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# A BILL FOR AN ACT

RELATING TO LAND-SECURED FINANCING.

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

1           SECTION 1. The legislature finds that with budgets  
2 tightening, the counties are finding it more difficult to  
3 support their annual operating costs. In some jurisdictions,  
4 the use of land-secured financing has been used by various  
5 government agencies to fund infrastructure and other  
6 improvements. The counties are authorized under existing  
7 statutes to create improvement districts and community  
8 facilities districts to finance special improvements; however,  
9 these types of land-secured financing are used sparingly in  
10 Hawaii. The legislature finds that land-secured financing  
11 provides an opportunity for the counties to support new and  
12 existing development-related operating costs, such as police,  
13 fire protection, and maintenance services, in addition to  
14 special improvements and infrastructure.

15           The purpose of this Act is to expand the authority of  
16 counties to use land-based financing to support their operating  
17 costs for new and existing developments in improvement districts  
18 and community facilities districts.



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

3 **"§46-80 Improvement by assessment; financing.** (a) Any  
4 county having a charter may enact an ordinance, and may amend  
5 the same from time to time, providing for the making and  
6 financing of improvement districts in the county, and [~~such~~] the  
7 improvements and operating expenses for certain county services,  
8 pursuant to subsection (b), may be made and financed under  
9 [~~such~~] the ordinance. The county may issue and sell bonds to  
10 provide funds for [~~such~~] the improvements[-]; provided that  
11 bonds may not be issued pursuant to this section to fund any of  
12 the county services specified in subsection (b); provided  
13 however that bonds may be issued to fund capital facilities to  
14 be used in providing the county services specified in subsection  
15 (b). Bonds issued to provide funds for [~~such~~] improvements  
16 within the district may be either bonds when the only security  
17 therefor is the properties benefited or improved or the  
18 assessments thereon or bonds payable from taxes or secured by  
19 the taxing power of the county. If the bonds are secured only  
20 by the properties benefited or improved or the assessments  
21 thereon, the bonds shall be issued according and subject to the  
22 provisions of the ordinance. If the bonds are payable from



1 taxes or secured by the taxing power, the bonds shall be issued  
2 according and subject to chapter 47. Except as is otherwise  
3 provided in section 46-80.1, in assessing land for improvements  
4 a county shall assess the land within an improvement district  
5 according to the special benefits conferred upon the land by the  
6 special improvement; these methods include assessment on a  
7 frontage basis or according to the area of land within an  
8 improvement district, or any other assessment method [~~which~~  
9 that assesses the land according to the special benefit  
10 conferred, or any combination thereof. A county may apply up to  
11 per cent of the assessments or tax revenues to cover the  
12 administrative expenses of the counties in creating and  
13 administering an improvement district and the associated  
14 assessments, fees, and taxes.

15 (b) The following types of county services may be provided  
16 within and financed by an improvement district pursuant to  
17 subsection (a):

18 (1) Police protection services, including criminal justice  
19 services; provided that criminal justice services  
20 shall be limited to providing services for jails,  
21 detention facilities, and juvenile halls;

22 (2) Fire protection and suppression services;



- 1        (3) Ambulance and paramedic services;
- 2        (4) Recreation program services;
- 3        (5) Maintenance and lighting of parks, parkways, streets,  
4            roads, and open spaces;
- 5        (6) Flood and storm protection services, including the  
6            operation and maintenance of storm drainage systems;
- 7        (7) Services with respect to removal or remedial action,  
8            as defined in section 128D-1, for the cleanup of any  
9            hazardous substance, as defined in section 128D-1,  
10           released or threatened to be released into the  
11           environment; and
- 12        (8) Maintenance of the capital improvements that are  
13           financed by improvement districts.

14        An improvement district assessment levied pursuant to this  
15        section may finance the services authorized in this subsection  
16        for a new or existing improvement district, whether the services  
17        were provided in the area constituting the improvement district  
18        before the district was created, or to the extent that they are  
19        in addition to those services that were provided in the area  
20        constituting the improvement district before the district was  
21        created; provided that any additional services may not supplant



1 services already available within the area when the improvement  
2 district was created."

