DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

CHUNG I. CHANG
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: dbedt.hawaii.gov

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
MIKE MCCARTNEY
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
AND
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Monday, March 21, 2022
1:00 PM
State Capitol, Conference Room 224 & Videoconference

In consideration of
HB2088, HD3
RELATING TO FINANCING.

Chairs Wakai and Gabbard, Vice Chairs Misalucha and Nishihara, and members of the Committees.

The Department of Business, Economic Development, and Tourism **supports** House Bill 2088, HD3, an Administration Bill, that proposes to create the Environmental and Economic Development Revolving Loan Fund under the administration of the Hawaii Green Infrastructure Authority and allow property owners to finance qualifying improvements through a voluntary non-ad valorem special tax assessment.

Collaborating with Hawaii's four Counties and members of the Hawaii Bankers Association, this bill will unlock a new market for commercial banks and other private capital providers to help the State address a number of critical initiatives, including aging cesspools, energy efficiency upgrades, and transitioning to clean energy.

Thank you for this opportunity to testify in support of HB2088, HD3.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022

ON THE FOLLOWING MEASURE:
H.B. NO. 2088, H.D. 3, RELATING TO FINANCING.

BEFORE THE:
SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM AND ON AGRICULTURE AND ENVIRONMENT

DATE: Monday, March 21, 2022 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 224 and Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Gregg J. Kinkley or Bryan C. Yee, Deputy Attorneys General

Chairs Wakai and Gabbard and Members of the Committees:

The Department of the Attorney General offers the following comments regarding this bill.

The bill establishes an at or below-market interest loan program to offer financial assistance for eligible property owners, including lessees on Hawaiian Home Lands, with cesspools to be upgraded or converted, and allows those property owners to finance the improvements through a non-ad valorem property assessment to be added to the owner's property tax bill.

This type of "property assessed financing" (PAF) of improvements on a homeowner's land is similar in structure to the Property Assessed Clean Energy (PACE) financing approaches that have been the subject of some continuing legal controversy since their introduction in the last decade, both on the mainland and here in Hawaii.

Article I, Section 10, of the U.S. Constitution states in pertinent part that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]" This provision of the federal constitution is often referred to as the "Contracts Clause." In section 196-B(c)(5) in section 2 of the bill, on page 12, lines 9-16, there is a provision that "[t]he property assessed financing assessment to be levied on the property shall be . . . a lien against the property on a parity with the lien of general real property taxes and the lien of any other assessments levied under section 46-80, from the date of recordation entered into pursuant to this section . . . ." Even though establishing the PAF lien by law

as a lien on a parity with the lien of county taxes and assessments may not raise constitutional concerns, there are further provisions allowing for the subordination of some existing (senior) private mortgages on the property to the PAF lien as well, which might raise Contracts Clause issues (see page 12, line 20, through page 13, line 11, under new section 196-B(c)(6)(A)(i) in section 2 of the bill, starting with the heading "For a residential property").

While the simple existence of a provision in state law impairing pre-existing contractual rights and obligations does not necessarily raise a constitutional issue (*see Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 412 (1983)), the legal analysis validating it is more nuanced and must take into consideration the nature of the impairment, both quantitatively and qualitatively.

There are provisions in this bill, not found in former, more troublesome PACE legislative attempts, that are clearly calculated to make the parity lien conditions more reasonable, and thus not run afoul of the Contracts Clause: the PAF lender's obligation to determine that the property owner can pay the assessment; the limitation on the PAF assessment to no more than 20 percent of the market value of the property; the notice of lien provision; and the capability of the holder or loan servicer to increase the required monthly escrow all make the PAF assessment scheme more "reasonable." House Draft 1 added provisions requiring that the property owner provide the written consent of each senior lienholder of commercial property before entering into the PAF contract, and House Draft 2 assured that no PAF lien foreclosed upon for failure to pay one annual assessment will accelerate the remaining term of the PAF.

In conclusion, we believe that, while the matter is not free from doubt, the bill's inclusion of the constraints placed on the PAF assessment listed above would help prevail against an attack on its unconstitutionality as violating the Contracts Clause.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR OF HAWAII

ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

WRITTEN
TESTIMONY ONLY

Testimony in SUPPORT of HB2088 HD3
RELATING TO FINANCING

SENATOR MIKE GABBARD, CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATOR GLENN WAKAI, CHAIR
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

Hearing Date: 3/21/2022 Room Number: 224/Videoconference

Fiscal Implications: The measure involves an appropriation for the Hawaii Green Infrastructure Authority for the creation of an environmental and economic revolving loan fund.

Department Testimony: The Department of Health (Department) supports this measure as long as it does not impact the priorities requested in the Executive Budget. Cesspools are a major source of pollution to Hawaii's waters. There are approximately 88,000 cesspools in the State, discharging millions of gallons of untreated sewage into the groundwater every day. The sewage polluted groundwater flows into drinking water sources, streams and the ocean, harming public health and the environment, including beaches and coral reefs. Ninety-five percent of all drinking water in Hawaii comes from groundwater sources. Cesspools should be phased out to eliminate threats to drinking water and recreational waters. The Department supports this measure as it would help to facilitate the phasing out of cesspools by providing another mechanism of financing that would be available for cesspool upgrades and conversions to a director-approved wastewater system or connection to a sewer system.

Offered Amendments: None.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAI'I EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAI'I
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAI'I 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY

TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT AND
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
ON
HOUSE BILL NO. 2088, H.D. 3

March 21, 2022
1:00 p.m.
Room 224 and Videoconference

RELATING TO FINANCING

The Department of Budget and Finance (B&F) offers comments on this Administration bill.

House Bill No. 2088, H.D. 3, establishes the Environmental and Economic Development Revolving Loan Fund (EEDRLF) within the Hawai'i Green Infrastructure Authority's (HGIA) Special Fund, similar to a revolving line of credit and to be administered by HGIA; allows property owners to finance qualified improvements through a non-ad valorem property assessment; appropriates an unspecified amount of general funds for FY 23 to be deposited into the EEDRLF; and appropriates an unspecified amount out of the EEDRLF for FY 23 for loans, other financial assistance, and other allowable expenses (including implementation costs). Examples of qualified improvements include, but are not limited to: upgrading or converting cesspools to Director of Health-approved wastewater systems; connecting a cesspool to a sewer system; eligible environmental, economic recovery, and economic diversification projects and initiatives; and other qualifying improvements.

B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai‘i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII

WILLIAM J. AILA, JR
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT & ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
HEARING ON MARCH 21, 2022 AT 1:00PM VIA VIDEOCONFERENCE

HB 2088, HD3, RELATING TO FINANCING

March 21, 2022

Aloha Chair Gabbard, Chair Wakai, and members of the Committees:

The Department of Hawaiian Home Lands (DHHL) supports this bill creating the environmental and economic development revolving loan fund under the administration of the Hawaii Green Infrastructure Authority and allowing property owners to finance qualifying improvements through a non-ad valorem property assessment.

DHHL is especially supportive of the inclusion of lessees on Hawaiian Home Lands with cesspools to at or below-market rate loans or other authorized financial assistance to upgrade or convert to Director of Health-approved wastewater systems or connect to sewer systems. Lessees are experiencing increased costs because of septic system requirements and given limited financing options on Hawaiian Home Lands, this measure provides a much needed resource. The Hawaiian Homes Commission approved a similar measure the past two years, but DHHL hasn't been able to design the appropriate mechanism to accomplish the result.

Thank you for your consideration of our testimony.

TESTIMONY OF
JAMES P. GRIFFIN, Ph.D.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
SENATE COMMITTEES ON
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
AND
AGRICULTURE AND ENVIRONMENT

March 21, 2022
1:00 p.m.

Chair Wakai, Chair Gabbard, and Members of the Committees:

MEASURE: H.B. No. 2088, HD3
TITLE: RELATING TO FINANCING.

