

Summary Review of Hawaii Revised Statutes Funding Mechanisms

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Community Facilities District [46-80.1]

Any county may enact an ordinance to create a community facilities district to finance special improvements. The county has the power to levy and assess a special tax on property in the district to finance the special improvements. The county may also issue and sell bonds to raise funds for the special improvements. The bonds may be secured by the properties in the district and/or the special taxes, or they may be payable from general taxes and/or secured by the county's general taxing power.

It is not necessary that the special tax convey a special benefit on any property within the district. Properties subject to the tax must only be improved by or benefit from the improvement in some manner (as decided by the governing body of the county). The special taxes represent a lien on the property assessed.

The ordinance should describe eligible special improvements and include procedures for:

- creating CFD's (with specific time spans)
- apportioning special taxes within a CFD
- providing notice to and an opportunity to be heard for affected owners, buyers, and lessees (proceedings will be terminated if the owners of more than 55% of the property in the CFD *or* if more than 55% of the affected owners protest in writing at the hearing)
- fixing, levying, collecting, and enforcing special taxes
- making changes in the CFD, special taxes, or special improvements
- acquisition or construction of the special improvements
- issuance and refunding of bonds; establishment and handling of a fund to pay or secure bonds or pay for special improvements

The amount of special taxes may be set (by the council) to cover administrative costs. (Full text of 46-80.1 is included in the Appendix)

Special Improvement District [46-80.5]

Any county may enact an ordinance authorizing the creation of special improvement districts to finance supplemental improvements, services, and facilities to promote or restore business activity in the district. Each special improvement district must be established by a separate ordinance. In order to establish a tax increment financing district, a county council must approve a tax increment financing plan and adopt an ordinance which establishes the tax increment district and:

- describes the boundaries of the district
- provides the date of commencement and termination of the district
- outlines how a tax increment fund will be established

The county may exercise any power needed to establish a tax increment district, including the power to:

- create and determine the boundaries of the district
- issue tax increment bonds
- deposit tax increments into the tax increment fund
- enter into agreements (with developers, property owners, redevelopment agencies)

The county may levy and assess a special assessment on property located within the district to finance improvements. It is not essential that properties subject to the special assessment benefit from the special improvement district.

The county may issue and sell bonds to finance improvements within the district; the original ordinance may provide the method, procedure, and type of security for the bonds. Each series of bonds must be authorized by a separate ordinance. The county council should outline the terms and conditions of the bonds.

Any action or proceeding to object to/question the validity of the district or bonds must commence within 30 days of the enactment of the ordinance. Only federal, state, or county-owned properties may be exempt from the assessment unless expressly exempted in the ordinance. The special improvement district represents a lien upon the property assessed. (Full text of 46-80.5 is included in the Appendix)

Tax Increment Financing [46-101 - 111]

Establishment: To establish tax increment financing (TIF), a county council must approve a TIF plan and adopt an ordinance establishing the tax increment district which:

- describes district boundaries
- provides a date of commencement and termination for the district
- provides for the establishment of a tax increment fund for the district

County powers: A county may exercise any power necessary to establish tax increment districts, including the power to:

- create and determine the boundaries of tax increment districts
- issue tax increment bonds
- deposit tax increments into the tax increment fund
- enter into agreements (e.g. with developers or redevelopment agencies) as necessary to implement plans

Collection: The real property tax collected shall be paid to the general county fund; the tax increments produced from the assessment increment in the district shall be deposited into either the tax increment fund or the general county fund (see 46-105 for specifics).

Bonds: A county may issue tax increment bonds and the proceeds may be used to pay project costs for a tax increment district. Tax increment bonds must be authorized by ordinance, may be issued in one or more series, and are exempt from state and county taxes. These bonds must be made payable no more than 30 years from their date of issuance. Tax increment bonds shall not be issued in an amount exceeding the total costs of the tax increment financing plan for which they were issued.

A tax increment district may terminate at the time designated in the ordinance; however the district shall not terminate until all project costs and bonds issued have been paid in full. (Full text of 46-101 - 111 is included in the Appendix)

Impact Fees [46-141 - 146, 148]

Authority: Impact fees may be assessed, imposed, levied, and collected by:

- any county for any development not involving water supply or service (if the county enacts appropriate impact fee ordinances); or

- any board for any development involving water supply or service (if the board adopts rules to effectuate the imposition and collection of fees within their jurisdiction)

Calculation: Impact fees may be imposed only for public facility capital improvements identified in a county comprehensive plan or facility needs assessment study. The plan or study should specify the service standards for each type of facility subject to an impact fee.

