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# 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, 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  
18 utility customers from investing in these infrastructure



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

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

15 (1) Focuses on providing an alternative means of low-cost  
16 financing for green infrastructure equipment for  
17 Hawaii ratepayers, particularly those ratepayers not  
18 currently able to obtain such technology on reasonable  
19 financing terms;

20 (2) Utilizes excess loan program funds as a fund to  
21 finance additional green infrastructure installations,  
22 subject to regulatory guidelines and approval; and



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

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

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

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



1                   **"PART . GREEN INFRASTRUCTURE LOANS**

2           **§196-A Definitions.** As used in this part:

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

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

11           "Clean energy technology" means shall have the same meaning  
12 as in section 269-121(b).

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

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

17           "Financing order" means the same as defined in section  
18 269-A.

19           "Financing party" means the same as defined in section  
20 269-A.

21           "Green infrastructure bond fund" means the special fund  
22 created pursuant to section 269-M.



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

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

13 "Green infrastructure equipment" means infrastructure  
14 improvements, equipment, and personal property to be installed  
15 to deploy clean energy technology, demand response technology,  
16 and energy use reduction and demand side management  
17 infrastructure.

18 "Green infrastructure fee" means the same as defined in  
19 section 269-A.

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



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

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

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

12 **§196-B Hawaii green infrastructure loan program.** There is  
13 established a Hawaii green infrastructure loan program, which  
14 shall be a loan program as defined under section 39-51. The  
15 program shall be administered by the authority on behalf of the  
16 department in a manner consistent with chapter 39, part III.  
17 This loan program may include loans made to private entities,  
18 whether corporations, partnerships, limited liability companies,  
19 or other persons, which entities may lease or provide green  
20 infrastructure equipment to electric utility customers, as well  
21 as direct loans to electric utility customers, on terms approved  
22 by the authority.



1           **§196-C Hawaii green infrastructure authority.** There is  
2 established the Hawaii green infrastructure authority as an  
3 instrumentality of the State comprising five members. The  
4 director, the director of finance, and the energy program  
5 administrator of the department shall be members of the  
6 authority. The governor shall appoint the other two members,  
7 pursuant to section 26-34. The director shall be the  
8 chairperson of the authority. The authority shall be placed  
9 within the department for administrative purposes, pursuant to  
10 section 26-35.

11           **§196-D Functions, powers, and duties of the authority.**

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

19           (1) Make loans and expend funds to finance the purchase or  
20           installation of green infrastructure equipment for  
21           clean energy technology, demand response technology,



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





1 commission pursuant to section 269-K to carry out the  
2 purposes of this part;

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

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

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

15 **§196-E Hawaii green infrastructure special fund.** (a)

16 There is established the Hawaii green infrastructure special  
17 fund into which shall be deposited:

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

20 (2) Green infrastructure charges received for the use and  
21 services of the loan program, including the repayment  
22 of loans made under the loan program;



- 1           (3) All other funds received by the department or the  
2           authority and legally available for the purposes of  
3           the green infrastructure special fund;
- 4           (4) Interest earnings on all amounts in the green  
5           infrastructure special fund; and
- 6           (5) Such other moneys as shall be permitted by an order of  
7           the public utilities commission.

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



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

4 (1) Making green infrastructure loans;

5 (2) Paying administrative costs of the Hawaii green  
6 infrastructure loan program;

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

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

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

19 **§196-F Use of Hawaii green infrastructure special fund;**

20 **application.** (a) The authority shall apply to the public  
21 utilities commission for one or more orders to effectuate the



1 Hawaii green infrastructure loan program, pursuant to section  
2 269-J.

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

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

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

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



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

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

19 **§196-H Severability.** If any provision of this part is  
20 held to be invalid or is superseded, replaced, repealed, or  
21 expires for any reason:



1 (1) That occurrence shall not affect any action allowed  
2 under this part that is taken prior to that occurrence  
3 by the public utilities commission, an electric  
4 utility, the department, the authority, a bondholder,  
5 or any financing party, and any such action shall  
6 remain in full force and effect; and

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

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

12 **"PART . GREEN INFRASTRUCTURE BONDS**

13 **§269-A Definitions.** As used in this part:

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



1 "Authority" means the Hawaii green infrastructure authority  
2 established under section 196-C.