DESCRIPTION: Creates the environmental and economic development revolving loan fund under the administration of the Hawaii green infrastructure authority. Allows property owners to finance qualifying improvements through a non-ad valorem property assessment. Appropriates funds. Effective 7/1/2100. (HD3)

POSITION:

The Public Utilities Commission ("Commission") offers the following comments for consideration.

COMMENTS:

The Commission supports the intent of this administration measure to create an Environmental and Economic Development Revolving Loan Fund under the administration of the Hawaii Green Infrastructure Authority. The contemplated Loan Fund would allow property owners to finance qualifying improvements through a non-ad valorem property assessment.

This measure would benefit property owners in Hawaii by increasing access to financing for energy efficiency and clean energy improvements. This measure would also assist property owners in mitigating the negative impacts of aging cesspools, which contribute to pollution in Hawaii's waters.

The Commission notes that the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs has submitted testimony recommending that this measure be clarified to explicitly state that:

1) electric utility ratepayer funds, including proceeds from the green energy market securitization bonds, shall be kept separate so that no such separate moneys are used to fund or guarantee any environmental and economic development revolving loan purposes; and

2) repayments from the Green Energy Money $aver On-Bill Program are an allowable use only for the existing clean energy and energy efficiency revolving loan fund and not for the new environmental and economic development revolving loan fund purposes.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

GWEN S. YAMAMOTO LAU
EXECUTIVE DIRECTOR

HAWAII GREEN INFRASTRUCTURE AUTHORITY

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Website: gemshawaii.gov

Telephone: (808) 587-3868
Fax: (808) 587-3896

Testimony of
Gwen Yamamoto Lau
Executive Director
before the
SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT & ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

Monday, March 21, 2022
Time: 1:00 P.M.
State Capitol, Conference Room No. 224 & Videoconference

In consideration of
HOUSE BILL NO. 2088, HD3
RELATING TO FINANCING

Chairs Gabbard and Wakai, Vice Chairs Nishihara and Misalucha, and Members of the Committees on Agriculture and Environment and Energy, Economic Development, and Tourism:

Thank you for the opportunity to testify and provide comments on House Bill 2088, HD3, relating to financing. This bill proposes to allow property owners to finance qualifying improvements through a non-ad valorem property assessment. The Hawaii Green Infrastructure Authority ("HGIA") **strongly supports** this bill.

After meeting with the local stakeholders that have an interest in the bill, including the Hawaii Bankers Association, Hawaii Financial Services Association, representatives of Residential Pace, Commercial Pace and individual local bank representatives, we all agreed to the following three changes in the bill:

1. Remove the Residential Property Assessed Financing Program from the bill and make the bill only apply to Commercial PACE;
2. Strengthen the "Lender Consent" language, giving existing mortgage holders "sole and absolute discretion" to withhold Lender Consent; and
3. Provide an exception for members of the Hawaii Bankers Association and Hawaii Financial Services Association to automatically be enrolled as Property Assessed Financing Lenders. All other interested commercial lenders will need to be qualified by HGIA, the administrator of the program.

Additionally, in order to alleviate concerns from the Counties on the additional work and resources that may be required to upgrade its billing systems to accommodate this special tax assessment; we are including the option for "stand-alone" special tax bills to be serviced by HGIA. As a result, this bill no longer requires an appropriation and HGIA requests the elimination of the establishment of the Environmental and Economic Development Revolving Loan Fund and any other state fiscal related references from this bill.

HGIA respectfully requests the following additional amendments:

1. Remove reference to "residential property" throughout the document and replace remaining references to "property" with "commercial property"'

2. Because homeowners will no longer be eligible for financing, beginning on page 4, line 3, amend sentence as follows:

   Providing non-traditional financing options to assist [~~low- and moderate-income homeowners and other~~] eligible commercial property owners for the upgrade, conversion, or connection to municipal or private wastewater systems, installation of energy conservation, or renewable energy retrofits, improve a property's resilience and remove health hazards while facilitating other allowable purposes by addressing access to capital obstacles and enabling the financing of qualifying improvements through the execution of property assessment financing contracts.

3. Because the purpose of the bill is to now only authorize commercial property assessed financing, beginning on page 4, line 19, amend sentence as follows:

   The purpose of this Act is to [~~establish an at- or below-market interest loan program and~~] authorize property assessed financing for commercial properties and establish a property assessed financing program [~~environmental, economic recovery, and economic diversification projects and initiatives~~].

4. As we will not be establishing an Environmental and Economic Development Revolving Loan Fund, beginning on page 5, line 3, amend sentence as follows:

   SECTION 2. Chapter 196, Hawaii Revised Statutes, is amended by adding [~~two~~] one new section[~~s~~] to part IV to be appropriately designated and to read as follows:

5. To eliminate additional work for the Counties' real property tax office, add the option for a stand-alone bill to be serviced by the authority, beginning on page 8, line 4, amend sentence as follows:

   (b) The authority, as administrator of the property assessed financing program, shall coordinate with each county to bill and collect a non-ad valorem special tax assessment on a

benefitted property as a repayment mechanism on the real property tax bill or stand-alone bill.

6. To remove the Residential Property Assessed program from the bill, beginning on page 10, line 4, delete reference to residential property.

7. As the bill will only allow property assessed financing on commercial properties, beginning on page 11, line 3, amend this section as follows:

[~~(B)~~] [~~For a commercial property:~~]

(A[~~i~~]) The commercial property owner is able to borrow the amount of the property assessed financing using reasonable commercial underwriting practices;

(B[~~ii~~]) All property taxes applicable to such commercial property, and any other assessments levied on the same bill as property taxes, are paid; and

(C[~~iii~~]) There are no involuntary liens applicable to such commercial property, including but not limited to construction liens, that will not be paid or satisfied upon the closing of the financing;

(4) The property assessed financing assessment contract shall include the amount of an annual assessment over a fixed term that will appear as a non-ad valorem special tax assessment on the property owner's tax bill or stand-alone bill annually;

(5) The property assessed financing assessment contract, or summary memorandum of such contract, shall be recorded by the property assessed financing lender in the public records of the State or of the county within which the property is located within five days after execution by the parties to the contract. The recorded contract shall provide constructive notice of the levy of, and obligation of the property owner to pay, the property assessed financing assessment. The property assessed financing assessment to be levied on the commercial property shall be a non-ad valorem special tax assessment and a lien against the commercial property on a parity with the lien of general real property taxes and the lien of any other assessments levied under section 46-80, from the date of recordation entered into pursuant to this section until paid or satisfied in accordance with the property assessed financing assessment contract;

8. Beginning on page 12, line 19, delete reference to residential property.

9. To strengthen the Lender Consent language, beginning on page 15, line 3, amend sentences as follows:

   [~~(B)~~] [~~For a commercial property, b~~] Before entering into a property assessed financing assessment contract for any commercial property, the property owner shall provide the authority and the property assessed financing lender with evidence of the written consent of each holder or loan servicer of any mortgage that encumbers or otherwise secures such commercial property, where such consent is in the sole and absolute discretion of each holder or loan servicer of a mortgage on the property, at the time of the execution of the property assessed financing assessment contract by the parties; provided that such consents shall be in a form prescribed by the authority;

   (7) At or before the time a purchaser executes a contract for the sale and purchase of any commercial property for which a non-ad valorem special tax assessment has been levied under this part and has an unpaid balance due, the seller shall give the prospective purchaser a written disclosure statement notifying the prospective purchaser of the property assessed financing assessment;

10. To provide the option for the authority to service the special property tax bill, beginning on page 16, line 18, amend sentence with:

    Each property assessed financing assessment so approved for collection shall be a non-ad valorem special tax assessment and shall be collected in the same manner as general real property taxes are collected and be subject to the same penalties and same procedure, sale, and lien priority, subject to this section, in case of delinquency as is provided by general law for default of the payment of real property taxes, unless another procedure, including stand-alone billing and collection, is agreed upon by the authority and the director.

