
A BILL FOR AN ACT

RELATING TO GREEN INFRASTRUCTURE.

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

1 SECTION 1. The legislature finds that building Hawaii's
2 clean energy infrastructure at the lowest possible cost is vital
3 to the State's reaching its seventy per cent clean energy goal
4 in 2030.

5 The legislature finds that significant investment in
6 infrastructure installations is required to achieve the State's
7 goals of energy self-sufficiency, greater energy security, and
8 greater energy diversification, and to support the achievement
9 of the renewable portfolio standards and energy efficiency
10 portfolio standards, as established in chapter 269, Hawaii
11 Revised Statutes. Further, these infrastructure installations
12 will require significant amounts of capital, and it is in the
13 public interest to minimize these costs. A key component to
14 minimizing costs is reducing the cost of capital required to
15 finance infrastructure installations.

16 The legislature further finds that the up front costs of
17 green infrastructure equipment are a barrier preventing many
18 electric utility customers from investing in these



1 infrastructure installations. Existing programs and incentives
2 do not serve the entire spectrum of the customer market,
3 particularly those customers who lack access to capital or who
4 cannot afford the large upfront costs required, thus creating an
5 underserved market. It is in the public interest to make cost-
6 effective green infrastructure equipment options accessible and
7 affordable to customers in an equitable way.

8 A green infrastructure financing program administered by
9 the State that capitalizes on existing ratepayer contributions
10 for green infrastructure equipment can serve a critical role in
11 ensuring all Hawaii electricity ratepayers receive the greatest
12 opportunity to adopt clean energy. The legislature further
13 finds that the State would be best served by a State-
14 administered green infrastructure financing program that:

- 15 (1) Focuses on providing an alternative means of low-cost
16 financing for green infrastructure equipment for
17 Hawaii ratepayers, particularly those ratepayers not
18 currently able to obtain such technology on reasonable
19 financing terms;
- 20 (2) Utilizes excess loan program funds as a funding source
21 to finance additional green infrastructure



1 installations, subject to regulatory guidelines and
2 approval; and

3 (3) Establishes clearly defined program procedures and
4 targets that encourage effective coordination among
5 state agencies, industry, investors, and other
6 critical energy industry stakeholders in order to help
7 the State achieve its clean energy policy mandates.

8 The legislature further finds that the impact and reach of
9 proven clean energy financing programs, such as on-bill
10 financing or on-bill repayment, can be greatly enhanced through
11 the use of low-cost capital made available through the green
12 infrastructure financing program established by this Act.

13 The purpose of this Act is to establish a regulatory
14 financing structure that authorizes the public utilities
15 commission and the department of business, economic development,
16 and tourism to acquire and provide alternative low-cost
17 financing, to be deployed through a financing program to enable
18 installations of green infrastructure equipment, achieve
19 measurable cost savings, and achieve Hawaii's clean energy
20 goals.



1 SECTION 2. Chapter 196, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . GREEN INFRASTRUCTURE LOANS

5 §196-A Definitions. As used in this part:

6 "Authority" means the Hawaii green infrastructure authority
7 as established under section 196-C; provided that until the
8 authority is duly constituted, the department may exercise all
9 powers reserved to the authority and shall perform all
10 responsibilities of the authority.

11 "Bond" means any bond, note, and other evidence of
12 indebtedness that is issued by the State pursuant to part
13 of chapter 269.

14 "Clean energy technology" means any technology as defined
15 in section 269-121(b).

16 "Department" means the department of business, economic
17 development, and tourism, or any successor by law.

18 "Director" means the director of business, economic
19 development, and tourism, or the director's designee.

20 "Financing order" means the same as defined in section
21 269-A.



1 "Financing party" means the same as defined in section
2 269-A.

3 "Green infrastructure bond fund" means the special fund
4 created pursuant to section 196-G.

5 "Green infrastructure charge" means the on-bill charges for
6 the use and services of the loan program, including the
7 repayment of loans made under the loan program, as authorized by
8 the public utilities commission to be imposed on electric
9 utility customers.

10 "Green infrastructure costs" means costs incurred or to be
11 incurred by the electric utility customers to pay for clean
12 energy technology, demand response technology, and energy use
13 reduction and demand side management infrastructure including,
14 without limitation, the purchase or installation of green
15 infrastructure equipment, programs, and services authorized by
16 the loan program.

17 "Green infrastructure equipment" means infrastructure
18 improvements, equipment, and personal property to be installed
19 to deploy clean energy technology, demand response technology,
20 and energy use reduction and demand side management
21 infrastructure.



1 "Green infrastructure fee" means the same as defined in
2 section 269-A.

3 "Green infrastructure loan program order" means the same as
4 defined in section 269-A.

5 "Green infrastructure property" means the same as defined
6 in section 269-A.

7 "Green infrastructure special fund" means the special fund
8 created pursuant to section 196-E.

9 "Loan program" and "green infrastructure loans" means the
10 program established by this part and loans made to finance the
11 purchase or installation of green infrastructure equipment for
12 clean energy technology, demand response technology, and energy
13 use reduction and demand side management infrastructure,
14 programs, and services as authorized by the public utilities
15 commission using the proceeds of bonds or other proceeds.

16 **§196-B. Hawaii green infrastructure loan program.** There is
17 established a Hawaii green infrastructure loan program, which
18 shall be a loan program as defined under section 39-51. The
19 program shall be administered by the authority on behalf of the
20 department in a manner consistent with chapter 39, part III.
21 This loan program may include loans made to private entities,
22 whether corporations, partnerships, limited liability companies,



1 or other persons, which entities may lease or provide green
2 infrastructure equipment to electric utility customers, as well
3 as direct loans to electric utility customers, on terms approved
4 by the authority.

