

**DISTRICT-WIDE
IMPROVEMENT PROGRAM
RULES (CHAPTER 19)**

**Kakaako Community
Development District**

Honolulu, Hawaii

**UNOFFICIAL
COMPILATION**

NOVEMBER 1999

KAKAAKO COMMUNITY DEVELOPMENT DISTRICT
UNOFFICIAL COMPILATION
OF THE
DISTRICT-WIDE IMPROVEMENT PROGRAM RULES

This is the 1999 edition of the Unofficial Compilation of the District-Wide Improvement Program Rules. The District-Wide Improvement Program Rules are part of the Hawaii Administrative Rules (HAR), Title 15, Department of Business, Economic Development & Tourism, Subtitle 4, Hawaii Community Development Authority (HCDA), Chapter 19, District-Wide Improvement Program Rules in the Kakaako Community Development District.

This edition includes amendments as of June 3, 1995. See Index of Amendments for a description of the amendments. The official District-Wide Improvement Program Rules and its amendments are on file at the Office of the Lieutenant Governor and may also be reviewed at the HCDA office.

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Executive Director

KAKAAKO COMMUNITY DEVELOPMENT DISTRICT
UNOFFICIAL COMPILATION
OF THE
DISTRICT-WIDE IMPROVEMENT PROGRAM RULES
INDEX OF AMENDMENTS

Hawaii Administrative Rules, Title 15, Subtitle 4, Chapter 19, effective as of September 17, 1984, has subsequently been amended by the following:

SUBJECT	EFFECTIVE DATE
Connection of Underground Public Utilities, and Various Procedures	November 1, 1985
Surcharge Fee	February 26, 1988
Notice of Public Hearing	January 29, 1990
Refunding of Assessment Area Bonds	February 22, 1993
Financing of Assessments	June 3, 1995

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HAWAII ADMINISTRATIVE RULES

TITLE 15
DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT & TOURISM

SUBTITLE 4
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 19
DISTRICT-WIDE IMPROVEMENT PROGRAM RULES

SUBCHAPTER 1

GENERAL PROVISIONS

§15-19-1 Methods. (a) Whenever in the opinion of the authority it is desirable to establish, open, construct or acquire a public facility, as defined by statute, or to extend, widen, alter, grade, pave, curb, macadamize or otherwise improve, to an extent exceeding maintenance or repair thereof, the whole or any part of any existing public highway including in connection therewith the construction of a sidewalk, storm drainage system, facilities for communication and electrical systems, sanitary sewerage system, water system or street lighting system, these acquisitions, betterments or improvements may be made and done under the provisions of this chapter, and the cost thereof, including the cost (if not assumed by the authority or the county in which the improvements are located, under their discretionary power) of acquiring, whether prior to or after the commencement of the proceedings for these betterments or improvements, any land therefor shall be assessed against the real property specially benefited.

(b) Special benefits shall be calculated using the frontage basis, or the area of the land, or real property tax assessment on the value of the land and improvements thereon, or the floor area ratio permissible for the real property, or any combination of the methods of assessment, provided that wherever the frontage or area or real property tax assessment on the value of land and improvements or floor area ratio basis are mentioned in this chapter, the valuation method may be used, or in combination of one or more of the methods of assessment. The authority may either (i) issue and sell bonds in the amounts as may be authorized by the legislature to provide the funds for these

improvements, which bonds may be bonds secured by these assessments as a lien upon the real property assessed, or (ii) advance the funds for these improvements out of any available funds of the authority; and for such purposes the authority may create, define and establish assessment areas, all according to the provisions of this chapter.

(c) Nothing in this chapter shall prevent the authority from compelling abutting property owners at their expense to construct, maintain and repair sidewalks and curbs in front of the abutting property under any other statute, ordinance, or rule.

(d) Furthermore, nothing in this chapter shall prevent the authority or the county or the county board of water supply from constructing, improving, maintaining and repairing any public facility or utility system as empowered by any other statute, ordinance, or rule.

(e) Any provision to the contrary notwithstanding, the authority may, in its discretion, enter into agreements with the county in which the public facilities are located to implement all or any part of the purposes of this chapter. [Eff 9/17/84, am 6/3/95] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-2 to §15-19-10 (Reserved).

SUBCHAPTER 2

COSTS

§15-19-11 Costs to be borne by the authority.

(a) Except as otherwise provided herein, if the authority decides to establish, open, construct or acquire a public facility under the provisions of this chapter, the authority may pay for the interest on assessment area bonds during the period of construction of the public facility and for a period of up to one year after the completion of such construction and the cost of engineering, incidentals, inspections, surveys, maps, plans, drawings, specifications, other engineering data, publication of notices of hearing, mailing notices to owners and lessees, services of bond counsel, printing of bonds and a prospectus on the sale of bonds, publication of notice of sale of bonds, execution and delivery of bonds, paying agents' fees and expenses, other reimbursements to paying agents and publication of notices

of redemption. The authority may assume any part of other costs of the assessment area, or the authority may assess the whole or any part of the cost against the real property according to the special benefits arising therefrom.

