

ACT 226

H.B. NO. 1509

A Bill for an Act Relating to Special Improvements and Services.

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

SECTION 1. The purpose of this Act is to grant general powers to the counties to provide, by ordinance, for the establishment of community facilities special tax districts within each county. It is the legislature's intent to allow the counties maximum flexibility in financing necessary special improvements in such areas through the establishment of community facilities special tax districts.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§46- Community facilities district.** (a) Any county having a charter may enact an ordinance, and may amend the same from time to time, providing for the creation of community facilities districts to finance special improvements in the county. The special improvements may be provided and financed under the ordinance. The county shall have the power to levy and assess a special tax on property located in a district to finance the special improvements and to pay the debt service on any bonds issued to finance the special improvements. The county may issue and sell bonds to provide funds for the special improvements. Bonds issued to provide funds for the special improvements may be either: bonds secured only by the properties included in the district and/or the special taxes thereon, or bonds payable from general taxes and/or secured by the general taxing power of the county. If the bonds are secured only by the properties included in the district and/or the special taxes thereon, the bonds shall be issued according and subject to the provisions of the ordinance. If the bonds are payable from general taxes or secured by the general taxing power, the bonds shall be issued according and subject to chapter 47.

(b) There is no requirement that the special tax imposed by ordinance pursuant to this section be fixed in an amount or apportioned on the basis of special benefit to be conveyed on property by the special improvement, or that the special improvement convey a special benefit on any property in the district. It shall be sufficient that the governing body of the county determines that the property to be subject to the special tax is improved or benefited by the special improvement in a general manner or in any other manner. The special improvement may also benefit property outside the district. The special taxes assessed pursuant to this section shall be a lien upon the property assessed. The lien shall have priority over all other liens except the lien of general real property taxes and the lien of assessments levied under section 46-80. The lien of special taxes assessed pursuant to this section shall be on a parity with the lien of general real property taxes and the lien of assessments levied under section 46-80, except to the extent the law or assessment ordinance provides that the lien of assessments levied under section 46-80 shall be subordinate to the lien of general real property taxes.

(c) The ordinance shall describe the types of special improvements that may be undertaken and financed. In addition, the ordinance shall include, but not be limited to, procedures for:

- (1) Creating community facilities districts (and zones therein), including specific time spans for the existence of each district;
- (2) Apportioning special taxes on real properties within a community facilities district;
- (3) Providing notice to and opportunity to be heard by owners of property proposed to be subject to the special tax (the affected owners), subject to waiver by one hundred per cent of the affected owners, including termination of proceedings if the affected owners of more than fifty-five per cent of the property, or if more than fifty-five per cent of the affected owners of the property, in the community facilities district proposed to be subject to the special tax protest in writing at the hearing. The ordinance shall also provide that if a lease requires the lessee to pay the proposed special tax, the ordinance shall state that the affected owner may waive this requirement in writing and that the affected owner refrain from imposing upon any successor lessee the obligation to pay the special tax. The ordinance shall also provide that if the affected owner fails to waive the requirement that the lessee pay the proposed tax, then all the rights for notice, hearing, and protest contained in this paragraph shall inure to the benefit of the original lessee or any subsequent lessee.
- (4) Provide notice to buyers or lessees of the property who would be required to pay the special tax;
- (5) Fixing, levying, collecting, and enforcing the special taxes against the properties affected thereby (including penalties for delinquent payment and sales for default);
- (6) Making changes in the community facilities district, in the special taxes, or in the special improvements to be financed or provided;
- (7) The acquisition or construction of the special improvements;
- (8) The issuance of bonds to pay all or part of the cost of the special improvements (including costs of issuance, reserves, capitalized interest, credit enhancement, and any other related expenses);
- (9) Refunding bonds previously issued;
- (10) The establishment and handling of a separate special fund or funds to pay or secure such bonds or to pay for acquisition or construction of special improvements or any other related expenses; and
- (11) Other matters as the council shall determine to be necessary or proper.

The amount of special taxes may include amounts determined by the council to be necessary or reasonable to cover administration and collection of the assessments, administration of the bonds or of the program authorized by this section, replenishment of reserves, arbitrage rebate, and a reasonable financing fee.

(d) Each issue of bonds shall be authorized by ordinance, separate from the foregoing procedural ordinance, and shall be in such amounts, denominations, forms, executed in such manner, payable at such place or places, at such time or times, at such interest rate or rates (either fixed or variable), with such maturity date or dates and terms of redemption, security (including pledge of proceeds, special taxes and liens therefor), credit enhancement, administration, investment of proceeds and special tax receipts, default, remedy, or other terms and conditions as the council deems necessary or convenient. The bonds shall be sold in the manner and at the price or prices determined by the council.

(e) This section is a special improvement statute which implements section 12 of Article VII of the State Constitution and provides a complete, additional, and alternative method of doing the things authorized herein; and the creation of districts, levying, assessments and collection of special taxes, issuance of bonds and other matters covered by this section, or by the procedural or bond ordinances authorized by this section, need not comply with any other law applicable to these matters. Bonds issued under this section, when the only security for such bonds is the special taxes or liens on the property in the district subject thereto, shall be excluded from any determination of the power of a county to issue general obligation bonds or funded debt for purposes of section 13 of Article VII of the State Constitution.

(f) Notwithstanding any other law, no action or proceeding to question the validity of or enjoining any ordinance, action, or proceeding undertaken pursuant hereto (including the determination of the amount of any special tax levied with respect to any property or the levy or assessment thereof), or any bonds issued or to be issued pursuant thereto or under this section, shall be maintained unless begun within thirty days of the adoption of the ordinance, determination, levy, assessment or other act, as the case may be, and, in the case of bonds, within thirty days after adoption of the ordinance authorizing the issuance of those bonds.

(g) Bonds issued pursuant to this section and the interest thereon and other income therefrom shall be exempt from any and all taxation by the State or any county or other political subdivision thereof, except inheritance, transfer, and estate taxes.

(h) Properties of entities of the state, federal, or county governments, except as provided in subsection (i), shall be exempt from the special tax. No other properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the ordinance of formation to establish a district adopted pursuant to this chapter or in an ordinance of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment of an existing special tax as provided in this section.

(i) If a public body owning property, including property held in trust for any beneficiary, which is exempt from a special tax pursuant to subsection (h), grants leasehold or other possessory interest in the property to a nonexempt person or entity, the special tax, notwithstanding subsection (h), shall be levied on the leasehold or possessory interest and shall be payable by the lessee."

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

**"§46-80 Improvement by assessment; financing.** 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 such improvements may be made and financed under such ordinance. The county may issue and sell bonds to provide funds for such improvements. Bonds issued to provide funds for such 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. [Any other law to the contrary notwithstanding,] Except as is otherwise provided in section 46-, 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 which assesses the land according to the special benefit conferred, or any combination thereof.”

SECTION 4. Section 47C-1, Hawaii Revised Statutes, is amended by amending the definition of “special assessment bonds” to read:

““Special assessment bonds” shall mean bonds issued under special improvement statutes when the only security for such bonds is the assessments or special taxes levied and assessed under those statutes or properties [benefited or improved or] subject to the assessments [thereon] or special taxes.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 1992.

(Approved June 17, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.