3 "Bond" or "green infrastructure bond" means any bond, note  
4 or other evidence of indebtedness that is issued by the State,  
5 acting through the department, under a financing order, the  
6 proceeds of which are used directly or indirectly to recover,  
7 finance, or refinance financing costs of clean energy  
8 technology, demand response technology, and energy use reduction  
9 and demand side management infrastructure, programs, and  
10 services, and that are secured by or payable from green  
11 infrastructure property.

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

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

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

17 "Electric utilities" means all electric utilities subject  
18 to billing, collecting, and remitting the public benefits fee,  
19 or the green infrastructure fee, at the time the financing order  
20 becomes final, and any other electric utility designated in the  
21 financing order.

22 "Financing costs" means any of the following:



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





1 expenses, legal, accounting, or other professional  
2 fees and expenses, administrative fees, placement  
3 fees, underwriting fees and discounts, capitalized  
4 interest and equity, and rating-agency fees; or loan  
5 program administration costs as authorized for  
6 recovery under a financing order or orders; or

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

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

15 "Financing party" means either of the following:

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

18 (2) Any party to an ancillary agreement, the rights and  
19 obligations of which relate to or depend upon the  
20 existence of green infrastructure property and green  
21 infrastructure fees, the enforcement and priority of a  
22 security interest in green infrastructure property,



1 the timely collection and payment of green  
2 infrastructure fees, or a combination of these  
3 factors.

4 "Green infrastructure bond fund" means the special fund  
5 created pursuant to section 269-M.

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

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

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

18 "Green infrastructure property" means the property, rights,  
19 and interests created by the public utilities commission under a  
20 financing order, including the right to impose, charge, and  
21 collect from electric utility customers the green infrastructure  
22 fee that shall be used to pay and secure the payment of bonds



1 and financing costs, including the right to obtain adjustments  
2 to the green infrastructure fee, and any revenues, receipts,  
3 collections, rights to payment, payments, moneys, claims, or  
4 other proceeds arising from the rights and interests created by  
5 the public utilities commission under any financing order.

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

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

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

19 **§269-B Applications to issue bonds and authorize green**  
20 **infrastructure fee.** (a) In connection with the issuance of  
21 bonds, the department may apply to the public utilities



1 commission for one or more financing orders, each of which  
2 financing orders authorizes the following:

- 3 (1) The imposition, charging, and collection on behalf of  
4 the department of the green infrastructure fee, to  
5 become effective upon the issuance of the bonds, and  
6 the adjustment of the green infrastructure fee on  
7 behalf of the department in accordance with an  
8 adjustment mechanism requested by the department under  
9 this part in amounts sufficient to pay the principal  
10 of and interest on bonds and all related financing  
11 costs on a timely basis;
- 12 (2) The creation of green infrastructure property under  
13 the financing order; and
- 14 (3) The deposit of the net proceeds of the bonds into the  
15 green infrastructure special fund.
- 16 (b) The application shall include all of the following:
- 17 (1) The principal amount of the bonds proposed to be  
18 issued;
- 19 (2) An estimate of the date each series of bonds is  
20 expected to be issued;
- 21 (3) The expected term, not to exceed thirty years, during  
22 which term the green infrastructure fee associated



- 1 with the issuance of each series of bonds is expected  
2 to be imposed and collected;
- 3 (4) An estimate of the financing costs associated with the  
4 issuance of each series of bonds;
- 5 (5) An estimate of the amount of the green infrastructure  
6 fee revenues necessary to pay principal and interest  
7 on the bonds and related financing costs as set forth  
8 in the application and the calculation for that  
9 estimate, which calculation shall take into account  
10 the estimated date or dates of issuance and the  
11 estimated principal amount of each series of bonds;
- 12 (6) A proposed methodology for allocating the green  
13 infrastructure fee among electric utilities and  
14 customer classes within each electric utility;
- 15 (7) A description of a proposed formulaic adjustment  
16 mechanism for the adjustment of the green  
17 infrastructure fee to ensure the timely payment of  
18 principal and interest on the bonds and related  
19 financing costs; and
- 20 (8) Any other information required by the public utilities  
21 commission.



