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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: (1) focuses on  
15 providing an alternative means of low-cost financing for green  
16 infrastructure equipment for Hawaii ratepayers, particularly  
17 those ratepayers not currently able to obtain such technology on  
18 reasonable financing terms; (2) utilizes excess loan program  
19 funds as a fund to finance additional green infrastructure  
20 installations, subject to regulatory guidelines and approval;  
21 and (3) establishes clearly defined program procedures and  
22 targets that encourage effective coordination among state



1 agencies, industry, investors, and other critical energy  
2 industry stakeholders in order to help the State achieve its  
3 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 department may exercise all powers  
20 reserved to the authority.

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



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

3 "Green infrastructure bond" means any bond issued by the  
4 State under part of chapter 269.

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

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

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

19 "Green infrastructure equipment" means infrastructure  
20 improvements, equipment, and personal property to be installed  
21 to deploy clean energy technology, demand response technology,



1 and energy use reduction and demand side management  
2 infrastructure.

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

17 "Green infrastructure special fund" means the special fund  
18 created pursuant to section 196-J.

19 **§196-B Hawaii green infrastructure loan program.** There is  
20 established a Hawaii green infrastructure loan program, which  
21 shall be a loan program as defined under section 39-51. The  
22 green infrastructure loan program shall be administered by the



1 authority on behalf of the department in a manner consistent  
2 with chapter 39, part III.

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

13       **§196-D Functions, powers, and duties of the authority.** In  
14 the performance of, and with respect to the functions, powers,  
15 and duties vested in the authority by this part, the authority  
16 may, as directed by the director and in accordance with an  
17 approved order or orders by the public utilities commission:

18       (1) Make loans and expend funds to finance the purchase or  
19 installation of green infrastructure equipment for  
20 clean energy technology, demand response technology,  
21 and energy use reduction and demand side management  
22 infrastructure, programs, and services;



- 1           (2) Hold and invest moneys in the green infrastructure  
2           special fund in such investments as permitted by law  
3           and in accordance with approved investment guidelines  
4           established in one or more orders issued by the public  
5           utilities commission pursuant to section 196-F;
- 6           (3) Hire employees necessary to perform its duties,  
7           including an executive director. The executive  
8           director shall be appointed by the authority, and the  
9           employees' positions, including the executive  
10          director's position shall be exempt from chapter 76;
- 11          (4) Enter into contracts for the service of consultants  
12          for rendering professional and technical assistance  
13          and advice, and any other contracts that are necessary  
14          and proper for the implementation of the program;
- 15          (5) Enter into contracts for the administration of the  
16          green infrastructure loan program, without the  
17          necessity of complying with chapter 103D;
- 18          (6) Establish loan program guidelines to be approved in  
19          one or more orders issued by the public utilities  
20          commission pursuant to section 196-F;
- 21          (7) Be audited at least annually by a firm of independent  
22          certified public accountants selected by the



1 authority, and provide the results of this audit to  
2 the department; and

3 (8) Perform all functions necessary to effectuate the  
4 purposes of this chapter.

5 **§196-E Hawaii green infrastructure special fund. (a)**

6 There is established the Hawaii green infrastructure special  
7 fund into which shall be deposited:

- 8 (1) The proceeds of green infrastructure bonds net of  
9 issuance costs and reserves or overcollateralization  
10 amounts;
- 11 (2) Proceeds of green infrastructure bonds net of issuance  
12 costs and reserves or overcollateralization amounts;
- 13 (3) All other funds received by the department or the  
14 authority and legally available for the purposes of  
15 the special fund; and
- 16 (4) Interest earnings on all amounts in the special fund;  
17 and
- 18 (5) Such other moneys as shall be permitted by an order of  
19 the public utilities commission.

