge. Yet an installation of microprocessor-based controllers on boilers and hot water heaters at the U.S. Army Garrison here in Wahiawa has already solved most of the facility's requirements for water heating with years to spare.

The units, each only a little larger than a shoe box, have cut down on fuel consumption by 23 percent to 26 percent, for a savings of more than \$177,000 a year. Payback is estimated at a year and a half.

A vast military installation that includes Schofield Barracks, Fort Shafter, Wheeler Army Airfield, and Helemano Military reservation, the U.S. Army Garrison in Hawaii houses 15,000 soldiers of the 25th Infantry Division. Located near the city of Wahiawa on the island of Oahu, it spans 30 million square feet of building space, and runs an annual energy tab of \$30 million.

While the electric heat pump has been one of the local methods of conserving energy in Hawaii, the Army discovered that alternatives are worth a second look. Despite Hawaii's moderate temperatures, humidity and salt in the air can wreak havoc on that equipment, and the state has one of the highest electric rates in the country.

MICROPROCESSOR CONTROLS BOILERS

That's where the MicroTherm L.L.C. computers came in. When a unit is installed on a boiler or hot water heater, it monitors the daily routine of the equipment, including its cycles and temperatures. The microprocessor in the unit assimilates the information, automatically determines how long to keep the boiler or water heater in its "off" cycle, and reprograms the equipment to perform more efficiently. The unit determines if the boiler is oversized or has extra capacity, and scales back the equipment's ignitions to meet the actual needs of the facility.

"The computer literally learns what the personality of the boiler is," says Todd Scheibert, owner of Scheibert Energy Co., and the local distributor for the computer manufacturer. "It learns how long it took for the boiler to recover in the last cycle, how far the temperature dropped, and how far the temperature went up before the boiler shut down. It learns this and then it determines how long to hold the boiler in an 'off' condition to max-



Microprocessor control units, installed on boilers and hot-water heaters, assimilate operating data and automatically determine how long to keep the unit in its "off" cycle, reprogramming the equipment to perform more efficiently.

imize the 'off' cycle."

The Army first agreed to experiment with the units in 1997. At that time, after Scheibert proposed a free trial period, the Army's energy manager, Scott Bly, agreed to the installation of three units. They tested the units for six months on three different systems: a propane manifold system, an individual propane tank, and a diesel, low-pressure boiler fired on diesel fuel.

IMPRESSIVE RESULTS

Impressed with the results, Bly finalized the deal: \$260,000 for the 100 units and their installation. Most were installed by July of 1998 on heaters and boilers used for showers, laundry, and food preparation at Schofield Barracks. "We considered adding timers to our boilers or converting to heat pumps, but neither could provide dependable, cost effective, low-maintenance savings and performance of the unit," says Bly. "Although the heat pump may have a higher efficiency rating, the maintenance costs have outweighed the energy savings. Many of our heat pumps failed due to the rust caused by the environment and substandard materials."

In 1997, before the installation, the garrison's propane consumption for July through December totaled 283,595 gallons, averaging 47,265 gallons a

month. At the time, 71 boilers were operating. A year later, after the installation, when an additional 10 more boilers were in use, fuel consumption dipped to 250,232 gallons for the same six-month period, for an average of 41,704 gallons a month. End result: A cost savings of \$14,785 a month. (The remaining units were installed on synthetic natural gas or diesel-fired boilers; there is no analysis of that data.)

SCALING BACK

In many cases, boilers or hot-water heaters are oversized to meet the toughest of conditions, starting and stopping many times a day—often wasting fuel and money and spewing more pollutants than necessary into the atmosphere. Depending on the equipment, a unit may scale back the number of ignitions by 25 or 30 each day, without reducing the temperature. In the case of Schofield, "Every boiler had savings, some were higher, some were lower," says Scheibert. "We had some boilers that got as high as 50 percent savings. They were very much oversized." He adds, "Whenever a boiler turns on, the combustion is very inefficient."

By running diagnostics, the units also identify problems with equipment or ground wiring. At Schofield, the diagnostics test identified some problems with old equipment, which was replaced or upgraded. "In many cases, the installer or diagnostic computer identified opportunities for even greater savings," says Bly.

The unit is a plastic box with a printed circuit board and viewing screen inside. It snaps onto the surface of the boiler, or in some instances at Schofield, on the wall in the boiler room. The unit is equipped with a temperature sensor that attaches to the outgoing hot water pipe, and will override the device if the temperature falls below a programmed minimum temperature because of a sudden change in demand.

FAST PAYBACK

"This is the simplest retrofit project I have been involved with, and it provided the fastest payback," says Bly.