5 **§196-C Hawaii green infrastructure authority.** There is
6 established the Hawaii green infrastructure authority as an
7 instrumentality of the State comprising five members. The
8 director, the director of finance, and the energy program
9 administrator of the department shall be members of the
10 authority. The governor shall appoint the other two members,
11 pursuant to section 26-34. The director shall be the
12 chairperson of the authority. The authority shall be placed
13 within the department for administrative purposes, pursuant to
14 section 26-35.

15 **§196-D Functions, powers, and duties of the authority.**

16 (a) In the performance of, and with respect to the functions,
17 powers, and duties vested in the authority by this part, the
18 authority may, as directed by the director and in accordance
19 with a green infrastructure loan program order or orders under
20 section 269-K or an annual plan submitted by the authority
21 pursuant to this section, as approved by the public utilities
22 commission:



- 1 (1) Make loans and expend funds to finance the purchase or
2 installation of green infrastructure equipment for
3 clean energy technology, demand response technology,
4 and energy use reduction and demand side management
5 infrastructure, programs, and services;
- 6 (2) Hold and invest moneys in the green infrastructure
7 special fund in investments as permitted by law and in
8 accordance with approved investment guidelines
9 established in one or more orders issued by the public
10 utilities commission pursuant to section 269-K;
- 11 (3) Hire employees necessary to perform its duties,
12 including an executive director. The executive
13 director shall be appointed by the authority, and the
14 employees' positions, including the executive
15 director's position, shall be exempt from chapter 76;
- 16 (4) Enter into contracts for the service of consultants
17 for rendering professional and technical assistance
18 and advice, and any other contracts that are necessary
19 and proper for the implementation of the program;
- 20 (5) Enter into contracts for the administration of the
21 loan program, without the necessity of complying with
22 chapter 103D;



1 (6) Establish loan program guidelines to be approved in
2 one or more orders issued by the public utilities
3 commission pursuant to section 269-K to carry out the
4 purposes of this part;

5 (7) Be audited at least annually by a firm of independent
6 certified public accountants selected by the
7 authority, and provide the results of this audit to
8 the department and the public utilities commission;
9 and

10 (8) Perform all functions necessary to effectuate the
11 purposes of this part.

12 (b) The authority shall submit to the public utilities
13 commission an annual plan for review and approval no later than
14 ninety days prior to the start of each fiscal year. The annual
15 plan submitted by the authority shall include the authority's
16 projected operational budget for the succeeding fiscal year.

17 **§196-E Hawaii green infrastructure special fund.** (a)

18 There is established the Hawaii green infrastructure special
19 fund into which shall be deposited:

20 (1) The proceeds of bonds net of issuance costs and
21 reserves or overcollateralization amounts;



- 1 (2) Green infrastructure charges received for the use and
2 services of the loan program, including the repayment
3 of loans made under the loan program;
- 4 (3) All other funds received by the department or the
5 authority and legally available for the purposes of
6 the green infrastructure special fund;
- 7 (4) Interest earnings on all amounts in the green
8 infrastructure special fund; and
- 9 (5) Such other moneys as shall be permitted by an order of
10 the public utilities commission.

11 The Hawaii green infrastructure special fund shall not be
12 subject to section 37-53. Any amounts received from green
13 infrastructure charges or any other net proceeds earned from the
14 allocation, use, expenditure, or other disposition of amounts
15 approved by the public utilities commission and deposited or
16 held in the Hawaii green infrastructure special fund in excess
17 of amounts necessary for the purposes of subsection (b) shall be
18 credited to electric utility customers as provided in a green
19 infrastructure loan program order or orders. Funds that are
20 transferred back to the electric utility in order to credit
21 electric utility customers under this subsection shall not be



1 considered revenue of the electric utility and shall not be
2 subject to state or county taxes.

3 (b) Moneys in the Hawaii green infrastructure special fund
4 may be used, subject to the approval of the public utilities
5 commission, for the purposes of:

6 (1) Making green infrastructure loans;

7 (2) Paying administrative costs of the Hawaii green
8 infrastructure loan program;

9 (3) Paying any other costs related to the Hawaii green
10 infrastructure loan program; or

11 (4) Paying financing costs, as defined in section 269-A,
12 to the extent permitted by the public utilities
13 commission financing order pursuant to section 269-C.

14 (c) The authority may invest funds held in the Hawaii
15 green infrastructure special fund in investments as permitted by
16 law, and in accordance with approved investment guidelines
17 established in one or more orders issued by the public utilities
18 commission pursuant to section 269-K. All amounts in the Hawaii
19 green infrastructure special fund shall be exempt from all taxes
20 and surcharges imposed by the State or the counties.

21 **§196-F Use of Hawaii green infrastructure special fund;**

22 **application.** (a) The authority shall apply to the public



1 utilities commission for one or more orders to effectuate the
2 Hawaii green infrastructure loan program, pursuant to section
3 269-J.

4 Nothing herein shall preclude the department from applying
5 for a financing order, pursuant to section 269-B, prior to the
6 issuance of an order or orders to effectuate the Hawaii green
7 infrastructure loan program under section 269-K, nor from
8 requesting consolidation of the proceeding for a financing order
9 with such a loan program implementation order.

10 (b) An application shall be submitted by the authority to
11 the public utilities commission in accordance with section 269-
12 J.

13 (c) In accordance with an approved green infrastructure
14 loan program order or orders, the authority shall utilize the
15 proceeds of bonds and other amounts deposited in the Hawaii
16 green infrastructure special fund pursuant to 196-E, or to the
17 extent permitted by a financing order, to pay financing costs,
18 as defined in section 269-A.

19 (d) Within the order or orders issued by the public
20 utilities commission under section 269-K, the authority shall
21 obtain approval from the public utilities commission requiring
22 the electric utilities to serve as agents to bill and collect



1 the green infrastructure charge imposed to repay green
2 infrastructure costs and transfer all green infrastructure
3 charges collected to the authority on behalf of the department.
4 Notwithstanding anything to the contrary, electric utilities
5 shall not be obligated to bill, collect, or remit green
6 infrastructure charges from non-utility customers.

