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A BILL FOR AN ACT

RELATING TO COMMERCIAL PROPERTY ASSESSED FINANCING.

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

1 SECTION 1. The legislature finds that more than two 2 hundred eighty-one high-rise residential buildings, primarily 3 condominiums developed before 1975, have failed to pass safety 4 evaluations due to the lack of fire sprinklers or other safety 5 requirements. According to the state fire council, more than 6 three dozen people died in fires in Honolulu between 2006 and 7 2019, ninety-eight per cent of those deaths occurred in 8 buildings without sufficient fire safety measures, and ninety-9 four per cent of the more than two hundred people injured by 10 fire or smoke inhalation were in buildings without sufficient 11 fire safety measures. Further, there have been over two hundred 12 forty high-rise fires since the Marco Polo fire, and over 13 seventy-nine per cent of the buildings that burned did not have 14 sufficient fire safety measures. Some forty thousand individual 15 unit owners may achieve fire safety by meeting fire safety 16 requirements, but doing so has also proven to be a costly 17 endeavor.





1	Act	183, Session Laws of Hawaii 2022, authorized commercial
2	property	assessed financing, also known as commercial property
3	assessed	clean energy and resiliency, or C-PACER financing, in
4	Hawaii.	C-PACER is an alternative financing option that
5	finances	one hundred per cent of qualified capital improvement
6	costs, wi	th terms matching the useful life of the equipment
7	installed	, thereby making payments more affordable than a
8	typical e	quipment loan. The legislature further finds that C-
9	PACER financing can help condominiums finance the installation	
10	of fire safety and other energy efficiency, renewable energy,	
11	water conservation, and resiliency measures at more attractive	
12	rates and terms than may be currently available with	
13	conventional financing.	
14	The	purpose of this Act is to:
15	(1)	Enable condominiums to participate in C-PACER
16		financing;
17	(2)	Provide clarity to the definition of a commercial
18		property for purposes of green infrastructure loans;
19		and
20	(3)	Delegate all existing administrative responsibilities
21		of the counties under the commercial property assessed

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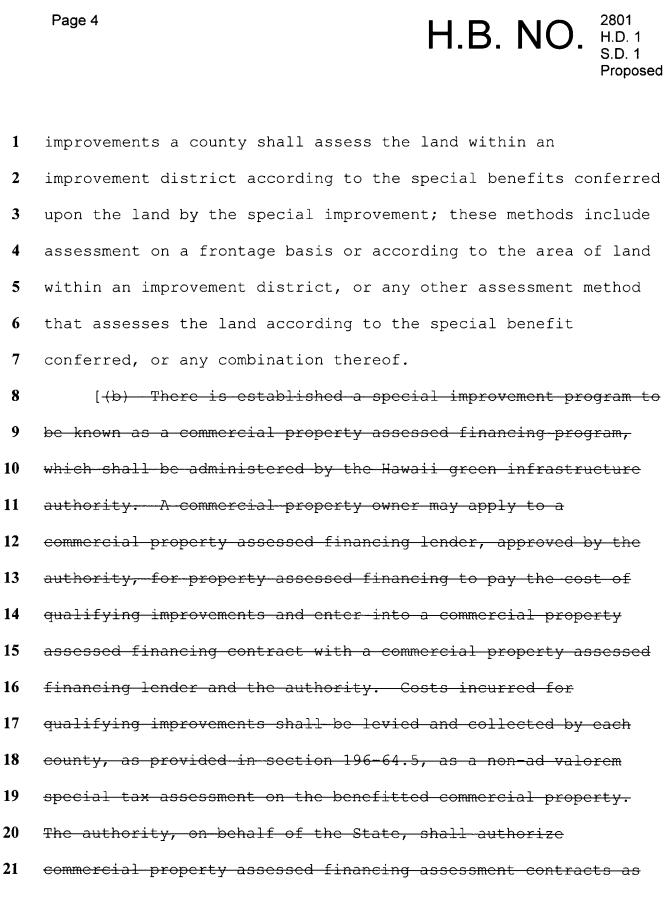
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1 financing program to the Hawaii green infrastructure
2 authority.