(b) Notwithstanding the provisions of subsection (a), the authority shall not bear the costs of inspections requested to be made during any hour after the normal working hours of the authority on any work day, or on a Saturday, Sunday or legal holiday. The normal working hours of the authority are from 7:45 a.m. to 4:30 p.m., Monday to Friday. [Eff 9/17/84, am 6/3/95] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-12 Costs to be borne by the county. The county in which the improvements are situated may assume and pay out of its funds available for these purposes, all or any part of the cost of improvements in the assessment area. The amount and nature of the costs to be borne by the county shall be as mutually agreed to between the authority and the county. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-13 Costs of water system. If the improvement includes the construction of improvement of a water system, the county board of water supply may assume and pay out of its funds available for these purposes, all or any part of the costs of construction or improvement of the water system. The amount and nature of the costs to be borne by the county board of water supply shall be as mutually agreed to between the authority and the county board of water supply. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-14 Connection by property owners to underground public utility facilities. (a) Whenever any public utility company has relocated its utility lines and related facilities underground as part of the improvements made under this chapter, any property owner or lessee whose property abuts the street in which such underground facilities are located, and who receives services from such public utility company by means of the overhead utility lines to be replaced thereby, shall provide underground lateral connection at said owners or lessees expense, which

meets the standards of such public utility company, upon receipt of notice as hereinafter provided.

(b) Prior to or upon completion of the relocation of utility lines and related facilities, the executive director shall notify the owner or lessee of such abutting property to provide lateral connection to the underground facilities at said owners or lessees own expense. Such notice shall be by certified mail, addressed to the owner or lessee at the street address of such abutting property.

(c) Upon failure, neglect, or refusal of any owner or lessee so notified to commence work to provide the necessary lateral connection within thirty calendar days after notice has been given, or by the date specified in the notice, whichever is later, the executive director shall contract to provide for the necessary lateral connection and pay for such work with authority funds. The executive director and authorized representatives, including any contractor with whom they contract hereunder, and assistants, employees, or agents of such contractor, are authorized to enter upon said property for the purpose of providing the necessary lateral connection described in the notice. Before the executive director or his authorized representative or contractor arrives, any property owner or lessee may provide the necessary lateral connection at his own expense.

(d) In the event the authority has provided the necessary lateral connection, the owner of such property shall be billed for the cost thereof and the cost shall be a lien on the property. In the event the bill is not paid within thirty calendar days after the mailing date of such bill, the owner shall be liable for payment of penalty at a rate determined by the authority.

(e) Any work performed by the authority hereunder is deemed to be done pursuant to quasi-contract or construction contract between the authority and the owner or lessee. Based on the foregoing contractual relationship, should the owner fail to pay the amount duly noted on the statement as provided in subsection (f) herein, the Attorney General may proceed to file a mechanic's and materialman's lien pursuant to the provisions of Part II of Chapter 507, HRS, or any other appropriate lien procedures. [Eff 11/1/85]
(Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-15 Connection by the authority to underground public utility facilities. (a) Whenever any public utility company has relocated its utility lines and related facilities underground in compliance with this chapter the

authority may, in lieu of the procedures prescribed in section 15-19-14 include the installation of the underground lateral connections within private properties as part of an assessment area so as to assure the timely removal of utility poles.

(b) When the installation of the lateral connection is performed as part of an assessment area, the cost thereof shall be added to the property owner's share of the cost of assessments and if the property owner elects to pay said assessment in installments, it shall be payable in the same manner and at the same rate of interest as prescribed for the payment of assessments.

(c) In the case of connections to be made on properties owned by government, an eleemosynary organization, or an entity exempted by law from the payment of assessments, the cost thereof shall be assumed and paid for by the affected government agency, eleemosynary organization, or entity, subject to the same manner and subject to the same rate of interest to be established by the authority for the assessment area. [Eff 11/1/85] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-16 Costs related to refunding assessment area bonds. In the event the authority shall issue refunding assessment bonds pursuant to this chapter, the authority may pay for all costs related or incidental to effecting such refunding, including without limitation, redemption premiums, the cost of publication of notices of hearing, printing costs for assessment billings, mailing notices to owners and lessees, services of bond counsel, other reimbursements to paying underwriter fees, printing of such bonds and a prospectus on the sale of such bonds, publication of any notice of sale of such bonds, execution and delivery of such bonds, paying agents' and registrars' fees and expenses, publication of notice of refunding and of redemption, or the authority may assess the whole or any part of such cost against the real property according to the special benefits arising therefrom. [Eff 2/22/93] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-19-17 to §15-19-20 (Reserved).

SUBCHAPTER 3

ASSESSMENT AREA PROCEDURE

§15-19-21 Initial procedure. (a) The authority shall commence the assessment area process by directing the executive director to investigate and report to the authority preliminary information and data concerning the public facilities to be proposed or improved, the general character and the extent of any improvement or improvements to be proposed, whether the improvement or improvements should be assessed on a frontage basis, or an area basis, or according to the real property tax assessment on the value of the land and improvements, or floor area ratio basis, whether it will be necessary to acquire any new land, the estimated cost of acquiring the land and the proportion of the cost which should be borne by the authority and the county, the materials recommended for the improvement or improvements, the boundary of the assessment area to be proposed, the various types of improvements and the costs to be assessed for each, the portion of the cost to be borne by the authority, the portion of the cost to be borne by the county in which the improvements are situated, and the portion of the cost to be specifically assessed against the real property specially benefited with the estimated total amount of assessment to be made against each property according to the method of assessment proposed, and furnish all available preliminary surveys, maps, plans, drawings and other data, details and specifications for the improvement or improvements and any other matter of details intended to apply thereto.

(b) The authority may approve the undertaking of engineering design of these improvements at any time preceding or following the initiation of the assessment area procedure.