1           **§269-C Green infrastructure financing order.** (a) The  
2 public utilities commission shall issue its financing order as  
3 final or if a finding in subsection (b) cannot be made, its  
4 denial of a financing order, as expeditiously as possible and in  
5 any event within ninety days from the date the completed  
6 application is submitted.

7           (b) The public utilities commission may issue a financing  
8 order if the public utilities commission finds that the creation  
9 of the green infrastructure property to secure the payment of  
10 the bonds, including the imposition of the green infrastructure  
11 fee, will facilitate the acquisition of low-cost financing,  
12 pursuant to an application under section 269-B.

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

15           (1) The maximum amount of bonds to be issued by the State  
16 acting through the department under the financing  
17 order;

18           (2) A description of the green infrastructure property,  
19 the creation of which property is authorized by the  
20 financing order;

21           (3) A description of the financing costs that will be  
22 recoverable through green infrastructure fees,



1 including any reserves or overcollateralization  
2 amounts required by the department to secure payment  
3 of the bonds;

4 (4) A description of the methodology to be applied by the  
5 public utilities commission, on behalf of the  
6 department, for calculating the green infrastructure  
7 fee, including the allocation of financing costs among  
8 electric utilities and customer classes;

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

18 (6) The term of the bonds, as proposed by the department,  
19 during which term the green infrastructure fee shall  
20 continue to be collected and pledged to pay the bonds,  
21 which term shall automatically be extended by the term  
22 of any refunding bonds, as approved in a subsequent



1 financing order, issued in such principal amounts as  
2 the department may determine to be necessary to refund  
3 the bonds that are the subject of the original  
4 financing order;

5 (7) A requirement that the electric utilities, including  
6 any successors, serve as agents to collect the green  
7 infrastructure fee and transfer those surcharges to  
8 the trustee or other financing party as required by  
9 the financing order and any agreements with the  
10 department;

11 (8) The procedures to be followed by the electric  
12 utilities in the event of non-payment or partial  
13 payment of the green infrastructure fee by the  
14 electric utilities' customers, which procedures shall  
15 be consistent with the public utilities commission  
16 approved procedures for non-payment and partial  
17 payment of rates, charges and fees under the electric  
18 utilities' tariffs;

19 (9) The distribution of the total amounts collected by the  
20 electric utilities for amounts billed to customers for  
21 the electric utilities' rates, fees, the green  
22 infrastructure fee, other public utilities commission





1 approved fees, and for associated taxes, in the event  
2 of partial payments of the billed amounts;

3 (10) Terms satisfactory to the public utilities commission  
4 to ensure that the green infrastructure fee shall be  
5 nonbypassable and will be paid by all existing and  
6 future customers of an electric utility or any  
7 successor; and

8 (11) Any other provision the public utilities commission  
9 considers appropriate to ensure the full and timely  
10 imposition, charging, collection, and adjustment,  
11 pursuant to an approved adjustment mechanism, of the  
12 green infrastructure fee described in this subsection.

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

16 (d) The public utilities commission, in a financing order,  
17 may permit the department flexibility in establishing the terms  
18 and conditions for the bonds to accommodate changes in market  
19 conditions, including repayment schedules, interest rates,  
20 financing costs, collateral requirements, required debt service  
21 and other reserves, and the ability of the department, at its  
22 option, to effect a series of issuances of bonds and correlated



1 assignments, sales, pledges, or other transfers of green  
2 infrastructure property. Any changes made under this section to  
3 terms and conditions for the bonds shall be in conformance with  
4 the financing order.

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

11 (f) Any adjustment to the green infrastructure fee made by  
12 the public utilities commission pursuant to the adjustment  
13 mechanism approved in the financing order shall be a ministerial  
14 act of the public utilities commission.

