

JAN 24 2013

---

---

# 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 reaching its seventy per cent clean energy goal in  
4 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 and greater energy security and  
8 diversification, and to support the achievement of the Renewable  
9 Portfolio Standards and Energy Efficiency Portfolio Standards,  
10 as established in chapter 269, Hawaii Revised Statutes.

11 Further, these infrastructure installations will require  
12 significant amounts of capital, and it is in the public interest  
13 to minimize these costs. A key component to minimizing cost is  
14 reducing the cost of capital required to finance infrastructure  
15 installations.

16           The legislature further finds that up-front costs of green  
17 infrastructure equipment are a barrier preventing many electric

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

9       A green infrastructure financing program administered by  
10 the State that capitalizes on existing ratepayer contributions  
11 for green infrastructure equipment can serve a critical role in  
12 ensuring all Hawaii electricity ratepayers receive the greatest  
13 opportunity to adopt clean energy. The legislature finds the  
14 State would be best served by a State-administered green  
15 infrastructure financing program that: (1) focuses on providing  
16 an alternative means of low-cost financing for green  
17 infrastructure equipment for Hawaii ratepayers, particularly  
18 those ratepayers not currently able to obtain such technology on  
19 reasonable financing terms; (2) utilizes excess loan program  
20 funds as a special fund to finance additional green  
21 infrastructure installations, subject to regulatory guidelines  
22 and approval; and (3) establishes clearly defined program  
23 procedures and targets that encourage effective coordination

1 among state agencies, industry, investors, and other critical  
2 energy industry stakeholders in order to help the State achieve  
3 its clean energy policy mandates.

4 The purpose of this Act is to establish a regulatory  
5 financing structure that authorizes the public utilities  
6 commission and the department of business, economic development,  
7 and tourism to acquire and provide alternative low-cost  
8 financing, to be deployed through a financing program to enable  
9 installations of green infrastructure equipment, achieve  
10 measurable cost savings, and achieve Hawaii's clean energy  
11 goals.

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

15 **"PART . GREEN INFRASTRUCTURE LOANS**

16 **§196-A Definitions.** As used in this part:

17 "Authority" means the Hawaii green infrastructure authority  
18 as described in this section, provided that until the authority  
19 is duly constituted the director may exercise all powers  
20 reserved to the authority.

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

1 "Green infrastructure bond" means any bond issued by the  
2 State under section 269-A.

3 "Green infrastructure charge" means the on-bill charges as  
4 authorized by the public utilities commission to be imposed on  
5 electric utility customers to repay green infrastructure loans  
6 made to finance the purchase or installation of green  
7 infrastructure equipment for clean energy technology, demand  
8 response technology, and energy use reduction and demand side  
9 management infrastructure, programs, and services using the  
10 proceeds of green infrastructure bonds.

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

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

1 "Green infrastructure loan program" and "green  
2 infrastructure loans" means the program established by this  
3 section and loans made to finance the purchase or installation  
4 of green infrastructure equipment for clean energy technology,  
5 demand response technology, and energy use reduction and demand  
6 side management infrastructure, programs, and services as  
7 authorized by the public utilities commission using the proceeds  
8 of green infrastructure bonds or other proceeds. This loan  
9 program may include loans made to private entities, whether  
10 corporations, partnerships, limited liability companies or other  
11 persons, which entities may lease or provide green  
12 infrastructure equipment to electric utility customers, as well  
13 as direct loans to electric utility customers, on terms approved  
14 by the authority.

15 **§196-B Hawaii green infrastructure loan program.** There is  
16 created a Hawaii green infrastructure loan program, which shall  
17 be a loan program as defined under section 39-51. The green  
18 infrastructure loan program shall be administered by the  
19 authority in a manner consistent with section 39-51.

20 **§196-C Hawaii green infrastructure authority.** (a) There  
21 is created the Hawaii green infrastructure authority comprised  
22 of five members as an instrumentality of the State. Three  
23 members shall be the director, the director of finance, and the

1 energy program administrator. The governor shall appoint the  
2 other two members, pursuant to section 26-34. The director  
3 shall be the chairperson of the authority. The authority shall  
4 be placed within the department of business, economic  
5 development, and tourism for administrative purposes, pursuant  
6 to section 26-35.

7 (b) The authority shall utilize the proceeds of green  
8 infrastructure bonds and other amounts in the green  
9 infrastructure special fund established pursuant to section 196-  
10 F for the purposes of making green infrastructure loans to  
11 finance green infrastructure costs, acquiring, owning, or  
12 administering green infrastructure property, or a combination of  
13 these purposes.

