

ACT 62

S. B. 141.

A Bill for an Act to Amend Chapters 146, 147, and 148, Revised Laws of Hawaii 1955, Relating to Improvements by Assessment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is hereby declared to be an urgency measure deemed necessary in the public interest within the meaning of section 11 of Article III of the Constitution of the State of Hawaii.

The following is a statement of the facts constituting such urgency:

The city and county of Honolulu is empowered to amend the law respecting improvements by assessments in that county; the neighbor island counties are not. It therefore is reasonable to deal separately with the neighbor island counties at this time to effect needed changes in the laws relating to improvements by assessments in those counties. It is essential if these counties are to prosper and grow that they have effective legislation to make improvements by assessments and particularly to be able to sell their improvement district bonds. Bond attorneys have had a number of objections to existing law concerning improvement by assessment in these counties, the objections going to such matters as the kind of notice given to property owners, priority of liens, saleability of bonds, prepayment premiums, and reserve funding. This Act meets these objections. It is urgent and in the public interest to thus amend the statutes respecting improvement by assessment in the neighbor island counties to make these statutes more effective and to make neighbor island improvement district bonds more marketable as soon as possible so that planned and future developments may proceed.

SECTION 2. Sections 146-130, 147-110, and 148-120, Revised Laws of Hawaii 1955, are amended by adding to each the following new subsection (d) (7) and new subsections to be appropriately designated and to read as follows:

(d)

(7) Construction and installation of underground utility facilities and the removal, relocation, replacement or reconstruction of the utility facilities required to be placed underground.

“() “Cost” means the cost, either estimated or actual, as the case may be of the improvements to be opened, constructed, or improved in proceedings taken pursuant to this part for which assessments are to be levied. There may be included within the definition of “cost” amounts for construction contingencies, bond discounts, reserve funds, fees of financial, legal, engineering and surveying consultants.

() “Incidentals” means expenses incurred by the county in carrying out proceedings pursuant to this part for preparation of maps, notices and other documents; posting, mailing and publication costs; preparation and printing of bonds, bond registers and transfer books; fees of financial, legal, engineering and surveying consultants; and such other miscellaneous expenses incurred by the county which relate directly to the proceedings.

() "Premium" means any of the following:

(1) An amount payable by a property owner at the time he makes an advance payment of unpaid installments of his assessment in accordance with the provisions of section 146-150, 147-129, or 148-139, as the case may be, which amount is in addition to the unpaid principal amount of his assessment and the interest thereon to the next subsequent annual date for the payment of installments;

(2) An amount payable to the holder of a bond issued pursuant to this part which is called by the treasurer for payment before maturity in accordance with the provisions of section 146-158, 147-137, or 148-147, as the case may be, and which is in addition to the face amount of such bond and the interest thereon payable to such bondholder;

(3) An amount paid by the purchaser of the bonds in excess of the par value of the bonds.

In the case of (1), above, the premium may not exceed five per cent of the unpaid principal amount. In the case of (2), above, the premium may not exceed five per cent of the face amount of the bond."

SECTION 3. Sections 146-136, 147-116, and 148-126, Revised Laws of Hawaii 1955, are amended to be appropriately designated and to read as follows:

"Sec. . **Initial procedure.** The board shall, by resolution requiring not more than one reading for its adoption, direct the chief engineer, department of public works, to investigate and report to the board preliminary data concerning the special improvement proposed to be opened, constructed, or improved, the general character and extent of any improvement to be proposed, whether such improvement should be proposed on a frontage or an area basis, whether any new land will be necessary to be acquired, and the estimated cost thereof and the proportion of the cost which should be borne by the county, the materials recommended to meet the conditions of the improvement the boundaries of the improvement to be proposed and any sub-districts or zones therein as to which different portions of the cost should be charged, the estimated cost of the improvement, the portions of the cost to be borne by the county, and the portions of the cost to be specifically assessed against the lands specially benefited with the maximum unit of assessment to be made against the property posed, and to prepare and furnish all necessary drawings and other data, details, and specifications for the improvements and any other matters or details intended to apply thereto. The report, when so furnished and filed with the board, shall not be acted upon until one week has elapsed from the date of the filing of the same. If the proposed improvement includes the construction or improvement of a water system or the laying or installation of conduits, pipes, hydrants, or any appliance for supplying or distributing a water supply, the chief engineer shall obtain from the county board of water supply preliminary plans and estimates for such proposed water system, and the engineer shall furnish the board of water supply with such preliminary plans of the proposed improvement as will enable the board of

water supply to make its plans and estimates for the proposed water system. The chief engineer shall incorporate such preliminary plans and estimates of the board of water supply in his report to the board.