15 **§269-D Green infrastructure property.** (a) The green  
16 infrastructure property shall be created simultaneously with the  
17 issuance of the bonds and shall immediately vest in the  
18 department, which shall pledge and create a lien on the  
19 property, together with all other money in the green  
20 infrastructure bond fund, solely and exclusively in favor of  
21 bondholders and financing parties, to secure the payment of  
22 bonds, amounts payable to financing parties and bondholders,



1 amounts payable under any ancillary agreement, and other  
2 financing costs as provided in the financing documents executed  
3 by the department. Subject to this subsection, the lien and  
4 charge on green infrastructure property and all other moneys in  
5 the green infrastructure bond fund for the benefit of any  
6 financing party shall be governed by section 39-63.

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



1 The green infrastructure fee or green infrastructure property  
2 shall not be considered revenue of any electric utility.

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

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

21 (b) Once a financing order has become final as provided by  
22 law, the financing order shall become irrevocable. The public



1 utilities commission may not directly or indirectly, except as  
2 provided in the adjustment mechanism approved in the financing  
3 order, reduce, impair, postpone, rescind, alter, or terminate  
4 the green infrastructure fee authorized in the financing order  
5 or impair the green infrastructure property or the collection of  
6 the green infrastructure fee so long as any bonds are  
7 outstanding or any financing costs remain unpaid.

8 (c) Under a final financing order, the department shall  
9 retain sole discretion to cause bonds to be issued, including  
10 the right to defer or postpone such issuance, assignment, sale,  
11 or transfer.

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



1 (b) The green infrastructure fee may be applied to reduce  
2 the public benefits fee to be transferred pursuant to section  
3 269-121 if so provided in a financing order. Nothing in this  
4 subsection shall affect the right to impose, collect, and adjust  
5 from time to time the green infrastructure fee as provided in  
6 the financing order and this chapter.

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

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

18 **§269-G Electric utility successor requirements; default of**  
19 **electric utility.** (a) Any successor to an electric utility  
20 subject to a financing order shall be bound by the requirements  
21 of this part. The successor shall perform and satisfy all  
22 obligations of the electric utility under the financing order,



1 in the same manner and to the same extent as the electric  
2 utility, including the obligation to collect and pay the green  
3 infrastructure fee to the department or to any financing party  
4 as required by a financing order.

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

19 **§269-H Treatment of bonds, fees, and property.** (a) In  
20 the furtherance of section 39-65, the ownership, transfer, and  
21 pledge of the green infrastructure fee and green infrastructure  
22 property and the imposition, charging, collection, and receipt



1 of the green infrastructure fee and green infrastructure charge  
2 are exempt from all taxes and surcharges imposed by the State or  
3 the counties, including the general excise tax under chapter  
4 237, public service company tax under chapter 239, public  
5 utility fee under section 269-30, and public utility franchise  
6 tax under chapter 240.

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

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





1 or performed in full or unless adequate provision has been made  
2 by law for the protection of bondholders and other financing  
3 parties.

4 (b) The department in issuing the bonds is permitted to  
5 include the pledge specified in subsection (a) of this section  
6 in the bonds, ancillary agreements, and documentation related to  
7 the issuance and marketing of the bonds.

8 **§269-J Green infrastructure loan program order;**

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

19 (b) An application submitted by the authority to the  
20 public utilities commission under this section shall include the  
21 following:



- 1           (1) A description of each project, program, financing  
2                    agreement, or other arrangement for which the  
3                    authority seeks to allocate, use, expend, or otherwise  
4                    dispose of amounts deposited or held in the green  
5                    infrastructure special fund, including:
- 6            (A) The clean energy technology, demand response  
7                    technology, and energy use reduction and demand  
8                    side management infrastructure, programs, and  
9                    services to be financed;
- 10           (B) A description of the parties, both direct and  
11                    incidental, intended to benefit from any  
12                    financing made in connection with the green  
13                    infrastructure special fund amounts requested by  
14                    the authority in an application submitted to the  
15                    public utilities commission under this section;
- 16           (C) A description of the loan programs or other  
17                    arrangements designed, established, identified,  
18                    agreed to, agreed to in principle, continued,  
19                    carried over, or otherwise intended to be  
20                    effectuated for the use of the green  
21                    infrastructure special fund amounts requested by  
22                    the authority in an application submitted to the