11. Beginning page 22, line 14, revise the definition of “Commercial property” as follows:

    “Property” or “[~~C~~}commercial property" means any existing or new real property not defined as a residential property, and shall include any such property where there is a leasehold or possessory interest in such property and any multi-family dwelling or townhouse consisting of five or more units as well as agricultural property.

12. To allow members of the Hawaii Bankers Association and Hawaii Financial Services Association to automatically be enrolled as Property Assessed Financing Lenders, beginning on page 23, line 18, amend the definition of "Property assessed financing lender" as follows:

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

13. To remove the Environmental and Economic Development Revolving Loan Fund from the bill, beginning on page 24, line 18, amend Sections (c) and (d) as follows:

"(c) In the performance of the functions, powers, and duties vested in the authority by this part, the authority shall administer the clean energy and energy efficiency revolving loan fund pursuant to section 196-65.5 and [~~the environmental and economic development revolving loan fund pursuant to section 196-A and~~] may:

(d) The authority shall submit an annual report for the clean energy and energy efficiency revolving loan fund [~~and environmental and economic development revolving loan fund~~] to the legislature no later than twenty days prior to the convening of each regular session describing the projects funded and the projected energy[~~, environmental, and economic development~~] impacts."

14. To allow the remaining parts of the bill to remain in effect in the event a part is deemed unenforceable or unimplementable, beginning on page 27, line 20, replace Section 6 as follows and delete language in Section 7:

SECTION 6. Every provision in this Act and every application of the provisions in this Act are severable from each other as a matter of state law. If any application of any provision in this Act to any person or group of persons or circumstances is found by a court to be invalid, the remainder of this Act and the application of the Act's provisions to all other persons and circumstances may not be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of

this Act invalid in a large or substantial fraction of relevant cases, the remaining valid applications shall be severed and allowed to remain in force."

15. As only one new section is being added with this bill, beginning on page 28, line 7, re-number sections 8, 9 and 10, and revise the sentence as follows:

Section 7[~~8~~]. In codifying the new section[~~s~~] added by section 2 of this Act, the revisor of statutes shall [~~substitute~~] insert the appropriate section number[~~s for the letters used~~] in designating the new section[~~s~~] in this Act.

16. On page 29, revise the Report Title as follows:

Hawaii Green Infrastructure Authority; Counties; Property Assessed Financing; Cesspool Upgrade and Conversion; Property Resilience[~~; Environmental and Economic Development Financing; Appropriation~~]

17. On page 29, revise Description as follows:

Creates a Property Assessed Financing Program [~~the environmental and economic development revolving loan fund~~] under the administration of the Hawaii green infrastructure authority. Allows commercial property owners to finance qualifying improvements through a non-ad valorem property assessment. [~~Appropriates funds.~~] Effective 7/1/2[~~100~~]022.

Thank you for this opportunity to provide comments and testify in strong support of HB 2088, HD3.

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Agriculture and Environment
and
Senate Committee on Energy, Economic Development, and Tourism
Monday, March 21, 2022
1:00 PM
Conference Room 224 & Videoconference

On the following measure:
H.B. 2088, HD3, RELATING TO FINANCING

Chairs Gabbard and Wakai and Members of the Committee:

My name is Dean Nishina, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Division of Consumer Advocacy. The Department offers comments on this bill.

The purpose of this bill is to create the environmental and economic development revolving loan fund under the administration of the Hawaii Green Infrastructure Authority (HGIA) and to allow property owners to finance qualifying improvements through a non-ad valorem property assessment.

The HD3 version of clarifies that cesspools may be upgraded or converted to Director of Health-approved wastewater systems, rather than just to septic systems or aerobic treatment units; by removing language would have authorized the HGIA to issue revenue bonds; by specifying that delinquent liens do not trigger the acceleration of the Property Assessed Financing Assessment Contract; and, by clarifying that the on-bill

repayment mechanism can only be used as approved in the Green Energy Money $aver On-Bill Program. This HD3 version amends the bill by changing the appropriations to unspecified amounts.

Since the measure proposes to expand the areas and purposes to which HGIA may provide funding, it is important to safeguard against the possibility that electric customers may be burdened with the costs and/or risks associated with investments that do not relate to electric services. Thus, the Department supports the bill's intent to establish other forms of financing for HGIA to use, when HGIA may finance interests other than clean energy technology and infrastructure.

To that point, consistent with the stated intent of this measure, the Department appreciates how the bill's proposed HRS section 196-A(a)(3) excludes funds collected as payment of loans and interest payments from funds advanced from proceeds of green energy market securitization bonds, and proposed HRS section 196-A(a)(5) keeps moneys collected related to green energy market securitization bonds separate. However, to more closely match the measure's stated intent to use public funds, the Department believes that additional modifications may be necessary to ensure that ratepayer funds are not used to fund or otherwise guarantee the environmental and economic development loan program or environmental and economic revolving loan fund. Along those lines, the Department still respectfully suggests the following amendments to the proposed HRS section 196-A(a)(5) to read as follows:

> (5) Any fees collected by the authority pursuant to this section; provided that moneys collected as a result of the funds advanced from proceeds of the green energy market securitization bonds shall be kept separate so that no such separate moneys shall be used to fund or guarantee any environmental and economic development revolving loan purposes.

In addition, proposed HRS section 196-64(c)(3), which would allow the HGIA to "[u]tilize all repayment mechanisms, including the <u>on-bill repayment mechanism, as authorized by the</u> green energy money saver on-bill program, <u>property assessed</u>

financing assessment program, financing tools, servicing and other arrangements, and sources of capital available to the authority []", could lead to electric ratepayer funds being used for unintended purposes. The bill proposes to not require (or allow) Public Utilities Commission (PUC) oversight of how the funds used for the environmental and economic development revolving fund would be used (see the proposed HRS section 196-A, where it reads that the "[f]unds deposited into the environmental and economic development revolving loan fund shall not be under the jurisdiction of nor be subject to public utilities commission approval"). Thus, the proposed language creates a dilemma, where the language could be read to still allow the use of on-bill repayment mechanism to be used for the proposed fund. While the Department recognizes that HD3 may have intended to address this concern ("as authorized by the green energy money saver on-bill program"), the Department believes that there is remaining ambiguity that could allow the electric on-bill program to be used in an unintended manner. The Department acknowledges that the PUC should not need to review how the environmental and economic development funds are used, but the proposed language could still allow funds collected from electric utility customers to be used for non-electric service purposes and is not in the interest of those customers. Therefore, the Department respectfully offers that it would be clearer to specify that the repayments from the Green Energy Money $aver On-Bill Program are an allowable use only for the existing clean energy and energy efficiency revolving loan fund and not for the new environmental and economic development revolving loan fund purposes.

Thank you for the opportunity to testify on this bill.

OFFICE OF CLIMATE CHANGE, SUSTAINABILITY AND RESILIENCY

CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11th FLOOR • HONOLULU, HAWAI'I 96813
PHONE: (808) 768-2277 • EMAIL: resilientoahu@honolulu.gov • INTERNET: www.resilientoahu.org

RICK BLANGIARDI
MAYOR

M ATTHEW GONSER, AICP, CFM
EXECUTIVE DIRECTOR &
CHIEF RESILIENCE OFFICER

MONDAY, MARCH 21, 2022, 1:00 P.M.

STATE OF HAWAI'I
SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
AND AGRICULTURE AND ENVIRONMENT

TESTIMONY ON HOUSE BILL 2088, HD3
RELATING TO FINANCING

BY,

MATTHEW GONSER
EXECUTIVE DIRECTOR AND CHIEF RESILIENCE OFFICER
OFFICE OF CLIMATE CHANGE, SUSTAINABILITY AND RESILIENCY

Dear Chair Wakai, Chair Gabbard, and Members of the Committees:

The City and County of Honolulu ("City") Office of Climate Change, Sustainability and Resiliency ("CCSR") **supports HB2088, HD3** which establishes an at- or below-market interest loan program and authorizes property assessed financing for environmental, economic recovery, and economic diversification projects and initiatives.