The project is part of a sweeping energy conservation program at the U.S. Army Garrison-Hawaii (USAG-HI), which includes lighting retrofits, chiller replacements, daylighting, and cogeneration. "MicroTherm L.L.C. contributed to the USAG-HI being selected as a winner in the Secretary of the Army Energy Conservation Award," says Bly. USAG-HI has claimed the award for the last three years.

HB-2801-HD-1

Submitted on: 3/16/2024 2:06:43 PM

Testimony for CPN on 3/19/2024 9:44:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| JESSICA A KERBER | Individual | Support | Written Testimony Only |

Comments:

I am an owner resident of Regency Tower for the last 5 years. I was only able to qualify for my mortgage because the building had relatively low HOA fees when I purchased. We are in need of modifying the building to add sprinklers AS WELL as getting Hurricane insurance coverage, however the building in its current state does not allow us to receive insurance for fire or hurricanes. In addition the building has other maintenance issues (as is common with similar age buildings in the area) all of these required upgrades are threatening to increase my HOA fees by more than double and probably quadruple what I am currently paying. If this happens I will be priced out as a home owner and forced to sell, but new mortgages are requiring the fire and hurricane insurance which we will not be able to provide so I may be stuck with my condo that I can no longer afford and not be able to sell. The state needs to do something to assist the THOUSANDS of residents in my situation before this creates a massive issue. Hundreds of buildings were built before the requirement of sprinklers and many like Regency Tower were not designed in a way to retrofit waterlines for sprinklers without it costing more than the building is worth. There has to be a solution to help keep home owners in their homes while keeping them safe.

HB-2801-HD-1

Submitted on: 3/16/2024 6:06:22 PM

Testimony for CPN on 3/19/2024 9:44:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|----------------|
| Gary Strange | Individual | Support | In Person |

Comments:

I support HB2801

**The Senate
The Thirty-Second Legislature
Committee on Commerce and Consumer Protection
Tuesday, March 19, 2024
9:44 a.m.**

To: Senator Jarrett Keohokalole, Chair
Re: HB 2801 HD 1, Relating to Commercial Property Assessed Financing

Aloha Chair Keohokalole, Vice-Chair Fukunaga, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii’s oldest advocacy groups which has continuously served our State since 1972. I also serve on the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 retirees. And I am the leader of a coalition of hundreds of property owners, mostly seniors, who own and/or reside in associations throughout Hawaii and served as an officer on three condominium associations’ boards.

For many of my colleagues, the future is finite. Too many older condo owners, with limited ability to finance needed improvements, find ourselves in “the perfect storm” of aging buildings with deferred maintenance, underfunded reserves, and rising costs. We do not have the luxury of time to cure the mistakes we make now.

Thus, this testimony addresses **HB 2801 HD 1 with concerns not addressed earlier** when you heard the similar measure, SB 2727.

I applaud and encourage the legislature’s efforts to study alternative funding options for capital improvements of condominium associations to comply with the City and County of Honolulu’s Life Safety Evaluation (CCH LSE) requirements, and to mitigate rising insurance premiums despite reduced coverage, or the loss of insurance coverage, and the perception of higher risk because of substandard collateral, each of which reduced traditional financing opportunities. But **the proposed financing in this measure does not appear to be a good fit for condominium unit owners.**

A commercial property—whether it is student or senior housing; multi-family housing (i.e., an apartment complex); retail, office, or mixed-use complex; industrial complex; agricultural property—is owned by a *single entity* and an unreleased condominium project is owned by the declarant, i.e., the developer, *a single entity*.

But a residential condominium is an association of divisible units that are each owned by a separate entity upon sale or release from the declarant.

Thus, in the proposed measure, to whom does “*commercial property owner*” refer? The association? Or each condominium unit owner?

The Commonwealth of Virginia **excludes condominiums from C-PACE financing**:

“Eligible properties” means all assessable commercial real estate...**other than a residential dwelling with fewer than five dwelling units or a condominium** as defined in § 55.1-2000 used for residential purposes. Common areas of real estate owned by a cooperative or a property owners' association described in Subtitle IV (§ 55.1-1800 et seq.) of Title 55.1 that have a separate real property tax identification number are eligible properties. Eligible properties shall be eligible to participate in the C-PACE loan program.”¹

Similarly, Plante Moran, an international investment provider headquartered in Michigan, suggests that **C-PACE financing may not be suitable for condominium associations**:

“Concerns about C-PACE financing

- Lender Approval/Pushback – Because unpaid C-PACE assessments can create a senior lien on the property, C-PACE financing often requires lender consent for any property with a mortgage. This can add time and cost to the financing process. C-PACE assessments can also limit refinance options due to these senior liens. The Federal Housing Finance Agency (FHFA) has directed Fannie Mae and Freddie Mac not to purchase or refinance mortgages with C-PACE liens.
- Limits Sale Options – Properties that have C-PACE assessments attached to them can be more difficult to sell, as the new owner has to agree to pay the additional assessments.
- Property-Specific Financing – **C-PACE loans are structured uniquely for individual properties** and require cost/savings analysis specific to that property, making it difficult to utilize for a portfolio strategy.”²

Further, Whitney Satin of Convex, a firm that provides a secure platform for the commercial services industry, reported:

“Earlier this summer, *Last Week Tonight with John Oliver*^[3] featured a story about a relatively new program designed to help property owners finance green renovations: Property Assessed Clean Energy (PACE)...