14 (c) The authority shall obtain an order from the public  
15 utilities commission requiring the electric utilities to serve  
16 as collection agents to collect the green infrastructure charges  
17 imposed to repay green infrastructure loans and transfer all  
18 green infrastructure charges collected to the authority to be  
19 applied to repay green infrastructure loans. Green  
20 infrastructure charges shall not be considered revenue of the  
21 electric utilities.

22 **§196-D Functions, powers, and duties of the authority.** In  
23 the performance of, and with respect to the functions, powers,

1 and duties vested in the authority by this chapter, the  
2 authority may:

3 (1) Make loans and expend funds to finance the purchase or  
4 installation of green infrastructure equipment for  
5 clean energy technology, demand response technology,  
6 and energy use reduction and demand side management  
7 infrastructure, programs, and services;

8 (2) Hold and invest the proceeds of the green  
9 infrastructure special fund in such investments as  
10 permitted by law and in accordance with approved  
11 investment guidelines established in one or more  
12 financing orders issued by the public utilities  
13 commission pursuant to part \_\_\_\_ of chapter 269;

14 (3) Hire employees necessary to perform its duties,  
15 including an executive director. The executive  
16 director shall be appointed by the authority, and the  
17 executive director's position shall be exempt from  
18 civil service;

19 (4) Enter into contracts for the service of consultants  
20 for rendering professional and technical assistance  
21 and advice, management of the green infrastructure  
22 loan program, and any other contracts that are  
23 necessary and proper for the implementation of the

- 1 program, without the necessity of complying with  
2 chapter 103D;
- 3 (5) Adopt rules in accordance with loan program guidelines  
4 established in one or more financing orders issued by  
5 the public utilities commission pursuant to part \_\_\_\_  
6 of chapter 269 to carry out this part, which rules  
7 shall:
- 8 (A) Prescribe the qualifications for eligibility of  
9 applicants for loans;
- 10 (B) Establish preferences and priorities in  
11 determining eligibility for loans; and
- 12 (C) Establish the terms and conditions for green  
13 infrastructure loans;
- 14 (6) Be audited at least annually by a firm of independent  
15 certified public accountants selected by the  
16 authority, and provide the results of this audit to  
17 the director; and
- 18 (7) Perform all functions necessary to effectuate the  
19 purposes of this chapter.

20 **§196-E Hawaii green infrastructure special fund.** (a)  
21 There is established the Hawaii green infrastructure special  
22 fund. The Hawaii green infrastructure special fund shall not be  
23 subject to section 37-53.



1 (b) Moneys in the Hawaii green infrastructure special fund  
2 may be used for the purpose of making green infrastructure  
3 loans, paying the administrative costs of the green  
4 infrastructure loan program, or any other costs related to the  
5 green infrastructure loan program. The following shall be  
6 deposited into the Hawaii green infrastructure special fund:

7 (1) The proceeds of green infrastructure bonds net of  
8 issuance costs and reserves or overcollateralization  
9 amounts;

10 (2) Green infrastructure fees collected, pursuant to  
11 section 269-121;

12 (3) Green infrastructure charges received in repayment of  
13 loans;

14 (4) All other funds received by the director and the  
15 authority and legally available for the purposes of the  
16 special fund; and

17 (5) Interest earnings on all amounts in the special fund.

18 The director and the authority may invest funds held in the  
19 Hawaii green infrastructure special fund in such investments as  
20 permitted by law, and in accordance with approved investment  
21 guidelines established in one or more financing orders issued by  
22 the public utilities commission pursuant to chapter 269, part  
23 \_\_\_\_\_. All amounts in the Hawaii green infrastructure special

1 fund shall not be considered state general funds, and shall be  
2 exempt from all taxes and similar surcharges imposed by the  
3 State. Nothing in this section shall prohibit the authority  
4 from using moneys in the Hawaii green infrastructure special  
5 fund to credit back to electric utility customers at the  
6 direction of the public utilities commission.

7       **§196-F Severability.** If any provision of this part is  
8 held to be invalid or is superseded, replaced, repealed, or  
9 expires for any reason, that occurrence shall not affect any  
10 action allowed under this part that is taken prior to that  
11 occurrence by the public utilities commission, an electric  
12 utility, the director, or the authority. Any such action shall  
13 remain in full force and effect."

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

17                   **"PART . GREEN INFRASTRUCTURE BONDS**

18       **§269-A Definitions.** As used in this part:

19       "Ancillary agreement" means any bond insurance policy,  
20 letter of credit, reserve account, surety bond, swap  
21 arrangement, hedging arrangement, liquidity or credit support  
22 arrangement, or other related bond document or other similar  
23 agreement or arrangement entered into in connection with the

1 issuance of green infrastructure bonds that is designed to  
2 promote the credit quality and marketability of the bonds or to  
3 mitigate the risk of an increase in interest rates.