Thereafter the board may, by resolution requiring one reading for its adoption, propose the making of an improvement or improvements specifying the streets, storm drainage, sanitary sewerage system, water system or street lighting system, or combination thereof, to be opened, constructed, or improved; the area, owners, so far as known, and general description and location of new land to be acquired, if any; the materials proposed to be used; the proposed method of assessment including the minimum number of installment payments to be proposed; the maximum term of assessment bonds to be issued to represent unpaid installments; the maximum rate of interest to be borne by said bonds; the premium required to be paid on the advance payment of installments or the call and redemption of any bond prior to its maturity; the amount of the reserve fund either as set forth in the report of the chief engineer or as otherwise determined by the board; the general boundaries of the district or frontage, subdistricts, and zones to be assessed; and the maximum estimated unit of assessment. The board may adopt the plans and estimates so furnished by the board of water supply and incorporated in the report of the chief engineer. If the plans and estimates of the board of water supply are adopted by the board, the plans and estimates shall be referred to and incorporated by reference in such resolution. The resolution shall refer to and incorporate by reference such surveys, plans, maps, and other data reported by the chief engineer as are approved by the board. The resolution shall also fix a date of public hearing upon the proposed improvement, which date shall be not less than fifteen days after the first publication of notice thereof in a newspaper of general circulation in the county.

After the adoption of the resolution, the county clerk shall cause a notice of the public hearing to be published twice a week for two successive weeks (four publications in all) in a newspaper of general circulation in the county, giving notice, generally, to all owners, lessees, and occupants of land proposed to be assessed or acquired and to all others interested in the general details of the proposed improvements as adopted by the board and stating the time and place of public hearing and where the resolution and reports and other data may be seen and examined prior to the hearings. Like notices shall be posted conspicuously at least ten days prior to the hearing approximately every two hundred and fifty feet along the highway or highways proposed to be opened or improved. A similar notice of public hearing shall be mailed to all owners, lessees, and occupants of land proposed to be assessed at least two weeks prior to the hearing. Said notice shall contain, in addition to the material contained in the published and posted notices, a description of the property of such owner, lessee, or occupant of land set forth in such manner as to enable such owner, lessee, or occupant to identify same, together with a statement that the property described on said notice is proposed to be assessed to pay for a portion of the cost of the proposed improvements. In case of a storm drainage, sanitary sewerage, water or street lighting system

proposed to be constructed or improved independently, like notices shall be posted conspicuously at various places within the area or along the frontage to be assessed. Affidavits of publication both in the newspaper and along the route of improvement, respectively, shall be filed with the board at the hearing."

SECTION 4. Sections 146-139, 147-119, and 148-129, Revised Laws of Hawaii 1955, are amended to be appropriately designated and to read as follows:

"**Sec. . . . Petition by owners of one hundred per cent of frontage or area.** If a petition is filed and is acknowledged by the owners of one hundred per cent of the frontage upon any street, alley, or highway or of the area of land designated by them as a proposed improvement district, and by all lessees of any property to be assessed under this part, who, by the express terms of the lease, must pay the kind of assessment contemplated by this part, unless the lessor shall, with the petition, file a duly acknowledged waiver of the stipulation in the lease which requires the lessee to pay the special assessments to be made under the proposed improvement, then the board shall proceed in the same manner as though the plan for the improvement had been initiated on its own motion, excepting that it shall be unnecessary for the board to give, publish, mail, or post notice of, call, or conduct a public hearing, or to publish, mail, or post notices of the proposed improvements, as provided for in section 146-136, 147-116, or 148-126, as the case may be; and in the case of a petition acknowledged by the owners of one hundred per cent as aforesaid, section 146-137, 147-117, or 148-127, as the case may be, shall be inapplicable thereto, any other provision or section to the contrary notwithstanding; and in the case the owners of one hundred per cent as aforesaid, in writing, consent to the amount and apportionment of the proposed assessments for such improvements, it shall be unnecessary to give the notice or to hold the hearing specified by section 146-143, 147-122 or 148-132, as the case may be; and the board may immediately proceed to fix the assessment or assessments in the manner provided by section 146-144, 147-123, or 148-133, as the case may be.

