

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

RECEIVED
Notice is hereby given that the Kaua'i County Council will hold a public hearing on Wednesday, March 13, 2024, at 8:30 a.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihue, on the following:

24 FEB 20 AM 8:16

Bill No. 2912

OFFICE OF THE COUNTY CLERK
THE COUNTY CLERK
COUNTY OF KAUAI
A BILL FOR AN ORDINANCE ADDING A NEW ARTICLE TO CHAPTER 6, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO GENERAL PROVISIONS RELATING TO FINANCE

This Bill proposes to add a new article to Chapter 6, Kaua'i County Code 1987, as amended, relating to General Provisions Relating to Finance. This Bill proposes to establish a commercial property assessed financing program and to authorize property assessed financing for commercial properties, which will be administered by the Hawai'i Green Infrastructure Authority.

Any person may testify at the public hearing, and at any Council and Committee Meeting (at which time any Bill may be amended). Meeting notices and full-text Bills are available at least six (6) days in advance at the Office of the County Clerk, Council Services Division and kauai.gov/Government/Council/Webcast-Meetings. Written testimony may be submitted via counciltestimony@kauai.gov, mail, or fax. For further information, please call (808) 241-4188.

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the Kaua'i County Council passed on first reading and ordered to print Bill No. 2912 during the February 16, 2024 Council Meeting, by the following vote:

AYES:	Bulosan, Carvalho, Cowden, Kagawa, Kualii, Rapozo	TOTAL – 6,
NOES:	DeCosta	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihue, Hawai'i
February 16, 2024

/s/ Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF THE COUNTY CLERK, COUNCIL SERVICES DIVISION AT (808) 241-4188 OR COKCOUNCIL@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

(One publication – The Garden Island – February 23, 2024)

ORDINANCE NO. _____

BILL NO. 2912

**A BILL FOR AN ORDINANCE ADDING A NEW ARTICLE TO CHAPTER 6,
KAUA'I COUNTY CODE 1987, AS AMENDED,
RELATING TO GENERAL PROVISIONS RELATING TO FINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Council of the County of Kaua'i finds that cesspools pose a harmful threat to residents and visitors as well as the environment. There are approximately fourteen thousand cesspools on the island of Kaua'i, which according to the State of Hawai'i Department of Health collectively releases more than fifty-three million gallons of untreated sewage into the ground each day. Additionally, Hawai'i relies on groundwater for ninety per cent of its drinking water.

Pursuant to Hawai'i Revised Statutes Section 342D-72 (Cesspools; mandatory upgrade, conversion, or connection), the State Legislature requires that all cesspools in the State, excluding cesspools granted exemptions by the Director of Health, be upgraded or converted to a Director-approved wastewater system or sewerage system by January 1, 2050. However, cesspool conversions are costly, and to make qualifying improvements affordable, non-traditional financing options and repayment mechanisms may help bridge the gap. Additionally, leveraging non-traditional financing options and repayment mechanisms will accelerate economic recovery and economic diversification.

The purpose of this Ordinance is to establish a commercial property assessed financing program and to authorize property assessed financing for commercial properties, which will be administered by the Hawai'i Green Infrastructure Authority.

SECTION 2. Chapter 6, Kaua'i County Code 1987, as amended, is hereby amended by establishing a new Article 16 to be appropriately designated and to read as follows:

"ARTICLE 16. Property Assessed Financing Program.

Section 6-16.1 Purpose.

The purpose of this Article is to implement the authority granted to the County of Kaua'i pursuant to Chapter 196, Part IV, and Section 46-80(b), Hawai'i Revised Statutes, with respect to the property assessed financing program to be established and administered within the County of Kaua'i by the Hawai'i Green Infrastructure Authority.

Section 6-16.2 Definitions.

Except as otherwise provided herein, the following definitions shall apply to this Article:

“Authority” means the Hawai‘i Green Infrastructure Authority, an instrumentality of the State of Hawai‘i, as administrator of the Property Assessed Financing Program.

“Authorizing Acts” means Chapter 196, Part IV, and Section 46-80(b), Hawai‘i Revised Statutes.

“Commercial property” means any existing or new real property located within the County of Kaua‘i that is not defined as a residential property, including any such property where there is a leasehold or possessory interest in the property and any multi-family dwelling or townhouse consisting of five (5) or more units as well as agricultural property.

“Director” means the Director of Finance of the County of Kaua‘i or such Director’s authorized representative.

“Financing program administration agreement” means the program administration agreement entered into between the County of Kaua‘i and the authority with respect to the administration of the property assessed financing program pursuant to Section 6-16.4.

“Non-ad valorem special tax assessment” means a special tax assessment levied by the County of Kaua‘i a benefitted property as provided in the authorizing acts and this Chapter 6.

“Property assessed financing assessment” means the non-ad valorem special tax assessment levied by the County of Kaua‘i that secures the repayment of financing obtained by a property owner for a qualifying improvement and that appears on a property tax bill or a standalone bill as provided herein.

“Property assessed financing assessment contract” means the financing contract, under the property assessed financing program, by and among one or more property assessed financing lenders, one or more property owners, and the authority as the administrator of the property assessed financing program for the acquisition or installation of qualifying improvements.