4 "Authority" means the Hawaii green infrastructure authority  
5 established under chapter 196.

6 "Bond" or "green infrastructure bond" means any bond, note  
7 or other evidence of indebtedness that is issued by the State,  
8 acting through the department, under a financing order, the  
9 proceeds of which are used directly or indirectly to recover,  
10 finance, or refinance financing costs of clean energy  
11 technology, demand response technology, and energy use reduction  
12 and demand side management infrastructure, programs, and  
13 services, and that are secured by or payable from green  
14 infrastructure property. Green infrastructure bonds are revenue  
15 bonds issued under article VII, section 12 of the State  
16 Constitution and are excluded from the calculation of the  
17 State's debt limit pursuant to article VII, section 13 of the  
18 State Constitution.

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

20 "Department" means the department of business, economic  
21 development, and tourism.

1 "Electric utilities" means all electric utilities subject  
2 to collecting and remitting the public benefit fee pursuant to  
3 section 269-121, at the time the financing order becomes final.

4 "Financing costs" means any of the following:

- 5 (1) Principal and interest payable on green infrastructure  
6 bonds;
- 7 (2) Any payment required under an ancillary agreement;
- 8 (3) Any amount required to fund or replenish a reserve  
9 account or another account established under any  
10 indenture, ancillary agreement, or other financing  
11 document relating to the issuance of green  
12 infrastructure bonds;
- 13 (4) Any redemption or call premium or cost of redeeming or  
14 refunding any existing debt of the department in  
15 connection with either the issuance of, or the use of  
16 proceeds from, green infrastructure bonds;
- 17 (5) Any costs incurred by the department to modify or  
18 amend any indenture, financing agreement, security  
19 agreement, or similar agreement or instrument securing  
20 any bond or any ancillary agreement;
- 21 (6) Any costs incurred by the department to obtain any  
22 consent, release, waiver, or approval from any holder  
23 of any bond or of any party to an ancillary agreement

1           that are necessary to be incurred for the department  
2           to issue green infrastructure bonds;

3           (7) Any costs related to issuing or servicing green  
4           infrastructure bonds or related to obtaining a  
5           financing order, including servicing fees and  
6           expenses, trustee fees and expenses, legal,  
7           accounting, or other professional fees and expenses,  
8           administrative fees, placement fees, underwriting fees  
9           and discounts, capitalized interest and equity, and  
10          rating-agency fees; or

11          (8) Any other similar costs incident to the issuance,  
12          administration or servicing of the green  
13          infrastructure bonds that the department finds  
14          appropriate.

15          "Financing order" means an order issued at the request of  
16          the department by the public utilities commission under this  
17          part that has become final as provided by law, and that  
18          authorizes the issuance of green infrastructure bonds and the  
19          imposition, adjustment from time to time and the collection of  
20          green infrastructure fees. The financing order shall include,  
21          without limitation, a procedure to require the public utilities  
22          commission in accordance with a formula set out in the financing  
23          order and approved by the department to review and approve

1 expeditiously periodic adjustments to green infrastructure fees  
2 to ensure the payment of the green infrastructure bonds and  
3 related financing costs on a timely basis.

4 "Financing party" means either of the following:

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

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

15 "Green infrastructure fee" means the nonbypassable charges  
16 authorized by section 269-121 and in a financing order  
17 authorized under this part to be imposed and collected on all  
18 existing and future customers of electric utilities (or any  
19 successor). The green infrastructure fee may be a usage based  
20 surcharge, a flat user fee, or a charge based upon customer  
21 revenues as determined by the public utilities commission for  
22 each customer class in any financing order.

1 "Green infrastructure property" means the property, rights,  
2 and interests created by the public utilities commission under a  
3 financing order, including the right to impose, charge, and  
4 collect from electric utility customers the green infrastructure  
5 fee that shall be used to pay and secure the payment of green  
6 infrastructure bonds and financing costs, and the green  
7 infrastructure charge to repay green infrastructure loans, and  
8 including the right to obtain adjustments to those surcharges,  
9 fees or other charges, and any revenues, receipts, collections,  
10 rights to payment, payments, moneys, claims, or other proceeds  
11 arising from the rights and interests created by the public  
12 utilities commission under any financing order.