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





1 (b) Moneys in the Hawaii green infrastructure special fund  
2 may be used for:

- 3 (1) Making green infrastructure loans;
- 4 (2) Paying administrative costs of the Hawaii green  
5 infrastructure loan program;
- 6 (3) Paying any other costs related to the Hawaii green  
7 infrastructure loan program; or
- 8 (4) Paying financing costs, as defined in section 269-A,  
9 to the extent permitted by the public utilities  
10 commission financing order pursuant to section 269-C.

11 (c) The authority may invest funds held in the Hawaii  
12 green infrastructure special fund in such investments as  
13 permitted by law, and in accordance with approved investment  
14 guidelines established in one or more orders issued by the  
15 public utilities commission pursuant to section 196-F. All  
16 amounts in the Hawaii green infrastructure special fund shall be  
17 exempt from all taxes and similar surcharges imposed by the  
18 State. Nothing in this section shall prohibit the authority  
19 from using moneys in the Hawaii green infrastructure special  
20 fund to credit funds back to electric utility customers at the  
21 direction of the public utilities commission. If such funds are  
22 transferred back to the electric utility in order to credit



1 electric utility customers, the transfer back to such electric  
2 utility shall not be considered revenue of the electric utility  
3 and shall not be subject to state or county taxes.

4       **§196-F Processes and procedures.** (a) The authority shall  
5 apply to the public utilities commission for one or more orders  
6 to effectuate the Hawaii green infrastructure loan program,  
7 pursuant to sections 296-125 and 269-C. In the application, the  
8 authority shall identify terms and conditions for the uses of  
9 the Hawaii green infrastructure special fund consistent with  
10 section 169-E, including but not limited to the:

- 11       (1) Lending criteria;
- 12       (2) Equipment, products, and services to be financed;
- 13       (3) Qualifications and criteria of parties providing  
14             equipment, products, and services;
- 15       (4) Terms and conditions of the on-bill repayment  
16             mechanisms; and
- 17       (5) Calculation of the green infrastructure charge.

18       Nothing herein shall preclude the department from applying  
19 for a financing order, pursuant to section 269-B, prior to the  
20 issuance of an order or orders to effectuate the Hawaii green  
21 infrastructure loan program, nor from consolidating the



1 proceeding for a financing order with such a loan program  
2 implementation order.

3 (b) The public utilities commission shall issue a final  
4 order or orders for the Hawaii green infrastructure loan program  
5 as expeditiously as possible.

6 (c) In accordance with an approved order or orders for the  
7 Hawaii green infrastructure loan program, the authority shall  
8 utilize the proceeds of green infrastructure bonds and other  
9 amounts deposited in the green infrastructure special fund  
10 pursuant to 196-E, or to the extent permitted by a financing  
11 order, to pay financing costs, as defined in section 269-A.

12 (d) Within the order or orders, the authority shall obtain  
13 approval from the public utilities commission requiring the  
14 electric utilities to serve as agents to bill and collect the  
15 green infrastructure charge imposed to repay green  
16 infrastructure costs and transfer all green infrastructure  
17 charges collected to the authority on behalf of the department.  
18 Notwithstanding anything to the contrary, the utility shall not  
19 be obligated to bill, collect, or remit green infrastructure  
20 charges from non-utility customers.

21 (e) The order shall specify the following, including but  
22 not limited to:



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          (f) The green infrastructure charge shall not be  
20          considered revenue of the electric utilities and accordingly,  
21          shall not be subject to state or county taxes, including but not  
22          limited to the general excise tax under chapter 237, public



1 service company tax under chapter 239, public utility fee under  
2 section 269-30, and public utility franchise tax under chapter  
3 240.

4 (g) The public utilities commission shall ensure that all  
5 reasonable costs incurred by electric utilities to start up and  
6 implement the green infrastructure loan program may be recovered  
7 as part of the electric utility's revenue requirement, including  
8 necessary billing system adjustments, costs arising out of the  
9 billing and collection of green infrastructure charges, and any  
10 costs for green infrastructure charges that are not recovered  
11 via participating customers' green infrastructure bill payments  
12 or otherwise.