The needs assessment study must identify the kinds of public facilities for which the fees should be imposed, and shall be conducted by a qualified professional. The study should:

- identify service standard levels
- forecast capital improvement needs
- differentiate between current and future needs
- identify the data sources and methodology used to calculate impact fees

Impact fees shall be based on the costs of public facility expansion to be incurred (or a reasonable estimate). They must also be "substantially related to the needs arising from development and shall not exceed a proportionate share of the costs incurred..." (46-143).

Collection/Expenditure: Collection and expenditure of impact fees for development should be "reasonably related to the benefits accruing to the development." To determine whether fees are reasonably related, the ordinance shall provide that:

- fees shall be deposited in a special fund or account upon collection
- collection and expenditure shall be localized to provide a reasonable benefit to the development
- impact fees shall not be collected from a developer before approval of a needs assessment study showing a substantial relationship between planned expenditures and needs created by the development
- fees shall be expended for facilities of the type for which they were collected and of reasonable benefit to the development
- impact fees shall be expended or encumbered for the construction of public facility capital improvements consistent with the needs assessment study and of reasonable benefit to the development, within six years of collection

Refund: If impact fees are not expended or encumbered within six years, the county shall refund the sum (plus accrued interest) to the developer.

Timing: Assessment of impact fees shall occur before a grading or building permit is issued; fees shall be collected before or upon issuance of the permit.

Transitions: Impact fees shall be incorporated in such a manner that developments are not required to contribute more than a proportionate share of public facility capital improvements. (Full text of 46-141 - 148 is included in the Appendix)

APPENDIX

[§46-80.1] 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 therefore), 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. [L 1992, c 226, §2]

http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0046/HRS_0046-0080_0001.htm

§46-80.5 Special improvement district. (a) In addition and supplemental to the authority vested in the counties by sections 46-80 and 46-80.1, any county having a charter may enact an ordinance, and may amend the same from time to time, authorizing the creation of special improvement districts for the purpose of providing and financing supplemental maintenance and security services and such other improvements, services, and facilities within the special improvement district as the council of the county determines will restore or promote business activity in the special improvement district and making and financing improvements therein. Each separate special improvement district shall be established by a separate ordinance enacted as provided in the ordinance authorizing the creation of special improvement districts. The ordinance authorizing the creation of special improvement districts may permit the county to provide for a board or association, established pursuant to chapter 414D, to provide management of the special improvement district, and to carry out activities as may be prescribed by the ordinance authorizing the creation of special improvement districts and the ordinance establishing the special improvement district as permitted thereby.

(b) The county may levy and assess a special assessment on property located within the special improvement district to finance the maintenance and operation of the special improvement district and to pay the debt service on any bonds issued to finance improvements within the special improvement district. Notwithstanding any law to the contrary, in assessing property for a special assessment, the county may implement a methodology as the council of the county deems appropriate. The special assessment may be fixed in an amount or appropriated on a basis as the council of the county deems appropriate, and it shall not be essential that the property subject to the special assessment be improved or benefited by the operation and maintenance of the special improvement district or any activity or improvement undertaken for, and financed by, the special improvement district.

(c) The county may issue and sell bonds to finance improvements within the special improvement district and the ordinance authorizing the creation of special improvement districts may provide the method, procedure, and type or types of security for those bonds. Each issue or series of bonds shall be authorized by ordinance separate from the ordinance establishing the special improvement district. The bonds shall be in amounts, in denomination or denominations, in form or forms, executed in a manner, payable in place or places and at time or times, bear interest at rate or rates (either fixed or variable), mature on date or dates and provide terms and conditions of redemption, provide security (including the pledge of proceeds of the bonds, special assessments, and the lien therefore), provide for credit enhancement, if any, administration, terms of investment of proceeds of the bonds and special assessment receipts, provide terms of default and remedy, and other terms and conditions, as the council of the county deems necessary or proper. The bonds may be sold in a manner and at price or prices as the council of the county shall determine. 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, except inheritance, transfer, and estate taxes.

(d) Notwithstanding any other law to the contrary, no action or proceeding to object to or question the validity of or enjoining any ordinance, action, or proceeding permitted by this section (including the liability for or the determination of the amount of any special assessment levied or the imposition thereof), or any bonds issued or to be issued pursuant to an ordinance enacted as permitted by this section, shall be maintained unless begun within thirty days of the enactment of the ordinance, determination, or other act, as the case may be and, in the case of the assessment, whether the determination or levy, within thirty days after adoption of the ordinance authorizing or amending the assessment formula and, in the case of bonds, within thirty days after enactment of the ordinance authorizing the issuance of the bonds.