“It naturally raised questions about C-PACE from commercial contractors and property owners. And since more and more states are passing legislation to enable C-PACE, it’s a good time to learn about how to navigate C-PACE financing and avoid its pitfalls...

¹ <https://law.lis.virginia.gov/vacode/title15.2/chapter56/section15.2-958.3/>

² <https://www.plantemoran.com/explore-our-thinking/insight/2023/plante-moran-reia/about-c-pace-financing-pros-and-cons-of-energy-efficiency-loan-programs>

³ <https://www.theguardian.com/tv-and-radio/2021/jun/21/john-oliver-last-week-tonight-pace-loans>

“John Oliver criticized PACE funding for incentivizing predatory behavior from contractors and administrators. He shared the stories of contractors who misleadingly described PACE as “free government money,” targeted homeowners without the means to repay the lien (including the elderly and people with cognitive disabilities), and administrators who approved those projects with virtually no oversight...

“A C-PACE lien can be an issue when building owners try to sell their property since buyers are likely to balk at a massive property tax bill for improvements that are no longer state-of-the-art.”⁴

The investigative and research economics journal Crittenden Report confirmed,

“The largest hurdle by far is senior lender consent as C-PACE has senior priority over all other debt on the project. At this time, Fannie Mae does not allow it. Freddie Mac will allow it, although will underwrite it like an additional operation expense...the first mortgage become subordinate to the C-PACE payments.”⁵

Current market dynamics, including the slowing of commercial and industrial constructions due to work-from-home opportunities and a decline in manufacturing productivity, have encouraged C-PACE capital providers to seek other markets. The appearance of this resource may appear convenient as traditional financing sources have tightened, but **C-PACE has not been well tested, if at all, in *mature* condominium associations of units’ owners.**

C-PACE works well with commercial properties with shorter leases, like apartments, which allow repayment by tenants. But saddling owners with long term debt that may not be properly weighted if the useful life of more than one component is included, may exacerbate the financial difficulties of condominium units’ owners.

While the non-accelerating feature of C-PACE may be attractive to some, future payments are the responsibility of whoever owns the property.

Should more capital be needed in the future, it is unclear if C-PACE will recast. Prepayment penalties have been reported and it is unclear if these penalties are disclosed upfront, or if they are calculated based on the capital provider’s perceived loss of earnings at that time.

Also, the relatively ease of obtaining C-PACE is disconcerting, reminiscent of the housing market’s loosened lending policies which led to the subprime crisis and the Great Recession.

In my earlier testimony to your committee regarding SB 2727, I shared these concerns:

⁴ <https://www.convex.com/blog/a-guide-to-c-pace-financing-eligibility-and-controversies/>

⁵ <https://crittendenreport.com/lenders-are-coming-around-to-c-pace-financing/>

LACK OF CONSUMER PROTECTIONS

- Because C-PACE is not a loan, borrowers may not have the same consumer protections of disclosures about financing costs that traditional lenders must provide.
- Without those disclosures, directors, community association managers, and other advisors, who are not experienced in or may only have superficial knowledge of financing, may not know what to ask, including inquiring if the rates and terms that are offered are competitive (and may not know how to compare), about penalties, restrictions, and other limitations.
- Unlike traditional financing, C-PACE programs may not require a third-party assessment of the costs of improvements (i.e., appraisal).
- Those who are naïve may have a false sense of security about C-PACE, wrongly assuming that it is a federal or state loan program, leading them to wrongly believe that there are consumer protective terms that may not exist.
- Additionally, there may be individuals who influence the board's decision to borrow who may have undisclosed conflicts of interests, including pecuniary interests which may be hidden in the undisclosed financing costs, or financial interests in the capital improvements that are to be funded by C-PACE.

These include contractors who use C-PACE as a sales tactic to lure business and use the financing option to generate more business (greater and additional improvements) than needed. There is also the possibility of "kickbacks."

ADVERSE AFFECT ON THE REAL ESTATE MARKET

- Because C-PACE runs with the land (i.e., property), C-PACE may make it more difficult for owners who desire to sell or for purchasers who desire to purchase in an already difficult real estate market. Sellers may have to discount their units compared to comparable units in associations without C-PACE.
- Because C-PACE takes priority over other lienholders except for government tax liens, those lienholders (mostly mortgagors) will have to consent. In the past, Fannie Mae (FNMA) and Freddie Mac (FLMC) indicated that they will not purchase mortgages with C-PACE superior liens. If this is still correct, the marketability of properties with C-PACE will be affected, reversing the purpose of utilizing C-PACE to fund needed improvements for borrowers and their properties to qualify for Fannie Mae or Freddie Mac mortgage financing.