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

19 **§196-G Reporting; annual report.** The authority shall  
20 submit a report to the legislature on the authority's activities  
21 in administering the green infrastructure loan program under  
22 this part, no later than twenty days prior to the convening of



1 each regular session beginning with the regular session of 2015.  
 2 The report shall include but not be limited to the green  
 3 infrastructure loan program description and uses; summary  
 4 information and analytical data concerning the green  
 5 infrastructure loan program implementation; summary information  
 6 and analytical data concerning deployment of clean energy  
 7 technology, demand response technology, and energy use reduction  
 8 and demand side management infrastructure; and repayments made  
 9 or credits provided to electric utility customers under section  
 10 196-E(c) and this part.

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

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

21 **"PART . GREEN INFRASTRUCTURE BONDS**

22 **§269-A Definitions.** As used in this part:



1 "Ancillary agreement" means any bond insurance policy,  
2 letter of credit, reserve account, surety bond, swap  
3 arrangement, hedging arrangement, liquidity or credit support  
4 arrangement, or other related bond document or other similar  
5 agreement or arrangement entered into in connection with the  
6 issuance of green infrastructure bonds that is designed to  
7 promote the credit quality and marketability of the bonds or to  
8 mitigate the risk of an increase in interest rates.

9 "Authority" means the Hawaii green infrastructure authority  
10 established under chapter 196-C.

11 "Bond" or "green infrastructure bond" means any bond, note  
12 or other evidence of indebtedness that is issued by the State,  
13 acting through the department, under a financing order, the  
14 proceeds of which are used directly or indirectly to recover,  
15 finance, or refinance financing costs of clean energy  
16 technology, demand response technology, and energy use reduction  
17 and demand side management infrastructure, programs, and  
18 services, and that are secured by or payable from green  
19 infrastructure property. Green infrastructure bonds are revenue  
20 bonds issued under article VII, section 12 of the state  
21 constitution, and chapter 39, part III, as modified by this  
22 part, and the department shall ensure that any bonds issued



1 under this part are excluded from the calculation of the State's  
2 debt limit pursuant to article VII, section 13 of the state  
3 constitution.

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

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

7 "Electric utilities" means all electric utilities subject  
8 to billing, collecting, and remitting the public benefits fee,  
9 or the green infrastructure fee, pursuant to section 269-121, at  
10 the time the financing order becomes final, and any other  
11 electric utility designated in the financing order.

12 "Financing costs" means any of the following:

13 (1) Principal and interest payable on green infrastructure  
14 bonds;

15 (2) Any payment required under an ancillary agreement;

16 (3) Any amount required to fund or replenish a reserve  
17 account or another account established under any  
18 indenture, ancillary agreement, or other financing  
19 document relating to the issuance of green  
20 infrastructure bonds;

21 (4) Any redemption or call premium or cost of redeeming or  
22 refunding any existing debt of the department in.





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



1           infrastructure bonds that the department finds  
2           appropriate.

3           "Financing order" means an order issued at the request of  
4 the department by the public utilities commission under this  
5 part that has become final as provided by law, and that  
6 authorizes the issuance of green infrastructure bonds and the  
7 imposition, adjustment from time to time, and collection of  
8 green infrastructure fees. The financing order shall include,  
9 without limitation, a procedure to require the public utilities  
10 commission in accordance with a formula set out in the financing  
11 order and approved by the department to review and approve  
12 expeditiously periodic adjustments to green infrastructure fees  
13 to ensure the payment of the green infrastructure bonds and  
14 related financing costs on a timely basis.

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-J.

6           "Green infrastructure fee" means the nonbypassable fees and  
7           charges authorized by section 269-121 and in a financing order  
8           authorized under this part to be imposed on and collected from  
9           all existing and future customers of electric utilities or any  
10          successor. The green infrastructure fee may be a usage based  
11          surcharge, a flat user fee, or a charge based upon customer  
12          revenues as determined by the public utilities commission for  
13          each customer class in any financing order.