(e) Exemptions.

- (1) Property owned by the state or county governments or entities, may be exempt from the assessment except as provided in paragraph (3);

- (2) Property owned by the federal government or entities, shall be exempt from the assessment except as provided in paragraph (3);
- (3) If a public body owning property, including property held in trust for any beneficiary, which is exempt from an assessment pursuant to paragraphs (1) and (2), grants a leasehold or other possessory interest in the property to a nonexempt person or entity, the assessment, notwithstanding paragraphs (1) and (2), shall be levied on the leasehold or possessory interest and shall be payable by the lessee; and
- (4) No other properties or owners shall be exempt from the assessment unless the properties or owners are expressly exempted in the ordinance establishing a district adopted pursuant to this section or amending the rate or method of assessment of an existing district.

(f) The assessments levied pursuant to the ordinance authorizing the creation of special improvement districts, the ordinance establishing a district, and 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 shall be on a parity with the lien of assessments levied under sections 46-80 and 46-80.1.

(g) Any board or association established for the purposes of carrying out the activities described in this section shall not be deemed a governmental body. The board and association shall neither be deemed to be a government department, agency, or a county nor to be performing services on behalf of a government department, agency, or county. [L 1999, c 107, §1; am L 2002, c 40, §2]

http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0046/HRS_0046-0080_0005.htm

PART VI. TAX INCREMENT FINANCING

§46-101 Short title. This part shall be known and may be cited as the "Tax Increment Financing Act." [L 1985, c 267, pt of §1]

§46-102 Definitions. As used in this part, the following words and terms shall have the following meanings unless the context indicates a different meaning or intent:

"Adjustment rate" means a percentage rate or rates of adjustment of the assessment base determined by the director of finance at the time the tax increment district is established, based on the historical and projected increases to the assessed values of taxable real property within the boundary of the tax increment district and the projected cost increases to the county for servicing the new developments within the tax increment district.

"Assessment base" means the total assessed values of all taxable real property in a tax increment district as most recently certified by the director of finance on the date of creation of the tax increment district.

"Assessment increment" means the amount by which the current assessed values of taxable real property located within the boundaries of a tax increment district exceeds its assessment base.

"Community development plan" means a plan established pursuant to section 206E-5.

"Council" means the council of the county in which a tax increment district is situated.

"County" has the same meaning as set forth in section 1-22 and means the county in which a tax increment district is situated.

"Director of budget" means the office or chief budget officer of the county charged with the responsibility of preparing and reviewing the operating and capital budget programs of the county.

"Director of finance" means the officer or officers of the county charged with the responsibility of administering the real property taxation function of the county.

"High technology parks" means an industrial park that has been developed to accommodate and support high technology activities including the Hawaii technology park at Mililani town,

city and county of Honolulu, the Maui research and technology park, Maui county, and the Hawaii ocean science and technology (HOST) park, Hawaii county.

"Project costs" means expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the agency that are listed in a tax increment financing plan as costs of public works or public improvements in a tax increment district, plus other costs incidental to the expenditures or obligations. Project costs include:

- (1) Capital costs, including the actual costs of the construction of public works or public improvements, new buildings, structures, and fixtures; the actual costs of the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; and the actual costs of the acquisition, clearing, and grading of land;
- (2) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of tax increment bonds and all interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs, any capitalized interest, and any premium paid over the principal amount of the obligations because of the redemption of the obligations prior to maturity;
- (3) Professional service costs, including architectural, planning, engineering, marketing, appraisal, financial consultant, and special services and legal advice;
- (4) Imputed administrative costs, including reasonable charges for the time spent by employees of the agency in connection with the implementation of a tax increment financing plan;
- (5) Relocation costs to the extent required by federal or state law;
- (6) Organizational costs, including the costs of conducting environmental impact studies or other studies, the costs of publicizing the creation of a tax increment district, and the cost of implementing the tax increment financing plan for the tax increment district;
- (7) Payments determined by the county council to be necessary or convenient to the creation of a tax increment district or to the implementation of the tax increment financing plan for the tax increment district.

"Redevelopment agency" or "agency" means an agency defined in section 53-1 or the Hawaii community development authority as established pursuant to chapter 206E.

"Redevelopment plan" means a plan as defined in section 53-1.