3 SECTION 2. Section 46-80, Hawaii Revised Statutes, is4 amended to read as follows:

"§46-80 Improvement by assessment; financing[; commercial 5 property assessed financing program]. [(a)] Any county having 6 7 a charter may enact an ordinance, and may amend the same from 8 time to time, providing for the making and financing of 9 improvement districts in the county, and the improvements may be 10 made and financed under the ordinance. The county may issue and 11 sell bonds to provide funds for the improvements. Bonds issued 12 to provide funds for the improvements may be either bonds when 13 the only security therefor is the properties benefited or 14 improved or the assessments thereon or bonds payable from taxes 15 or secured by the taxing power of the county. If the bonds are 16 secured only by the properties benefited or improved or the 17 assessments thereon, the bonds shall be issued according and 18 subject to the provisions of the ordinance. If the bonds are 19 payable from taxes or secured by the taxing power, the bonds 20 shall be issued according and subject to chapter 47. Except as 21 is otherwise provided in section 46-80.1, in assessing land for









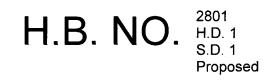
1	instruments of indebtedness in the form as may be prescribed by
2	the authority. Commercial property assessed financing
3	assessment contracts authorized to finance qualifying
4	improvements, when the only security is the non-ad valorem
5	special tax assessment levied against benefitted or improved
6	commercial property, shall be excluded from any determination of
7	the power of the State to issue general obligation bonds or
8	funded debt for purposes of section 13 of article VII of the
9	state constitution.
10	(c) Any county having a charter may enact an ordinance,
11	and may amend the same from time to time, to establish a special
12	improvement program containing the same elements as the
13	commercial property assessed financing program authorized under
14	chapter 196 and subsection (b), except that any program that is
15	established shall be administered by the county in lieu of
16	administration by the-authority. The county shall assume all of
17	the responsibilities of the authority provided in chapter 196
18	and subsection-(b), including determining qualifying
19	improvements eligible for property assessed financing. A
20	commercial property owner may apply to the county for property
21	assessed financing to pay the costs of qualifying improvements



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1	and enter into a commercial property assessed financing
2	assessment contract with an approved commercial property
3	assessed financing lender and the county. Costs incurred for
4	qualifying improvements shall be levied and collected by each
5	county, as provided in section 196-64.5, as a non-ad valorem
6	special tax assessment on the benefitted commercial property.
7	The county may issue revenue bonds to finance or refinance the
8	improvements, and the form of any revenue bond may be a
9	commercial property assessed financing assessment-contract or
10	other instrument prescribed by the county. Bonds issued to
11	finance qualifying improvements, when the only security is the
12	non-ad valorem special tax assessment levied against benefitted
13	or improved commercial property, shall be excluded from any
14	determination of the power of the county to issue general
15	obligation bonds or funded debt for purposes of article VII,
16	section-13, of-the state constitution.]"
17	SECTION 3. Section 196-61, Hawaii Revised Statutes, is
18	amended as follows:
19	1. By adding a new definition to be appropriately inserted
20	and to read:

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1	" <u>"</u> As	sessment" means an assessment imposed by the authority
2	<u>on a bene</u>	fitted commercial property pursuant to section 196-
3	<u>64.5.</u> "	
4	2.	By amending the definition of "commercial property" to
5	read:	
6	""Co	mmercial property" means [any] <u>:</u>
7	(1)	Any existing or new non-residential real property [not
8		defined as a residential property, and shall include],
9		including any property where there is a leasehold or
10		possessory interest in the property [and any] <u>;</u>
11	(2)	Any multi-family dwelling or townhouse consisting of
12		five or more units [as well as agricultural] <u>;</u>
13	(3)	Any long-term care or assisted living facility;
14	(4)	Any condominium property regime consisting of six or
15		more units; or
16	(5)	Agricultural property.
17	"Com	mercial property assessed financing assessment" <u>or</u>
18	"special	assessment" means the [non-ad valorem special tax]
19	<u>annual</u> as	sessment [that secures], secured by a lien on a
20	property,	for the repayment of financing obtained by an owner of
21	commercia	l property for a qualifying improvement [and that

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1 appears on a property tax-bill.] that is billed and collected by
2 the authority."