7 **§196-G Hawaii green infrastructure bond fund.** (a) There
8 is established the Hawaii green infrastructure bond fund as a
9 special fund into which all proceeds of the green infrastructure
10 fee and any other proceeds of green infrastructure property
11 shall be paid. The Hawaii green infrastructure bond fund may
12 also receive other moneys as the department may determine and as
13 provided in a financing order, including, without limitation,
14 green infrastructure charges.

15 (b) Moneys in the Hawaii green infrastructure bond fund
16 shall be impressed with the lien created by, and shall be used
17 solely for purposes set forth in, section 269-D. Upon payment
18 or defeasance of all bonds and financing costs, moneys in the
19 fund, at the direction of the department, may be transferred
20 into the Hawaii green infrastructure special fund or other
21 purpose as the department shall specify.



1 (c) The Hawaii green infrastructure bond fund shall be
2 audited at least annually by a firm of independent certified
3 public accountants selected by the department, and the results
4 of this audit shall be provided to the department and the public
5 utilities commission.

6 (d) Pursuant to section 39-68, the department shall
7 appoint a trustee to receive, hold, and disburse all amounts
8 required to be held in the Hawaii green infrastructure bond fund
9 upon terms and conditions as set forth in a certificate,
10 indenture, or trust agreement.

11 The Hawaii green infrastructure bond fund shall not be
12 subject to section 37-53.

13 **§196-H Compliance with revenue bond law.** For purposes of
14 assuring conformity of and compliance with part III of chapter
15 39, it is determined as follows:

16 (1) For purposes of section 39-51, "revenues" shall
17 include the green infrastructure fee and the proceeds
18 of green infrastructure property; the "loan program"
19 shall include the loan program authorized under
20 section 196-B; and "undertaking" shall include
21 financing of the loan program through the issuance of
22 green infrastructure revenue bonds;



- 1 (2) In addition and supplemental to any covenants
2 recognized under section 39-60, any resolution,
3 certificate, or indenture approved by the department
4 may have additional or alternative covenants as may be
5 consistent with this chapter, and the department may
6 enter into a trust indenture, servicing agreement, or
7 other financing documents having terms and conditions
8 consistent with the financing order issued under
9 section 269-C;
- 10 (3) In addition and supplemental to the power to impose
11 rates, rentals, fees, or charges required under
12 section 39-61, the department shall impose, adjust,
13 and collect the green infrastructure fee as provided
14 in section 269-F and the financing order issued
15 pursuant thereto; and
- 16 (4) In addition and supplemental to the uses specified in
17 section 39-62, the green infrastructure fee shall be
18 applied as provided in this chapter, the financing
19 order, the certificate issued by the department, and
20 any financing documents executed by the department in
21 connection with the bonds.



1 **§196-I Reporting; annual report.** The authority shall
2 submit a report to the legislature on the authority's activities
3 in administering the loan program no later than twenty days
4 prior to the convening of each regular session beginning with
5 the regular session of 2015. The report shall include a
6 description and uses of the loan program; summary information
7 and analytical data concerning the implementation of the loan
8 program; summary information and analytical data concerning
9 deployment of clean energy technology, demand response
10 technology, and energy use reduction and demand side management
11 infrastructure; and repayments made or credits provided to
12 electric utility customers under this part or chapter 269, part
13 .

14 **§196-J Severability.** If any provision of this part is
15 held to be invalid or is superseded, replaced, repealed, or
16 expires for any reason:

17 (1) That occurrence shall not affect any action allowed
18 under this part that is taken prior to that occurrence
19 by the public utilities commission, an electric
20 utility, the department, the authority, a bondholder,
21 or any financing party, and any such action shall
22 remain in full force and effect; and



1 (2) The validity and enforceability of the rest of this
2 part shall remain unaffected."

3 SECTION 3. Chapter 269, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 "PART . GREEN INFRASTRUCTURE BONDS

7 §269-A Definitions. As used in this part:

8 "Ancillary agreement" means any bond insurance policy,
9 letter of credit, reserve account, surety bond, swap
10 arrangement, hedging arrangement, liquidity or credit support
11 arrangement, or other related bond document or other similar
12 agreement or arrangement entered into in connection with the
13 issuance of bonds that is designed to promote the credit quality
14 and marketability of the bonds or to mitigate the risk of an
15 increase in interest rates.

16 "Authority" means the Hawaii green infrastructure authority
17 established under section 196-C.

18 "Bond" or "green infrastructure bond" means any bond, note
19 or other evidence of indebtedness that is issued by the State,
20 acting through the department, under a financing order, the
21 proceeds of which are used directly or indirectly to recover,
22 finance, or refinance financing costs of clean energy



1 technology, demand response technology, and energy use reduction
2 and demand side management infrastructure, programs, and
3 services, and that are secured by or payable from green
4 infrastructure property.

5 "Bondholder" means any holder or owner of a bond.

6 "Clean energy technology" means any technology as defined
7 in section 269-121(b).

8 "Department" means the department of business, economic
9 development, and tourism, or any successor by law.

10 "Electric utilities" means all electric utilities subject
11 to billing, collecting, and remitting the public benefits fee,
12 or the green infrastructure fee, at the time the financing order
13 becomes final, and any other electric utility designated in the
14 financing order.

15 "Financing costs" means any of the following:

- 16 (1) Principal and interest payable on bonds;
- 17 (2) Any payment required under an ancillary agreement;
- 18 (3) Any amount required to fund or replenish a reserve
19 account or another account established under any
20 indenture, ancillary agreement, or other financing
21 document relating to the issuance of bonds;



- 1 (4) Any redemption or call premium or cost of redeeming or
2 refunding any existing debt of the department in
3 connection with either the issuance of, or the use of
4 proceeds from, bonds;
- 5 (5) Any costs incurred by the department to modify or
6 amend any indenture, financing agreement, security
7 agreement, or similar agreement or instrument securing
8 any bond or any ancillary agreement;
- 9 (6) Any costs incurred by the department to obtain any
10 consent, release, waiver, or approval from any
11 bondholder or of any party to an ancillary agreement
12 that are necessary to be incurred for the department
13 to issue bonds;
- 14 (7) Any costs related to issuing or servicing bonds or
15 related to obtaining a financing order, including
16 servicing fees and expenses, trustee fees and
17 expenses, legal, accounting, or other professional
18 fees and expenses, administrative fees, placement
19 fees, underwriting fees and discounts, capitalized
20 interest and equity, and rating-agency fees; or loan
21 program administration costs as authorized for
22 recovery under a financing order or orders; or



1 (8) Any other similar costs incident to the issuance,
2 administration, or servicing of the bonds that the
3 department finds appropriate.