"Tax increment" means the amount of real property taxes levied for one year on the assessment increment.

"Tax increment bonds" mean bonds, notes, interim certificates, debentures, or other obligations issued pursuant to this part.

"Tax increment district" or "district" means a contiguous or noncontiguous geographic area designated pursuant to section 46-103 by the county council for the purpose of tax increment financing.

"Tax increment financing plan" means the plan for tax increment financing for a tax increment district submitted to the county council. The tax increment financing plan shall contain estimates of: project costs; amount of tax increment bonds to be issued; sources of revenue to finance or otherwise pay project costs; the most recent assessed value of taxable real property in the district; the duration of the district's existence; and statements from the county's department of finance, and the county's department of budget, if applicable, regarding the financial and budgetary impacts on the county resulting from the proposed tax increment financing plan.

"Tax increment fund" means a fund which shall be held by the director of finance or other fiduciary designated by the county council and into which all tax increments and other moneys pledged by the county for payment of tax increment bonds are paid, and all proceeds from the sale of tax increment bonds are deposited, and from which moneys are disbursed to pay project costs for the tax increment district or to satisfy claims of holders of tax increment bonds issued for the district. [L 1985, c 267, pt of §1; am L 1987, c 248, §2]

§46-103 Establishment of tax increment district. Any county council may provide for tax increment financing by approving a tax increment financing plan and adopting an ordinance establishing the tax increment district. The ordinance shall:

- (1) Describe the boundaries of the tax increment district;
- (2) Provide for the date of commencement of the tax increment district and date of termination of the district;
- (3) Provide for the establishment of a tax increment fund for the district; and
- (4) Provide for such other matters deemed to be pertinent and desirable for tax increment financing and not inconsistent with any relevant redevelopment plan, community development plan, high technology park plan, or telecommunication development plan. [L 1985, c 267, pt of §1; am L 1987, c 248, §3]

§46-104 County powers. A county may exercise any power necessary and convenient to establish tax increment districts, including the power to:

- (1) Create tax increment districts and determine the boundaries of the districts;
- (2) Issue tax increment bonds;
- (3) Deposit tax increments into the tax increment fund created for a tax increment district; and
- (4) Enter into agreements, including agreements with the redevelopment agency and owners or developers of project lands and bondholders, determined to be necessary or convenient to implement redevelopment plans or community development plans, as the case may be, and achieve their purposes. [L 1985, c 267, pt of §1; am L 1987, c 248, §4]

§46-105 Collection of tax increments. (a) The county by ordinance shall provide for the allocation of real property taxes and tax increments in the manner required by this part.

(b) If a county exercises the power allowed under this part, then commencing with the first payment of real property taxes levied by the county subsequent to the time a tax increment district takes effect, receipts from real property taxes shall be allocated and paid over as follows:

- (1) The amount of real property tax produced from the assessment base shall be paid to the county general fund; and
- (2) The tax increments produced from the assessment increment in the tax increment district shall be applied as follows:
 - (A) First, an amount equal to the installment of (i) principal and interest falling due of any tax increment bonds, or (ii) any project cost approved by the county, shall be deposited into the tax increment fund established for the tax increment district.
 - (B) Second, an amount equal to the adjustment rate times the amount of real property tax produced from the assessment base shall be computed and paid to the county general fund.
 - (C) Third, the remaining amount of tax increments, if any, shall be deposited into the tax increment fund established for the tax increment district.

(c) The allocation of real property taxes pursuant to this part shall in no way limit the power of the county under section 47-12 to levy ad valorem taxes without limitation as to rate or amount on all real property subject to taxation by the county for the payment of the principal and interest of its general obligation bonds. [L 1985, c 267, pt of §1; am L 1990, c 34, §5]

§46-106 Tax increment bonds. (a) A county may issue tax increment bonds, the proceeds of which may be used to pay project costs for a tax increment district or to satisfy claims of bondholders. The county may issue refunding bonds previously issued by the county for the purpose of paying or retiring or in exchange for tax increment bonds previously issued by the county. Principal and interest on tax increment bonds shall be made payable, as to both

principal and interest, solely from the tax increment fund established for the tax increment district.

A county may provide in its contract with the owners or holders of the tax increment bonds that the county will pay into the tax increment fund all or any part of the revenue or money produced or received as a result of the operation or sale of a facility acquired, improved, or constructed pursuant to a redevelopment plan or community development plan, as the case may be, to be used to pay principal and interest on the tax increment bonds and, if a county so agrees, the owners or holders of the tax increment bonds may have a lien or mortgage on any facility acquired, improved, or constructed with the proceeds of the tax increment bonds.