(c) If the improvement or work proposed to be undertaken includes the construction or improvement of a water system or the laying or installation of conduits, pipes, hydrants or any appliance for supplying or distributing water, the executive director shall so inform the county board of water supply. Should the county board of water supply agree to provide the authority with preliminary plans and estimates for the proposed water system, the executive director shall furnish the county board of water supply with the available information which will enable the county board of water supply to make its

plans and estimates for the proposed water system. The executive director shall incorporate the preliminary plans and estimates of the county board of water supply in his report to the authority.

(d) The executive director shall furnish the county with information on the proposed improvements which will enable the county to provide input on the matter. The executive director shall incorporate the county's recommendation in his report to the authority.

(e) The authority may adopt the plans and estimates furnished by the county board of water supply which are incorporated as part of the executive director's report.

(f) The authority shall, to the extent possible, notify all affected landowners of the information contained in the report. County and state officials shall also be kept informed of the proposed improvements. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-22 Public hearing. (a) After receipt of the executive director's report, the authority may act to propose the making of an improvement or improvements and creation of assessment areas based upon the information and data provided in the report. Assessment area rules shall also be drafted incorporating the latest available data. Public hearing on the assessment area rules may be held together with the hearing on creation of the assessment area.

(b) Notice of public hearing shall comply with the requirements of chapter 91, HRS, and at least once in a daily newspaper of general circulation in the county and state in which improvements are proposed. The notice shall contain a statement describing the proposed assessment area rules, including the description of the assessment area, the real property proposed to be assessed or acquired and the general details of the proposed improvement or improvements. The notice shall also state the time, date and place of the public hearing wherein persons may object to and suggest modifications to the proposed improvement or improvements and where the reports and other data relating to the proposed assessment area or areas may be seen and examined prior to the hearing.

(c) In addition to the notice requirement of subsection (b), notice by certified or registered mail with a request for a return receipt shall be given to the several owners and lessees on record at the county department of finance. The notice shall be mailed to the address on

record at the department and shall be sent no later than the date of notice of public hearing and shall state the time, date, and place of the hearing where persons may object to and suggest modifications to the proposed improvement or improvements and where reports and other data relating to the proposed assessment area or areas may be seen and examined prior to the hearing.

(d) Rules required by this section shall define and establish the assessment area or areas, define the extent and describe the general details of the proposed improvement or improvements, describe each parcel of real property to be acquired, declare the part or portion of the cost of improvement or improvements to be borne by the authority, declare the part or portion of the cost of improvement or improvements to be borne by the county, declare the method of assessment, the portion of the cost of the improvement or improvements to be borne by the owners of real property, and the assessment on each lot. [Eff 9/17/84, am 1/29/90] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-23 Determination by the authority. (a) After holding the public hearing provided for in section 15-19-22, the authority shall determine whether or not the proposed improvement or improvements and the creation of the assessment area shall be made and, if made, whether the rules setting forth the details of the assessment program should be adopted. A determination to proceed with the improvements shall require an affirmative vote of not less than two-thirds of all members to which the authority is entitled.

(b) If the authority determines to proceed with the improvement or improvements, it shall adopt the rules as heard or with modifications and direct the executive director to prepare construction bid documents, including a map of the assessment area or areas showing the exact location of the proposed improvement or improvements together with final details, plans and specifications for the work in a form to call for and encourage competitive bidding, wherever feasible. The description and definition herein required may be set forth expressly or be incorporated therein by referring to the data of the preliminary assessment area map and report or to the final engineering design report theretofore presented to the authority.

(c) If the proposed improvement or improvements include the construction or improvement of a water system,

the authority shall work with the county board of water supply and prepare final details, plans and specifications for adequate and appropriate conduits, pipes, hydrants and other appurtenances for a water system and shall, upon completion, make them available to the county board of water supply. The map of the assessment area or areas showing the exact location of the proposed improvement or improvements, and the final details, plans and specifications of the authority and the county board of water supply shall be used as the basis for the calling for bids and awarding of contract. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-24 Construction contract bids and conditional award. (a) The authority shall advertise for bids on the construction of the approved improvements.

(b) The lowest responsible bidder shall be awarded a conditional contract, subject, however, to the holding of a public hearing on the final assessment area rules, approval by the authority and by the governor of the final assessment area rules, and the availability of sufficient funds.

(c) Where improvements within an assessment area are divided into sections or portions for the purposes of calling for bids thereon, construction costs for said sections or portions may be consolidated for the purpose of determining assessments or expenses. [Eff 9/17/84, am 11/1/85] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-25 Hearing on final assessment area rules.

(a) After the bid of the lowest responsible bidder has been received for the construction of the improvements, the authority shall hold a public hearing on the final assessment area rules.

(b) Final assessment area rules shall incorporate data from the final assessment area report. The rules shall include an assessment roll, a description of properties to be assessed including all data required in the application of the assessment formula, the amounts proposed to be assessed against the property in the benefited area or in the several subareas or zones thereof, if any, and a list of all owners and lessees on record with the county department of finance, of the land fronting upon the highway or highways or situated within the assessment area.

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(c) Public hearing notice shall be provided as required by chapter 91, HRS. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-26 Hearing on individual assessments.

(a) Prior to the award of the construction contract referred to in section 15-19-24 of this chapter, the authority shall afford landowners and lessees a hearing on the equity in the application of the assessment formula to individual lots. The hearing may be combined with the hearing on the final assessment area rules.