4 "Financing order" means an order issued at the request of
5 the department by the public utilities commission under this
6 part that has become final as provided by law, and that
7 authorizes the issuance of bonds and the imposition, adjustment
8 from time to time, and collection of green infrastructure fees.

9 "Financing party" means either of the following:

10 (1) Any trustee, collateral agent, or other person acting
11 for the benefit of a bondholder; or

12 (2) Any party to an ancillary agreement, the rights and
13 obligations of which relate to or depend upon the
14 existence of green infrastructure property and green
15 infrastructure fees, the enforcement and priority of a
16 security interest in green infrastructure property,
17 the timely collection and payment of green
18 infrastructure fees, or a combination of these
19 factors.

20 "Green infrastructure bond fund" means the special fund
21 created pursuant to section 196-G.



1 "Green infrastructure charge" means the on-bill charges as
2 defined in section 196-A.

3 "Green infrastructure fee" means the nonbypassable fees and
4 charges authorized by section 269-F and in a financing order
5 authorized under this part to be imposed on and collected from
6 all existing and future customers of electric utilities or any
7 successor.

8 "Green infrastructure loan program order" means an order
9 issued by the public utilities commission under section 269-K
10 that establishes the use or other disposition of amounts
11 deposited and held in the Hawaii green infrastructure special
12 fund pursuant to section 196-E.

13 "Green infrastructure property" means the property, rights,
14 and interests created by the public utilities commission under a
15 financing order, including the right to impose, charge, and
16 collect from electric utility customers the green infrastructure
17 fee that shall be used to pay and secure the payment of bonds
18 and financing costs, including the right to obtain adjustments
19 to the green infrastructure fee, and any revenues, receipts,
20 collections, rights to payment, payments, moneys, claims, or
21 other proceeds arising from the rights and interests created by
22 the public utilities commission under any financing order.



1 "Green infrastructure special fund" means the special fund
2 created pursuant to section 196-E.

3 "Successor" means, with respect to any electric utility,
4 another electric utility or other entity that succeeds
5 voluntarily or by operation of law to the rights and obligations
6 of the first electric utility or other entity pursuant to any
7 bankruptcy, reorganization, restructuring, or other insolvency
8 proceedings; any merger, acquisition, or consolidation; or any
9 sale or transfer of assets, regardless of how any of these
10 actions occurred.

11 "Trustee" means any trustee or fiscal agent appointed under
12 an indenture or certificate of the director executed in
13 connection with the issuance of bonds pursuant to section 39-68.

14 **§269-B Applications to issue bonds and authorize green**
15 **infrastructure fee.** (a) In connection with the issuance of
16 bonds, the department may apply to the public utilities
17 commission for one or more financing orders, each of which
18 financing orders authorizes the following:

- 19 (1) The imposition, charging, and collection on behalf of
20 the department of the green infrastructure fee, to
21 become effective upon the issuance of the bonds, and
22 the adjustment of the green infrastructure fee on

1 behalf of the department in accordance with an
2 adjustment mechanism requested by the department under
3 this part in amounts sufficient to pay the principal
4 of and interest on bonds and all related financing
5 costs on a timely basis;

6 (2) The creation of green infrastructure property under
7 the financing order; and

8 (3) The deposit of the net proceeds of the bonds into the
9 green infrastructure special fund.

10 (b) The application shall include all of the following:

11 (1) The principal amount of the bonds proposed to be
12 issued;

13 (2) An estimate of the date each series of bonds is
14 expected to be issued;

15 (3) The expected term, not to exceed thirty years, during
16 which term the green infrastructure fee associated
17 with the issuance of each series of bonds is expected
18 to be imposed and collected;

19 (4) An estimate of the financing costs associated with the
20 issuance of each series of bonds;

21 (5) An estimate of the amount of the green infrastructure
22 fee revenues necessary to pay principal and interest



1 on the bonds and related financing costs as set forth
2 in the application and the calculation for that
3 estimate, which calculation shall take into account
4 the estimated date or dates of issuance and the
5 estimated principal amount of each series of bonds;

6 (6) A proposed methodology for allocating the green
7 infrastructure fee among electric utilities and
8 customer classes within each electric utility;

9 (7) A description of a proposed formulaic adjustment
10 mechanism for the adjustment of the green
11 infrastructure fee to ensure the timely payment of
12 principal and interest on the bonds and related
13 financing costs; and

14 (8) Any other information required by the public utilities
15 commission.

16 **§269-C Green infrastructure financing order.** (a) The
17 public utilities commission shall issue its financing order as
18 final or if a finding in subsection (b) cannot be made, its
19 denial of a financing order, as expeditiously as possible and in
20 any event within ninety days from the date the completed
21 application is submitted.



1 (b) The public utilities commission may issue a financing
2 order if the public utilities commission finds that the creation
3 of the green infrastructure property to secure the payment of
4 the bonds, including the imposition of the green infrastructure
5 fee, will facilitate the acquisition of low-cost financing,
6 pursuant to an application under section 269-B.