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

6 ""Commercial property assessed financing lender" means a 7 financial institution as defined pursuant to section 412:1-109, 8 or a private or public lender approved by the authority, as the 9 administrator of the commercial property assessed financing 10 program, to originate commercial property assessed financing 11 assessment contracts, and [which] that may include any successor 12 or assignee of the lender as provided in the commercial property 13 assessed financing assessment contract.

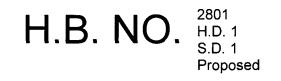
14 "Commercial property assessed financing program" means a 15 program to finance qualifying improvements on commercial 16 properties that are repaid through [a non-ad-valorem-special 17 tax] an assessment imposed by the authority on the commercial 18 property owner's property [tax bill]."

19 4. By amending the definition of "option to purchase" to20 read:



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1	""Option to purchase" means a legally binding agreement
2	between a buyer and a seller[, which] <u>that</u> gives the buyer the
3	option, but not the obligation, to purchase the solar energy
4	system or other installed equipment at an agreed upon price,
5	prior to the maturity date of the power purchase agreement or
6	energy performance contract."
7	5. By repealing the definition of "county director of
8	finance" and "county director of budget and fiscal services".
9	[""County director of finance" or "county director of
10	budget-and fiscal services" means the officer or officers of the
11	county-charged with the responsibility of administering the real
12	property taxation function of the county."]
13	6. By repealing the definition of "non-ad valorem special
14	tax assessment".
15	[""Non-ad valorem special tax assessment" means a special
16	tax assessment or governmental charge levied by the county as
17	provided in section 196-64.5 on a benefitted commercial property
18	that appears on a property tax bill."]
19	SECTION 4. Section 196-64.5, Hawaii Revised Statutes, is
20	amended to read as follows:

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1	"[[]§196-64.5[]] Commercial property assessed financing
2	program. (a) [Any county having a charter may authorize the
3	authority, pursuant to this section, to offer a commercial
4	property assessed financing program within its jurisdiction and
5	may contract with the authority for that purpose, and any county
6	having a charter may enact its own commercial property assessed
7	financing program pursuant to this section and section 46-80(b)
8	and (c).] There is established a commercial property assessed
9	financing program to be administered by the authority to enable
10	owners of qualifying property to access non-traditional
11	financing for qualifying improvements. Program financing shall
12	be secured by a voluntary assessment imposed on the benefitted
13	property that is secured by a statutory lien; provided that the
14	statutory lien shall have priority over all other liens except
15	the lien of property taxes and other assessments lawfully
16	imposed by governmental authority against the property.
17	(b) [The] In administering the commercial property
18	assessed financing program, the authority[, as the administrator
19	of the commercial property assessed financing program, shall
20	coordinate-with each county to bill and collect a non-ad valorem
21	special tax assessment on a benefitted commercial property as a

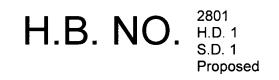


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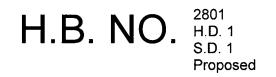
1	repayment mechanism on the real property tax bill or stand-alone
2	bill. The non-ad valorem special tax] may impose a governmental
3	lien to secure commercial property assessed financing against
4	real property specially benefitted pursuant to the program
5	established by this section. Commercial property assessed
6	financing shall be secured by the voluntary governmental lien
7	and repaid in assessment installments in accordance with the
8	commercial property assessed financing assessment contract and
9	billed and collected by the authority. The principal amount of
10	financing made pursuant to this section shall be a governmental
11	lien against each lot or parcel of the property and assessed for
12	a period beginning on the date of the notice of the assessment
13	and ending once payment is made in full or otherwise satisfied
14	in accordance with the commercial property assessed financing
15	assessment contract; provided that the lien shall have priority
16	over all other liens except the liens for property taxes and
17	assessments lawfully imposed by governmental authority against
18	the property; provided further that for multiple liens of
19	assessments, the earlier lien shall have priority over the later
20	lien. Neither the governmental lien nor the assessment on a
21	benefitted commercial property pursuant to this section shall