3 SECTION 3. Section 46-80.1, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[+]§46-80.1[+] **Community facilities district.** (a) Any  
6 county having a charter may enact an ordinance, and may amend  
7 the same from time to time, providing for the creation of  
8 community facilities districts to finance special improvements  
9 in the county[-] and operating expenses for certain county  
10 services, pursuant to subsection (b). The special improvements  
11 and county services described in subsection (b) may be provided  
12 and financed under the ordinance. The county shall have the  
13 power to levy and assess a special tax on property located in a  
14 district to finance the special improvements and to pay the debt  
15 service on any bonds issued to finance the special improvements.  
16 The county may issue and sell bonds to provide funds for the  
17 special improvements[-]; provided that bonds may not be issued  
18 pursuant to this section to fund any of the county services  
19 specified in subsection (b); provided however that bonds may be  
20 issued to fund capital facilities to be used in providing the  
21 county services specified in subsection (b). Bonds issued to  
22 provide funds for the special improvements may be either: bonds



1 secured only by the properties included in the district [~~and/or~~]  
2 or the special taxes thereon, or both, or bonds payable from  
3 general taxes [~~and/or~~] or secured by the general taxing power of  
4 the county[-], or both. If the bonds are secured only by the  
5 properties included in the district [~~and/or~~] or the special  
6 taxes thereon, or both, the bonds shall be issued according and  
7 subject to the provisions of the ordinance. If the bonds are  
8 payable from general taxes or secured by the general taxing  
9 power, the bonds shall be issued according and subject to  
10 chapter 47. A county may apply up to \_\_\_\_\_ per cent of the  
11 special or general tax revenues to cover the administrative  
12 expenses of the counties in creating and administering a  
13 community facilities district and the associated fees and taxes.

14 (b) The following types of county services may be provided  
15 and financed by a community facilities district pursuant to  
16 subsection (a):

- 17 (1) Police protection services, including criminal justice  
18 services; provided that criminal justice services  
19 shall be limited to providing services for jails,  
20 detention facilities, and juvenile halls;  
21 (2) Fire protection and suppression services;  
22 (3) Ambulance and paramedic services;



- 1        (4) Recreation program services;  
2        (5) Maintenance and lighting of parks, parkways, streets,  
3        roads, and open spaces;  
4        (6) Flood and storm protection services, including the  
5        operation and maintenance of storm drainage systems;  
6        (7) Services with respect to removal or remedial action,  
7        as defined in section 128D-1, for the cleanup of any  
8        hazardous substance, as defined in section 128D-1,  
9        released or threatened to be released into the  
10       environment; and  
11       (8) Maintenance of the capital improvements that are  
12       financed by community facilities districts.

13       A community facilities district special tax assessed  
14       pursuant to this section may finance the services authorized in  
15       this subsection for a new or existing community facility  
16       district, whether the services were provided in the area  
17       constituting the community facilities district before the  
18       district was created, or to the extent that they are in addition  
19       to those services that were provided in the area constituting  
20       the community facilities district before the district was  
21       created; provided that any additional services may not supplant



1 services already available within the area when the community  
2 facilities district was created.

3       ~~[(b)]~~ (c) There is no requirement that the special tax  
4 imposed by ordinance pursuant to this section be fixed in an  
5 amount or apportioned on the basis of special benefit to be  
6 conveyed on property by the special improvement, or that the  
7 special improvement convey a special benefit on any property in  
8 the district. It shall be sufficient that the governing body of  
9 the county determines that the property to be subject to the  
10 special tax is improved or benefited by the special improvement  
11 in a general manner or in any other manner. The special  
12 improvement may also benefit property outside the district. The  
13 special taxes assessed pursuant to this section shall be a lien  
14 upon the property assessed. The lien shall have priority over  
15 all other liens except the lien of general real property taxes  
16 and the lien of assessments levied under section 46-80. The  
17 lien of special taxes assessed pursuant to this section shall be  
18 on a parity with the lien of general real property taxes and the  
19 lien of assessments levied under section 46-80, except to the  
20 extent the law or assessment ordinance provides that the lien of  
21 assessments levied under section 46-80 shall be subordinate to  
22 the lien of general real property taxes.