(b) The hearing held under this section shall satisfy the requirements of chapter 91, HRS. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-27 Notice of improvement authorized.

(a) After the bid of the lowest responsible bidder has been received for the construction of the improvements, and a hearing is held on the final assessment area rules, the authority shall thereupon give notice as to its decision on the rules. Data regarding the total amount of the cost of the improvement or improvements based upon the bid of the lowest responsible and reliable bidder, the share per front foot or per square foot or real property tax assessment or per floor area ratio, as the case may be, proposed to be charged to the benefited area or subareas or zones, if any, and the assessment map, assessment roll and description of properties shall be made available for examination at the office of the authority during business hours. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-28 Acquisition of land.

(a) In the event the improvement or improvements proposed require the acquisition of any land therefor, the authority shall acquire the same before final award of the contract, either by deed, or other voluntary conveyance from the owners thereof, or it may, at its option, and in the name of the authority cause condemnation proceedings to be brought to acquire the same in like manner as by law provided or in like proceedings when brought by the State, and after the filing of the petition in the proceedings the final award of the contract may be made. If the cost of acquiring the land exceeds the

estimate, the authority may seek additional appropriations to provide for the excess cost.

(b) Land acquired through condemnation shall be pursuant to chapter 101, HRS. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-29 Compliance with community development district plan. Notwithstanding any provision of this chapter to the contrary, improvements shall not be constructed under authority of this chapter unless the improvements conform to the community development district plan adopted for the assessment area. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-30 Contract, bids, bonds. (a) All improvements made under the provisions of this chapter shall be constructed under contract let to the lowest possible and responsible bidder, after public advertisement by the authority in a newspaper of general circulation published in the county in which the improvements are proposed. The authority may either let the work as an entire contract, or in its discretion, make one or more contracts separately for each assessment area or the various types of work to be performed, or the various public facility systems to be improved under one proceeding. All bids shall be accompanied by a deposit of legal tender or by a certificate of deposit or certified check on a bank doing business within the State or a sufficient surety bond payable to and in favor of the authority under the terms and conditions as are determined by the authority. The authority may, in its discretion, impose any other reasonable terms, conditions, and requirements relating to the letting of the contract. No contract shall be made without a bond to the authority, for the faithful performance of the contract, under the terms and conditions as are determined by the authority.

(b) The provisions of chapter 103, HRS, shall be applicable to all contracts entered pursuant to this chapter. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-31 Inspection and use of improvements by the county. The authority may request the county in which the improvements are situated to maintain an inspector over the work to see that the plans and specifications have been

complied with. After the work has been accepted by the county, the public facilities shall be a part of the county system, and shall at all times thereafter be used, operated, and maintained by the county as part of its system. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-32 Water system, inspection and use of system by county board of water supply. If an improvement or work includes the construction or improvement of a water system, the authority may request the county board of water supply to maintain an inspector over the work to see that the plans and specifications which it has furnished have been complied with. After the work has been accepted, the water system, pipes, conduits, hydrants and other appurtenances for supplying or distributing water so installed shall constitute a part of the system of the county board of water supply and shall at all times thereafter be used, operated and maintained by it as a part of its system. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-33 Reassessment on refunding. (a) In the event the authority makes a preliminary determination that it would be advantageous to the State, the authority, the property owners and the lessees within an assessment area for which assessment area bonds have been issued to proceed with a refunding of all or part of such assessment bonds, it shall direct the executive director to investigate and report to the authority preliminary information and data concerning such refunding, including the remaining costs of improvements specifically assessed against the real property specifically benefited and any additional costs related or incidental to effecting such refunding, with the estimated total amount of assessment to be made against each property after the refunding utilizing the same method of assessment applied upon the original assessment.

(b) If such information and data reflect that such refunding would result in a decrease of the total amount of the installment payments then in effect within such assessment area for all assessments being paid in installments, the authority shall publish a notice of proposed refunding of assessment area bonds in a daily newspaper of general circulation in the county in which such assessment area is situated, such notice to include a description of the assessment area, the real property

assessed or to be assessed, and a general description of the proposed refunding. In addition to the publication of such notice, a copy of such notice shall be mailed by certified or registered mail with a request for a return receipt to the several owners and lessees on record at the county department of finance.

(c) If the owners or lessees of at least 25 per cent of the real property within the assessment area to be assessed shall file a petition with the authority within 30 days of the date of mailing the notice referred to in subsection (b) above, requesting a public hearing on such refunding, or if such refunding would have the effect of causing an increase in the amount of the assessment then in effect for any property within the assessment area for which such refunding is proposed in any subsequent fiscal year, the authority shall hold a public hearing on the advisability of effecting such refunding. Notice of public hearing shall be given in the same manner as required by Sec. 15-19-22, except the contents of such notice shall relate to the proposed refunding rather than improvements.

(d) After any public hearing held pursuant to subsection (c) above, or if no petition is filed within the time permitted under subsection (c) above, the authority shall determine whether to proceed with the refunding. [Eff 2/22/93] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-19-34 to §15-19-50 (Reserved).

SUBCHAPTER 4

ASSESSMENTS

§15-19-51 Assessments fixed by rule. (a) After the final assessment hearing, the authority shall forthwith proceed to make the modifications or changes to the data contained in the final assessment area rules as are equitable or just and shall fix the portions of the cost to be assessed against the benefited properties and against the owners thereof, respectively. It shall be conclusive that the amounts of the several assessments so listed, advertised and incorporated and not previously objected to are just and equitable and not in excess of the special benefits accruing

or to accrue by reason of the improvement to the specific property assessed.