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



1 interests created by the public utilities commission under any  
2 financing order.

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

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

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

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



- 1           (1) The imposition, charging, and collection on behalf of
- 2           the department of the green infrastructure fee, to
- 3           become effective upon the issuance of the green
- 4           infrastructure bonds, and the adjustment of such green
- 5           infrastructure fee on behalf of the department in
- 6           accordance with an adjustment mechanism requested by
- 7           the department under this part in amounts sufficient
- 8           to pay the principal of and interest on green
- 9           infrastructure bonds and all related financing costs
- 10          on a timely basis;
- 11          (2) The creation of green infrastructure property under
- 12          the financing order; and
- 13          (3) The deposit of the net proceeds of the green
- 14          infrastructure bonds into the green infrastructure
- 15          special fund.
- 16          (b) The application shall include all of the following:
- 17           (1) The principal amount of the green infrastructure bonds
- 18           proposed to be issued;
- 19           (2) An estimate of the date each series of green
- 20           infrastructure bonds is 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 green  
2 infrastructure bonds is expected to be imposed and  
3 collected;

4 (4) An estimate of the financing costs associated with the  
5 issuance of each series of green infrastructure bonds;

6 (5) An estimate of the amount of the green infrastructure  
7 fee revenues necessary to pay principal and interest  
8 on the green infrastructure bonds and related  
9 financing costs as set forth in the application and  
10 the calculation for that estimate, which calculation  
11 shall take into account the estimated date or dates of  
12 issuance and the estimated principal amount of each  
13 series of green infrastructure bonds;

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

17 (7) A description of a proposed formulaic adjustment  
18 mechanism for the adjustment of the green  
19 infrastructure fee to assure the timely payment of  
20 principal and interest on the green infrastructure  
21 bonds and related financing costs; and



1           (8) Any other information required by the public utilities  
2           commission.

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

9           (b) The public utilities commission may issue a financing  
10 order if the public utilities commission finds that the creation  
11 of the green infrastructure property to secure the payment of  
12 the green infrastructure bonds, including the imposition of the  
13 green infrastructure fee, will facilitate the acquisition of  
14 low-cost financing, pursuant to an application under section  
15 269-B.

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

18           (1) The maximum amount of green infrastructure bonds that  
19           the department requested to be issued under the  
20           financing order;



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





1 maintenance of any reserves required to be maintained  
2 by the department;

3 (6) The term of the green infrastructure bonds, as  
4 proposed by the department, during which term the  
5 green infrastructure fee shall continue to be  
6 collected and pledged to pay the green infrastructure  
7 bonds, which term shall automatically be extended by  
8 the term of any refunding green infrastructure bonds  
9 issued in such principal amounts as the department may  
10 determine to be necessary to refund the green  
11 infrastructure bonds that are the subject of the  
12 original financing order;

13 (7) A requirement that the electric utilities, including  
14 any successors, serve as agents to collect the green  
15 infrastructure fees and transfer those surcharges to  
16 the trustee or other financing party as required by  
17 the financing order and any agreements with the  
18 department;

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



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

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

12 (10) Terms satisfactory to the public utilities commission  
13 to ensure that the green infrastructure fee shall be  
14 nonbypassable and will be paid by all existing and  
15 future customers of an electric utility or any  
16 successor; and

17 (11) Any other provision the public utilities commission  
18 considers appropriate to ensure the full and timely  
19 imposition, charging, collection, and adjustment,  
20 pursuant to an approved adjustment mechanism, of the  
21 green infrastructure fee described in this subsection.



1           The electric utilities serving as billing and collecting  
2 agents shall be parties to the proceedings in which the order or  
3 orders are issued.

4           (d) The public utilities commission shall, in a financing  
5 order, permit 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 the 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  
3 269-15.5.