- 1 public utilities commission under this section;  
2 and
- 3 (D) Any and all funding or credit sources identified,  
4 pledged, dedicated, or otherwise provided to  
5 supplement the green infrastructure special fund  
6 amounts requested by the authority in an  
7 application submitted to the public utilities  
8 commission under this section;
- 9 (2) Minimum lending, crediting, or investing criteria in  
10 relation to each project, program, financing  
11 agreement, or other arrangement described in an  
12 application submitted to the public utilities  
13 commission under this section;
- 14 (3) A description of the repayment processes, mechanisms,  
15 and applicable calculations for each project, program,  
16 financing agreement, or other arrangement described in  
17 an application submitted to the public utilities  
18 commission under this section;
- 19 (4) An explanation of the anticipated impacts and benefits  
20 to electric utility ratepayers of any project,  
21 program, financing agreement, or other arrangement  
22 described under an application submitted by the



1 authority to the public utilities commission under  
2 this section; and

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

7 **§269-K Green infrastructure loan program order; issuance.**

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

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



- 1 (2) Minimum criteria for the lending, crediting, or  
2 investing of amounts deposited or held in the green  
3 infrastructure special fund;
- 4 (3) A description of the repayment processes, mechanisms,  
5 and applicable calculations for each project, program,  
6 financing agreement, or other arrangement approved by  
7 the public utilities commission for which amounts  
8 deposited or held in the green infrastructure special  
9 fund may be allocated, used, expended, or otherwise  
10 disposed of;
- 11 (4) A review of the anticipated impacts and benefits to  
12 electric utility ratepayers of any project, program,  
13 financing agreement, or other arrangement approved  
14 under a green infrastructure loan program order; and
- 15 (5) Any other provision or information determined to be  
16 necessary by the public utilities commission.
- 17 (b) The public utilities commission shall issue an order  
18 under this section as expeditiously as possible upon the receipt  
19 from the authority of a completed application submitted pursuant  
20 to section 269-J.
- 21 (c) The order shall specify the following, including:



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

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

16 The electric utilities serving as billing and collecting  
17 agents shall be parties to the proceedings in which the order or  
18 orders are issued.

19 **§269-L Electric utilities; cost recovery; billing agent.**

20 (a) The commission shall ensure that all reasonable costs  
21 incurred by electric utilities to start up and implement the  
22 loan program may be recovered as part of the electric utility's



1 revenue requirement, including necessary billing system  
2 adjustments, costs arising out of the billing and collection of  
3 green infrastructure charges, and any costs for green  
4 infrastructure charges that are not recovered via participating  
5 customers' green infrastructure bill payments, or otherwise.

6 (b) The green infrastructure charge shall not be  
7 considered revenue of the electric utilities and accordingly,  
8 shall not be subject to state or county taxes, including the  
9 general excise tax under chapter 237, the public service company  
10 tax under chapter 239, the public utility fee under section 269-  
11 30, and the public utility franchise tax under chapter 240.

12 (c) The loan program or the act of serving as an agent to  
13 bill and to collect the green infrastructure charge shall not  
14 expose any electric utility to financial institution, escrow  
15 depository, or collection agency laws. An electric utility  
16 shall not be responsible for lending, underwriting, and credit  
17 determinations.

18 **§269-M Hawaii green infrastructure bond fund.** (a) There  
19 is established the Hawaii green infrastructure bond fund as a  
20 special fund into which all proceeds of the green infrastructure  
21 fee and any other proceeds of green infrastructure property  
22 shall be paid. The Hawaii green infrastructure bond fund may



1 also receive other moneys as the department may determine and as  
2 provided in a financing order, including, without limitation,  
3 green infrastructure charges.

4 (b) Moneys in the Hawaii green infrastructure bond fund  
5 shall be impressed with the lien created by, and shall be used  
6 solely for purposes set forth in, section 269-D. Upon payment  
7 or defeasance of all bonds and financing costs, moneys in the  
8 fund, at the direction of the department, may be transferred  
9 into the green infrastructure special fund or other purpose as  
10 the department shall specify.