Achieving the state's and City's zero emissions clean economy target by 2045, as well as increasing resilience to growing environmental vulnerabilities due to climate change, requires a multitude of innovative solutions, both within government operations and financing options. Non-traditional financing mechanisms capable of attracting private capital, such as a Property Assessed Financing Program as proposed in this bill, have the potential to unlock a new market to support residents in making affordable improvements that address some of O'ahu's most critical needs: aging cesspools, transitioning to clean energy, and resilience to natural hazards.

CCSR reported to the Honolulu City Council in January 2020[1] after conducting research on potential feasibility of a similar financing mechanism just for clean energy improvements known as Commercial Property Assessed Clean Energy (C-PACE) Program, and found that a well-designed C-PACE program could complement

1 CCSR Response to City Council Resolution 19-133, FD1; https://hnldoc.ehawaii.gov/hnldoc/document-download?id=5274.

fundamental energy- and cost-saving public policies outlined in the *O'ahu Resilience Strategy* to help advance City goals to reduce energy use and associated greenhouse gas emissions, improve affordability for island residents, build resilience to the impacts of climate change, and foster economic development.

CCSR acknowledges the potential notable set up costs and considerations for the City in implementation of such a property assessed financing program as proposed in HB2088, HD3, and as such, supports the proposal's state-wide approach for the City to opt into and partner with the Hawai'i Green Infrastructure Authority in implementation.

With more than seven billion dollars already invested in property assessed financing nationally for clean energy programs alone[2], such financing has become a proven mechanism for supporting increased resilience and affordability for our local residents. Thank you for the opportunity to testify in support of HB2088, HD3.

2 Property Assessed Clean Energy Programs, U.S. Department of Energy Office of Energy Efficiency & Renewable Energy; https://www.energy.gov/eere/slsc/property-assessed-clean-energy-programs.

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305 Honolulu, Hawaii 96813 Tel. 536-4587

S SUBJECT: REAL PROPERTY, Property Assessed Financing

BILL NUMBER: HB 2088 HD 3

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Creates the environmental and economic development revolving loan fund under the administration of the Hawaii Green Infrastructure Authority. Allows property owners to finance qualified improvements through a non-ad valorem property assessment. This is a variant of a residential property assessed clean energy, or PACE, program that has been recognized and described by the U.S. Department of Energy. There are significant advantages and detriments to this program.

SYNOPSIS: Adds new sections to chapter 196, HRS, one of which allows a residential property owner to apply to the county in which the property is located for funding to finance a qualifying improvement. The financing agreement is to include an annual assessment over a fixed term that will appear annually on the owner's property tax bill, where such assessment is to constitute a lien of equal dignity to county taxes and assessments from and after the date of recordation of the financing agreement.

Defines a qualifying improvement as septic systems or aerobic treatment unit systems or connections to sewer systems, clean energy technologies, efficiency technologies, resiliency measures, and other improvements approved by the authority.

Provides that at least thirty days before entering into a financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. Provides that the senior lienors may not accelerate their debt solely as a result of the homeowner entering into the financing agreement, but may increase the required monthly escrow by an amount necessary to annually pay the improvement assessment. Makes additional technical and conforming amendments.

EFFECTIVE DATE: July 1, 2100

STAFF COMMENTS: This bill is an Administration bill sponsored by DBEDT and designated BED-13 (22).

The proposed program is a variant of a program known nationally as a PACE (property assessed clean energy) program.

This bill essentially turns the counties into lenders that are supposed to finance qualified improvements. However, county governments typically don't lend money as a core government function and aren't expected to know the first thing about lending money. Sure, they can partner

with the Hawaii Green Infrastructure Authority, which is a money lending agency of sorts. Without some assurance that the proper competencies will be exercised by county and state governments in responsible fashion, it may be a steep uphill struggle, to say the least, to get revenue bond underwriters on board.

PACE programs are in other areas around the country and can work with proper preparation and coordination of government resources. The U.S. Department of Energy summarized the advantages and disadvantages of PACE programs thus:

Advantages

- Allows for secure financing of comprehensive projects over a longer term, making more projects cash flow positive.
- Spreads repayment over many years, seldom requires an upfront payment, and removes the requirement that the debt be paid at sale or refinance.
- Can lead to low interest rates because of the high security of loan repayments attached to the property tax bill.
- Helps some property owners deduct payments from their income tax liability.
- Allows municipalities to encourage energy efficiency and renewable energy without putting general funds at risk.
- Taps into large sources of private capital.

Disadvantages

- Available only to property owners.
- Cannot finance portable items (screw-in light bulbs, standard refrigerators, etc.).
- Can require dedicated local government staff time.
- May require high legal and administrative setup obligations.
- Not appropriate for investments below $2,500.
- Potential resistance by lenders/mortgage-holders whose claims to the property may be subordinated to the unpaid assessment amount should the property go into foreclosure.

As of 2019, over 200,000 homeowners have made $5 billion in energy efficiency and other improvements to their homes through PACE financing. Typical home improvement projects include replacement of broken or failing heating and cooling systems and hot water heaters; air sealing and insulation; ENERGY STAR doors, windows, roofing; ENERGY STAR appliances; solar photovoltaic systems; and water conservation and resiliency measures (e.g., seismic retrofits and wind hazard protection). Residential PACE financing programs are currently available in the following states:

- California (10 active programs)

- Florida (4 active programs)
- Missouri (3 active programs).

U.S. Department of Energy, Property Assessed Clean Energy Programs, at https://www.energy.gov/eere/slsc/property-assessed-clean-energy-programs.

Digested: 3/17/2022

HB-2088-HD-3
Submitted on: 3/18/2022 3:05:36 PM
Testimony for EET on 3/21/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ted Bohlen	Testifying for Hawai‘i Reef and Ocean Coalition	Support	Written Testimony Only

Comments:

To: The Honorable Glenn Wakai, Chair, the Honorable Bennette Misalucha, Vice Chair, and members of the Senate Committee on Energy, Economic Development, and Tourism and

The Honorable Michael Gabbard, Chair, The Honorable Clarence Nishihara, Vice Chair, and Members of the Senate Committee on Agriculture and Environment

Re: Hearing **HB2088 HD3 RELATING TO FINANCING.**

Hearing: Monday, March 21, 2022, 1:00 p.m., CR 224 and by videoconference

Aloha Chairs Wakai and Gabbard, Vice Chairs Misalucha and Nishihara, and Members of the Committees on Energy, Economic Development, and Tourism and Agriculture and Environment:

The Hawaii Reef and Ocean Coalition (HIROC) was formed in 2017 with coral scientists, educators, legislators, filmmakers and advocacy groups to protect coral reefs and marine life. Hawai‘i Reef and Ocean Coalition **STRONGLY SUPPORTS** this bill!

Hawai‘i needs to begin upgrading cesspools now in order to protect its drinking water and surface waters. Cesspools do not treat household wastewater, but instead release untreated contaminants and nutrients, which pollute drinking water and nearshore waters, causing public health hazards and environmental damage to coral reefs and other marine species.

The costs of upgrading cesspools are unaffordable for many homeowners. One of the primary roadblocks to increasing rates of cesspool conversion is financing. Without this bill, most homeowners won't have options for financing the mandated conversions/upgrades. This bill will help homeowners finance those upgrades by enabling property-assessed financing. Non-traditional financing mechanisms like property assessed financing can help homeowners and others access capital through a loan fund to finance upgrades of cesspools. The bill is modeled after successful bills in other states. Thirty-seven states and D.C. have property-assessed financing legislation. This bill creates an environmental and economic development revolving loan fund to be administered by the Hawai‘i Green Infrastructure Authority. This revolving loan fund model, which has worked in many other states, can unlock new markets and inject needed capital to help resolve the serious statewide water pollution problem caused by cesspools. This bill provides the Counties with several options:

• the option to participate (it’s not a mandate);

• The option to issue bonds (or not); and • It will provide funds to help upgrade the County’s billing systems to accommodate the special tax assessments.