7 (c) The public utilities commission shall include all of
8 the following in a financing order:

- 9 (1) The maximum amount of bonds to be issued by the State
10 acting through the department under the financing
11 order;
- 12 (2) A description of the green infrastructure property,
13 the creation of which property is authorized by the
14 financing order;
- 15 (3) A description of the financing costs that will be
16 recoverable through green infrastructure fees,
17 including any reserves or overcollateralization
18 amounts required by the department to secure payment
19 of the bonds;
- 20 (4) A description of the methodology to be applied by the
21 public utilities commission, on behalf of the
22 department, for calculating the green infrastructure



1 fee, including the allocation of financing costs among
2 electric utilities and customer classes;

3 (5) A description of the formulaic adjustment mechanism to
4 be used by the public utilities commission, on behalf
5 of the department, to adjust the green infrastructure
6 fee in order to ensure that the amount of green
7 infrastructure fees projected to be collected shall be
8 sufficient to pay the principal and interest on the
9 bonds, and all related financing costs on a timely
10 basis, including the funding or maintenance of any
11 reserves required to be maintained by the department;

12 (6) The term of the bonds, as proposed by the department,
13 during which term the green infrastructure fee shall
14 continue to be collected and pledged to pay the bonds,
15 which term shall automatically be extended by the term
16 of any refunding bonds, as approved in a subsequent
17 financing order, issued in such principal amounts as
18 the department may determine to be necessary to refund
19 the bonds that are the subject of the original
20 financing order;

21 (7) A requirement that the electric utilities, including
22 any successors, serve as agents to collect the green



1 infrastructure fee and transfer those surcharges to
2 the trustee or other financing party as required by
3 the financing order and any agreements with the
4 department;

5 (8) The procedures to be followed by the electric
6 utilities in the event of non-payment or partial
7 payment of the green infrastructure fee by the
8 electric utilities' customers, which procedures shall
9 be consistent with the public utilities commission
10 approved procedures for non-payment and partial
11 payment of rates, charges and fees under the electric
12 utilities' tariffs;

13 (9) The distribution of the total amounts collected by the
14 electric utilities for amounts billed to customers for
15 the electric utilities' rates, fees, the green
16 infrastructure fee, other public utilities commission
17 approved fees, and for associated taxes, in the event
18 of partial payments of the billed amounts;

19 (10) Terms satisfactory to the public utilities commission
20 to ensure that the green infrastructure fee shall be
21 nonbypassable and will be paid by all existing and



1 future customers of an electric utility or any
2 successor; and
3 (11) Any other provision the public utilities commission
4 considers appropriate to ensure the full and timely
5 imposition, charging, collection, and adjustment,
6 pursuant to an approved adjustment mechanism, of the
7 green infrastructure fee described in this subsection.

8 The electric utilities serving as billing and collecting
9 agents shall be parties to the proceedings in which the
10 financing order or orders are issued.

11 (d) The public utilities commission, in a financing order,
12 may permit the department flexibility in establishing the terms
13 and conditions for the bonds to accommodate changes in market
14 conditions, including repayment schedules, interest rates,
15 financing costs, collateral requirements, required debt service
16 and other reserves, and the ability of the department, at its
17 option, to effect a series of issuances of bonds and correlated
18 assignments, sales, pledges, or other transfers of green
19 infrastructure property. Any changes made under this section to
20 terms and conditions for the bonds shall be in conformance with
21 the financing order.

1 (e) At the request of the department, the public utilities
2 commission shall determine, in accordance with the adjustment
3 mechanism set forth in the financing order, the initial green
4 infrastructure fee after the determination of the final terms of
5 each series of bonds, so that the green infrastructure fee shall
6 be final and effective upon issuance of the bonds.

7 (f) Any adjustment to the green infrastructure fee made by
8 the public utilities commission pursuant to the adjustment
9 mechanism approved in the financing order shall be a ministerial
10 act of the public utilities commission.

11 **§269-D Green infrastructure property.** (a) The green
12 infrastructure property shall be created simultaneously with the
13 issuance of the bonds and shall immediately vest in the
14 department, which shall pledge and create a lien on the
15 property, together with all other money in the green
16 infrastructure bond fund, solely and exclusively in favor of
17 bondholders and financing parties, to secure the payment of
18 bonds, amounts payable to financing parties and bondholders,
19 amounts payable under any ancillary agreement, and other
20 financing costs as provided in the financing documents executed
21 by the department. Subject to this subsection, the lien and
22 charge on green infrastructure property and all other moneys in



1 the green infrastructure bond fund for the benefit of any
2 financing party shall be governed by section 39-63.

3 (b) An electric utility shall have no ownership or
4 beneficial interest in nor any claim or right to the green
5 infrastructure fee, green infrastructure property, green
6 infrastructure equipment, or green infrastructure charge other
7 than the obligation to bill and collect the green infrastructure
8 fee and green infrastructure charge as agent for the department
9 or any financing party and remit the collected revenue to the
10 department or such financing party entitled to receive those
11 surcharges in accordance with the financing order. The public
12 utilities commission shall ensure that all reasonable costs
13 incurred by electric utilities to implement the green
14 infrastructure fee may be recovered as part of the electric
15 utility's revenue requirement, including necessary billing
16 system adjustments, costs arising out of the billing and
17 collection of the green infrastructure fee, and any costs for
18 the green infrastructure fee that are not recovered otherwise.
19 The green infrastructure fee or green infrastructure property
20 shall not be considered revenue of any electric utility.

21 (c) The obligation of any electric utility customer to pay
22 the green infrastructure fee or green infrastructure charge and,



1 notwithstanding subsection (b), the obligation of the electric
2 utility to collect and remit the green infrastructure fee or
3 green infrastructure charge shall not be subject to any setoff,
4 counterclaim, surcharge, or defense by the electric utility or
5 by any electric utility customer, or in connection with a
6 bankruptcy of any electric utility or any electric utility
7 customer.

8 **§269-E Bonds financing order.** (a) A financing order
9 shall remain in effect until the bonds issued under the
10 financing order and all financing costs related to the bonds
11 have been paid in full or defeased by their terms. A financing
12 order shall remain in effect and unabated notwithstanding the
13 bankruptcy, reorganization, or insolvency of any electric
14 utility or any affiliate of the electric utility or the
15 commencement of any judicial or nonjudicial proceeding on the
16 financing order.