13 "Successor" means, with respect to any electric utility  
14 another electric utility, or other entity that succeeds  
15 voluntarily or by operation of law to the rights and obligations  
16 of the first electric utility, or other entity pursuant to any  
17 bankruptcy, reorganization, restructuring, or other insolvency  
18 proceedings, any merger, acquisition, or consolidation, or any  
19 sale or transfer of assets, regardless of how any of these  
20 actions occurred.

21 "Trustee" means any trustee appointed under an indenture or  
22 certificate of the director executed in connection with the  
23 issuance of green infrastructure bonds.

1           **§269-B Applications to issue green infrastructure bonds**  
2 **and authorize green infrastructure fee.** (a) In connection with  
3 the issuance of green infrastructure bonds, the department may  
4 apply to the public utilities commission for one or more  
5 financing orders, each of which financing orders authorizes the  
6 following:

7           (1) The imposition, charging, and collection on behalf of  
8 the department of the green infrastructure fee and the  
9 adjustment of such green infrastructure fee on behalf  
10 of the department in accordance with an adjustment  
11 mechanism requested by the department under this part  
12 in amounts sufficient to pay the principal of and  
13 interest on green infrastructure bonds and all related  
14 financing costs on a timely basis;

15           (2) The creation of green infrastructure property under  
16 the financing order; and

17           (3) The contribution of the net proceeds of the green  
18 infrastructure bonds to provide funds for the  
19 financing of green infrastructure costs.

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

21           (1) The principal amount of the green infrastructure bonds  
22 proposed to be issued;



- 1           (2) An estimate of the date each series of green  
2                    infrastructure bonds is expected to be issued;
- 3           (3) The expected term, not to exceed thirty years, during  
4                    which term the green infrastructure fee associated  
5                    with the issuance of each series of green  
6                    infrastructure bonds is expected to be imposed and  
7                    collected;
- 8           (4) An estimate of the financing costs associated with the  
9                    issuance of each series of green infrastructure bonds;
- 10          (5) An estimate of the amount of green infrastructure fee  
11                    necessary to pay principal and interest on the green  
12                    infrastructure bonds and related financing costs as  
13                    set forth in the application and the calculation for  
14                    that estimate, which calculation shall take into  
15                    account the estimated date or dates of issuance and  
16                    the estimated principal amount of each series of green  
17                    infrastructure bonds;
- 18          (6) A proposed methodology for allocating the green  
19                    infrastructure fee among electric utilities and  
20                    customer classes within each electric utility;
- 21          (7) A description of a proposed formulaic adjustment  
22                    mechanism for the adjustment of the green  
23                    infrastructure fee to assure the timely payment of

1 principal and interest on the green infrastructure  
2 bonds and related financing costs; and  
3 (8) Any other information required by the public utilities  
4 commission.

5 **§269-C Green infrastructure financing order.** (a) The  
6 public utilities commission shall issue its financing order as  
7 final or in the event that the finding in clause (b) cannot be  
8 made, its denial of a financing order, as expeditiously as  
9 possible and in any event within ninety days from the date the  
10 completed application is submitted.

11 (b) The public utilities commission may issue a financing  
12 order if the public utilities commission finds that the  
13 imposition of the green infrastructure fee and the issuance of  
14 green infrastructure bonds authorized by the order will  
15 facilitate the provision of alternative low-cost financing, to  
16 be deployed through a financing program administered by the  
17 authority, to enable installations of clean energy technology,  
18 demand response technology, and energy use reduction and demand  
19 side management infrastructure, and to help achieve Hawaii's  
20 clean energy goals.

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

- 1           (1) A determination of the maximum amount of green  
2                    infrastructure bonds that may be issued under the  
3                    financing order;
- 4           (2) A description of the green infrastructure property,  
5                    the creation of which property is authorized by the  
6                    financing order;
- 7           (3) A description of the financing costs that may be  
8                    recovered through green infrastructure fees, including  
9                    any reserves required by the department to secure  
10                  payment of the green infrastructure bonds;
- 11          (4) A description of the methodology to be applied by the  
12                  public utilities commission for calculating the green  
13                  infrastructure fee, including the allocation of  
14                  financing costs among electric utilities and customer  
15                  classes;
- 16          (5) A description of the formulaic adjustment mechanism to  
17                  be used by the public utilities commission to adjust  
18                  the green infrastructure fee in order to ensure that  
19                  the amount of green infrastructure fees projected to  
20                  be collected shall be sufficient to pay the principal  
21                  and interest on the green infrastructure bonds, and  
22                  all related financing costs on a timely basis,