1	[not be]	constitute a [generally applicable] tax upon the real
2	property	[but shall be collected in the same manner as real
3	property -	taxes as a result of a benefit to the commercial
4	property (owners for qualifying improvements.] within the meaning
5	of any co	nstitutional or statutory provision. The requirement
6	of lender	consent pursuant to subsection (c)(6) shall be
7	satisfied	for the priority of the lien to be valid.
8	(c)	The authority shall design $[a]$ <u>the</u> commercial property
9	assessed	financing program authorized under this section [and
10	section 4	6-80(b) that addresses] <u>to address</u> market needs while
11	attractin	g private capital [and that shall,]; provided that the
12	program,	at $[a]$ minimum, shall include the following elements:
13	(1)	A commercial property owner who owns qualifying
14		property in the State may apply to the authority for
15		approval to use commercial property assessed financing
16		to pay the cost of qualifying improvements and enter
17		into a commercial property assessed financing contract
18		with an approved commercial property assessed
19		financing lender and the authority;
20	[(1)]	(2) A commercial property assessed financing lender
21		may enter into a commercial property assessed





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

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1 qualifying improvements to be funded through a 2 commercial property assessed financing assessment 3 contract; $\left[\frac{2}{2}\right]$ (3) Qualifying improvements shall be affixed to a 4 building or facility or affixed to real property, 5 subject to the commercial property assessed financing 6 7 assessments; [(3)] (4) Before entering into a commercial property 8 9 assessed financing assessment contract, the commercial 10 property assessed financing lender shall reasonably 11 determine that: The commercial property owner is able to borrow 12 (A) the amount of the property assessed financing 13 14 using reasonable commercial underwriting 15 practices; 16 All property taxes applicable to the commercial (B) 17 property, and any other assessments levied on the 18 same bill as property taxes, are paid; and 19 There are no involuntary liens applicable to the (C) 20 commercial property, including but not limited to



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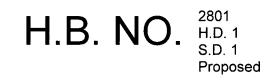
1		construction liens, that will not be paid or
2		satisfied upon the closing of the financing;
3	[(4)]	(5) The commercial property assessed financing
4		assessment contract shall include the amount of an
5		annual assessment, including interest, over a fixed
6		term that [will appear as a non-ad valorem special tax
7		assessment on the commercial property owner's tax bill
8		or stand-alone bill annually;] shall be billed
9		annually or as otherwise specified by the authority,
10		and collected by the authority in accordance with the
11		commercial property assessed financing lender's
12		amortization schedule;
13	[-(5)]	(6) The commercial property assessed financing
14		assessment contract, or summary memorandum of the
15		contract, shall be recorded by the commercial property
16		assessed financing lender in the public records of the
17		State [or of the county within which the commercial
18		property is located] within five days after execution
19		by the parties to the contract. The recorded contract
20		shall provide constructive notice of the levy of, and
21		obligation of the commercial property owner to pay,





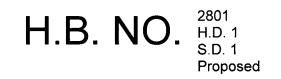
1		the commercial property assessed financing assessment.
2		The entire principal amount of the commercial property
3		assessed financing assessment [to be levied on the
4		<pre>commercial property] contract shall be a [non-ad</pre>
5		valorem special tax assessment and a] governmental
6		statutory lien against the commercial property [on a
7		parity with the lien of general real property taxes
8		and the lien of any other assessments levied under
9		section 46-80, from] that shall be assessed for a
10		period beginning on the date of recordation entered
11		into pursuant to this section [until] <u>and ending once</u>
12		paid or satisfied in accordance with the commercial
13		property assessed financing assessment contract;
14		provided further that the lien shall have priority
15		over all other liens except the lien for property
16		taxes and other assessments lawfully imposed by a
17		governmental authority against the property;
18	[(6)]	(7) Before entering into a commercial property
19		assessed financing assessment contract for any
20		commercial property, the commercial property owner
21		shall [provide]:





1		<u>(A)</u>	<u>Provide</u> the authority and the commercial property
2			assessed financing lender with evidence of the
3			written consent of each holder or loan servicer
4			of any mortgage that encumbers or otherwise
5			secures the commercial property, where the
6			consent is in the sole and absolute discretion of
7			each holder or loan servicer of a mortgage on the
8			commercial property, at the time of the execution
9			of the commercial property assessed financing
10			assessment contract by the parties; provided that
11			the consents shall be in a form prescribed by the
12			authority; <u>and</u>
13		<u>(B)</u>	Agree to the commercial property assessed
14			financing lender's remedies if a default occurs,
15			including foreclosure, in accordance with the
16			terms and conditions of the commercial property
17			assessed financing contract;
18	[(7)]	(8)	At or before the time a purchaser executes a
19		cont	ract for the sale and purchase of any commercial
20		prop	erty for which a [non-ad valorem special tax
21		asse	ssment has been levied] statutory lien has been





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



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1	shall-levy] Except as otherwise provided for
2	commercial property assessed financing special
3	assessments under chapter 514B, the authority shall
4	bill and collect any approved commercial property
5	assessed financing assessment [approved by the
6	authority]. Each commercial property assessed
7	financing assessment that is approved for collection
8	shall be [a non-ad valorem special tax assessment and
9	shall be] billed and collected in [the same manner as
10	general real property taxes are collected and be
11	subject to the same] accordance with the commercial
12	property assessed financing lender's amortization
13	schedule. The authority may charge interest or other
14	fees on assessment amounts not paid on a timely basis.
15	The authority shall develop guidelines and procedures
16	providing for the method of undertaking and financing
17	qualifying improvements as well as penalties [and same
18	<pre>procedure,], collection processes, sale, and lien</pre>
19	priority, [subject to this section,] in the case of
20	delinquency as is provided [by general law for the
21	default of the payment of real property taxes, unless



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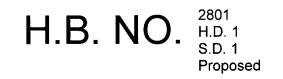
1	another procedure, including stand-alone billing and
2	collection, is agreed upon by the authority and the
3	county director. The county director may add to any
4	commercial property assessed financing assessment
5	reasonable administrative costs as agreed upon by the
6	authority and the county director.] in this section.
7	The [county director] <u>authority</u> shall remit any
8	commercial property assessed financing assessments
9	collected, less any reasonable administrative costs
10	[added by the county director, to or on the direction
11	of the authority, for further application by the
12	authority] to pay each commercial property assessed
13	financing lender [and to pay the reasonable
14	administrative costs of the authority] in accordance
15	with each commercial property assessed financing
16	assessment contract. [The county director shall
17	covenant in a contract or instrument, for] For the
18	benefit of any commercial property assessed financing
19	lender [or bondholder, to], the authority shall
20	commence and diligently pursue to completion the
21	foreclosure of delinquent commercial property assessed



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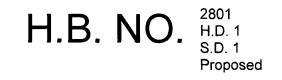
financing assessments and any penalty, interest, and 1 costs by advertisement and sale and with the same 2 effect as provided by general law for sales of real 3 property pursuant to [default in payment of property 4 taxes. The covenant] chapter 667 and in accordance 5 with the terms of the commercial property assessed 6 7 financing contract. Any guidelines and procedures developed pursuant to this paragraph shall specify a 8 9 deadline for commencement of the foreclosure sale and any other terms and conditions the [county director of 10 finance or county director of budget and fiscal 11 12 services] authority determines reasonable regarding 13 the foreclosure sale. For commercial property 14 assessed financing assessments levied but not paid 15 when due pursuant to a commercial property assessed 16 financing assessment contract, the foreclosure of the 17 lien of the commercial property assessed financing 18 assessment [, -lien of general real property taxes or 19 any other assessments levied under section 46-80, or any other lien foreclosed,] shall not accelerate or 20 21 extinguish the remaining term of the commercial