No such improvement shall be approved by the board unless: (1) the assessed valuation for taxation purposes of the land to be improved is twice the estimated cost of the proposed improvement, or (2) the board by resolution finds the appraised value of such land in accordance with prevailing standards of appraisal then used by banks for loans thereon is twice the estimated cost of the proposed improvement and that such approval is in the public interest."

SECTION 5. Sections 146-143, 147-122, and 148-132, Revised Laws of Hawaii 1955, are amended to be appropriately designated and to read as follows:

"**Sec. . . . Notice of improvement authorized.** The board shall cause to be prepared by the chief engineer, department of public works, a corrected map similar to that required under section 146-136, 147-116, or

148-126, as the case may be, and a preliminary assessment roll and description of properties to be assessed showing in detail the proportionate amount per front foot, and the exterior boundaries of the lands subject to the assessment, if the assessment is to be made on such basis, or per square foot, if the assessment is to be made according to area, proposed to be assessed against the property in the benefited district or in the several subdistricts or zones thereof, if any, and a list of all known owners, lessees and occupants of the land fronting upon such highway or highways or situate within the improvement district, and shall thereupon by advertisement in the same manner as that provided in section 146-136, 147-116, or 148-126, as the case may be, give notice of the total amount of the cost of the improvement based upon the bid of the lowest responsible and reliable bidder, the maximum share per front foot or per square foot, as the case may be, proposed to be charged to the benefited district or subdistricts or zones, if any, and that the corrected map, preliminary assessment roll and description of properties may be seen and examined at the office of the chief engineer during business hours at any time prior to and including the date fixed for hearing. In addition to the other material contained on the notice to be mailed as required by section 146-136, 147-116, or 148-126, as the case may be, and by this section, each mailed notice shall contain the amount proposed to be assessed against the property described therein. The notice shall also fix a date and place when a public hearing will be had and the board will sit as a board of equalization to receive complaints or objections respecting the total amounts of the proposed several assessments, which date shall not be less than ten days nor more than three weeks after the date of the first newspaper publication of the notice."

SECTION 6. Sections 146-147, 147-126, and 148-136, Revised Laws of Hawaii 1955, are amended to be appropriately designated and to read as follows:

"**Sec. . Lien; new assessment.** All assessments made pursuant to this part shall be a lien against each lot or parcel of land assessed from the date of the first publication of the ordinance declaring the assessment until paid and shall have priority over all other liens except the lien of property taxes and for other public purposes. The lien of assessments levied pursuant to this part shall be on a parity with the lien of property taxes and liens for other public purposes. As between liens of assessments made pursuant to this part, the earlier lien shall be superior to the later lien. No delay, mistake, error, defect, or irregularity in any act or proceeding authorized by this part shall prejudice or invalidate any assessment; but the same may be remedied by subsequent or amended acts or proceedings and, when so remedied, the same shall take effect as of the date of the original act or proceeding. If in any court of competent jurisdiction any assessment made under this part is set aside for irregularity in the proceedings, the board may, upon notice as required in making an original assessment, make a new assessment in accordance with the provisions of this part."

SECTION 7. Sections 146-150, 147-129, and 148-139, Revised Laws of Hawaii 1955, are amended to be appropriately designated and to read as follows:

“Sec. Effect of failure to pay installment. Failure to pay any installment, whether of principal or interest, when due, shall cause the whole of the unpaid principal to become due and payable immediately and the whole amount of unpaid principal and accrued interest shall thereafter draw interest at the rate of one per cent per month or fraction of a month until the day of sale as hereinafter provided; but at any time prior to the date of sale, the owner may pay the amount of all delinquent installments with interest thereon at one per cent per month or fraction of a month, and all costs and expenses accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been made. The owner of any land assessed, not in default as to any installment or payment, may at any time after the expiration of the first thirty-day period, pay the entire unpaid principal with interest thereon to the next subsequent annual date for the payment of the installments, together with any premium required to be paid pursuant to the resolution of the board adopted pursuant to the provisions of section 146-136, 147-116, or 148-126, as the case may be.”