1           ~~(+e)~~ (d) The ordinance shall describe the types of  
2 special improvements that may be undertaken and financed. In  
3 addition, the ordinance shall include~~(7)~~ but not be limited  
4 to~~(7)~~ procedures for:

- 5           (1) Creating community facilities districts (and zones  
6           therein), including specific time spans for the  
7           existence of each district;
- 8           (2) Apportioning special taxes on real properties within a  
9           community facilities district;
- 10          (3) Providing notice to and opportunity to be heard by  
11          owners of property proposed to be subject to the  
12          special tax (the affected owners), subject to waiver  
13          by one hundred per cent of the affected owners,  
14          including termination of proceedings if the affected  
15          owners of more than fifty-five per cent of the  
16          property, or if more than fifty-five per cent of the  
17          affected owners of the property, in the community  
18          facilities district proposed to be subject to the  
19          special tax protest in writing at the hearing. The  
20          ordinance shall also provide that if a lease requires  
21          the lessee to pay the proposed special tax, the  
22          ordinance shall state that the affected owner may



1 waive this requirement in writing and that the  
 2 affected owner refrain from imposing upon any  
 3 successor lessee the obligation to pay the special  
 4 tax. The ordinance shall also provide that if the  
 5 affected owner fails to waive the requirement that the  
 6 lessee pay the proposed tax, then all the rights for  
 7 notice, hearing, and protest contained in this  
 8 paragraph shall inure to the benefit of the original  
 9 lessee or any subsequent lessee;

- 10 (4) Provide notice to buyers or lessees of the property
- 11 who would be required to pay the special tax;
- 12 (5) Fixing, levying, collecting, and enforcing the special
- 13 taxes against the properties affected thereby
- 14 (including penalties for delinquent payment and sales
- 15 for default);
- 16 (6) Making changes in the community facilities district,
- 17 in the special taxes, or in the special improvements
- 18 to be financed or provided;
- 19 (7) The acquisition or construction of the special
- 20 improvements;
- 21 (8) The issuance of bonds to pay all or part of the cost
- 22 of the special improvements (including costs of



- 1 issuance, reserves, capitalized interest, credit  
2 enhancement, and any other related expenses);
- 3 (9) Refunding bonds previously issued;
- 4 (10) The establishment and handling of a separate special  
5 fund or funds to pay or secure [~~such~~] the bonds or to  
6 pay for acquisition or construction of special  
7 improvements or any other related expenses; [~~and~~]
- 8 (11) The provision and financing of operating expenses for  
9 certain county services by community facilities  
10 districts, pursuant to subsection (b); and
- 11 [~~(11)~~] (12) Other matters as the council shall determine to  
12 be necessary or proper.

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

19 [~~(d)~~] (e) Each issue of bonds shall be authorized by  
20 ordinance, separate from the foregoing procedural ordinance, and  
21 shall be in [~~such~~] the amounts, denominations, forms, executed  
22 in [~~such~~] a manner, payable at [~~such~~] a place or places, at



1 [such] the time or times, at [such] an interest rate or rates  
2 (either fixed or variable), with [such] a maturity date or dates  
3 and terms of redemption, security (including pledge of proceeds,  
4 special taxes and liens therefor), credit enhancement,  
5 administration, investment of proceeds and special tax receipts,  
6 default, remedy, or other terms and conditions as the council  
7 deems necessary or convenient. The bonds shall be sold in the  
8 manner and at the price or prices determined by the council.

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



1 debt for purposes of section 13 of [~~Article~~] article VII of the  
2 [~~State Constitution.~~] state constitution.

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

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

19 [~~(h)~~] (i) Properties of entities of the state, federal, or  
20 county governments, except as provided in subsection [~~(i)~~], (j),  
21 shall be exempt from the special tax. No other properties or  
22 entities are exempt from the special tax unless the properties



1 or entities are expressly exempted in the ordinance of formation  
2 to establish a district adopted pursuant to this chapter or in  
3 an ordinance of consideration to levy a new special tax or  
4 special taxes or to alter the rate or method of apportionment of  
5 an existing special tax as provided in this section.

6 ~~[(i)]~~ (j) If a public body owning property, including  
7 property held in trust for any beneficiary, which is exempt from  
8 a special tax pursuant to subsection ~~[(h)7]~~ (i), grants  
9 leasehold or other possessory interest in the property to a  
10 nonexempt person or entity, the special tax, notwithstanding  
11 subsection ~~[(h)7]~~ (i), shall be levied on the leasehold or  
12 possessory interest and shall be payable by the lessee."

13 SECTION 4. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect on July 1, 2050.



**Report Title:**

Counties; Land-Based Financing; Community Facilities District

**Description:**

Expands the authority of counties to use land-based financing to support operating costs for certain county services provided within improvement districts and community facilities districts. Adds county maintenance of the capital improvements to be land-based financed. Authorizes counties to use up to per cent of the assessment or tax revenues to cover administrative expenses in creating and administering the district and the associated assessments, fees, and taxes. Effective 7/1/2050.  
(SD2)

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