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 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 and create a lien on  
13 such property, together with all other money in the green  
14 infrastructure bond fund, solely and exclusively in favor of  
15 bondholders and financing parties, to secure the payment of  
16 green infrastructure bonds, amounts payable to financing parties  
17 and bondholders, amounts payable under any ancillary agreement,  
18 and other financing costs as provided in the financing documents  
19 executed by the department. Subject to the foregoing, the lien  
20 and charge on green infrastructure property and all other moneys  
21 in the green infrastructure bond fund for the benefit of any  
22 financing party shall be governed by section 39-63.



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

19           (c) The obligation of any electric utility customer to pay  
20 the green infrastructure fee or green infrastructure charge and,  
21 notwithstanding subsection (b), the obligation of the electric  
22 utility to collect and remit the green infrastructure fee or



1 green infrastructure charge shall not be subject to any setoff,  
2 counterclaim, surcharge, or defense by the electric utility or  
3 by any electric utility customer, or in connection with a  
4 bankruptcy of any electric utility or any electric utility  
5 customer.

6       **§269-E Green infrastructure bonds financing order.** (a) A  
7 financing order shall remain in effect until the green  
8 infrastructure bonds issued under the financing order and all  
9 financing costs related to the bonds have been paid in full or  
10 defeased by their terms. A financing order shall remain in  
11 effect and unabated notwithstanding the bankruptcy,  
12 reorganization, or insolvency of any electric utility or any  
13 affiliate of the electric utility or the commencement of any  
14 judicial or nonjudicial proceeding on the financing order.

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



1 the green infrastructure fee so long as any green infrastructure  
2 bonds are outstanding or any financing costs remain unpaid.

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

7 **§269-F Green infrastructure fee nonbypassable.** (a) So  
8 long as any green infrastructure bonds are outstanding and any  
9 financing costs have not been paid in full, the green  
10 infrastructure fees authorized under any financing order shall  
11 be nonbypassable. Subject to any exceptions provided in a  
12 financing order, the green infrastructure fee shall be paid by  
13 all existing and future customers of electric utilities or any  
14 successors.

15 (b) The green infrastructure fee shall be collected by the  
16 electric utilities or their successors, as collection agents for  
17 the department or the financing parties, in full through a  
18 surcharge, fee, or charge that is separate and apart from the  
19 electric utilities' rates. The green infrastructure fee may be  
20 included with the public benefits fee as one line item on the  
21 electric utility bill when the bill contains a public benefits  
22 fee pursuant to section 269-121, but such inclusion shall not



1 adversely affect the pledge of the green infrastructure fee or  
2 the right to adjust the green infrastructure fee as authorized  
3 by this section.

4       **§269-G Electric utility successor requirements; default of**  
5 **electric utility.** (a) Any successor to an electric utility  
6 subject to a financing order shall be bound by the requirements  
7 of this part. The successor shall perform and satisfy all  
8 obligations of the electric utility under the financing order,  
9 in the same manner and to the same extent as the electric  
10 utility, including the obligation to collect and pay the green  
11 infrastructure fee to the department or to any financing party  
12 as required by a financing order.

13       (b) The public utilities commission may require, in the  
14 financing order creating the green infrastructure fee and green  
15 infrastructure property, that, in the event of a default by the  
16 electric utility in remittance of the green infrastructure fee  
17 collected arising with respect to green infrastructure property,  
18 the public utilities commission, upon the application by the  
19 department, and without limiting any other remedies available to  
20 the department or any financing party by reason of the default,  
21 shall order the sequestration and payment to the beneficiaries  
22 of the green infrastructure fee collected arising with respect





1 to the green infrastructure property. Any order shall remain in  
2 full force and effect notwithstanding any bankruptcy,  
3 reorganization, or other insolvency proceedings with respect to  
4 the electric utility.

5       **§269-H Treatment of green infrastructure bonds, fees, and**  
6 **property.** (a) In the furtherance of section 39-65, the  
7 ownership, transfer, and pledge of the green infrastructure fee  
8 and green infrastructure property and the imposition, charging,  
9 collection, and receipt of the green infrastructure fee and  
10 green infrastructure charge are exempt from all taxes and  
11 similar surcharges imposed by the State and counties, including  
12 but not limited to the general excise tax under chapter 237,  
13 public service company tax under chapter 239, public utility fee  
14 under section 269-30, and public utility franchise tax under  
15 chapter 240.

