

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

WRITTEN
TESTIMONY ONLY

**Testimony in SUPPORT of HB2088 HD2
RELATING TO FINANCING**

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: 2/25/2022

Room Number: 308

1 **Fiscal Implications:** The measure involves a \$25,000,000 appropriation for the Hawaii Green
2 Infrastructure Authority for the creation of an environmental and economic revolving loan fund.

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

14 **Offered Amendments:** None.

15 Thank you for the opportunity to testify on this measure.



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

CHUNG I. CHANG
DEPUTY DIRECTOR

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

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

Statement of
MIKE MCCARTNEY
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON FINANCE

Friday, February 25, 2022
1:30 PM

State Capitol, Conference Room 308 & Videoconference

In consideration of
HB2088, HD2
RELATING TO FINANCING.

Chair Luke, Vice Chair Yamashita, and members of the Committee.

The Department of Business, Economic Development, and Tourism **supports** House Bill 2088, HD2, an Administration Bill, that proposes to create the Environmental and Economic Development Revolving Loan Fund under the administration of the Hawaii Green Infrastructure Authority and allow property owners to finance qualifying improvements through a voluntary non-ad valorem special tax assessment.

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

Thank you for this opportunity to testify in support of HB2088, HD2.



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2088, H.D. 2, RELATING TO FINANCING.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Friday, February 25, 2022

TIME: 1:30 p.m.

LOCATION: State Capitol, Room 308, Via Videoconference

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

Chair Luke and Members of the Committee:

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

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

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

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

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

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

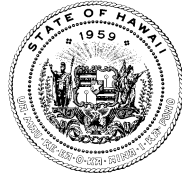
There are provisions in this bill, not found in former, more troublesome PACE legislative attempts, that are clearly calculated to make the parity lien conditions more reasonable, and thus not run afoul of the Contracts Clause: the PAF lender's obligation to determine that the property owner can pay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

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

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON FINANCE
HEARING ON FEBRUARY 25, 2022 AT 1:30PM VIA VIDEOCONFERENCE

HB 2088, HD2, RELATING TO FINANCING

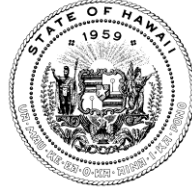
February 25, 2022

Aloha Chair Luke, Vice Chair Yamashita, and members of the Committee:

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

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

Thank you for your consideration of our testimony.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Finance
Friday, February 25, 2022
1:30 PM
Via Videoconference**

**On the following measure:
H.B. 2088, HD2, RELATING TO FINANCING**

Chair Luke and Members of the Committee:

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

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

This HD2 version further amends the bill by Clarifying that cesspools may be upgraded or converted to Director of Health-approved wastewater systems, rather than just to septic systems or aerobic treatment units; by removing language would have authorized the HGIA to issue revenue bonds; by specifying that delinquent liens do not trigger the acceleration of the Property Assessed Financing Assessment Contract; and, by clarifying that the on-bill repayment mechanism can only be used as approved in the Green Energy Money Saver On-Bill Program.

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

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

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

In addition, proposed HRS section 196-64(c)(3), which would allow the HGIA to “[u]tilize all repayment mechanisms, including the on-bill repayment mechanism, as authorized by the green energy money saver on-bill program, property assessed financing assessment program, financing tools, servicing and other arrangements, and sources of capital available to the authority []”, could lead to electric ratepayer funds being used for unintended purposes. The bill proposes to not require (or allow) Public

Utilities Commission (PUC) oversight of how the funds used for the environmental and economic development revolving fund would be used (see the proposed HRS section 196-A, where it reads that the “[f]unds deposited into the environmental and economic development revolving loan fund shall not be under the jurisdiction of nor be subject to public utilities commission approval”). Thus, the proposed language creates a dilemma, where the language could be read to still allow the use of on-bill repayment mechanism to be used for the proposed fund. While the Department recognizes that HD2 may have intended to address this concern (“as authorized by the green energy money saver on-bill program”), the Department believes that there is remaining ambiguity that could allow the electric on-bill program to be used in an unintended manner. The Department acknowledges that the PUC should not need to review how the environmental and economic development funds are used, but the proposed language could still allow funds collected from electric utility customers to be used for non-electric service purposes and is not in the interest of those customers. Therefore, the Department respectfully offers that it would be clearer to specify that the repayments from the Green Energy Money \$aver On-Bill Program are an allowable use only for the existing clean energy and energy efficiency revolving loan fund and not for the new environmental and economic development revolving loan fund purposes.

Thank you for the opportunity to testify on this bill



DAVID Y. IGE
GOVERNOR

GWEN S. YAMAMOTO LAU
EXECUTIVE DIRECTOR

HAWAII GREEN INFRASTRUCTURE AUTHORITY

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

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

Testimony of
Gwen Yamamoto Lau
Executive Director
before the
HOUSE COMMITTEE ON FINANCE
Friday, February 25, 2022
Time: 1:30 P.M.