- 1 including the funding or maintenance of any reserves  
2 required to be maintained by the department;
- 3 (6) The maximum term of the green infrastructure bonds,  
4 not to exceed thirty years;
- 5 (7) Any provisions necessary to issue from time to time  
6 refunding green infrastructure bonds in such principal  
7 amounts as the department may determine to be  
8 necessary to refund the green infrastructure bonds  
9 authorized in the financing order, to the extent  
10 permitted by the financing documents;
- 11 (8) A requirement that the electric utilities (including  
12 any successors) serve as collection agents to collect  
13 the green infrastructure fees and transfer those  
14 surcharges to the trustee or other financing party as  
15 required by the financing order and any agreements  
16 with the department;
- 17 (9) Terms satisfactory to the public utilities commission  
18 that the green infrastructure fee shall be  
19 nonbypassable and will be paid by all existing and  
20 future customers of an electric utility (or any  
21 successor); and
- 22 (10) Any other provision the public utilities commission  
23 considers appropriate to ensure the full and timely

1           imposition, charging, collection, and adjustment,  
2           pursuant to an approved adjustment mechanism, of the  
3           green infrastructure fee described in this subsection.

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

16          (e) At the request of the department, the public utilities  
17          commission shall determine, in accordance with the adjustment  
18          mechanism set forth in the financing order, the initial green  
19          infrastructure fee after the determination of the final terms of  
20          each series of green infrastructure bonds, so that the green  
21          infrastructure fee shall be final and effective upon issuance of  
22          the green infrastructure bonds.

1 (f) An appeal from a financing order issued by the public  
2 utilities commission shall be taken pursuant to section 269-  
3 15.5.

4 (g) Any adjustment to the green infrastructure fee made by  
5 the public utilities commission pursuant to the adjustment  
6 mechanism approved in the financing order shall be a ministerial  
7 act of the public utilities commission, and shall be not require  
8 any prior public notice or hearing.

9 **§269-D Green infrastructure property.** (a) The green  
10 infrastructure property shall be created simultaneously with the  
11 issuance of the green infrastructure bonds and shall immediately  
12 vest in the department, which shall pledge such property to  
13 secure the payment of green infrastructure bonds, amounts  
14 payable to financing parties and bondholders, amounts payable  
15 under any ancillary agreement, and other financing costs as  
16 provided in the financing documents executed by the department.

17 (b) The electric utility shall have no ownership or  
18 beneficial interest in nor any claim or right to the green  
19 infrastructure fee, green infrastructure property, or green  
20 infrastructure charge other than the obligation to collect the  
21 green infrastructure fee and green infrastructure charge as  
22 agent for the department or any financing party and remit the

1 same to the department or such financing party entitled to  
2 receive such surcharges in accordance with the financing order.

3 (c) The obligation of any customer to pay the green  
4 infrastructure fee or green infrastructure charge and the  
5 obligation of the electric utility to collect and remit the  
6 green infrastructure fee or green infrastructure charge shall  
7 not be subject to any setoff, counterclaim, surcharge, or  
8 defense by the electric utility or by any customer, or in  
9 connection with a bankruptcy of any electric utility or any  
10 customer.

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

20 (b) Once a financing order has become final as provided by  
21 law, the financing order shall become irrevocable. The public  
22 utilities commission may not directly or indirectly reduce,  
23 impair, postpone, rescind, alter or terminate the green

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

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

9 **§269-F Green infrastructure fee nonbypassable.** (a) So  
10 long as any green infrastructure bonds are outstanding and any  
11 financing costs have not been paid in full, the green  
12 infrastructure fees authorized under any financing order shall  
13 be nonbypassable. Subject to any exceptions provided in a  
14 financing order, the green infrastructure fee will be paid by  
15 all existing and future customers of an electric utility (or any  
16 successor).

17 (b) The green infrastructure fee shall be collected by the  
18 electric utilities or their successors, as collection agents for  
19 the department or the financing parties, in full through a  
20 surcharge, fee or charge that is separate and apart from the  
21 electric utilities' rates. The green infrastructure fee may be  
22 included with the public benefits fee as one line item on the  
23 electric utility bill when the bill contains a public benefits



1 fee pursuant to section 269-121, but such inclusion shall not  
2 adversely affect the pledge of the green infrastructure fee or  
3 the right to adjust the green infrastructure fee as authorized  
4 by this section.

5       **§269-G Electric utility successor requirements.** Any  
6 successor to an electric utility subject to a financing order  
7 shall be bound by the requirements of this part. The successor  
8 shall perform and satisfy all obligations of the electric  
9 utility under the financing order, in the same manner and to the  
10 same extent as the electric utility, including the obligation to  
11 collect and pay the green infrastructure fee to the department  
12 or to any financing party as required by a financing order.