16       (b) Green infrastructure bonds issued under a financing  
17 order shall not be an obligation of any electric utility. The  
18 issuance of green infrastructure bonds does not directly,  
19 indirectly, or contingently obligate the electric utility for  
20 payment of the principal of or interest on the bonds.

21       **§269-I Green infrastructure property non-impairment.** (a)  
22 In furtherance of section 39-61, the State pledges to and agrees



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

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

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



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

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

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

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

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



1           **§269-K 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 include  
5 the green infrastructure fee and the proceeds of green  
6 infrastructure property; the loan program shall  
7 include the loan program authorized under section  
8 196-B; and undertaking shall include financing of the  
9 Hawaii green infrastructure loan program through the  
10 issuance of green infrastructure revenue bonds;

11          (2) In addition and supplemental to the powers conferred  
12 by section 39-60, any resolution, certificate or  
13 indenture approved by the department may have such  
14 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 powers conferred  
21 by section 39-61, the green infrastructure fee shall  
22 be imposed, adjusted and collected as provided in



1 section 269-F and the financing order issued pursuant  
2 thereto; and

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

9 **§269-L Severability.** If any provision of this part is  
10 held to be invalid or is superseded, replaced, repealed, or  
11 expires for any reason, that occurrence shall not affect any  
12 action allowed under this part that is taken prior to that  
13 occurrence by the public utilities commission, an electric  
14 utility, the department, a collection agent, a financing party,  
15 a bondholder, or a party to an ancillary agreement. Any such  
16 action shall remain in full force and effect.

17 **§269-M Miscellaneous.** Neither the department nor a  
18 financing party shall be considered an electric utility or  
19 person providing electric service by virtue of engaging in the  
20 transactions described in this part.

21 **§269-N Annual report and register of orders.** The public  
22 utilities commission shall prepare and present to the governor,



1 through the director of finance, in the month of January in each  
2 year a report respecting its actions during the preceding fiscal  
3 year. This report shall include summary information and  
4 analytical, comparative, and trend data concerning major  
5 regulatory issues acted upon and pending before the commission;  
6 cases processed by the commission, including their dispositions;  
7 utility company operations, capital improvements, and rates;  
8 utility company performance in terms of efficiency and quality  
9 of services rendered; financing orders issued, adjustments made  
10 to the public benefits fee, and repayments or credits provided  
11 to electric utility customers pursuant to the issuance of green  
12 infrastructure bonds under section 196-E(b) and part ,  
13 chapter 269; environmental matters having a significant impact  
14 upon public utilities; actions of the federal government  
15 affecting the regulation of public utilities in Hawaii; long and  
16 short-range plans and objectives of the commission; together  
17 with the commission's recommendations respecting legislation and  
18 other matters requiring executive and legislative consideration.  
19 Copies of the annual reports shall be furnished by the governor  
20 to the legislature. In addition, the commission shall establish  
21 and maintain a register of all its orders and decisions, which  
22 shall be open and readily available for public inspection, and



1 no order or decision of the commission shall take effect until  
2 it is filed and recorded in this register."

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

5 "~~§269-121 Public benefits fee authorization[-];~~ green  
6 infrastructure fee. (a) The public utilities commission, by  
7 order or rule, may require that all or a portion of the moneys  
8 collected by Hawaii's electric utilities from its ratepayers  
9 through a demand-side management surcharge be transferred to a  
10 third-party administrator contracted by the public utilities  
11 commission. The moneys transferred shall be known as the public  
12 benefits fee.

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



1 and demand-side management infrastructure, programs, and  
2 services on the same basis as any other electric consumer.