17 (b) Once a financing order has become final as provided by
18 law, the financing order shall become irrevocable. The public
19 utilities commission may not directly or indirectly, except as
20 provided in the adjustment mechanism approved in the financing
21 order, reduce, impair, postpone, rescind, alter, or terminate
22 the green infrastructure fee authorized in the financing order

1 or impair the green infrastructure property or the collection of
2 the green infrastructure fee so long as any bonds are
3 outstanding or any financing costs remain unpaid.

4 (c) Under a final financing order, the department shall
5 retain sole discretion to cause bonds to be issued, including
6 the right to defer or postpone such issuance, assignment, sale,
7 or transfer.

8 **§269-F Green infrastructure fee; nonbypassable.** (a) The
9 public utilities commission may create, pursuant to a financing
10 order approved pursuant to section 269-C, a utility-wide
11 nonbypassable surcharge, referred to as the green infrastructure
12 fee, which shall be deposited into the green infrastructure bond
13 fund and be pledged to secure and be applied to the repayment of
14 bonds and related financing costs as described in this part.
15 The green infrastructure fee may be a usage-based surcharge, a
16 flat user fee, or a charge based upon customer revenues as
17 determined by the public utilities commission for each customer
18 class in any financing order.

19 (b) The green infrastructure fee may be applied to reduce
20 the public benefits fee to be transferred pursuant to section
21 269-121 if so provided in a financing order. Nothing in this
22 subsection shall affect the right to impose, collect, and adjust



1 from time to time the green infrastructure fee as provided in
2 the financing order and this chapter.

3 (c) As long as any bonds are outstanding and any financing
4 costs have not been paid in full, the green infrastructure fee
5 authorized under any financing order shall be nonbypassable.
6 Subject to any exceptions provided in a financing order, the
7 green infrastructure fee shall be paid by all existing and
8 future customers of electric utilities or any successors.

9 (d) The green infrastructure fee shall be collected by the
10 electric utilities or their successors, as collection agents for
11 the department or the financing parties, in full through a
12 surcharge, fee, or charge that is separate and apart from the
13 electric utilities' rates.

14 **§269-G Electric utility successor requirements; default of**
15 **electric utility.** (a) Any successor to an electric utility
16 subject to a financing order shall be bound by the requirements
17 of this part. The successor shall perform and satisfy all
18 obligations of the electric utility under the financing order,
19 in the same manner and to the same extent as the electric
20 utility, including the obligation to collect and pay the green
21 infrastructure fee to the department or to any financing party
22 as required by a financing order.



1 (b) The public utilities commission may require, in the
2 financing order creating the green infrastructure fee and green
3 infrastructure property, that, if a default by the electric
4 utility in remittance of the green infrastructure fee collected
5 arising with respect to green infrastructure property occurs,
6 the public utilities commission, upon the application by the
7 department, and without limiting any other remedies available to
8 the department or any financing party by reason of the default,
9 shall order the sequestration and payment to the beneficiaries
10 of the green infrastructure fee collected arising with respect
11 to the green infrastructure property. Any order shall remain in
12 full force and effect notwithstanding any bankruptcy,
13 reorganization, or other insolvency proceedings with respect to
14 the electric utility.

15 **§269-H Treatment of bonds, fees, and property.** (a) In
16 the furtherance of section 39-65, the ownership, transfer, and
17 pledge of the green infrastructure fee and green infrastructure
18 property and the imposition, charging, collection, and receipt
19 of the green infrastructure fee and green infrastructure charge
20 are exempt from all taxes and surcharges imposed by the State or
21 the counties, including the general excise tax under chapter
22 237, public service company tax under chapter 239, public



1 utility fee under section 269-30, and public utility franchise
2 tax under chapter 240.

3 (b) Bonds issued under a financing order shall not be an
4 obligation of any electric utility. The issuance of bonds shall
5 not directly, indirectly, or contingently obligate the electric
6 utility for payment of the principal of or interest on the
7 bonds.

8 **§269-I Green infrastructure property; non-impairment.** (a)
9 In furtherance of section 39-61, the State pledges to and agrees
10 with the bondholders and any financing parties under a financing
11 order that the State will not take or permit any action that
12 impairs the value of green infrastructure property under the
13 financing order, or reduce, alter, or impair the green
14 infrastructure fee that is imposed, charged, collected, or
15 remitted for the benefit of the bondholders and any financing
16 parties, until any principal, interest, and redemption premium
17 in respect of bonds, all financing costs, and all amounts to be
18 paid to a financing party under an ancillary agreement are paid
19 or performed in full or unless adequate provision has been made
20 by law for the protection of bondholders and other financing
21 parties.



1 (b) In issuing the bonds, the department may include the
2 pledge specified in subsection (a) of this section in the bonds,
3 ancillary agreements, and documentation related to the issuance
4 and marketing of the bonds.

5 **§269-J Green infrastructure loan program order;**

6 **application.** (a) The authority shall submit an application to
7 the public utilities commission for the use or other disposition
8 of amounts deposited or held in the green infrastructure special
9 fund pursuant to section 196-E prior to the allocation, use,
10 expenditure, or other disposition of any such amounts; provided
11 that this subsection shall not apply to the expenditure of
12 amounts deposited or held in the green infrastructure special
13 fund that have been reviewed and approved by the public
14 utilities commission for operational or administrative expenses
15 of the authority pursuant to section 196-D.