SECTION 8. Sections 146-154, 147-133, and 148-143, Revised Laws of Hawaii 1955, are amended to be appropriately designated and to read as follows:

“Sec. Improvement bonds authorized. In the event of an election to pay all or any part of any such special assessment in installments, the amount required for immediate use to pay the cost of the improvement, or the installments thereof from time to time as they fall due may be advanced out of any funds available in the general fund or the permanent improvement fund; provided that as soon as practicable, the amounts so necessary shall be secured, and repaid if advances have been made, by the issuance of sufficient district improvement bonds of the county to raise such required amount or amounts. Such bonds shall be in such form as may be prescribed by the board, shall bear the name of the benefited or improved district, shall be payable to bearer in a sufficient period of years to cover the outstanding installment payments determined upon pursuant to the provisions of this part, and shall be subject to call but not prior to the second interest date thereof as hereinafter provided and at such premium, if any, as may have been provided for in the resolution of the board adopted pursuant to section 146-136, 147-116, or 148-126, as the case may be. The bonds of each issue shall bear serial numbers, shall be of such denomination, not exceeding \$5,000 each, as may be determined by the board, and shall bear interest at the rate of not more than seven per cent per annum, payable semi-annually, as may be determined by the board.

Such bonds shall be executed by the treasurer and issued pursuant to and under the authority and requirements of resolutions of the board. The bonds shall be countersigned by the chairman of the board and attested by

the clerk and by the seal of the county. Interest coupons shall bear a lithographed or engraved facsimile of the signature of the treasurer. The treasurer shall preserve a record of the bonds in a suitable book kept for that purpose. The bonds shall be payable only out of the moneys collected on account of assessments made for the improvement for which they are issued or from the reserve fund established pursuant to section 146-155.1, 147-134.1, or 148-144.1, as the case may be, in the event that the moneys collected out of assessments are insufficient to pay the bonds or the interest thereon as they become due, and the county shall not otherwise guarantee payment of any bonds issued under the provisions of this part; provided that interest payments may be advanced by the board temporarily out of any moneys available in the county treasury."

SECTION 9. Sections 146-155, 147-134, and 148-144, Revised Laws of Hawaii 1955, are amended to be appropriately designated and to read as follows:

"Sec. . **Special funds for payment of bonds and certain other expenses.** All moneys collected on account of assessments and interest for any improvement after the issuance of any bonds shall be kept by the treasurer in a special fund and applied solely to the payment of interest and principal of bonds issued for such improvement until such bonds have been paid. In the event that any surplus remains in any such special fund after the payment of the bonds chargeable against such fund or in case of a premium received on the sale of the bonds, it shall be credited to and become a part of a fund to be known as the improvement district revolving fund, the moneys in which shall be available to make up deficiencies in the proceeds of bonds sold below par, to cover deficiencies in interest realized on account of diminishing balances of installments outstanding, and to advance interest due on bonds outstanding prior to collection of annual assessments, and also for the purpose of paying all expenses in connection with the sale of delinquent improvement district lots and the prices of such delinquent lots as are bid for and purchased by the treasurer for the county, and the treasurer may upon such purchase transfer the proper amounts so bid to the proper special funds for the respective improvement districts concerned. In the event that moneys in the special fund prove insufficient at any time to pay the principal and interest, or the interest only, as the case may be, on bonds outstanding, moneys shall be transferred from the reserve fund established pursuant to section 146-155.1, 147-155.1, or 148-155.1, as the case may be, or from the improvement district revolving fund into such special fund in such amounts as will enable the treasurer to make the payments of principal or interest, or interest only, as the same becomes due."

SECTION 10. Sections 146-157, 147-136, and 148-146, Revised Laws of Hawaii 1955, are amended to be appropriately designated and to read as follows:

"Sec. . **Use of bonds; sale.** Bonds so issued may be used by the board at par at the time of final acceptance of the contract to pay wholly or

in part the contract price of any improvement made as aforesaid, or, in the event that the bonds are not so used, they shall then be sold to the highest bidder or bidders therefor, after public advertisement for tenders for at least once each week for not less than two successive weeks in a suitable newspaper of general circulation in the county, and the proceeds thereof shall be so applied; provided that in the event at an advertised sale only part of the issue so advertised is bid for, thereafter, the board may authorize the treasurer, by resolution requiring one reading for adoption, to sell the whole or any part of the remainder of such issue at the highest bid so received to any person at private sale. In the event no purchaser is found, the county may be the purchaser of any such bonds, using any funds available and unspent. Bonds sold to a purchaser or purchasers other than the county may be sold for such discount as is acceptable to the board."