“Property assessed financing lender” means a financial institution as defined pursuant to Section 412:1-109, Hawai‘i Revised Statutes, or a private or public lender approved by the authority, as the administrator of the property assessed financing program, to originate property assessed financing assessment contracts, and which may include any successor or assignee of the lender as provided in the property assessed financing assessment contract.

“Property assessed financing program” means a program to finance qualifying improvements on properties that are repaid through a non-ad

valorem special tax assessment levied and collected by the County of Kaua'i in accordance with the authorizing acts and this Chapter 6.

"Qualifying improvement" means a septic system or aerobic treatment unit system or connection to sewer systems, clean energy technology, efficiency technology, water conservation, resiliency measure, or other improvement approved by the authority.

"Summary Memorandum of C-PACER Assessment Contract and Notice of Levy and Lien or Summary Memorandum" means a memorandum of the C-PACER Assessment Contract, which is recorded with the State of Hawaii's Bureau of Conveyances or Land Court, to provide constructive notice of the levy and lien on a subject property, with respect to each property assessed financing assessment. Each Summary Memorandum shall: (i) identify the property subject to the property assessed financing assessment, (ii) state that such assessment has been levied pursuant to this Chapter 6 with respect to the property owner's payment obligations under the property assessed financing assessment contract, (iii) specify the term of the levy and the annual amount thereof, and (iv) state that the total amount of the property assessed financing shall constitute a non-accelerating lien on the property pursuant to this Chapter 6.

Section 6-16.3 Participation in Property Assessed Financing Program; Limited Obligations.

(a) Subject to the provisions of the authorizing acts and this Chapter 6, the County of Kaua'i shall: (i) participate in the property assessed financing program established and administered within the County of Kaua'i by the authority, and (ii) levy a property assessed financing assessment on properties pursuant to the property assessed financing program.

(b) The obligations of the County of Kaua'i with respect to the property assessed financing program shall be limited to the levy of property assessed financing assessments pursuant to Section 6-16.5, collection and payment to the authority of amounts collected pursuant to Section 6-16.8, and enforcement of liens for property assessed financing assessments pursuant to Section 6-16.9. The County of Kaua'i shall have no other obligations with respect to the property assessed financing program or any property assessed financing assessment contracts.

Section 6-16.4 Financing Program Administration Agreement with Authority.

The County of Kaua'i shall participate in the property assessed financing program in accordance with the financing program administration agreement to be entered into between the County, acting through the Director, and the authority prior to the execution of the first property assessed financing assessment contract within the County of Kaua'i. Subject to the further provisions of this Chapter 6, the financing program administration agreement shall establish the terms upon which the authority

shall establish and administer the property assessed financing program within the County of Kaua'i, and the County of Kaua'i shall levy property assessed financing assessments on benefitted properties, which terms shall include the following:

(a) The authority shall establish and administer the applicable eligibility standards and requirements for participation by property assessed financing lenders and property owners in the property assessed financing program and for the qualifying improvements for properties to be financed under the program. The authority shall be responsible for approving all applications for participation by the property assessed financing lenders and property owners and for the financing of qualifying improvements in accordance with such standards and requirements. The authority shall be responsible for the preparation and dissemination of all informational materials regarding the offering of the property assessed financing program and the eligibility standards and requirements relating thereto.

(b) The property assessed financing assessment on each property shall include the amounts necessary to repay the property owner's debt obligations to the property assessed financing lender with respect to the financing. The assessment may also include such reasonable administrative expenses of the authority and the County of Kaua'i, as determined in accordance with the financing program administration agreement and set forth in the applicable property assessed financing assessment contract.

(c) As administrator of the property assessed financing program, the authority shall enter into the property assessed financing assessment contract for each financing with the property assessed financing lender and the property owner. Upon execution and delivery of each property assessed financing assessment contract, the authority shall cause the property assessed financing lender to record the contract, or a summary memorandum thereof, in accordance with Chapter 196, Part IV, and Section 46-80(b), Hawai'i Revised Statutes, and Section 6-16.6 hereof. If agreed to by the County of Kaua'i in the financing program administration agreement, the authority shall act as servicing agent under the property assessed financing assessment contracts during their respective terms.

(d) The Director shall levy and collect the property assessed financing assessments in the amounts approved and certified by the authority for collection, and shall enforce the lien of such assessments, as provided in the financing program administration agreement, subject to the further provisions in this Chapter 6. The authority shall agree to assist the Director with respect to such matters as provided in the financing program administration agreement.

Section 6-16.5 Levy of Property Assessed Financing Assessment; Report to Council.

(a) The Director shall levy the property assessed financing assessment on each property in the amount approved and certified by the authority to the director in accordance with the financing program administration agreement. No action by the Council shall be required for any such levy so approved and certified by the authority.

(b) The Director shall file a report with the Council upon the making of each levy of property assessed financing assessments. Such report shall: (i) identify the property owner, the property, the property assessed financing lender, and the qualifying improvements being financed; and (ii) specify the amount and term of the financing obligation and the amount of the property assessed financing assessment with respect to the financing obligation.