(b) Tax increment bonds, and the income therefrom, issued pursuant to this part shall be exempt from all state and county taxation, except estate and transfer taxes.

The bonds shall be authorized by ordinance and may be issued in one or more series. The tax increment bonds of each issue shall be dated, be payable upon demand or mature at a time or times not exceeding thirty years from their date of issuance, bear interest at a rate or rates, be in a denomination or denominations, be in registered form, have a rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, and be subject to terms of redemption (with or without premium), be secured in a manner, and have other characteristics as may be provided by the ordinance providing for issuance of the bonds or by the trust indenture or mortgage issued in connection with the bonds. The county may sell tax increment bonds in such manner, either at public or private sale, and for such price as it may determine.

(c) Prior to the preparation of definitive tax increment bonds, the county may issue interim receipts or temporary bonds exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(d) Should any bond issued under this part become mutilated or be lost, stolen, or destroyed, the county may cause a new bond of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of such mutilated bond, or in lieu of and in substitution for such lost, stolen, or destroyed bond. Such new bond shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond:

- (1) Has paid reasonable expenses and charges in connection therewith;
- (2) In the case of a lost, stolen, or destroyed bond, has filed with the county or its fiduciary satisfactory evidence that such bond was lost, stolen, or destroyed, and that the holder was owner thereof; and
- (3) Has furnished indemnity satisfactory to the county.

(e) Notwithstanding any of the provisions of this part or any recital in any tax increment bond issued under this part, all tax increment bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions pertaining to registration.

(f) In any suit, action, or other proceeding involving the validity or enforceability of a bond issued under this part or the security for a bond or note issued under this part, a bond reciting in substance that it had been issued by the county for a tax increment district shall be conclusively deemed to have been issued for that purpose, and the development or redevelopment of the district conclusively shall be deemed to have been planned, located, and carried out as provided by this part.

(g) All banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all personal representatives, administrators, curators, trustees, and other fiduciaries legally may invest sinking funds, money, or other funds belonging to them or within their control in tax increment bonds issued by a county pursuant to this part. The bonds shall be authorized security for all public deposits. Any person, political subdivision, and officer, public or private, are authorized to use funds owned or controlled by them for the purchase of tax increment bonds. This part does not relieve any person of the duty to exercise reasonable care in selecting securities.

(h) Tax increment bonds shall be payable only out of the tax increment fund. The county council may pledge irrevocably all or a part of the fund for payment of the bonds. The part of the fund pledged in payment thereafter shall be used only for the payment of the bonds or interest or redemption premium, if any, on the bonds until the bonds have been fully paid. A holder of the bonds shall have a lien against the fund for payment of the bonds and interest thereon and may either at law or in equity protect and enforce such lien.

(i) No officer of the county including any officer executing tax increment bonds shall be liable for the tax increment bonds by reason of the issuance thereof. Tax increment bonds issued under this part shall not be general obligations of the State or county, nor in any event shall they give rise to a charge against the general credit or taxing powers of the State or county or be payable other than as provided by this part. No holder of bonds issued under this part shall have the right to compel any exercise of the taxing power of the State or county to pay such bonds or the interest thereon, and no moneys other than the moneys in the tax increment fund pledged to the bonds shall be applied to the payment thereof. Tax increment bonds issued under this part shall state these restrictions on their face.

(j) The tax increment bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all persons whose signatures appear thereon shall have ceased to be officers of the county.

(k) Tax increment bonds shall not be issued in an amount exceeding the total costs of implementing the tax increment financing plan for which they were issued. [L 1985, c 267, pt of §1]

§46-107 Tax increment bond anticipation notes. Whenever the county has authorized the issuance of tax increment bonds under this part, tax increment bond anticipation notes of the county may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All tax increment bond anticipation notes shall be authorized by the county, and the maximum principal amount of such notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the tax increment bonds in anticipation of which the notes are issued and the moneys in the tax increment fund from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such bonds, the maximum amount of bonds authorized in anticipation of which the notes are issued shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and details of such notes shall be governed by this part with respect to tax increment bonds insofar as the same may be applicable; provided that each note, together with renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note. [L 1985, c 267, pt of §1]

§46-108 Annual report. The county council by ordinance may require the director of finance to prepare a report to the county council on the status of the tax increment district. The county council shall determine what information and data are required to be included in the report. [L 1985, c 267, pt of §1]