(b) Upon a determination to proceed with a refunding under section 15-19-33(d), the authority shall forthwith proceed to make modifications or changes to the data contained in the final assessment area rules promulgated upon the original assessment and to fix the portions of the cost to be assessed upon such refunding against the benefited properties and against the owners thereof, respectively. All provisions of this chapter with respect to assessments for improvements shall apply to any assessments fixed upon a refunding, including particularly the provisions of this subchapter with respect to notice, collection, payment, and lien position of assessments. It shall be conclusive that the amounts of the several assessments so listed, advertised and incorporated and not previously objected to are just and equitable and not in excess of the special benefits accruing or to accrue by reason of the improvement to the specific property assessed which were financed from the proceeds of the assessment area bonds being refinanced from the proceeds of the refunding assessment area bonds. [Eff 9/17/84, am 2/22/93] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-52 Notice and collection of assessments. The authority shall notify the several owners and lessees, on record at the county department of finance, by either certified or registered mail addressed to their address on record at the department, with a request for a return receipt, of the several amounts assessed on the respective properties and of the date when the assessments are payable. However, failure of any owner or lessee to receive any notice shall not invalidate the assessment or entitle the owner or lessee to an extension of time within which to pay the assessment. The authority shall also collect the assessment and set aside all moneys so collected in a special fund. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-53 Assessments, when payable. (a) All assessments so made shall be due and payable within thirty days after receipt of notice of assessment, provided that any assessment may, at the election of the owner of the land assessed, be paid in installments with interest, as hereinafter provided. Failure to pay the whole of any

assessment within the period of thirty days shall be conclusively considered an election on the part of all persons interested in the assessments, whether under disability or otherwise, to pay in installments.

(b) All persons so electing to pay in installments shall be conclusively considered and held to have consented to the improvement and the election shall be conclusively held and considered as a waiver of any and all right to question all power or jurisdiction of the authority to make the improvement, the regularity or the sufficiency of the proceedings, or the validity or correctness of the assessment. However, the waiver shall not apply to any person who has properly filed an action in court, challenging the power or jurisdiction of the authority to make the improvement, within thirty days after receipt of notice fixing the assessments. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-54 Lien; new assessment. (a) All assessments made pursuant to this chapter shall be a lien until paid against each lot or parcel of land assessed from the date of receipt of notice declaring the assessment and shall have priority over all other liens except the lien of property taxes.

(b) In the event that a lot previously assessed is subsequently subdivided or subsequently consolidated with any other lot, whether or not the latter is within the assessment area, the authority, upon petition by the owners of the lots as may be subdivided or consolidated, or upon petition by the lessees of the lots as may be subdivided or consolidated who by the express terms of their leases are obligated to pay the kind of assessments covered by this chapter, may prorate the original assessment among the lots resultant from the subdivision, or consolidate the assessments upon the component lots and assess the consolidated lot therefor, by an appropriate amendment to the assessment roll; provided that prior to the introduction of the amendment to the assessment roll, the subdivider or consolidators shall deposit with the authority legal tender or a certified check in a sufficient amount to be used to cover the cost of making the allocation and to cover the assessment allocable to areas used or to be used for purposes that are public in nature, such as, but not limited to, roadways, parks, school sites, sewage treatment plant sites and reservoir sites, developed in connection with the subdivision or consolidation. The cost of making the

reallocation of assessments, when determined by the authority, shall be paid into the revolving fund of the authority.

(c) The amount of assessment, allocable to areas used or to be used for purposes that are public in nature and developed in connection with the subdivision or consolidation, as approved by the authority, shall be credited to the appropriate fund. The amended assessments shall be a lien upon the subdivided or consolidated lots as of the date of the amended roll. The amendments shall be paid in installments equal in number to that remaining under the original assessment and at the same rates of assessments and interest.

(d) No delay, mistake, error, defect, or irregularity in any act or proceeding authorized by this chapter shall prejudice or invalidate any assessment; but the same may be remedied by subsequent or amended acts or proceedings and, when so remedied, the same shall take effect as of the date of the original act or proceedings. If in any court of competent jurisdiction any assessment made under this chapter is set aside for irregularity in the proceedings, the authority may, upon notice as required in making an original assessment, make a new assessment in accordance with the provisions of this chapter.

(e) Upon completion of the improvement or improvements and the payment of the cost thereof, the authority shall certify the actual cost of the improvement or improvements together with the amount of the assessments therefor. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-55 Payment of installments. (a) In case of an election to pay any assessment in installments, the assessment shall be payable over a term not to exceed thirty years. Interest shall be paid on the unpaid principal at a rate not exceeding fifteen per cent per annum. The number of installments, period of payment, the rate of interest, and other repayment terms shall be as determined by the authority. The authority's determination shall consider the source and cost of funds being used for the financing of assessments, the amount of government funds involved and any constraints thereon, the need for the financing of assessments to be self-sustaining, the prevailing market conditions, and other pertinent matters.