This bill is an innovative way to **provide financing to assist in cesspool upgrades, thereby reducing wastewate pollution!**

Please pass this bill!

Mahalo!

Hawai‘i Reef and Ocean Coalition (by Ted Bohlen)

MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

HEARING BEFORE THE SENATE COMMITTEES ON
AGRICULTURE AND ENVIRONMENT and
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 224
MONDAY, MARCH 22, 2022 AT 1:00 P.M.

To The Honorable Senator Mike Gabbard, Chair
The Honorable Senator Clarence K. Nishihara, Vice Chair
Members of the committee on Agriculture and Environment
To The Honorable Senator Glenn Wakai, Chair
The Honorable Senator Bennette E. Misalucha, Vice Chair
Members of the committee on Energy, Economic Development and Tourism

SUPPORTING HB2088 HD3 RELATING TO FINANCING

The Maui Chamber of Commerce **supports HB2088 HD3** which creates the environmental and economic development revolving loan fund under the administration of the Hawaii green infrastructure authority and allows property owners to finance qualifying improvements through a non-ad valorem property assessment. Qualifying improvements include much needed cesspool replacements and installation of wind resistive devices.

The Chamber believes that the sooner cesspool owners convert to a less polluting wastewater system, the quicker our water systems (ground water & near shore water) can recover from potential seepage issues. We support assisting homeowners with innovative, non-traditional financing options and repayment mechanisms help bridge financing gaps for the conversion of their cesspools.

For this reason, we **support HB2088 HD3** and request it be passed.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

62 North Market St., Suite 302, Wailuku, Hawaii 96793 808-244-0081 legislation@MauiChamber.com MauiChamber.com

Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

March 18, 2022

The Honorable Glenn Wakai, Chair
The Honorable Bennette E. Misalucha, Vice Chair
Members of the Committee on Energy, Economic Development, Tourism, and Technology

The Honorable Mike Gabbard, Chair
The Honorable Clarence K. Nishihara, Vice Chair
Members of the Committee on Agriculture and Environment

Hearing Date: March 21, 2022, 1:00pm, State Capitol Via Videoconference

Re: HB 2088 HD3 Relating to Finance

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

HB 2088 creates the environmental and economic development revolving loan fund under the administration of the Hawaii green infrastructure authority. Allows property owners to finance qualifying improvements through a non-ad valorem property assessment and appropriate funds.

The MBAH is opposed to the bill as it is currently drafted. We understand that the Hawaii Banker's Association is working on a compromise bill. We are in support of their efforts and are in support of the version they have offered.

Thank you for the opportunity to present this testimony.

Linda Nakamura
Mortgage Bankers Association of Hawaii

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law
P.O. Box 4109
Honolulu, Hawaii 96812-4109
Telephone No.: (808) 521-8521

March 21, 2022

Senator Glenn Wakai, Chair
Senator Bennette E. Misalucha, Vice Chair
and members of the Senate Committee on Energy, Economic Development & Tourism
Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair
and members of the Senate Committee on Agriculture & Environment
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **H.B. 2088, H.D. 3 (Financing)**
Hearing Date/Time: Monday, March 21, 2022, 1:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA **offers comments on this Bill**.

This Bill (a) creates the environmental and economic development revolving loan fund under the administration of the Hawaii green infrastructure authority; (b) allows property owners to finance qualifying improvements through a non-ad valorem property assessment; and (c) appropriates funds.

HFSA opposes this Bill as currently drafted (H.D. 3) for various reasons including: this Bill would enable a lien for certain financed improvements on a residential or commercial property to be a super-lien, i.e. the lien of the "property assessed financing assessment" would have priority over and would be senior to all existing mortgages on the property.

However, **the HFSA and other stakeholders have agreed conceptually to revise this Bill. The proposed Senate Draft 1 version should**:

1. Delete all provisions regarding property assessed financing for residential properties;

2. Keep the provision from H.D. 3 (page 15, beginning on line 3) that when a lender is financing an improvement on any commercial property, the written consent of each holder or loan servicer of any mortgage on the property is required before any property assessed financing assessment contract can be entered into by the property owner and the lender. To enhance the consent provision, **the HFSA agrees with the Hawaii Bankers Association's** proposal to add in: "***provided that such holder and loan servicer shall have the sole and absolute discretion regarding its decision to grant or decline to grant consent; provided further that any property assessed financing assessment contract entered into without having obtained all holder's and loan servicer's written consent shall be null and void.***";

3. For the definition of "property assessed financing lender" in H.D. 3 (page 23, beginning on line 18), add in that it also means "***a financial institution as defined in section 412:1-109***"; and

4. Revise the preamble of this Bill on pages 1-5 to be consistent with the above revisions.

When this testimony was submitted, we hadn't received a draft of the proposed S.D. 1 to review. We reserve the right to comment on and support (or not support) the proposed S.D. 1 after we review it.

Thank you for considering our testimony.

Marvin S.C. Dang

MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

PETROS PACE
FINANCE

O: 512.599.9038 ◆ **FAX:** 512.532.0792
300 West 6th St. Suite 1540, Austin, Texas 78701
www.petros-pace.com

March 18, 2022

The Hon. Glenn Wakai, Chair
The Hon. Bennette Misalucha, Vice Chair
Energy, Economic Development, and Tourism

The Hon. Mike Gabbard, Chair
The Hon. Clarence Nishihara, Vice Chair
Agriculture and Environment

State Capitol
415 South Beretania Street
Honolulu, HI 96813

VIA EMAIL

RE: HB2088 HD3

Dear Chair Wakai and Chair Gabbard and members of the committees:

I am writing on behalf of Petros PACE Finance, one of the nation's largest commercial PACE capital providers in the country, and a leader in developing and innovating commercial PACE policy and programs. We are writing in support of the HB2088 HD3 and the amendments submitted by the Hawaii Green Infrastructure Authority that reflect the agreement reached by stakeholders, including the C-PACE industry and the Hawaii Bankers Association, in a meeting convened by Chair Wakai on March 16th.

The agreement, as it affects commercial PACE, is simple: at the request of the Bankers, we strengthened the language on lender consent to make it clear that they have sole and absolute discretion in their consent. In addition, the Bankers and the Financial Services companies want to be exempt from the screening process by HGIA to qualify as potential lenders – something that no other states grant any classification of lenders -- and we accommodated that request as well. We want local banks to be C-PACE lenders. In Colorado, nearly half of all C-PACE projects are financed by local banks.

This is a brand-new form of commercial financing accessible to commercial properties that you will authorize by passing this bill, and it provides new opportunities for the banks of Hawaii to service their commercial customers. Even though companies like ours originated the market, it is a fact that banks are beginning to enter the market in strength. And we welcome the

competition because banks have more client and customers they can reach with their trusted relationships to bring the benefits of PACE to more properties.

Therefore, we are concerned by recent requests by the Hawaii Bankers and the Hawaii Financial Services Associations that seek to curtail competition under the guide of regulation.

Commercial PACE providers are not regulated by state law anywhere in this country.[1] Program administrators such as HGIA are charged with screening potential capital providers for knowledge and experience in underwriting, access to capital, and overall experience with commercial real estate investment. We are not banks. We don't take deposits. We don't do mortgages and we don't lend to homeowners. We invest private capital in commercial properties, pure and simple.

In fact, we are recognized by the Securities and Exchange Commission as Accredited Investors, which requires entities like ourselves to meet certain income, net worth, and other qualifications. We are also recognized by the SEC as Qualified Institutional Buyers (QIBs), a class of investor that by virtue of being a sophisticated investor, does not require the regulatory protection that the Securities Act's registration provisions give to investors. Typically, a QIB is a company that manages a minimum investment of $100 million in securities on a discretionary basis or is a registered broker-dealer with at least a $10 million investment in non-affiliated securities. This would address certain issues raised by the Commissioner of Financial Institutions.