13       **§269-H Green infrastructure security interest.** (a) The  
14 creation, perfection, and enforcement of any security interest  
15 in the green infrastructure fee and green infrastructure  
16 property under a financing order to secure the payment of the  
17 principal and interest on green infrastructure bonds, amounts  
18 payable under any ancillary agreement, and other financing costs  
19 are governed by this section.

20       (b) Upon the issuance of any green infrastructure bonds by  
21 the department, there shall exist a statutory first priority  
22 lien and security interest as provided in this subsection on the  
23 green infrastructure fee and all green infrastructure property

1 then existing or thereafter arising pursuant to the terms of the  
2 financing order to secure payment of the green infrastructure  
3 bonds, amounts payable under any ancillary agreement and other  
4 financing costs. This lien shall arise by operation of this  
5 subsection automatically without any action on the part of the  
6 department, the electric utilities or any other person. This  
7 lien shall secure all obligations, then existing or subsequently  
8 arising, to the bondholders, the trustee or representative for  
9 the bondholders, and any other financing party as authorized by  
10 the financing order.

11 (c) The persons for whose benefit this lien is established  
12 shall, upon the occurrence of any default specified in the  
13 financing order, have all rights and remedies of a secured party  
14 upon default pursuant to article 9 of chapter 490, and shall be  
15 entitled to foreclose or otherwise enforce this statutory lien  
16 in the green infrastructure property. This lien shall be valid,  
17 perfected, and enforceable against the department and all third-  
18 parties upon the effectiveness of the financing order without  
19 any further public notice; provided that any person may file a  
20 financing statement.

21 (d) A perfected statutory lien in the green infrastructure  
22 fee and green infrastructure property shall be a continuously  
23 perfected lien in all revenues and proceeds arising with respect

1 to the green infrastructure fee and green infrastructure  
2 property, whether or not the revenues or proceeds have accrued.  
3 Conflicting liens shall rank according to priority in time of  
4 perfection. The green infrastructure fee and green  
5 infrastructure property shall constitute property for all  
6 purposes, including for contracts securing green infrastructure  
7 bonds, whether or not the revenues and proceeds arising with  
8 respect thereto have accrued.

9 (e) In addition, the public utilities commission may  
10 require, in the financing order creating the green  
11 infrastructure fee and green infrastructure property, that, in  
12 the event of a default by the electric utility in remittance of  
13 the green infrastructure fee arising with respect to green  
14 infrastructure property, the public utilities commission, upon  
15 the application by the beneficiaries of the statutory lien, and  
16 without limiting any other remedies available to the  
17 beneficiaries by reason of the default, shall order the  
18 sequestration and payment to the beneficiaries of the green  
19 infrastructure fee arising with respect to the green  
20 infrastructure property. Any order shall remain in full force  
21 and effect notwithstanding any bankruptcy, reorganization, or  
22 other insolvency proceedings with respect to the electric  
23 utility.

1           **§269-I Treatment of green infrastructure property.** (a)

2 The ownership, transfer and pledge of the green infrastructure  
3 fee and green infrastructure property and the imposition,  
4 charging, collection, and receipt of the green infrastructure  
5 fee and green infrastructure charge are exempt from all taxes  
6 and similar surcharges imposed by the State.

7           (b) Green infrastructure bonds issued under a financing  
8 order shall not constitute a debt, a liability or a pledge of  
9 the faith and credit or taxing power of the state, any county,  
10 or of any instrumentality of the State. Bondholders shall have  
11 no right to have taxes levied by the State or the taxing  
12 authority any county, or any other instrumentality of the State  
13 for the payment of the principal of or interest on the bonds.  
14 The issuance of green infrastructure bonds does not, directly,  
15 indirectly, or contingently, obligate the State, any county, or  
16 any instrumentality of the State to levy any tax or make any  
17 appropriation for payment of the principal of or interest on the  
18 bonds.

19           (c) Green infrastructure bonds issued under a financing  
20 order shall not be an obligation of any electric utility.

21           **§269-J Green infrastructure property non-impairment.** (a)

22 In furtherance of section 39-61, the State pledges to and agrees  
23 with the bondholders and any financing parties under a financing

1 order that the State will not take or permit any action that  
2 impairs the value of green infrastructure property under the  
3 financing order, or reduce, alter, or impair green  
4 infrastructure fees that are imposed, charged, collected, or  
5 remitted for the benefit of the bondholders and any financing  
6 parties, until any principal, interest, and redemption premium  
7 in respect of green infrastructure bonds, all financing costs,  
8 and all amounts to be paid to a financing party under an  
9 ancillary agreement are paid or performed in full or unless  
10 adequate provision has been made by law for the protection of  
11 bondholders and other financing parties.