1		property assessed financing assessment as approved in
2		the commercial property assessed financing assessment
3		contract[-]; and
4	(11)	All moneys collected for assessments for the
5		commercial property assessed financing program,
6		including any interest accrued and fee revenues
7		collected, shall be deposited in a separate subaccount
8		in the clean energy and energy efficiency revolving
9		loan fund established pursuant to section 196-65.5,
10		and expended only for the administration of the
11		commercial property assessed financing program;
12		provided that any surplus moneys remaining at the end
13		of each fiscal year after the payment of expenses of
14		the commercial property assessed financing program
15		shall be transferred and credited to the Hawaii green
16		infrastructure special fund established pursuant to
17		section 196-65, and may be expended for the
18		administration of the commercial property assessed
19		financing program."
20	SECT	ION 5. Section 196-65.5, Hawaii Revised Statutes, is
21	amended b	y amending subsection (e) to read as follows:





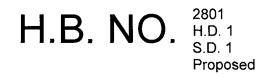
1	"(e) The authority may establish subaccounts within the
2	fund as necessary $[-]$; provided that, in accordance with section
3	196-64.5(c)(11), the authority shall establish a subaccount
4	within the fund into which shall be deposited all moneys,
5	including any interest accrued and fee revenues, collected as
6	assessments under the commercial property assessed financing
7	program established pursuant to section 196-64.5."
8	SECTION 6. Section 514B-4, Hawaii Revised Statutes, is
9	amended by amending subsection (b) to read as follows:
10	"(b) If there is any unit owner other than a developer,
11	each unit shall be separately taxed and assessed, and no
12	separate tax or assessment [may] shall be rendered against any
13	common elements. The laws relating to home exemptions from
14	state property taxes are applicable to individual units, which
15	shall have the benefit of home exemption in those cases where
16	the owner of a single-family dwelling would qualify. Property
17	taxes assessed by the State or any county shall be assessed and
18	collected on the individual units and not on the property as a
19	whole. Commercial property assessed financing program special
20	assessments, pursuant to section 196-64.5, may be levied upon
21	the project, as described by the project's master deed,



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1	declaration, and map pursuant to part III of this chapter.
2	Without limitation of the foregoing, each unit and its
3	appurtenant common interest shall be deemed to be a "parcel" and
4	shall be subject to separate assessment and taxation for all
5	types of taxes authorized by law, including[$_{ au}$] but not limited
6	to[$_{ au}$] other non-commercial property assessed financing program
7	special assessments."
8	SECTION 7. Section 514B-41, Hawaii Revised Statutes, is
9	amended by amending subsection (a) to read as follows:
10	"(a) The common profits of the property shall be
11	distributed among, and the common expenses shall be charged to,
12	the unit owners, including the developer, in proportion to the
13	common interest appurtenant to their respective units, except as
14	otherwise provided in the declaration or bylaws. In a mixed-use
15	project containing units for both residential and nonresidential
16	use, the charges and distributions may be apportioned in a fair
17	and equitable manner as set forth in the declaration. Except as
18	otherwise provided in subsection (c) or the declaration or
19	bylaws, all limited common element costs and expenses, including
20	but not limited to maintenance, repair, replacement, additions,
21	and improvements, including capital improvements financed by

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1 commercial property assessed financing pursuant to section 1962 <u>64.5</u>, shall be charged to the owner or owners of the unit or
3 units to which the limited common element is appurtenant in an
4 equitable manner as set forth in the declaration."

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

7 "\$514B-105 Association; limitations on powers. (a) The
8 declaration and bylaws [may] shall not impose limitations on the
9 power of the association to deal with the developer [which] that
10 are more restrictive than the limitations imposed on the power
11 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:

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

18 (2) Regulate any behavior in or occupancy of a unit

19 [which] that violates the declaration or bylaws or

20 unreasonably interferes with the use and enjoyment of

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1 other units or the common elements by other unit 2 owners; or Restrict the leasing of residential units to the 3 (3) 4 extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who 5 regularly lend money secured by first mortgages on 6 units in condominiums or regularly purchase those 7 8 mortgages. 9 Otherwise, the association [may] shall not regulate any use of 10 or behavior in units by means of the rules and regulations. 11 (c) Any payments made by or on behalf of a unit owner 12 shall first be applied to outstanding common expenses that are 13 assessed to all unit owners in proportion to the common interest 14 appurtenant to their respective units [-], including commercial 15 property assessed financing special assessment expenses incurred 16 for improvements financed pursuant to section 196-64.5. Only 17 after [said] the outstanding common expenses have been paid in 18 full may the payments be applied to other charges owed to the 19 association, including assessed charges to the unit such as 20 ground lease rent, utility sub-metering, storage lockers, 21 parking stalls, boat slips, insurance deductibles, and cable.