§46-109 Termination of a tax increment district. A tax increment district shall terminate at the time designated in the ordinance creating the district or at an earlier time designated by a subsequent ordinance, but in no event shall the district terminate until such time as all project costs and tax increment bonds issued for the district and the interest thereon, have been paid in full, or sufficient funds have been irrevocably deposited in a special fund or other escrow account held in trust for all outstanding tax increment bonds issued for such district to provide for the payment of such bonds at maturity or date of redemption and interest and premium, if any, thereon. [L 1985, c 267, pt of §1]

§46-110 Tax increment fund. (a) Money shall be disbursed from the tax increment fund for a tax increment district only to satisfy the claims of holders of tax increment bonds issued for the tax increment district or to pay project costs for the district, or to make payments to the county as provided by subsection (c).

(b) Subject to an agreement with the holders of tax increment bonds, money in a tax increment fund may be temporarily invested in the same manner as other funds of the county.

(c) In any year in which the tax increment exceeds the amount necessary to pay all project costs and all installments of principal and interest of tax increment bonds issued for a tax increment district falling due and the amount paid to the county general fund pursuant to section 46-105(b)(2)(B), and subject to any agreement with bondholders, any excess money in the fund at the option of the county council, shall be used to redeem or purchase any outstanding tax increment bonds issued for the district, discharge the pledge of tax increment therefor, be paid into an escrow account dedicated to the payment of such bonds, be paid over to the county general fund, or any combination thereof. [L 1985, c 267, pt of §1]

§46-111 Computation of tax increment. (a) Upon or after creation of a tax increment district, the director of finance of the county in which the district is situated shall certify the assessment base of the tax increment district and shall certify in each year thereafter the amount by which the assessment base has increased or decreased as a result of a change in tax exempt status of property within the district, or reduction or enlargement of the district. The amount to be added to the assessment base of the district as a result of previously tax exempt real property within the district becoming taxable shall be equal to the assessed value of the real property as most recently assessed or, if the assessment was made more than one year prior to the date of transfer rendering the property taxable, the value which shall be assessed by the director of finance at the time of such transfer. The amount to be added to the assessment base of the district as a result of enlargements thereof shall be equal to the assessed value of the additional real property as most recently certified by the director of finance as of the date of modification of the tax increment financing plan. The amount to be subtracted from the assessment base of the district as a result of previously taxable real property within the district becoming tax exempt, or a reduction in the geographic area of the district, shall be the amount of assessment base initially attributed to the property becoming tax exempt or being removed from the district.

If the assessed value of property located within the tax increment district is reduced by reason of a court-ordered abatement, stipulated agreement, or voluntary abatement made by the director of finance, the reduction shall be applied to the assessment base of the district when the property upon which the abatement is made has not been improved since the date of creation of the district, and to the assessment increment of the district in each year thereafter when the abatement relates to improvements made after the date of creation.

(b) The director of finance shall certify the amount of the assessment increment to the county and redevelopment agency each year, together with the proportion that the assessment increment bears to the total assessed value of the real property within the tax increment district for that year. [L 1985, c 267, pt of §1]

§46-112 Tax on leased redevelopment property. Whenever property in the tax increment district has been redeveloped and thereafter is leased by the county or redevelopment agency to any person or whenever the county or agency leases real property in any tax increment district to any person for redevelopment, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes upon the assessed value of the entire property and not merely the assessed value of the lessee's leasehold interest. [L 1985, c 267, pt of §1]

§46-113 Cumulative effect. Neither this part nor anything contained in this part shall be construed as a restriction or limitation upon any power which a county might otherwise have under any law of this State, but shall be construed as cumulative. The authorization granted

may be carried out by the county council acting at any regular or special meeting. [L 1985, c 267, pt of §1]

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[PART VIII.] IMPACT FEES

§46-141 Definitions. As used in this part, unless the context requires otherwise:

"Board" means the board of water supply or water board of any county.

"Capital improvements" means the acquisition of real property, improvements to expand capacity and serviceability of existing public facilities, and the development of new public facilities.

"Comprehensive plan" means a coordinated land use plan for the development of public facilities within the jurisdiction of a county based on existing and anticipated needs, showing existing and proposed developments, stating principles to which future development should conform, such as the county's general plans, development plans, or community plans, and the manner in which development should be controlled. In the case of the city and county of Honolulu, public facility maps shall be equivalent to the comprehensive plan required in this part.

"County" or "counties" means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and the county of Maui.