Licensing and regulatory regimes are designed to protect consumers and homeowners. Even Commissioner Ikeda has said that commercial businesses do not have the same regulatory considerations as consumer finance. For commercial-only businesses like the mine, that have built a vibrant commercial PACE industry that is now recognized as a form of green investment, it makes no sense to require state licensing and regulation of commercial investment – especially where it does not exist in a state like Hawaii.

While the Bankers are suggesting this language to prevent companies like mine from entering the Hawaii market, they do so by using a blunt instrument – the regulation of commercial investment -- that is a dangerous policy precedent for commercial finance in Hawaii. Debt funds, venture funds, pension, and retirement funds – many of whom also fall under the QIB and Accredited Investor categories -- all invest in commercial real estate in Hawaii. For all

---

[1] CPACE capital providers who do not finance properties worth $1m or less ***are exempt from licensing*** in California. *See* California Financing Law Section 22018 (b)(2), at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=22018&lawCode=FIN

Since CPACE loans are typically in the $2-5M range, that means the average property value is around $10-25m, far *above* the threshold and thus no CPACE providers require licensing in California. Only RPACE companies are license in California. See https://dfpi.ca.gov/pace-program-administrators/

communities whose economies are still recovering from the impact of the pandemic, the message should be to encourage, not chill, commercial investment.

The Hawaii Bankers do not control all investment in Hawaii. Hawaii and the Hawaii economy are an important player in the international and national financial markets, particularly in the hotel and resort community. There is room enough for all of us in the commercial PACE market here.

There are projects now on Oahu, on Maui, on Kauai and the Big Island that would like to receive the benefits of CPACE financing. And all of Hawaii will benefit from of cleaner air, clean water, and the prevention of loss from natural disasters.

HB2088 is an important step towards establishing a successful commercial PACE program for businesses and property owners in Hawaii. The amendments proposed by HGIA reflect the consensus of stakeholders. We urge your support for advancing the amended HB2088 HD3 through the legislative process.

Sincerely

MICHAEL YAKI
Senior Vice President & Sr. Counsel
Policy and Programs
Petros PACE Finance, LLC

Hawaii Bankers Association

TEL:
808-524-5161
FAX:
808-521-4120
ADDRESS:
1000 Bishop Street, Suite 301B
Honolulu, HI 96813-4203

Presentation to The Committee on Energy,
Economic Development, Tourism, and Technology

The Committee on Agriculture and Environment

March 21, 2022, 1:00 p.m.
State Capitol Via Videoconference

Testimony on HB 2088, HD 3 With Comments

TO: The Honorable Glenn Wakai, Chair
The Honorable Bennette E. Misalucha, Vice Chair
Members of the Committee

The Honorable Mike Gabbard, Chair
The Honorable Clarence K. Nishihara, Vice Chair
Members of the Committee

My name is Neal K. Okabayashi, Executive Director of the Hawaii Bankers Association (HBA). HBA represents seven Hawai`i banks and three banks from the continent with branches in Hawai`i.

In previous hearings, we have made our public policy points justifying our opposition to a bill that would establish Residential PACE (R-PACE) and Commercial PACE (C-PACE) programs. However, after discussions, it appears that we have reached a consensus agreement on the substance of a Senate amendment to HB 2088, HD 3, which agreement resolves most of our public policy concerns.

The agreements on substantive issues are:

1. Deletion of language establishing a R-PACE program; and
2. Enhancement of the C-PACE consent language.

Our proposed consent language is as follows:

> (B) For a commercial property, before entering into a property assessed financing assessment contract for any commercial property, the property owner shall provide the authority and the property assessed financing lender with evidence of the written consent of each holder **and** loan servicer of any mortgage that encumbers or otherwise secures such commercial property at the time of the execution of the property assessed financing assessment contract by the parties provided that such consent shall be in a form prescribed by the authority; **provided that such holder and loan servicer shall have the sole and absolute**

discretion regarding its decision to grant or decline to grant consent; provided further that any property assessed financing assessment contract entered into without having obtained any holder's and loan servicer's written consent shall be null and void.

Thank you for the opportunity to submit this testimony with comments on HB 2088, HD3, supporting the consensus agreement, subject to approval of the language of the proposed SD1, which we have not yet received. Please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161

Hawaii Solar Energy Association
Serving Hawaii Since 1977

Testimony of The Hawaii Solar Energy Association Regarding HB 2088 HD3, Relating to Financing, Before the Senate Committees on Energy, Economic Development, and Tourism and Agriculture and Environment

Monday, March 21, 2022

Aloha Chairs Wakai and Gabbard, Vice-Chairs Misalucha and Nishihara, and committee members, my name is Rocky Mould and I am the Executive Director of the Hawaii Solar Energy Association (HSEA). We **strongly support HB 2088 HD3 in its current form,** which establishes a revolving loan fund and property assessment mechanism to provide 'at or below market' financing or other authorized financial assistance to eligible public, private, or nonprofit borrowers – **including both the residential and commercial markets.**

HSEA members include the majority of locally owned and operated renewable energy companies in the State of Hawaii. We employ thousands of local residents in a diverse set of well-paying jobs including, but not limited to, contractors, designers, electricians, engineers, financiers, installers, salespeople, and service technicians.

HSEA advocates for policies that provide cost-effective, equitable, and impactful solutions to achieve Hawaii's climate and resilience goals by enabling residents and businesses to invest in and benefit from the transition to clean energy. Rooftop solar PV is the leading contributor to Hawaii's clean energy transition making up 45.7% of all renewable energy in the State.[1] In recent years, Hawaii has leapt forward and leads the nation by far in pairing distributed solar with energy storage systems.[2] These investments provide resilient power systems that reduce energy burden for residents and businesses, and contribute to energy security and reliability as we decarbonize our economy and retire fossil fuel power plants such the AES coal plant.

A revolving loan fund that has the authority to tap a variety of funding sources, deploy 'at or below market rate' loans, and use other funding mechanisms is a powerful tool to invest in resilience, renewable energy and energy efficiency measures for underserved markets and

[1] See Hawaiian Electric's "Key Performance Metrics, Renewable Portfolio Standard compliance" available at https://www.hawaiianelectric.com/about-us/key-performance-metrics/renewable-energy.
[2] See Lawrence Berkeley National Laboratory, *Tracking the Sun, Pricing and Design Trends for Distributed Photovoltaic Systems in the United States* (2021 Edition) at Slide 14 (finding that "Hawaii has, by far, the highest storage attachment rates of any state").

P.O. Box 37070 Honolulu, Hawaii 96837
SOLAR HOTLINE (808)232-8371

communities. ***These investments not only serve key public policy goals that make our island more resilient to the accelerating risks and costs of climate change, but they also save money and reduce risks for borrowers and lenders which in turn improves the ability of borrowers to pay back their loans.***

HSEA **strongly supports HB 2088 HD3** and respectfully asks the committee to advance this measure for **both residential and commercial borrowers**.

Thank you for the opportunity to testify.

HOLU HOU ENERGY

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair

SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
Senator Glenn Wakai, Chair
Senator Bennette E. Misalucha, Vice Chair

DATE: Monday, March 21, 2022
TIME: 1:00pm
PLACE: CR 224 & Videoconference

Theodore (Ted) Peck
President, Holu Hou Energy
1003 Bishop Street Suite 1840
Honolulu, HI 96813

RE: HB2088, HD3 RELATING TO FINANCING.