(b) The owner of any land assessed may at any time after the expiration of the first thirty-day period pay the

entire unpaid principal of an assessment, or any portion of the unpaid principal, together with interest on the amount so paid to date for the payment of the next subsequent installment, and the owner shall no longer be liable for the interest which would otherwise have accrued after the date on the amount of principal so prepaid. Any prepayment of the unpaid principal of an assessment shall be applied to reduce the unpaid principal of the assessment outstanding, shall be credited against the outstanding principal installments in inverse chronological order, and shall not relieve the owner of the land assessed from the payment of the amount of the installment of principal and interest next due. [Eff 9/17/84, am 11/1/85, am 6/3/95] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-56 Payment in bonds. The authority may accept in lieu of cash in payment of any assessment, installment thereof, interest, penalty, cost, expense or any portion thereof, bonds of the assessment area in which the land is situated, whether the bonds are outstanding or hereafter issued, to a value of par, plus accrued interest to the date of acceptance of the bonds by the authority. Upon the receipt of the bonds, the authority shall cancel same and credit the assessment area with the amount allowed on the bonds. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-57 Effect of failure to pay installment. Failure to pay any installment or any part of an installment, whether of principal or interest or both, when due, shall cause the whole of the unpaid principal to become due and payable immediately, and the delinquent installment or installments or any delinquent part or parts thereof, whether of principal or interest or both, shall thereafter bear penalty at the rate of one and one-half per cent per month or fraction of a month from the date of delinquency until the day of sale as hereinafter provided; but at any time prior to the day of sale the owner may pay the entire amount of the delinquent installment or installments or delinquent part or parts, whether of principal or interest or both, with penalty, and all costs and expenses accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been made. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

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§15-19-58 Owner of undivided interest. The owner of any undivided interest in any land may pay the whole assessment and may have a joint or several right of action against the other owners of any interest in the land for their proportionate share of the assessment. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-59 Sale in case of default. In case of default in the payment of any installment of principal and interest when due, the authority shall advertise and sell the property concerning which default is made for the whole of the unpaid assessment thereon, interest and costs. The sale and advertisement shall be made by the authority in the same manner, under the same conditions and penalties and with the same effect as provided by general law for sale of real property for default in payment of property taxes. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-60 Purchase at sale. At any sale for default in payment of any assessment as aforesaid, the authority may accept, in lieu of cash, in payment for the land so sold, bonds of the assessment area whether the bonds are then outstanding or hereafter issued, to a value of par plus accrued interest to date of sale. Upon the receipt of the bonds the authority shall cancel same and credit the assessment area with the amount allowed on the bonds. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-61 Certificate by authority. The authority shall on request give a certificate in writing to any person making request for same, showing in the certificate the balance due on any individual assessment for improvements for principal, with the date of next installment payment, the number of the installment payment and the amount to be due for the installment payment and particulars of interest and penalty on the next installment date to be due and owing. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-62 Disposition of land bid in by authority at sale for default. Whenever any land has been bid in by the authority at any sale for default of the owner thereof, the authority in disposing thereof as may by law be authorized, may sell the same upon the following terms and conditions:

- (1) A down payment of twenty per cent of the sale price;
- (2) The balance payable in monthly installments of not less than one and one-third per cent of the total sale price, plus interest at the prevailing rate established by the authority for payment of the unpaid balance of the property owners' share of the cost of assessments within an assessment area created and established under section 15-19-23;
- (3) Failure for thirty days to pay any installment due shall effect an entire forfeiture of the purchaser's right, title and interest in the land and in any payments previously made by him on account thereof;
- (4) The building restrictions as the authority may prescribe; and
- (5) The land when sold shall be subject to real property taxes. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-63 Surcharge fee. (a) In the event the authority constructs drainage or sewer improvements benefiting lots of a subsequent improvement district project, the authority may establish a surcharge amount to be levied against the benefiting lots of a subsequent improvement district project. The surcharge amount shall be determined by the authority based on cost allocation and assessment methods and construction bids for any previous improvement district project from which the lots benefited.

(b) The authority shall advance payment of the surcharge amount. The surcharge amount, together with any other assessable costs, shall be assessed against the benefiting properties in accordance with chapter 15-19. [Eff 2/26/88] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-64 to §15-19-80 (Reserved).

FINANCING

§15-19-81 Assessment area bonds; financing of special assessments from available moneys. (a) In the event of an election to pay all or any part of any special assessment in installments, the unpaid amount of the special assessment required to pay the contract price of the improvement and any other costs involved in the undertaking of the improvement, including the cost of land acquisition shall be obtained by the issuance of sufficient assessment area bonds of the authority to raise the required amount; provided that assessment area bonds need not be issued (i) if the aggregate of the assessment installments for all property owners in the assessment area is less than \$1,000 in each year, or (ii) if, as provided in subsection (e) hereof, the authority shall determine to advance the funds for the unpaid amount of the special assessment out of any available funds of the authority.

(b) The bonds shall be authorized by resolution of the authority and issued pursuant to and under the authority and requirements of the authority. The bonds shall be in such form, either coupon or registered, shall bear the name of the benefited assessment area, shall be dated, shall be numbered, shall be of the denomination or denominations, shall bear interest at such rate or rates per annum, but not more than fifteen per cent per annum, payable at such time or times and at such place or places, shall mature at such time or times so as to cover the outstanding installment payments determined upon pursuant to the provisions of this chapter, shall be subject to call at such price or prices and upon such terms and conditions, and may be subject to tender by the holders thereof upon such terms and conditions, all as determined by resolution of the authority. The bonds shall bear the facsimile signature of the chairman of the authority and shall be sealed with the seal of the authority, or a facsimile thereof, attested by the facsimile of the signature of the secretary of the authority and shall bear a certificate of authentication manually executed by the registrar. No bond shall be valid or obligatory unless certified or authenticated by the registrar. Interest coupons, if any, shall bear a facsimile of the signature of the chairman of the authority. The executive director shall preserve a record of the bonds in a suitable book kept for that purpose. The authority shall designate the registrar, if any, for the bonds and the place or places of registration and transfer of such bonds, and

such registrar shall maintain such books of registry as shall be required by resolution of the authority.