16 (b) An application submitted by the authority to the
17 public utilities commission under this section shall include the
18 following:

19 (1) A description of each project, program, financing
20 agreement, or other arrangement for which the
21 authority seeks to allocate, use, expend, or otherwise



1 dispose of amounts deposited or held in the green
2 infrastructure special fund, including:

3 (A) The clean energy technology, demand response
4 technology, and energy use reduction and demand
5 side management infrastructure, programs, and
6 services to be financed;

7 (B) A description of the parties, both direct and
8 incidental, intended to benefit from any
9 financing made in connection with the green
10 infrastructure special fund amounts requested by
11 the authority in an application submitted to the
12 public utilities commission under this section;

13 (C) A description of the loan programs or other
14 arrangements designed, established, identified,
15 agreed to, agreed to in principle, continued,
16 carried over, or otherwise intended to be
17 effectuated for the use of the green
18 infrastructure special fund amounts requested by
19 the authority in an application submitted to the
20 public utilities commission under this section;
21 and

1 (D) Any and all funding or credit sources identified,
2 pledged, dedicated, or otherwise provided to
3 supplement the green infrastructure special fund
4 amounts requested by the authority in an
5 application submitted to the public utilities
6 commission under this section;

7 (2) Minimum lending, crediting, or investing criteria in
8 relation to each project, program, financing
9 agreement, or other arrangement described in an
10 application submitted to the public utilities
11 commission under this section;

12 (3) A description of the repayment processes, mechanisms,
13 and applicable calculations for each project, program,
14 financing agreement, or other arrangement described in
15 an application submitted to the public utilities
16 commission under this section;

17 (4) An explanation of the anticipated impacts and benefits
18 to electric utility ratepayers of any project,
19 program, financing agreement, or other arrangement
20 described under an application submitted by the
21 authority to the public utilities commission under
22 this section; and



1 (5) Any other additional information determined to be
2 necessary by the public utilities commission upon the
3 review of an application submitted or resubmitted by
4 the authority under this section.

5 **§269-K Green infrastructure loan program order; issuance.**

6 (a) The public utilities commission may issue a program order
7 authorizing the allocation, use, expenditure, or other
8 disposition of any amounts deposited or held in the green
9 infrastructure special fund upon the submission by the authority
10 to the commission of a completed application, as described in
11 this section. A green infrastructure loan program order issued
12 by the public utilities commission shall include the following,
13 where determined necessary and applicable by the commission:

14 (1) An identification and description of each project,
15 program, financing agreement, or other arrangement
16 approved by the public utilities commission for which
17 amounts deposited or held in the green infrastructure
18 special fund may be allocated, used, expended, or
19 otherwise disposed of;

20 (2) Minimum criteria for the lending, crediting, or
21 investing of amounts deposited or held in the green
22 infrastructure special fund;



1 (3) A description of the repayment processes, mechanisms,
2 and applicable calculations for each project, program,
3 financing agreement, or other arrangement approved by
4 the public utilities commission for which amounts
5 deposited or held in the green infrastructure special
6 fund may be allocated, used, expended, or otherwise
7 disposed of;

8 (4) A review of the anticipated impacts and benefits to
9 electric utility ratepayers of any project, program,
10 financing agreement, or other arrangement approved
11 under a green infrastructure loan program order; and

12 (5) Any other provision or information determined to be
13 necessary by the public utilities commission.

14 (b) The public utilities commission shall issue an order
15 under this section as expeditiously as possible upon the receipt
16 from the authority of a completed application submitted pursuant
17 to section 269-J.

18 (c) The order shall specify the following, including:

19 (1) The procedures to be followed by the electric
20 utilities in the event of non-payment or partial
21 payment of the green infrastructure charge by the
22 electric utilities' customers, which procedures shall



1 be consistent with the public utilities commission's
2 approved procedures for non-payment and partial
3 payment of rates, charges, and fees under the electric
4 utilities' tariffs; and

- 5 (2) The distribution of the total amounts collected by the
6 electric utilities for amounts billed to customers for
7 the electric utilities' rates, fees, and charges, for
8 the green infrastructure charge, for other fees and
9 charges approved by the public utilities commission,
10 and for associated taxes, in the event of partial
11 payments of the billed amounts.

12 The electric utilities serving as billing and collecting
13 agents shall be parties to the proceedings in which the order or
14 orders are issued.

15 **§269-L Electric utilities; cost recovery; billing agent.**

16 (a) The public utilities commission shall ensure that all
17 reasonable costs incurred by electric utilities to start up and
18 implement the loan program may be recovered as part of the
19 electric utility's revenue requirement, including necessary
20 billing system adjustments, costs arising out of the billing and
21 collection of green infrastructure charges, and any costs for
22 green infrastructure charges that are not recovered via



1 participating customers' green infrastructure bill payments, or
2 otherwise.

3 (b) The green infrastructure charge shall not be
4 considered revenue of the electric utilities and accordingly,
5 shall not be subject to state or county taxes, including the
6 general excise tax under chapter 237, the public service company
7 tax under chapter 239, the public utility fee under section 269-
8 30, and the public utility franchise tax under chapter 240.

9 (c) The loan program or the act of serving as an agent to
10 bill and to collect the green infrastructure charge shall not
11 cause any electric utility to be subject to the laws that
12 regulate financial institutions, escrow depositories, or
13 collection agencies. An electric utility shall not be
14 responsible for lending, underwriting, and credit
15 determinations.

16 **§269-M Severability.** If any provision of this part is
17 held to be invalid or is superseded, replaced, repealed, or
18 expires for any reason:

19 (1) That occurrence shall not affect any action allowed
20 under this part that is taken prior to that occurrence
21 by the public utilities commission, an electric
22 utility, the department, the authority, a bondholder,



1 or any financing party, and any such action shall
2 remain in full force and effect; and

3 (2) The validity and enforceability of the rest of this
4 part shall remain unaffected.

5 **§269-N Miscellaneous.** Neither the department nor a
6 financing party shall be considered an electric utility or
7 person providing electric service by virtue of engaging in the
8 transactions described in this part.

9 **§269-O Revenue bonds; exclusion from debt limit.** Green
10 infrastructure bonds are revenue bonds issued under article VII,
11 section 12, of the Hawaii state constitution, and chapter 39,
12 part III, as modified by this part, and the department shall
13 ensure that any bonds issued under this part are excluded from
14 the calculation of the State's debt limit pursuant to article
15 VII, section 13, of the Hawaii state constitution.