Aloha Chairs Gabbard and Wakai, Vice Chairs Nishihara and Misalucha and Members of the Committees

Thank you for the opportunity to provide testimony on this bill. My name is Ted Peck. I am the former Energy Administrator for the State of Hawaii, and have been working in energy development for the last 14 years. I have over thirty years of experience with energy, technology, and policy. My company, Holu Hou Energy, develops commercial, industrial, and utility energy projects in Hawaii, with a focus on difficult-to-penetrate markets and projects. We recently successfully completed a project on Kauai at the Makani Koae low income housing project, providing solar for each unit at the project. We are working on providing lease solar solutions for Hawaiian Homestead homes and low income homes as well, both single family and multifamily projects across the state.

I am very excited about this bill, as it removes a significant barrier for property-rich and cash-poor homeowners, but providing a pathway for funding for non-credit barriers elements of distributed solar for them. Many Hawaiian Homestead homeowners have roofs that are at end-of-life, and the program this bill creates will allow them to finance these roof improvements via their property tax assessment, which both reduces the interest rate and lengthens the term for the loan, significantly driving down the monthly cost of servicing that debt. This program will open the way for them to self-generating electricity, providing further economic relief to them via self-generation of power, as well as participation in grid services or the Emergency Scheduled Dispatch Program, providing the additional benefit to the community of filling the gap left by the closure of the AES Power Plant.

You may recall that I was involved with similar legislation during the 2010 Legislative Session, which did not pass. Now, three quarters of states have Property Assessed programs, benefitting homeowners and businesses across the country. I wanted to provide my appreciation to your committees for supporting such a program, with the additional benefit of providing a means for helping homeowners and businesses clean up environmental issues such as cesspools, where they previously did not have the economic means to do so. In 2010l, the state's financial industry expressed concerns, and have done so now. According to the US Department of Energy, over $7 billion of projects have successfully been financed via these programs, both commercial and residential (https://www.energy.gov/eere/slsc/property-assessed-clean-energy-programs). I look forward to being a part of Hawaii adding to that number. Please pass this bill forward.

Thank you again for the opportunity to testify and for your time in considering my comments.

Respectfully,

Ted Peck
President, Holu Hou Energy

HB-2088-HD-3
Submitted on: 3/20/2022 11:28:51 AM
Testimony for EET on 3/21/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ruta Jordans	Testifying for Zero Waste Kauai	Support	Written Testimony Only

Comments:

Revolving loans will help to get more cesspool conversions. Please support!

nuveen
GREEN CAPITAL

March 20, 2022

The Hon. Chairs Gabbard and Wakai,
Senate Committee on Agriculture and Environment
Senate Committee on Energy, Economic Development, and Tourism
State Capitol, 415 South Beretania Street
Honolulu, HI 96813

RE: HB 2088 HD3

Chairs Gabbard and Wakai and Members of the Committees:

We are writing on behalf of Nuveen Green Capital in support of the objective of HB2088 to enable a statewide Commercial PACE (C-PACE) Program in Hawaii. As a leading provider of C-PACE financing, we have seen firsthand the value that C-PACE programs bring to communities. With C-PACE, businesses save on their monthly utility bills and maintenance costs. C-PACE removes the traditional barriers building owners face to invest in building performance and renewable energy. C-PACE projects create jobs, foster business expansion and retention, upgrade building stock, and encourage resource conservation. C-PACE policy is one of those rare instances where everyone is a winner. **We strongly support this legislation.**

C-PACE funding does not rely on any taxpayer or public dollars. Instead, private financing is facilitated through a voluntary contractual property assessment secured by a senior, nonextinsuighable lien on the property. For commercial properties the assessment is consented to by the existing mortgage holder. This structure allows our company, Nuveen Green Capital, to offer 100% upfront capital at competitive market rates with attractive terms to a range of businesses that need financing to overcome the steep upfront costs of sustainable capital improvements. This structure has enabled over $2B in sustainable investment in 30 states.

We have been working alongside industry stakeholders and the bill authors on proposed amendments that will ensure Hawaii has a bankable program that will attract low-cost private capital, achieve sustainability outcomes, and protect existing mortgage holders, property owners and counties from financial risk.

We encourage the effective date of HB 2088 to be immediate to allow HGIA to promptly move forward on design and launch of the program. Nuveen Green Capital and other capital providers stand ready and available to you and other members of the Legislature to help you achieve your goals. We urge your support for advancing HB2088 through the legislative process.

Sincerely,

Genevieve Sherman
Head of C-PACE Programs & Policy
Nuveen Green Capital
genevieve.sherman@nuveen.com

HB-2088-HD-3
Submitted on: 3/20/2022 12:00:57 PM
Testimony for EET on 3/21/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Maxx Phillips	Testifying for Center for Biological Diversity	Support	Written Testimony Only

Comments:

Please accept the Center for Biological Diversity's testimony in support of House Bill 2088 HD3.

Mahalo,

Maxx Phillips, Esq.

Hawai‘i Director and Staff Attorney

Center *for* Biological Diversity

1188 Bishop Street, Suite 2412

Honolulu, Hawai‘i 96813

mphillips@biologicaldiversity.org

www.biologicaldiversity.org

3/20/2022

EET/AEN Committee
Hawai‘i State Capitol
Honolulu, Hawai‘i 96813

Dear Chairs Wakai and Gabbard, Vice Chairs Misalucha and Nishihara, and members of the Senate Committees on Energy, Economic Development, and Tourism and and Agriculture and Environment

Position: Support HB2088 HD3.

The Surfrider Foundation is a national nonprofit organization dedicated to the protection and enjoyment of our ocean, waves, and beaches. Surfrider maintains a network of over 150 chapters and academic clubs nationwide, including 4 chapters in the Hawaiian Islands. The Surfrider Foundation focuses on many aspects of the environment such as coastal protection, plastic pollution, and water quality.

HB2088 HD3 creates an environmental and economic development revolving loan fund under the administration of the Hawaii Green Infrastructure Authority. It allows property owners to finance qualified improvements (incl. cesspool upgrades) through this loan fund and appropriates funds.

With an estimated 88,000 cesspools, Hawai‘i has one of the highest per capita number of cesspools in the nation. While the state has recognized the crucial need to convert these cesspools to newer technology, the conversion to septic or sewer can be upwards of $30,000. Fortunately, advances in wastewater technology have increased substantially in the last few years and there are more affordable systems available.

One of the primary roadblocks to increasing rates of cesspool conversion is financing. Without this bill, most homeowners won't have options for financing these conversions and mandated upgrades. This bill would establish a revolving loan fund through the Hawaii Green Infrastructure Authority that would help homeowners access capital to convert cesspools. The structure of the revolving loan fund can unlock new markets and inject needed capital into this statewide problem, and it is modeled after successful bills in other states.

Surfrider Foundation maintains a citizen-science water quality monitoring program called the Blue Water Task Force (BWTF) on Kaua‘i, Maui, and O‘ahu that tests for enterococcus, a fecal indicator bacteria. Since 2018, the O‘ahu BWTF has been monitoring water quality in Kāne‘ohe bay at Kahalu‘u due to the high concentration of coastal cesspools in this area. Due to these cesspools, the water near and around Kahalu‘u regularly exceeds state public health standards (see 2021 annual results attached). Without mechanisms and tools to help finance and convert cesspools and other failing wastewater systems, we will continue to pollute our coastal and freshwaters, threatening both environmental and public health.

Thank you for your consideration of this testimony in support of **HB2088 HD3**, submitted on the behalf of the Surfrider Foundation’s 4 Chapters in Hawai‘i, our 357 Hawai‘i members, and the thousands of community members and visitors who utilize the coastal waters of Hawai‘i.