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

9 (d) No unit owner who requests legal or other information 10 from the association, the board, the managing agent, or their 11 employees or agents, shall be charged for the reasonable cost of 12 providing the information unless the association notifies the 13 unit owner that it intends to charge the unit owner for the 14 reasonable cost. The association shall notify the unit owner in 15 writing at least ten days prior to incurring the reasonable cost 16 of providing the information, except that no prior notice shall 17 be required to assess the reasonable cost of providing 18 information on delinquent assessments or in connection with 19 proceedings to enforce the law or the association's governing 20 documents.



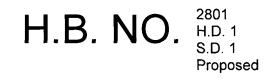
After being notified of the reasonable cost of providing
 the information, the unit owner may withdraw the request, in
 writing. A unit owner who withdraws a request for information
 shall not be charged for the reasonable cost of providing the
 information.

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6 (e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association 7 8 may authorize the board to borrow money for the repair, 9 replacement, maintenance, operation, or administration of the 10 common elements and personal property of the project, or the 11 making of any additions, alterations, and improvements thereto; 12 provided that written notice of the purpose and use of the funds 13 is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to 14 15 the borrowing. In connection with the borrowing, including noncommercial property assessed financing, the board may grant to 16 17 the lender the right to assess and collect monthly or special 18 assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure 19 20 proceedings. The cost of the borrowing, including, without 21 limitation, all principal, interest, commitment fees, and other





1	expenses payable with respect to the borrowing or the
2	enforcement of the obligations under the borrowing, shall be a
3	common expense of the project. For purposes of this section,
4	the financing of insurance premiums by the association within
5	the policy period shall not be deemed a loan and no lease shall
6	be deemed a loan if it provides that at the end of the lease the
7	association may purchase the leased equipment for its fair
8	market value.
9	(f) For special assessments levied upon the project under
10	a commercial property assessed financing program pursuant to
11	section 196-64.5 and due from the association, the cost of the
12	commercial property assessed financing, including all principal,
13	interest, commitment fees, servicing fees, and other expenses
14	payable with respect to this borrowing or the enforcement of the
15	obligations under the borrowing, shall be a common expense of
16	the project and the unit owners' proportionate share of the
17	special assessment shall be collected in the same manner as
18	common expenses. The written consent of at least fifty per cent
19	of all unit owners to finance qualifying improvements with
20	commercial property assessed financing shall include an
21	acknowledgment that the annual special assessment required to

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1	fund debt service on the commercial property assessed financing
2	shall be included as part of the association's adopted revised
3	budget."
4	SECTION 9. Section 514B-146, Hawaii Revised Statutes, is
5	amended as follows:
6	1. By amending subsection (a) to read:
7	"(a) All sums assessed by the association but unpaid for
8	the share of the common expenses chargeable to any unit shall
9	constitute a lien on the unit with priority over all other
10	liens, except:
11	(1) Liens for real property taxes and assessments lawfully
12	imposed by governmental authority, including
13	commercial property assessed financing special
14	assessments established pursuant to section 196-64.5,
15	against the unit; and
16	(2) Except as provided in subsection (j), all sums unpaid
17	on any mortgage of record that was recorded [prior to]
18	before the recordation of a notice of a lien by the
19	association, and costs and expenses including
20	attorneys' fees provided in [such] <u>the</u> mortgages;

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

17 The lien of the association may be foreclosed by action or 18 by nonjudicial or power of sale foreclosure, regardless of the 19 presence or absence of power of sale language in an 20 association's governing documents, by the managing agent or 21 board, acting on behalf of the association and in the name of

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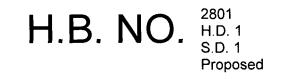
1 the association; provided that no association may exercise the
2 nonjudicial or power of sale remedies provided in chapter 667 to
3 foreclose a lien against any unit that arises solely from fines,
4 penalties, legal fees, or late fees, and the foreclosure of [any
5 such] the lien shall be filed in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