"Credits" means the present value of past or future payments or contributions, including, but not limited to, the dedication of land or construction of a public facility made by a developer toward the cost of existing or future public facility capital improvements, except for contributions or payments made under a development agreement pursuant to section 46-123.

"Developer" means a person, corporation, organization, partnership, association, or other legal entity constructing, erecting, enlarging, altering, or engaging in any development activity.

"Development" means any artificial change to real property that requires a grading or building permit as appropriate, including, but not limited to, construction, expansion, enlargement, alteration, or erection of buildings or structures.

"Discount rate" means the interest rate, expressed in terms of an annual percentage, that is used to adjust past or future financial or monetary payments to present value.

"Impact fees" means the charges imposed upon a developer by a county or board to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected, or to recoup the cost of existing public facility capital improvements made in anticipation of the needs of a development.

"Needs assessment study" means a study required under an impact fee ordinance that determines the need for a public facility, the cost of development, and the level of service standards, and that projects future public facility capital improvement needs; provided that the study shall take into consideration and incorporate any relevant county general plan, development plan, or community plan.

"Non-site related improvements" means land dedications or the provision of public facility capital improvements that are not for the exclusive use or benefit of a development and are not site-related improvements.

"Offset" means a reduction in impact fees designed to fairly reflect the value of non-site related public facility capital improvements provided by a developer pursuant to county land use provisions.

"Present value" means the value of past or future payments adjusted to a base period by a discount rate.

"Proportionate share" means the portion of total public facility capital improvement costs that is reasonably attributable to a development, less:

- (1) Any credits for past or future payments, adjusted to present value, for public facility capital improvement costs made or reasonably anticipated to be contributed by a developer in the form of user fees, debt service payments, taxes, or other payments; or

- (2) Offsets for non-site related public facility capital improvements provided by a developer pursuant to county land use provisions.

"Public facility capital improvement costs" means costs of land acquisition, construction, planning and engineering, administration, and legal and financial consulting fees associated with construction, expansion, or improvement of a public facility. Public facility capital improvement costs do not include expenditures for required affordable housing, routine and periodic maintenance, personnel, training, or other operating costs.

"Reasonable benefit" means a benefit received by a development from a public facility capital improvement that is greater than the benefit afforded the general public in the jurisdiction imposing the impact fees. Incidental benefit to other developments shall not negate a "reasonable" benefit to a development.

"Recoupment" means the proportionate share of the public facility capital improvement costs of excess capacity in existing capital facilities where excess capacity has been provided in anticipation of the needs of a development.

"Site-related improvements" means land dedications or the provision of public facility capital improvements for the exclusive use or benefit of a development or for the provision of safe and adequate public facilities related to a particular development. [L 1992, c 282, pt of §2; am L 2001, c 235, §1]

§46-142 Authority to impose impact fees; enactment of ordinances required. (a) Impact fees may be assessed, imposed, levied, and collected by:

- (1) Any county for any development, or portion thereof, not involving water supply or service; or

(2) Any board for any development, or portion thereof, involving water supply or service; provided that the county enacts appropriate impact fee ordinances or the board adopts rules to effectuate the imposition and collection of the fees within their respective jurisdictions.

(b) Except for any ordinance governing impact fees enacted before July 1, 1993, impact fees may be imposed only for those types of public facility capital improvements specifically identified in a county comprehensive plan or a facility needs assessment study. The plan or study shall specify the service standards for each type of facility subject to an impact fee; provided that the standards shall apply equally to existing and new public facilities. [L 1992, c 282, pt of §2; am L 1996, c 175, §1; am L 2001, c 235, §2]

§46-143 Impact fee calculation. (a) A county council or board considering the enactment or adoption of impact fees shall first approve a needs assessment study that shall identify the kinds of public facilities for which the fees shall be imposed. The study shall be prepared by an engineer, architect, or other qualified professional and shall identify service standard levels, project public facility capital improvement needs, and differentiate between existing and future needs.

(b) The data sources and methodology upon which needs assessments and impact fees are based shall be set forth in the needs assessment study.

(c) [2004 amendment retroactive to October 1, 2002. L 2004, c 155, §6.] The pro rata amount of each impact fee shall be based upon the development and actual capital cost of public facility expansion, or a reasonable estimate thereof, to be incurred.