(c) The assessment area bonds shall be payable only out of the moneys collected on account of assessments made for the improvement or improvements for which they are issued and the authority shall not otherwise guarantee payment of the bonds; provided that interest payments may be advanced by the executive director out of moneys available in the assessment area revolving fund.

(d) Whenever the authority shall have outstanding any assessment area bonds, and the authority with the approval of the governor and the director of finance, determines that it will be financially sound and advantageous to the State, the authority, the landowners and the lessees within the assessment area for which assessment area bonds have been issued to refund any outstanding assessment area bonds, the authority may provide for the issuance of refunding assessment area bonds with which to provide for the payment of the outstanding assessment area bonds or any part thereof at or before the maturity or redemption date thereof, with the right to include various series and issues of outstanding assessment area bonds in a single issue of refunding assessment area bonds, to pay any redemption premium and interest to accrue and become payable on the outstanding assessment area bonds being refunded, and to establish reserves for the refunding assessment area bonds and partly to refund outstanding assessment area bonds and partly for the payment of the contract prices of an improvement and any other costs involved in the undertaking of an improvement for which the outstanding assessment area bonds were issued.

The refunding assessment area bonds may be issued and delivered at any time prior to the date of maturity or redemption date of the assessment area bonds to be refunded that the authority deems to be in its best interest. The refunding assessment area bonds, except as specifically provided in this subsection (d) shall be issued in accordance with the provisions of this chapter with respect to assessment area bonds. Pending the time the proceeds derived from the sale of refunding assessment area bonds issued under this chapter are required for the purposes for which they were issued, the proceeds, upon authorization or approval of the governor, may be invested in obligations of, or obligations unconditionally guaranteed by the United States of America, or in savings accounts, time deposits, or certificates of deposit of any bank or trust company within or without the State, to the extent that such savings accounts, time deposits, or certificates of deposit are collaterally secured by a pledge of obligations of, or obligations unconditionally guaranteed by, the United States

of America; or in obligation of any state of the United States of America or any agency, instrumentality, or local government thereof, the provision for payment of the principal and interest which have irrevocably been made by deposit of obligations of, or obligations unconditionally guaranteed by the United States of America.

To further secure assessment area bonds, or the assessment area bonds being refunded, or both, the State may enter into a contract with any bank or trust company, within or without the State, with respect to the safekeeping and application of the earnings of investments. All assessment area bonds refunded and redeemed by the issue and sale or issue and exchange of refunding assessment area bonds shall be defeased.

The determination of the authority with respect to the financial soundness and advantage of the issue and delivery of refunding assessment area bonds authorized, when approved by the governor and the director of finance, shall be conclusive, but nothing in this subsection (d) shall require the holders of any outstanding assessment area bonds being refunded to accept payment thereof otherwise than as provided in the assessment area bonds to be refunded.

(e) In the event of an election to pay all or any part of any special assessment in installments, in lieu of issuing assessment area bonds to pay the contract price of the improvement and any other costs involved in the undertaking of the improvement, including the cost of land acquisition, the authority may determine by resolution to advance the funds for the unpaid amount of the special assessment out of any available funds of the authority. In the event of such determination by the authority to finance all or any part of any special assessment from available moneys, the interest payable on the unpaid principal of such special assessment shall accrue to the benefit of and be deposited, together with the principal of the funds so advanced, into the fund from which such funds were advanced. [Eff 9/17/84, am 11/1/85, am 2/22/93, am 6/3/95] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-82 Advances from available funds prior to the issuance of bonds. In the event of an election to pay all or any part of any special assessment in installments and a determination by the authority to issue assessment area bonds pursuant to section 15-19-81 hereof, the amount required for immediate use during the period prior to the issuance of assessment area bonds to pay the contract price of the improvement or the installments thereof from time to time as they fall due may be advanced out of any available

funds of the authority. [Eff 9/17/84, am 6/3/95]
(Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-83 Special funds for payment of bonds. (a) All moneys collected on account of assessments and interest for any improvement or improvements after the issuance of any assessment area bonds, including refunding assessment bonds, for the improvement or improvements shall be kept by the executive director in a special fund and applied solely to the payment of interest and principal of the assessment area bonds until the bonds have been paid. In the event that any surplus remains in the special fund after the payment of assessment area bonds chargeable against the fund or in case of a premium received on the sale of the bonds, it shall be credited and become a part of a fund to be known as the assessment area revolving fund. Moneys in the assessment area revolving fund shall be available to make up deficiencies in the proceeds of bonds sold below par, to cover deficiencies in interest realized on account of diminishing balances of installments outstanding, to advance interest due on assessment area bonds outstanding prior to collection of annual assessments, to be advanced by the authority in lieu of issuing assessment area bonds for the purposes specified in section 15-19-81(e) hereof, to pay all expenses in connection with the sale of delinquent assessment area lots, and to pay the prices of the delinquent lots as are bid for and purchased for the authority by the executive director, and the executive director is authorized upon the purchase to transfer the proper amounts so bid to the proper special funds for the respective assessment area concerned.