Mahalo for the opportunity to address my concerns regarding HB 2801 HD 1. I am not against C-PACE and am aware of its potential benefits, but I do have concerns about the lack of consumer protection and the lack of clarity. Neither have been addressed to my satisfaction by testifiers in support nor are discoverable online.

HB-2801-HD-1

Submitted on: 3/18/2024 8:37:02 AM

Testimony for CPN on 3/19/2024 9:44:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Kevin Martin | Individual | Support | Written Testimony Only |

Comments:

Hi,

My name is Kevin Martin and I'm a 33 year old condo owner. I live in the Mokuliea Sands, a small concrete condo, in Waialua. I used my VA home loan to purchase my one bedroom condo, and serve on my buildings AOA board. Additionally, I work as a construction engineer, so I thought my background would help the board make better decisions about our capital improvement projects. Moreover, after recently learning how much insurance fees are going up this year due to Hawaiian Electric's disastrous operations in Lahaina, I have become disillusioned by our system. The state of Hawaii cannot allow the buck to be passed to homeowners over the Lahaina fire. Please please please help us condo owners stay afloat.

Testimony of
THOMAS A. NIDA
Retired Executive Vice President/Market Executive
City First Bank, Washington, DC
before the
**SENATE COMMITTEE ON COMMERCE AND
CONSUMER PROTECTION**

Tuesday, March 19, 2024, Time: 9:44 A.M.
State Capitol Conference Room 229 and Videoconference

In support of
**House Bill No. 2801, HD1; Proposed SD1
RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING**

Committee Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Thank you for the opportunity to testify and provide comments in support of HB 2801, HD1; Proposed SD1 to include eligible condominium properties in the C-PACER program.

A successful C-PACER program can provide the following benefits:

- 1) Benefits to the State and Counties
 - a) Program costs can be covered by program revenues.
 - b) Increased property values.
 - c) Funding is all from private capital sources.
- 2) Benefits to Commercial Property Owners
 - a) Increased property values from improved net operating income.
 - b) C-PACER is an operating expense, not additional debt, with payments that can be more than offset by reduced utility costs.
 - c) Up to 100% financing for eligible energy improvements and mandated safety improvements.
 - d) No personal guarantees from the property owners.
- 3) Benefits to local financial institutions
 - a) An enhanced competitive position against larger money center banks and other financial organizations to provide both commercial mortgage loans and C-PACER loans to meet their customer needs.
 - b) Better control of C-PACER funding to ensure eligible improvements are completed.
 - c) Improved collateral positions on C-PACER projects funded.
- 4) Benefits to the Environment/Sustainability/GHG reduction
 - a) Reduced power and water consumption from long term capital investment to improve energy efficiency of commercial properties.
 - b) Support for municipal goals to reduce GHG.
- 5) Stimulus to energy efficient commercial construction, both for new construction and renovations, adding construction new construction jobs and additional business from local building materials suppliers.

As a senior banker, who last year retired after 56 years in the industry, I have been actively involved with the C-PACE program in Washington, DC, since 2016, and have provided C-

PACE funding for educational facilities, healthcare facilities, multifamily properties, and retail properties, with no delinquencies, defaults, or losses. Our C-PACE lending continues to expand as an active part of our commercial lending. Further, to date with over 3,000 closed C-PACE loans totaling more than three billion dollars across the country, there have been no tax foreclosures on properties with C-PACE loans, a reflection of the success of C-PACE programs where they have been enacted. I am currently working with the Community Development Bankers Association to help establish active C-PACE lending programs for its members across the country.

Thank you for this opportunity to testify in strong support of HB2801, HD1; Proposed SD1.

LATE

HB-2801-HD-1

Submitted on: 3/18/2024 8:28:36 PM

Testimony for CPN on 3/19/2024 9:44:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Jeff Roesener | Individual | Support | Written Testimony Only |

Comments:

I urge the committee and all House and Senate members to vote in favor of HB 2801 relating to commercial property assessed financing. All older condominiums on Oahu are facing enormous costs associated with the fire alarm and sprinkler system mandates in addition to pipe retrofit and elevator upgrades. If these costs were not enough of a burden the insurance rates on our building have risen over 500% from \$110,000 3 years ago to \$ 698,000 for 2024.

Any assistance in the way of lower financing costs would be extremely helpful at this time with the inflation rate having recently risen to a 40 year high also. Jeff Roesener owner at Regency Tower