3 (c) The public utilities commission is further authorized  
4 to create, pursuant to a financing order approved pursuant to  
5 part , a utility-wide nonbypassable surcharge, referred to  
6 as the green infrastructure fee, which shall be deposited in the  
7 green infrastructure bond fund and pledged and applied to the  
8 repayment of green infrastructure bonds and related financing  
9 costs as described in part .

10 (d) The green infrastructure fee may be included with the  
11 public benefits fee as one line item on the electric utility  
12 bill when the bill contains a public benefits fee if so provided  
13 in the financing order authorized in part . The green  
14 infrastructure fee may be applied to reduce the public benefits  
15 fee to be transferred pursuant to subsection (a) if so provided  
16 in a financing order. Nothing in this section shall affect the  
17 right to impose, collect, and adjust from time to time, the  
18 green infrastructure fee as provided in the financing order and  
19 chapter 269.

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



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

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

13 (b) The department of business, economic development, and  
14 tourism is authorized to issue revenue bonds pursuant to part  
15 III of chapter 39, Hawaii Revised Statutes, as amended and  
16 supplemented by this part, in a principal amount not to exceed  
17 \$200,000,000 to establish and administer the Hawaii green  
18 infrastructure loan program pursuant to section 196-B, Hawaii  
19 Revised Statutes.

20 (c) The department of business, economic development, and  
21 tourism is authorized to issue from time to time refunding green  
22 infrastructure bonds in such principal amounts as the department



1 shall determine to be necessary to refund the green  
2 infrastructure bonds authorized under this Act, to the extent  
3 permitted by the financing documents.

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

7 SECTION 7. There is appropriated out of the general  
8 revenues of the State of Hawaii the sum of \$100,000,000 or so  
9 much thereof as may be necessary for fiscal year 2013-2014 and  
10 the same sum or so much thereof as may be necessary for fiscal  
11 year 2014-2015 for deposit into the Hawaii green infrastructure  
12 special fund established pursuant to section 196-E, Hawaii  
13 Revised Statutes.

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

17 SECTION 8. 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 for the issuance of Hawaii green infrastructure loans.



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 9. There is appropriated out of the general  
5 revenues of the State of Hawaii the sum of \$10,000,000 or so  
6 much thereof as may be necessary for fiscal year 2013-2014 and  
7 the same sum or so much thereof as may be necessary for fiscal  
8 year 2014-2015 for deposit into the Hawaii green infrastructure  
9 bond fund established pursuant to section 296-J, Hawaii Revised  
10 Statutes.

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

14           SECTION 10. There is appropriated out of the Hawaii green  
15 infrastructure bond fund established pursuant to section 296-J,  
16 Hawaii Revised Statutes, the sum of \$10,000,000 or so much  
17 thereof as may be necessary for fiscal year 2013-2014 and the  
18 same sum or so much thereof as may be necessary for fiscal year  
19 2014-2015 for the issuance of Hawaii green infrastructure bonds.

20           The sums appropriated shall be expended by the department  
21 of business, economic development, and tourism for the purposes  
22 of this Act.



1 SECTION 11. The department of business, economic  
2 development, and tourism, with the assistance of the Hawaii  
3 green infrastructure authority, shall submit a report on the  
4 status of the Hawaii green infrastructure authority's  
5 activities, including approved loan program description and  
6 uses; summary information and analytical data concerning loan  
7 program implementation; summary information and analytical data  
8 concerning the deployment of clean energy technology, demand  
9 response technology, and energy use reduction and demand side  
10 management infrastructure; and repayments made or credits  
11 provided to electric utility customers under section 196-E and  
12 part of chapter 269, no later than twenty days prior to  
13 the convening of the regular session of 2014.

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

20 SECTION 13. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 14. This Act shall take effect upon its approval;  
2 provided that sections 7, 8, 9, and 10 shall take effect on  
3 July 1, 2013.

4



**Report Title:**

Green Infrastructure Loan Program; Public Benefits Fee;  
Appropriation

**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. Requires a report to the legislature. Appropriates funds. (SD1)

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