12 (b) The department in issuing the green infrastructure  
13 bonds is permitted to include the pledge specified in subsection  
14 (a) of this section in the green infrastructure bonds, ancillary  
15 agreements, and documentation related to the issuance and  
16 marketing of the green infrastructure bonds.

17 (c) The law governing the validity, enforceability,  
18 attachment, perfection, priority, and exercise of remedies with  
19 respect to the transfer of green infrastructure property under a  
20 financing order, or creation of a security interest in any such  
21 property, green infrastructure fee, green infrastructure charge  
22 or financing order shall be the laws of this State as set forth  
23 in this part.

1 (d) This section shall control in the event of a conflict  
2 in this part and any other law regarding the attachment,  
3 assignment, or perfection, the effect of perfection, or priority  
4 of any security interest in or transfer of green infrastructure  
5 property under a financing order.

6 **§269-K Compliance with revenue bond law.** For purposes of  
7 assuring compliance with part III of chapter 39, it is  
8 determined as follows:

9 (1) For purposes of section 39-51, revenues shall include  
10 the green infrastructure fee and the proceeds of green  
11 infrastructure property, including the green  
12 infrastructure charge, and the loan program shall  
13 include the loan program authorized under section 196-  
14 \_\_\_\_;

15 (2) In addition and supplemental to the powers conferred  
16 by section 39-60, any resolution, certificate or  
17 indenture approved by the department may have such  
18 additional or alternative covenants as may be  
19 consistent with this chapter, and the department may  
20 enter into a trust indenture, servicing agreement or  
21 other financing documents having terms and conditions  
22 consistent with the financing order issued under  
23 section 269-C;

1           (3) In addition and supplemental to the powers conferred  
2           by section 39-61, the green infrastructure fee shall  
3           be imposed, adjusted and collected as provided in  
4           section 269-F and the financing order issued pursuant  
5           thereto;

6           (4) In addition and supplemental to the powers conferred  
7           by section 39-62, the green infrastructure fee and  
8           green infrastructure charge shall be applied as  
9           provided in the financing order, the certificate  
10          issued by the department and any financing documents  
11          executed by the department in connection with the  
12          green infrastructure bonds; and

13          (5) In addition and supplemental to the powers conferred  
14          by section 39-63, the lien and security interest in  
15          the green infrastructure fee, green infrastructure  
16          property, and green infrastructure charge, and the  
17          perfection and priority thereof shall be governed by  
18          section 269-H.

19          **§269-L Severability.** If any provision of this part is  
20          held to be invalid or is superseded, replaced, repealed, or  
21          expires for any reason, that occurrence shall not affect any  
22          action allowed under this part that is taken prior to that  
23          occurrence by the public utilities commission, an electric

1 utility, the department, a collection agent, a financing party,  
2 a bondholder, or a party to an ancillary agreement. Any such  
3 action shall remain in full force and effect.

4 **§269-M Miscellaneous.** Neither the department nor a  
5 financing party shall be considered an electric utility or  
6 person providing electric service by virtue of engaging in the  
7 transactions described in this part."

8 SECTION 4. Section 269-121, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§269-121 Public benefits fee authorization.** (a) The  
11 public utilities commission, by order or rule, may require that  
12 all or a portion of the moneys collected by Hawaii's electric  
13 utilities from its ratepayers through a demand-side management  
14 surcharge be transferred to a third-party administrator  
15 contracted by the public utilities commission. The moneys  
16 transferred shall be known as the public benefits fee.

17 (b) The public benefits fee shall be used to support  
18 [energy efficiency] clean energy technology, demand response  
19 technology, and energy use reduction and demand-side management  
20 infrastructure, programs, and services, subject to the review  
21 and approval of the public utilities commission. These moneys  
22 shall not be available to meet any current or past general  
23 obligations of the State; provided that the State may



1 participate in any [~~energy efficiency or~~] clean energy  
2 technology, demand response technology, or energy use reduction  
3 and demand-side management infrastructure, programs, and  
4 services on the same basis as any other electric consumer.

5 (c) The public utilities commission is further authorized  
6 to create, pursuant to a financing order approved pursuant to  
7 part , a utility-wide nonbypassable surcharge, referred to as  
8 the green infrastructure fee, which shall be deposited in the  
9 green infrastructure special fund and pledged and applied to the  
10 repayment of green infrastructure bonds and related financing  
11 costs as described in part . The green infrastructure fee  
12 shall not be considered revenue to any electric utility.