(d) [2004 amendment retroactive to October 1, 2002. L 2004, c 155, §6.] An impact fee shall be substantially related to the needs arising from the development and shall not exceed a proportionate share of the costs incurred or to be incurred in accommodating the development. The following seven factors shall be considered in determining a proportionate share of public facility capital improvement costs:

- (1) The level of public facility capital improvements required to appropriately serve a development, based on a needs assessment study that identifies:
- (A) Deficiencies in existing public facilities;
 - (B) The means, other than impact fees, by which existing deficiencies will be eliminated within a reasonable period of time; and

- (C) Additional demands anticipated to be placed on specified public facilities by a development;
 - (2) The availability of other funding for public facility capital improvements, including but not limited to user charges, taxes, bonds, intergovernmental transfers, and special taxation or assessments;
 - (3) The cost of existing public facility capital improvements;
 - (4) The methods by which existing public facility capital improvements were financed;
 - (5) The extent to which a developer required to pay impact fees has contributed in the previous five years to the cost of existing public facility capital improvements and received no reasonable benefit therefrom, and any credits that may be due to a development because of such contributions;
 - (6) The extent to which a developer required to pay impact fees over the next twenty years may reasonably be anticipated to contribute to the cost of existing public facility capital improvements through user fees, debt service payments, or other payments, and any credits that may accrue to a development because of future payments; and
 - (7) The extent to which a developer is required to pay impact fees as a condition precedent to the development of non-site related public facility capital improvements, and any offsets payable to a developer because of this provision.
- (e) The impact fee ordinance shall contain a provision setting forth the process by which a developer may contest the amount of the impact fee assessed. [L 1992, c 282, pt of §2; am L 2001, c 235, §3; am L 2004, c 155, §3]

§46-144 Collection and expenditure of impact fees. Collection and expenditure of impact fees assessed, imposed, levied, and collected for development shall be reasonably related to the benefits accruing to the development. To determine whether the fees are reasonably related, the impact fee ordinance or board rule shall provide that:

- (1) Upon collection, the fees shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund;
- (2) Collection and expenditure shall be localized to provide a reasonable benefit to the development. A county or board shall establish geographically limited benefit zones for this purpose; provided that zones shall not be required if a reasonable benefit can be otherwise derived. Benefit zones shall be appropriate to the particular public facility and the county or board. A county or board shall explain in writing and disclose at a public hearing reasons for establishing or not establishing benefit zones;
- (3) Except for recoupment, impact fees shall not be collected from a developer until approval of a needs assessment study that sets out planned expenditures bearing a substantial relationship to the needs or anticipated needs created by the development;
- (4) Impact fees shall be expended for public facilities of the type for which they are collected and of reasonable benefit to the development; and
- (5) Within six years of the date of collection, the impact fees shall be expended or encumbered for the construction of public facility capital improvements that are consistent with the needs assessment study and of reasonable benefit to the development. [L 1992, c 282, pt of §2; am L 2001, c 235, §4]

§46-145 Refund of impact fees. (a) If impact fees are not expended or encumbered within the period established in section 46-144, the county or the board shall refund to the developer or the developer's successor in title the amount of fees paid and any accrued interest. Application for a refund shall be submitted to the county or the board within one year of the date on which the right to claim arises. Any unclaimed refund shall be retained in

the special trust fund or interest bearing account and be expended as provided in section 46-144.

(b) If a county or board seeks to terminate impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided in subsection (a) and the county or board shall give public notice of termination and availability of refunds at least two times. All funds available for refund shall be retained for a period of one year at the end of which any remaining funds may be transferred to:

- (1) The county's general fund and expended for any public purpose not involving water supply or service as determined by the county council; or
- (2) The board's general fund and expended for any public purpose involving water supply or service as determined by the board.

(c) Recoupment shall be exempt from subsections (a) and (b). [L 1992, c 282, pt of §2; am L 1998, c 2, §14; am L 2001, c 235, §5]

[§46-146] Time of assessment and collection of impact fees. Assessment of impact fees shall be a condition precedent to the issuance of a grading or building permit and shall be collected in full before or upon issuance of the permit. [L 1992, c 282, pt of §2]

[§46-147] Effect on existing ordinances. This part shall not invalidate any impact fee ordinance existing on June 19, 1992. [L 1992, c 282, pt of §2]

[§46-148] Transitions. Any county requiring impact fees or imposing development exactions, in order to fund public facilities, shall incorporate fee requirements into their broader system of development and land use regulations in such a manner that developments, either collectively or individually, are not required to pay or otherwise contribute more than a proportionate share of public facility capital improvements. Development contributions or payments made under a development agreement, pursuant to section 46-123, are exempted from this requirement. [L 1992, c 282, pt of §2]

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