Section 6-16.6 Notice of Levy; Disclosure Statement upon Sale of Property.

(a) The property assessed financing lender with respect to each property assessed financing assessment contract, or the authority on behalf of such lender, shall record such contract or a summary memorandum of the contract, together with the applicable notice of levy, in the land records for the property maintained by the Bureau of Conveyances or Land Court, as applicable, within five (5) days after execution by the parties to the contract. Such recordation shall provide constructive notice of the levy of, and obligation of the property owner to pay, the property assessed financing assessment on the property and of the lien of such assessment on the property.

(b) In addition to the foregoing, at or before the time a purchaser executes a contract for the sale and purchase of any property for which a non-ad valorem special tax assessment has been levied under this Chapter and has an unpaid balanced due, the seller shall give the prospective purchaser a written disclosure statement notifying the prospective purchaser of the property assessed financing assessment.

Section 6-16.7 Lien on Property; Term of Lien.

The property assessed financing assessment levied on the property shall be a non-ad valorem special tax assessment and a lien against the property on a parity with the lien of real property taxes and the lien of any assessments levied under other assessment ordinances from the date of recordation of the applicable property assessed financing assessment contract pursuant to Section 6-16.6 until paid or satisfied in accordance with such contract. Upon payment or satisfaction of the property assessed financing assessment contract, the property assessed financing lender, or the authority on behalf of such lender, shall record an instrument evidencing the termination of the lien in the land records for the property.

Section 6-16.8 Billing and Collection.

As provided in the financing program administration agreement and the applicable property assessed financing assessment contract, the property assessed financing assessment for a property shall be billed and collected in the same manner as real property taxes are billed collected and be subject to the same penalties and same procedure, sale, and lien priority, subject to this chapter, in the case of delinquency as is provided by general law for the default of the payment of real property taxes, unless another procedure, including standalone billing and collection, is agreed upon by the authority and the director. The Director shall remit any property assessed financing assessments collected, less any reasonable administrative costs of the county included in the assessments, to or on the direction of the authority, for further application by the authority to pay each property assessed financing lender and to pay the reasonable administrative costs of the authority in accordance with the applicable property assessed financing assessment contract.

Section 6-16.9 Enforcement of Lien.

(a) The Director shall commence and diligently pursue to completion, and shall covenant in a contract or instrument for the benefit of any property assessed financing lender or bondholder to commence and diligently pursue to completion, the foreclosure of the lien of delinquent property assessed financing assessments and any penalty, interest, and costs by advertisement and sale and with the same effect as provided by general law for sales of real property pursuant to default in payment of property taxes. The foregoing covenant shall specify a deadline for commencement of the foreclosure sale and any other terms and conditions the Director determines reasonable regarding the foreclosure sale. For property assessed financing assessments levied but not paid when due pursuant to a property assessed financing assessment contract, the foreclosure of the lien of the property assessed financing assessment, lien of real property taxes or any assessments levied under other assessment ordinances, or any other lien foreclosed, shall not accelerate or extinguish the remaining term of the property assessed financing assessment as approved in the applicable property assessed financing assessment contract.

(b) Subject to the foregoing, the lien of delinquent property assessed financing assessments may be enforced, by judicial or non-judicial foreclosure, either in a single, combined sale of the property to satisfy all liens for delinquent property assessed financing assessments, real property taxes and assessments levied under other assessment ordinances, or in a separate sale to satisfy the lien for delinquent property assessed financing assessments only; subject to the following:

(i) If the property is sold in a single, combined foreclosure sale to satisfy multiple delinquent liens as aforesaid, the sale proceeds shall be applied to the payment of all delinquent property assessed financing assessments, real property taxes and assessments under other assessment

ordinances, plus all applicable penalties, interests and costs; provided that, if the sale proceeds are insufficient to satisfy all delinquent liens, the Director may allocate such proceeds: first, to the payment of delinquent real property taxes; and then, to the payment of delinquent property assessed financing assessments and delinquent assessments levied under other assessment ordinances in the order of the original levy of assessments on the property pursuant to this Chapter 6 and other assessment ordinances.

(ii) If the property is sold separately to satisfy the lien for delinquent property assessed financing assessments only, the sale proceeds shall be applied to the payment of all delinquent property assessed financing assessments, plus all applicable penalties, interests, and costs. Such sale shall not be deemed to accelerate, extinguish, or otherwise affect any liens for real property taxes or assessments under other assessment ordinances. Likewise, any separate sale to satisfy the liens for delinquent real property taxes or assessments under other assessment ordinances shall not be deemed to accelerate, extinguish, or otherwise affect the lien for property assessed financing assessments."

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Ordinance that can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are severable.

SECTION 4. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This Ordinance shall take effect upon its approval.

Introduced by:



ADDISON BULOSAN

DATE OF INTRODUCTION:

February 16, 2024

Lihu'e, Kaua'i, Hawai'i

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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2912, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on February 16, 2024, by the following vote:

FOR PASSAGE:	Bulosan, Carvalho, Cowden, Kagawa, Kuali'i, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	DeCosta	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Līhu'e, Hawai'i
February 16, 2024



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i