11 (c) The Hawaii green infrastructure bond fund shall be  
12 audited at least annually by a firm of independent certified  
13 public accountants selected by the department, and the results  
14 of this audit shall be provided to the department and the public  
15 utilities commission.

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

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





1           **§269-N Compliance with revenue bond law.** For purposes of  
2 assuring conformity of and compliance with part III of chapter  
3 39, it is determined as follows:

- 4           (1) For purposes of section 39-51, "revenues" shall  
5 include the green infrastructure fee and the proceeds  
6 of green infrastructure property; the "loan program"  
7 shall include the loan program authorized under  
8 section 196-B; and "undertaking" shall include  
9 financing of the loan program through the issuance of  
10 green infrastructure revenue bonds;
- 11           (2) In addition and supplemental to any covenants  
12 recognized under section 39-60, any resolution,  
13 certificate, or indenture approved by the department  
14 may have additional or alternative covenants as may be  
15 consistent with this chapter, and the department may  
16 enter into a trust indenture, servicing agreement, or  
17 other financing documents having terms and conditions  
18 consistent with the financing order issued under  
19 section 269-C;
- 20           (3) In addition and supplemental to the power to impose  
21 rates, rentals, fees, or charges required under  
22 section 39-61, the department shall impose, adjust,



1 and collect the green infrastructure fee as provided  
2 in section 269-F and the financing order issued  
3 pursuant thereto; and

4 (4) In addition and supplemental to the uses specified in  
5 section 39-62, the green infrastructure fee shall be  
6 applied as provided in this chapter, the financing  
7 order, the certificate issued by the department, and  
8 any financing documents executed by the department in  
9 connection with the bonds.

10 **§269-O Severability.** If any provision of this part is  
11 held to be invalid or is superseded, replaced, repealed, or  
12 expires for any reason:

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

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

21 **§269-P Miscellaneous.** Neither the department nor a  
22 financing party shall be considered an electric utility or



1 person providing electric service by virtue of engaging in the  
2 transactions described in this part.

3       **§269-Q Revenue bonds; exclusion from debt limit.** Green  
4 infrastructure bonds are revenue bonds issued under article VII,  
5 section 12 of the state constitution, and chapter 39, part III,  
6 as modified by this part, and the department shall ensure that  
7 any bonds issued under this part are excluded from the  
8 calculation of the State's debt limit pursuant to article VII,  
9 section 13 of the state constitution.

10       **§269-R Financing order; adjustments to green**  
11 **infrastructure fee.** The financing order shall include, without  
12 limitation, a procedure to require the public utilities  
13 commission, in accordance with a formula set out in the  
14 financing order and approved by the department, to expeditiously  
15 review and approve periodic adjustments to the green  
16 infrastructure fee to ensure the payment of the bonds and  
17 related financing costs on a timely basis."

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

20       "**§269-5 Annual report and register of orders.** The public  
21 utilities commission shall prepare and present to the governor,  
22 through the director of finance, in the month of January in each



1 year a report respecting its actions during the preceding fiscal  
2 year. This report shall include summary information and  
3 analytical, comparative, and trend data concerning major  
4 regulatory issues acted upon and pending before the commission;  
5 cases processed by the commission, including their dispositions;  
6 utility company operations, capital improvements, and rates;  
7 utility company performance in terms of efficiency and quality  
8 of services rendered; financing orders issued, adjustments made  
9 to the public benefits fee, and repayments or credits provided  
10 to electric utility customers pursuant to part     or chapter  
11 196, part     ; environmental matters having a significant impact  
12 upon public utilities; actions of the federal government  
13 affecting the regulation of public utilities in Hawaii; long and  
14 short-range plans and objectives of the commission; together  
15 with the commission's recommendations respecting legislation and  
16 other matters requiring executive and legislative consideration.  
17 Copies of the annual reports shall be furnished by the governor  
18 to the legislature. In addition, the commission shall establish  
19 and maintain a register of all its orders and decisions, which  
20 shall be open and readily available for public inspection, and  
21 no order or decision of the commission shall take effect until  
22 it is filed and recorded in this register."