Sincerely,

Lauren Blickley
Hawai‘i Regional Manager
Surfrider Foundation

SURFRIDER FOUNDATION
HAWAI'I REGION

KEY OUTCOMES

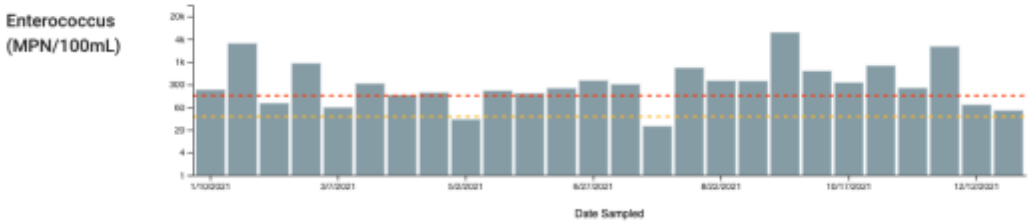
PRIORITY SAMPLE SITE: HAKIPU'U

In the summer of 2020, concerns over pollution from nearby cesspools and construction prompted the communities of Kāne'ohe Bay to launch water quality monitoring. Since August 2020, local volunteers have collected samples from Hakipu'u. Of the 26 Hakipu'u samples tested in 2021, 77% exceeded HDOH health standards for bacterial counts. The high bacterial counts indicate there is human or animal waste present in these waters, which may threaten public health and coral reefs.

77%

OF HAKIPU'U SAMPLES IN 2021 EXCEEDED HEALTH STANDARDS FOR BACTERIAL COUNTS

Hakipu'u Boat Ramp Results



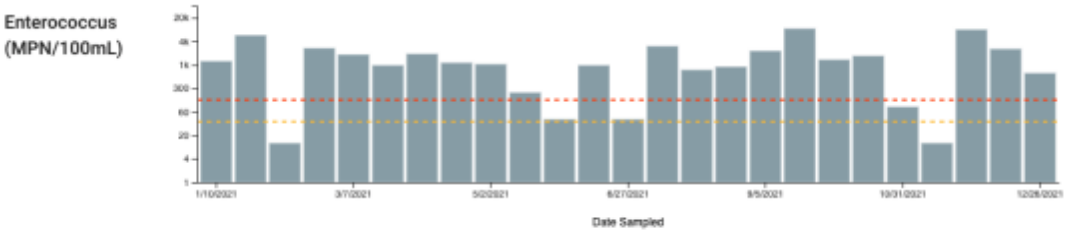
PRIORITY SAMPLE SITES: KAHALU'U

Since 2018, BWTF monitoring has indicated chronically high bacteria levels at Kahalu'u. In 2021, 80% of the samples collected at Kahalu'u exceeded health standards. Two important factors seem to contribute to the high bacteria readings at Kahalu'u. First, Kahalu'u is located at the mouth of a river and thus receives high amounts of land-based runoff. Secondly, Kahalu'u has a high density of coastal cesspools and is considered a Priority 1 Area (wastewater contamination is documented). The chronically high bacteria readings at Kahalu'u indicate the potential impact of wastewater contamination from cesspools.

80%

OF KAHALU'U SAMPLES IN 2021 EXCEEDED HEALTH STANDARDS FOR BACTERIAL COUNTS

Kahalu'u Results



Hawaii Credit Union League
Your Partner For Success
Unite for Good
1654 South King Street
Honolulu, Hawaii 96826-2097
Telephone: (808) 941.0556
Fax: (808) 945.0019
Web site: www.hcul.org
Email: info@hcul.org

Testimony to the Senate Committees on Agriculture & the Environment; and
Energy, Economic Development, & Tourism
March 21, 2022
1:00 PM
Via Videoconference

In Opposition to HB 2088 HD3, Relating to Financing

To: The Honorable Glenn Wakai, and Mike Gabbard, Chairs
The Honorable Bennette Misalucha, and Clarence Nishihara, Vice-Chairs
Members of the Committees

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 48 Hawaii credit unions, representing over 867,000 credit union members across the state.

We are in opposition to HB 2088 HD2, Relating to Financing. This bill would create the environmental and economic development revolving loan fund under the administration of the Hawaii Green Infrastructure Authority.

While we understand that the intent of this measure is to provide a method of financing for cesspool conversion and other “clean energy improvements”, this bill would create the unintended consequence of creating a “super-lien”. Because the structure would make the mortgage lien second to this environmental lien, lenders would have to take the risk into account when making the loan. With the home tied to the environmental loan, there is also a higher risk to the borrower.

Many Hawaii credit unions are small, community-based financial institutions that make mortgage loans. This proposal has the potential to be extremely damaging to such smaller financial institutions who do not have as much access to capital. Small financial institutions are important to the communities they serve because they will often help people build assets, and eventually achieve home ownership,

Further, a loan program such as this is unnecessary in a time when many financial institutions, including credit unions, already offer specialized, low-cost loans for green energy home improvements.

We understand that there may be a compromise version forthcoming. As such, we agree with comments made accordingly by the Hawaii Bankers Association and the Hawaii Financial Services Association.

Thank you for the opportunity to provide comments on this issue.

C-PACE ALLIANCE

LATE

Capital Providers

- Bayview PACE
- Castle Green Finance
- CleanFund Commercial
- Counterpointe SRE
- Dividend Finance
- Inland Green Capital
- Nuveen Green Capital
- PACE Equity
- PACE Loan Group
- Petros PACE Finance
- Stonehill Strategic
- Twain Financial
- White Oak Capital

Law Firms

- Bricker & Eckler
- Chapman and Cutler
- Haynes Boone
- Hirschler
- Kramer Levin
- Norton Rose Fulbright
- Stinson
- Winston & Strawn

Accounting Firms

- Novogradac & Company

Service Provider

- Citadel SPV

March 20, 2022

The Honorable Glenn Wakai, Chair
The Honorable Bennette Misalucha, Vice Chair
Energy, Economic Development, and Tourism

The Honorable Mike Gabbard, Chair
The Honorable Clarence Nishihara, Vice Chair
Agriculture and Environment

Hawaii Senate
Honolulu, HI 96813

Re: HB2088 HD3

Dear Chair Wakai and Chair Gabbard and Members of the Committees:

On behalf of C-PACE Alliance, I am writing to express our strong support of HB2088 HD3 and the amendments submitted by the Hawaii Green Infrastructure Authority (HGIA).

As a business association, C-PACE Alliance authors white papers on industry practices and educates members, state and local policymakers and legislators, and other constituencies about C-PACE financing. For more information, please refer to the website www.c-pacealliance.com.

C-PACE financing is available in 28 states and the District of Columbia as a financing tool for commercial property owners who wish to upgrade their building with energy efficiency or renewable energy improvements. C-PACE financing is supplied entirely by the private sector at no cost or financial risk to the state or local government.

In particular, we would like to confirm that no state requires C-PACE capital providers to be regulated by the state's department of banking or financial institutions. Instead, states typically empower the program administrator (such as HGIA) to determine the qualifications of a firm to provide capital under the program.

Thank you for your leadership on this legislation.

Sincerely,

Clifton G. Kellogg
Executive Director

HB-2088-HD-3
Submitted on: 3/17/2022 12:26:15 PM
Testimony for EET on 3/21/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

Support HB2088 HD3

HB-2088-HD-3
Submitted on: 3/17/2022 7:38:06 PM
Testimony for EET on 3/21/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jennifer Azuma Chrupalyk	Individual	Comments	Written Testimony Only

Comments:

This bill will be obsolete by the time it is enacted.

HB-2088-HD-3
Submitted on: 3/20/2022 9:30:05 AM
Testimony for EET on 3/21/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mark Wolfendale	Individual	Support	Written Testimony Only

Comments:

The Rotary Club of Hanalei Bay actively supported all private and government actions designed to remove sewage from our rivers and bays. These waters are the primary recreation areas for both visitors and residents and must not be polluted by cesspools. The primary obstical is cost for most cesspool owners. This is a simple effective way to address this concern.

LATE

HB-2088-HD-3
Submitted on: 3/20/2022 3:29:56 PM
Testimony for EET on 3/21/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
David Dinner	Individual	Support	Written Testimony Only

Comments:

The only way we are going to get rid of our sensitive cesspools is to assist those who cannot afford it.. Please pass this bill.