16 **§269-P Financing order; adjustments to green**
17 **infrastructure fee.** The financing order shall include, without
18 limitation, a procedure to require the public utilities
19 commission, in accordance with a formula set out in the
20 financing order and approved by the department, to expeditiously
21 review and approve periodic adjustments to the green



1 infrastructure fee to ensure the payment of the bonds and
2 related financing costs on a timely basis."

3 SECTION 4. Section 269-5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§269-5 Annual report and register of orders.** The public
6 utilities commission shall prepare and present to the governor,
7 through the director of finance, in the month of January in each
8 year a report respecting its actions during the preceding fiscal
9 year. This report shall include summary information and
10 analytical, comparative, and trend data concerning major
11 regulatory issues acted upon and pending before the commission;
12 cases processed by the commission, including their dispositions;
13 utility company operations, capital improvements, and rates;
14 utility company performance in terms of efficiency and quality
15 of services rendered; financing orders issued, adjustments made
16 to the public benefits fee, and repayments or credits provided
17 to electric utility customers pursuant to part or chapter
18 196, part ; environmental matters having a significant impact
19 upon public utilities; actions of the federal government
20 affecting the regulation of public utilities in Hawaii; long and
21 short-range plans and objectives of the commission; together
22 with the commission's recommendations respecting legislation and



1 other matters requiring executive and legislative consideration.
2 Copies of the annual reports shall be furnished by the governor
3 to the legislature. In addition, the commission shall establish
4 and maintain a register of all its orders and decisions, which
5 shall be open and readily available for public inspection, and
6 no order or decision of the commission shall take effect until
7 it is filed and recorded in this register."

8 SECTION 5. Section 269-121, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) The public benefits fee shall be used to support
11 ~~[energy efficiency]~~ clean energy technology, demand response
12 technology, and energy use reduction and demand-side management
13 infrastructure, programs, and services, subject to the review
14 and approval of the public utilities commission. These moneys
15 shall not be available to meet any current or past general
16 obligations of the State; provided that the State may
17 participate in any ~~[energy efficiency or]~~ clean energy
18 technology, demand response technology, or energy use reduction
19 and demand-side management infrastructure, programs, and
20 services on the same basis as any other electric consumer.
21 "Clean energy technology" means any commercially available
22 technology that enables the State to meet the renewable



1 portfolio standards under section 269-92, or the energy
2 efficiency portfolio standards under section 269-96, and
3 approved by the public utilities commission by rule or order."

4 SECTION 6. (a) The legislature finds and declares that
5 the issuance of revenue bonds under this Act is in the public
6 interest and for the public health, safety, and welfare.

7 (b) The department of business, economic development, and
8 tourism is authorized to issue revenue bonds pursuant to part
9 III of chapter 39, Hawaii Revised Statutes, as amended and
10 supplemented by this Act, in a principal amount not to exceed
11 \$200,000,000 to establish and administer the Hawaii green
12 infrastructure loan program pursuant to section 196-B, Hawaii
13 Revised Statutes.

14 (c) The department of business, economic development, and
15 tourism is authorized to issue from time to time refunding bonds
16 in such principal amounts as the department shall determine to
17 be necessary to refund the green infrastructure bonds authorized
18 under this Act, to the extent permitted by the financing
19 documents.

20 (d) To the extent there is any conflict between this Act
21 and part III of chapter 39, Hawaii Revised Statutes, this Act
22 shall prevail.



1 SECTION 7. There is appropriated out of the Hawaii green
2 infrastructure special fund established pursuant to section 196-
3 E, Hawaii Revised Statutes, the sum of \$100,000,000 or so much
4 thereof as may be necessary for fiscal year 2013-2014 and the
5 same sum or so much thereof as may be necessary for fiscal year
6 2014-2015.

7 The sums appropriated shall be expended by the department
8 of business, economic development, and tourism for the purposes
9 of this Act.

10 SECTION 8. There is appropriated out of the Hawaii green
11 infrastructure bond fund established pursuant to section 196-G,
12 Hawaii Revised Statutes, the sum of \$10,000,000 or so much
13 thereof as may be necessary for fiscal year 2013-2014 and the
14 sum of \$20,000,000 or so much thereof as may be necessary for
15 fiscal year 2014-2015.

16 The sums appropriated shall be expended by the department
17 of business, economic development, and tourism for the purposes
18 of this Act.

19 SECTION 9. The department of business, economic
20 development, and tourism, with the assistance of the Hawaii
21 green infrastructure authority, shall submit a report on the
22 status of the Hawaii green infrastructure authority's



1 activities, including approved loan program description and
2 uses; summary information and analytical data concerning
3 implementation of the loan program; summary information and
4 analytical data concerning the deployment of clean energy
5 technology, demand response technology, and energy use reduction
6 and demand-side management infrastructure; and repayments made
7 or credits provided to electric utility customers under section
8 196-E and part of chapter 269, Hawaii Revised Statutes, no
9 later than twenty days prior to the convening of the regular
10 session of 2014.

11 SECTION 10. In codifying the new part added to chapter
12 196, Hawaii Revised Statutes, by section 2 of this Act and the
13 new part added to chapter 269, Hawaii Revised Statutes, by
14 section 3 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 and referring to the new sections in this Act.

17 SECTION 11. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 12. This Act shall take effect upon its approval;
20 provided that sections 7 and 8 shall take effect on July 1,
21 2013.



Report Title:

Green Infrastructure Loan Program; Public Benefits Fee;
Appropriation

Description:

Establishes a regulatory financing structure that authorizes the PUC and DBEDT to provide low-cost loans for green infrastructure equipment to achieve measurable cost savings and Hawaii's clean energy goals. Requires a report to the legislature. Appropriates funds. (SB1087 HD2)

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