(b) The executive director shall advance moneys in the assessment area revolving fund for any part of unpaid assessments for any improvement or improvements when, pursuant to this chapter, the authority has rounded off the amount of bonds to be issued, the advancement to be in the amount equal to the difference between the total of the bonds issued and the total of the unpaid assessment. Upon recommendation of the executive director, the authority may by resolution authorize the executive director also to advance moneys in the assessment area revolving fund for unpaid assessments for any improvement or improvements in lieu of the issuance of bonds where the aggregate of the assessment installments for all property owners in the assessment area is less than \$1,000.00 for each year, for the purposes specified in section 15-19-81(e) hereof in lieu of issuing assessment area bonds, for any unpaid amount of the first installment of the assessments where elections have been made to pay the assessments in installments and

for any payment in connection with any improvement or improvements for which the issuance and sale of assessment area bonds have been duly authorized. After the authority has created, defined and established an assessment area pursuant to this chapter, the authority, upon recommendation of the executive director, may by resolution authorize the executive director to advance moneys in the assessment area revolving fund for the cost of land acquisition for improvements pursuant to this chapter. [Eff 9/17/84, am 2/22/93, am 6/3/95] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-84 Payment of principal and interest. The principal and interest of the bonds shall be payable at such place or places as may be determined by resolution of the authority. In all cases the bonds and coupons, if any, shall recite the places of payment. In case any bonds are made payable elsewhere than in the county in which the improvements are situated, the executive director shall remit the funds necessary to pay the interest and principal when due, of the bonds, with exchange, to the institution so designated, first assuring himself that the institution is then solvent. [Eff 9/17/84, am 11/1/85] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-85 Sale and use of bonds. (a) Assessment area bonds, including refunding assessment area bonds, may be sold at public or private sale, and for a price or prices as may be determined by resolution of the authority to be in the best interest of the State.

(b) If the bonds are to be sold at public sale, the executive director shall advertise for tenders, for the par value or below par value thereof in accordance with the provisions hereof and the resolution authorizing the issuance and sale of bonds. Publication of the advertisement shall be made at least once in a newspaper of general circulation published in the county in which the improvements are situated at least five days prior to the date of sale. In the event only part of the issue so advertised to bid for, then the executive director shall sell at private sale the whole or any part of the remainder of the issue for the par value or below par value thereof at an interest rate not exceeding the highest interest rate received and established by bid.

(c) If no purchaser is found at the private sale pursuant to subsection (b) above, then the authority may by

resolution authorize the executive director to sell at private sale the remainder of the issue for the par value or below par value thereof at an interest rate not exceeding the maximum interest rate established by the resolution authorizing the issue. The proceeds from the sale thereof shall be applied to pay wholly or in part the contract price of improvement and any other costs involved in the undertaking of the improvement, including the cost of land acquisition. In the event no purchaser is found at an advertised sale or at private sale, then the unsold bonds so issued shall be used by the authority at par at the maximum interest rate established by the resolution authorizing the issue to pay wholly or in part the contract price of the improvement made as aforesaid.

(d) Prior to the sale of any assessment area bonds, the authority shall determine that sufficient sources of funds are available to complete the improvements in the assessment area for which the bonds are to be issued. [Eff 9/17/84, am 11/1/85, am 2/22/93] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-86 Payment before maturity. (a) On and after the second interest due date of any bonds so issued and annually thereafter, whenever sufficient funds are in the hands of the executive director, exceeding the next interest payment on the unpaid balance of any bonds so issued, the executive director shall call for payment, in accordance with the terms of such bond sale. Interest on the bonds so called for payment shall cease on the date of call, provided that all notice requirements have been satisfied. The monies provided for the payment of the bonds with the interest unpaid to the date of their call for payment shall be transferred from the assessment area assessment fund into the assessment area bond and interest redemption fund to which only the owners of the bonds shall thereafter look for payment. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-87 Payment at maturity. All bonds not previously paid shall be paid at maturity together with interest thereon as the same become due at the places and in the manner prescribed by this chapter. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-88 Bonds not chargeable against general revenues. Bonds issued under the provisions of this chapter shall not constitute a general or other obligation of the State, or a charge against the general fund of the State. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-89 County financing. The counties may issue assessments area bonds to implement the purposes of this chapter. Said bonds may be issued pursuant to county legal requirements provided that the authority has consented to said requirements prior to issuance. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-90 to §15-19-110 (Reserved).

SUBCHAPTER 6

LIMITATION ON TIME TO SUE

§15-19-111 Limitation on time to sue. No action or proceeding to review any acts or proceedings or to question the validity or enjoin the performance of any act or the issue or payment of any bonds, or the levy or collection of any assessments authorized by this chapter, or for any other relief against any acts or proceedings, done or had under this chapter, whether based upon irregularities or jurisdictional defects or otherwise, shall be maintained unless begun within thirty days after performance of the act or the passage of the resolution, ordinance, or rule complained of. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)

§15-19-112 to §15-19-115 (Reserved).

SUBCHAPTER 7

SEVERABILITY

§15-19-116 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [Eff 9/17/84] (Auth: HRS §§206E-4, 206E-6) (Imp: HRS §§206E-4, 206E-6)