SECTION 11. Sections 146-158, 147-137, and 148-147, Revised Laws of Hawaii 1955, are amended to be appropriately designated and to read as follows:

"Sec. . **Payment before maturity.** On and after the second interest due date of any bonds so issued and annually thereafter, whenever sufficient funds are in the hands of the treasurer, exceeding the next interest payment on the unpaid balance of any bonds so issued, the board may direct the treasurer, by resolution, to call for payment, by advertisement for not less than five days in some newspaper of general circulation in the county, such a number of bonds as there are funds to pay. In each case the bonds to be called for payment shall be those of the lowest outstanding serial numbers, which serial numbers shall be specified in the advertisement so published. At the expiration of thirty days from the first publication of such notice, interest on the bonds so called for payment shall cease; and the moneys provided for the payment shall be set aside by the treasurer in a special deposit to which fund only the owners of the bonds shall thereafter look for payment. The call price of any bond called for payment before maturity pursuant to this section shall be the principal amount of such bond, interest at the rate stated on the face of the bond from the date on which interest on such bond was last paid to and including the thirtieth day from the first publication of such notice, together with the applicable premium payable, if any."

SECTION 12. Chapters 146, 147, and 148, Revised Laws of Hawaii 1955, are amended by adding new sections to be designated as sections 146-136.1, 147-116.1, and 148-126.1, respectively, and to read as follows:

"Sec. . **Report of chief engineer.** In preparing the report required by section 146-136, 147-116, or 148-126, as the case may be, the chief engineer may consult with the county treasurer or with such financial consultant as has been specially employed by the board to assist in the proceedings or who may otherwise be available to the board, at the direction of the board. Upon the written advice and recommendation of the treasurer or of such a financial consultant, the chief engineer may include such sums as he deems proper for reserve funds, bond discount allowances, and construc-

tion contingencies in determining his estimate of the project cost and the amount to be assessed therefor.”

SECTION 13. Chapters 146, 147, and 148, Revised Laws of Hawaii 1955, are amended by adding new sections to be designated as sections 146-137.1, 147-117.1, and 148-127.1, respectively, and to read as follows:

“Sec. . **Waiver of objections.** All objections to any act or proceeding occurring prior to the time within which such objections are permitted to be filed in relation to the work, not made in writing and in the manner and at the time specified, shall be waived if the notices required by section 146-136, 147-116, or 148-126, as the case may be, have been actually mailed, published and posted as required by law.”

SECTION 14. Chapters 146, 147, and 148, Revised Laws of Hawaii 1955, are amended by adding new sections to be designated as sections 146-155.1, 147-134.1, and 148-144.1, respectively, and to read as follows:

“Sec. . **Reserve Fund.** The board may provide in the resolution adopted pursuant to section 146-136, 147-116, or 148-126, as the case may be, that a reserve fund shall be established as additional security for the payment of principal and interest on bonds issued in proceedings taken pursuant to this part. The reserve fund shall be established from the proceeds from the sale of bonds in such amount as is designated by the board in the aforementioned resolution. Thereafter, moneys in the reserve fund shall be used in accordance with the provisions of section 146-155, 147-134, or 148-144, as the case may be. Moneys in the reserve fund may be used to pay the principal interest or both, in whole or in part, on the last outstanding maturity or maturities of the bonds and in such case assessments or such portions thereof which would otherwise be collected to make such payments shall be cancelled.”

SECTION 15. Chapters 146, 147, and 148, Revised Laws of Hawaii 1955, are amended by adding new sections to be designated as sections 146-155.2, 147-134.2, and 148-144.2, respectively, and to read as follows:

“Sec. . **Replenishment of reserve fund.** When moneys are transferred from the reserve fund to the special fund described in section 146-155, 147-134, or 148-144, as the case may be, the board shall replenish the reserve fund by providing for the levy and collection of an annual ad valorem assessment upon the lands assessed in the proceedings. The ad valorem assessment referred to in this section shall be levied, collected and enforced by the county in the same time and manner as the county levies, collects, and enforces property taxes for general county purposes.”

SECTION 16. This Act shall take effect upon its approval.

(Approved May 9, 1968.)