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

3 "(b) The public benefits fee shall be used to support  
4 [energy efficiency] clean energy technology, demand response  
5 technology, and energy use reduction and demand-side management  
6 infrastructure, programs, and services, subject to the review  
7 and approval of the public utilities commission. These moneys  
8 shall not be available to meet any current or past general  
9 obligations of the State; provided that the State may  
10 participate in any [energy efficiency or] clean energy  
11 technology, demand response technology, or energy use reduction  
12 and demand-side management infrastructure, programs, and  
13 services on the same basis as any other electric consumer.  
14 "Clean energy technology" means any commercially available  
15 technology that enables the State to meet the renewable  
16 portfolio standards under section 269-92, or the energy  
17 efficiency portfolio standards under section 269-96, and  
18 approved by the public utilities commission by rule or order."

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



1           (b) The department of business, economic development, and  
2 tourism is authorized to issue revenue bonds pursuant to part  
3 III of chapter 39, Hawaii Revised Statutes, as amended and  
4 supplemented by this Act, in a principal amount not to exceed  
5 \$200,000,000 to establish and administer the Hawaii green  
6 infrastructure loan program pursuant to section 196-B, Hawaii  
7 Revised Statutes.

8           (c) The department of business, economic development, and  
9 tourism is authorized to issue from time to time refunding bonds  
10 in such principal amounts as the department shall determine to  
11 be necessary to refund the green infrastructure bonds authorized  
12 under this Act, to the extent permitted by the financing  
13 documents.

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

17           SECTION 7. There is appropriated out of the Hawaii green  
18 infrastructure special fund established pursuant to section 196-  
19 E, Hawaii Revised Statutes, the sum of \$100,000,000 or so much  
20 thereof as may be necessary for fiscal year 2013-2014 and the  
21 same sum or so much thereof as may be necessary for fiscal year  
22 2014-2015.



1           The sums appropriated shall be expended by the department  
2 of business, economic development, and tourism for the purposes  
3 of this Act.

4           SECTION 8. There is appropriated out of the Hawaii green  
5 infrastructure bond fund established pursuant to section 269-M,  
6 Hawaii Revised Statutes, the sum of \$10,000,000 or so much  
7 thereof as may be necessary for fiscal year 2013-2014 and the  
8 sum of \$20,000,000 or so much thereof as may be necessary for  
9 fiscal year 2014-2015.

10           The sums appropriated shall be expended by the department  
11 of business, economic development, and tourism for the purposes  
12 of this Act.

13           SECTION 9. The department of business, economic  
14 development, and tourism, with the assistance of the Hawaii  
15 green infrastructure authority, shall submit a report on the  
16 status of the Hawaii green infrastructure authority's  
17 activities, including approved loan program description and  
18 uses; summary information and analytical data concerning loan  
19 program implementation; summary information and analytical data  
20 concerning the deployment of clean energy technology, demand  
21 response technology, and energy use reduction and demand side  
22 management infrastructure; and repayments made or credits



1 provided to electric utility customers under section 196-E and  
2 part of chapter 269, Hawaii Revised Statutes, no later than  
3 twenty days prior to the convening of the regular session of  
4 2014.

5 SECTION 10. In codifying the new part added to chapter  
6 196, Hawaii Revised Statutes, by section 2 of this Act and the  
7 new part added to chapter 269, Hawaii Revised Statutes, by  
8 section 3 of this Act, the revisor of statutes shall substitute  
9 appropriate section numbers for the letters used in designating  
10 and referring to the new sections in this Act.

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

13 SECTION 12. This Act shall take effect upon its approval;  
14 provided that sections 7 and 8 shall take effect on July 1,  
15 2013.





**Report Title:**

Green Infrastructure Loan Program; Public Benefits Fee;  
Appropriation

**Description:**

Establishes a regulatory financing structure that authorizes the PUC and DBEDT to provide low-cost loans for green infrastructure equipment to achieve measurable cost savings and Hawaii's clean energy goals. Requires a report to the legislature.  
Appropriates funds. (SB1087 HD1)

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