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7 In any [such] foreclosure $[\tau]$ described in this section, the 8 unit owner shall be required to pay a reasonable [rental] rent 9 for the unit, if so provided in the bylaws or the law, and the 10 plaintiff in the foreclosure shall be entitled to the 11 appointment of a receiver to collect the [rental] rent owed by the unit owner or any tenant of the unit. If the association is 12 13 the plaintiff, it may request that its managing agent be 14 appointed as receiver to collect the rent from the tenant. The 15 managing agent or board, acting on behalf of the association and 16 in the name of the association, unless prohibited by the 17 declaration, may bid on the unit at foreclosure sale, and 18 acquire and hold, lease, mortgage, and convey the unit. Action 19 to recover a money judgment for unpaid common expenses shall be 20 maintainable without foreclosing or waiving the lien securing 21 the unpaid common expenses owed."

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1	2.	By amending subsection (1) to read:
2	"(1)	For purposes of subsections (j) and (k), the
3	following	definitions shall apply, unless the context requires
4	otherwise	:
5	"Com	pletion" means:
6	(1)	In a nonjudicial power of sale foreclosure, when the
7		affidavit after public sale is recorded pursuant to
8		section 667-33; and
9	(2)	In a judicial foreclosure, when a purchaser is deemed
10		to acquire title pursuant to subsection (b).
11	"Reg	ular monthly common assessments" does not include:
12	(1)	Any other special assessment, except for a special
13		assessment imposed on all units as part of a budget
14		adopted pursuant to section 514B-148[+], including
15		commercial property assessed financing assessments
16		imposed pursuant to section 196-64.5;
17	(2)	Late charges, fines, or penalties;
18	(3)	Interest assessed by the association;
19	(4)	Any lien arising out of the assessment; or

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1	(5) Any fees or costs related to the collection or
2	enforcement of the assessment, including attorneys'
3	fees and court costs."
4	SECTION 10. Section 514B-157, Hawaii Revised Statutes, is
5	amended by amending subsection (a) to read as follows:
6	"(a) All costs and expenses, including reasonable
7	attorneys' fees, incurred by or on behalf of the association
8	for:
9	(1) Collecting any delinquent assessments, including
10	commercial property assessed financing assessments
11	imposed pursuant to section 196-64.5, against any
12	owner's unit;
13	(2) Foreclosing any lien thereon; or
14	(3) Enforcing any provision of the declaration, bylaws,
15	house rules, and this chapter, or the rules of the
16	real estate commission;
17	against an owner, occupant, tenant, employee of an owner, or any
18	other person who may in any manner use the property, shall be
19	promptly paid on demand to the association by [such] <u>the</u> person
20	or persons; provided that if the claims upon which the
21	association takes any action are not substantiated, all costs

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1 and expenses, including reasonable attorneys' fees, incurred by 2 any [such] applicable person or persons as a result of the 3 action of the association, shall be promptly paid on demand to 4 [such] the person or persons by the association." 5 SECTION 11. Section 667-40, Hawaii Revised Statutes, is 6 amended to read as follows: 7 "[+]§667-40[+] Use of power of sale foreclosure in certain non-mortgage situations. A power of sale foreclosure under this 8 9 part may be used in certain non-mortgage situations where a law

11 for a power of sale, a power of sale foreclosure, a power of

or a written document contains, authorizes, permits, or provides

12 sale remedy, or a nonjudicial foreclosure. These laws or

13 written documents are limited to those involving time share

14 plans, condominium property regimes, and agreements of sale[\pm],

15 and commercial property assessed financing assessments imposed

16 pursuant to section 196-64.5."

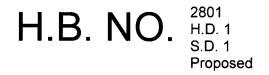
17 SECTION 12. Statutory material to be repealed is bracketed18 and stricken. New statutory material is underscored.

19

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

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Report Title:

Hawaii Green Infrastructure Authority; Condominiums; Commercial Property Assessed Financing; C-PACER

Description:

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. (Proposed SD1)

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