13 (d) The green infrastructure fee may be included with the  
14 public benefits fee as one line item on the electric utility  
15 bill when the bill contains a public benefits fee if so provided  
16 in the financing order authorized in part . The green  
17 infrastructure fee may be applied to reduce the public benefits  
18 fee to be transferred pursuant to subsection (a) if so provided  
19 in a financing order.

20 [~~(e)~~] (e) Nothing in this section shall create or be  
21 construed to cause the public benefits fee to be considered  
22 state or public moneys subject to appropriation by the

1 legislature or be required to be deposited into the state  
2 treasury."

3 SECTION 5. Section 269-125, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) The public utilities commission shall investigate an  
7 on-bill financing program that would allow an electric utility  
8 company customer to purchase or otherwise acquire a [~~renewable~~  
9 ~~energy system or energy efficient~~] clean energy technology,  
10 demand response technology, and energy use reduction and demand  
11 side management device, as determined by the public utilities  
12 commission, by providing for billing and payment of such a  
13 system or device through an assessment on the electric utility  
14 company customer's electricity bill."

15 2. By amending subsection (c) to read:

16 "(c) If on-bill financing is determined by the public  
17 utilities commission to be viable, the public utilities  
18 commission may implement an on-bill financing program by  
19 decision and order or by rules pursuant to chapter 91[-];  
20 provided that any on-bill financing program implemented by the  
21 public utilities commission shall allow participating electric  
22 utility company customers to purchase, finance for the  
23 installation or purchase of, or otherwise acquire clean energy

1 technology, demand response technology, or energy use reduction  
2 and demand side management systems or devices by providing for  
3 billing and payment of such systems or devices through an  
4 assessment on the electric utility company customer's  
5 electricity bill. Any on-bill financing program implemented by  
6 the public utilities commission may utilize funds administered  
7 via the green infrastructure loan program authorized under  
8 section 196-A for purposes established therein."

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

12 (b) The department of business, economic development, and  
13 tourism is authorized to issue revenue bonds pursuant to part  
14 III of chapter 39, Hawaii Revised Statutes, in a principal  
15 amount not to exceed \$200,000,000 to establish and administer a  
16 loan program.

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

**SB. NO. 1087**

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

4 SECTION 7. In codifying the new part added to chapter 196,  
5 Hawaii Revised Statutes, by section 2 of this Act and the new  
6 part added to chapter 269, Hawaii Revised Statutes, by section 3  
7 of this Act, the revisor of statutes shall substitute  
8 appropriate section numbers for the letters used in designating  
9 and referring to the new sections in this Act.

10 SECTION 8. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 9. This Act shall take effect upon its approval.

13  
14 INTRODUCED BY: *Anna Inez Ki*

15 BY REQUEST

**Report Title:**

Green Infrastructure Loan Program; Public Benefits Fee

**Description:**

Establishes a regulatory financing structure that authorizes the Public Utilities Commission and the Department of Business, Economic Development, and Tourism to provide low-cost loans for green infrastructure equipment to achieve measurable cost savings and achieve Hawaii's clean energy goals.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor.

TITLE: A BILL FOR AN ACT RELATING TO GREEN INFRASTRUCTURE.

PURPOSE: Establishes a regulatory financing structure that authorizes the Public Utilities Commission and the Department of Business, Economic Development, and Tourism to provide low-cost loans for green infrastructure equipment to achieve measurable cost savings and achieve Hawaii's clean energy goals.

MEANS: Add new parts to chapters 196 and 269, and amend sections 269-121 and 269-125, Hawaii Revised Statutes.

JUSTIFICATION: This measure will provide a regulatory financing structure to gain access to low-cost financing for clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure, programs, and services. This will support the achievement of the Renewable Portfolio Standards and Energy-Efficiency Portfolio Standards, as established in chapter 269 and enable electric utility customer savings.

Impact on the public: Lowers electric utility bill for customers participating in the green infrastructure loan program. Increases accessibility and affordability of clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure to achieve the State's energy goals of energy self-sufficiency and greater energy security and diversification.

Impact on the department and other agencies:  
Authorizes the Commission to approve a financing order that authorizes the issuance of green infrastructure bonds to provide alternative low-cost means to finance green infrastructure equipment.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BED 120.

OTHER AFFECTED  
AGENCIES: Department of Business, Economic  
Development, and Tourism, Department of  
Budget and Finance, Public Utilities  
Commission.

EFFECTIVE DATE: Upon approval.