State Capitol, Conference Room No. 308 & Videoconference

In consideration of
HOUSE BILL NO. 2088, HD2
RELATING TO FINANCING

Chair Luke, Vice Chair Yamashita, and Members of the Committee on Finance:

Thank you for the opportunity to testify and provide comments on House Bill 2088, HD2, relating to financing. This bill proposes to allow property owners to finance qualifying improvements through a non-ad valorem property assessment. The Hawaii Green Infrastructure Authority ("HGIA") **strongly supports** this bill.

Working together with the Counties to leverage a non-traditional financing mechanism capable of attracting private capital, as well as members of the Hawaii Banker's Association to design a Property Assessed Financing Program, Hawaii has an opportunity to unleash millions of much needed capital to finance energy efficiency upgrades, disaster resiliency improvements, water conservation measures and renewable energy installations for residential and commercial property owners.

HGIA respectfully requests the following amendment to limit the residential property assessed loan amount and alleviate concerns:

(6) The following provisions regarding lienholders:

(A) For residential properties:

(i) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by residential property, the

total principal amount funded through any property assessed financing assessment contract secured with a non-ad valorem special tax assessment for a residential property under this part shall not exceed the lesser of twenty per cent of the market value of the property as determined by the county property appraiser or an amount not to exceed ninety per cent of the market value of the property as determined by the county property appraiser, inclusive of the balance of any existing mortgage loans. This limitation shall not apply to any property assessed financing assessment on residential property that is consented to by the holders or loan servicers of any mortgage encumbering or otherwise secured by the property; and

Thank you for this opportunity to provide comments and testify in strong support of HB 2088, HD2.

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

TO THE
HOUSE COMMITTEE ON
FINANCE

February 25, 2022
1:30 p.m.

Chair Luke and Members of the Committee:

MEASURE: H.B. No. 2088, HD2

TITLE: RELATING TO FINANCING.

DESCRIPTION: Creates the environmental and economic development revolving loan fund under the administration of the Hawaii green infrastructure authority. Allows property owners to finance qualifying improvements through a non-ad valorem property assessment. Appropriates funds. Effective 7/1/2100. (HD2)

POSITION:

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

COMMENTS:

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

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

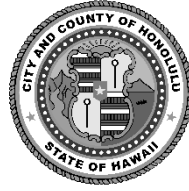
The Commission notes that the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs has submitted testimony recommending that this measure be clarified to explicitly state that:

- 1) electric utility ratepayer funds, including proceeds from the green energy market securitization bonds, shall be kept separate so that no such separate moneys are used to fund or guarantee any environmental and economic development revolving loan purposes; and
- 2) repayments from the Green Energy Money Saver On-Bill Program are an allowable use only for the existing clean energy and energy efficiency revolving loan fund and not for the new environmental and economic development revolving loan fund purposes.

Thank you for the opportunity to testify on this measure.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

RICK BLANGIARDI
MAYOR



ANDREW T. KAWANO
DIRECTOR

CARRIE CASTLE
DEPUTY DIRECTOR

February 24, 2022

The Honorable Chair Sylvia Luke
And Members of the Committee on Finance
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Committee Members:

Re: Testimony on House Bill 2088 H.D. 2
Hearing: Friday, February 25, 2022, 1:30 p.m., via videoconference

The City and County of Honolulu ("City") appreciates the opportunity to testify and provide comments on House Bill 2088 H.D.2 (HB 2088), relating to the Clean Energy/Environmental Improvements, Bonds and County-Implemented Property Assessed Financing Program (C-PACE).

HB 2088 targets upgrading or converting the State's cesspools to sewage systems by January 1, 2050; however the estimated costs is \$1.3 billion statewide. Out of the 88,000 known cesspools statewide, Oahu currently has 11,000 cesspools.

The City supports preserving Oahu's natural resources for the health and safety of all Oahu residences and businesses. We acknowledge C-PACE as a response to preserving our natural resources and providing a cesspool replacement financing option, and thus provide the following comments on HB 2088 for your consideration.

As currently drafted, HB 2088 would allow residential and commercial property owners to apply to a financial institution for funding to finance a qualified improvement. The financing agreement would be annually assessed over a fixed term and would appear annually on the owner's real property tax bill as a non-ad valorem special tax assessment. The City anticipates that annual assessment and billing cycles could coincide with the real property tax program.

The City's focus is providing its core services to our residents and visitors with safe, accessible, well-maintained public facilities, exceptional customer service, fiscal stewardship of tax dollars, and quality and comprehensive programs for all. Real property tax is the largest and primary source of revenue for the City.

The Honorable Chair, Sylvia Luke
February 24, 2022
Page 2

Staffing resources and expertise in the City's Real Property Assessment and Treasury Divisions are currently stretched and may have to be supplemented in order to service the proposed HB 2088. The current existing staff are focused on supporting the real property tax program and the volume and complexity of the ever-changing real property tax initiatives.

The City's real property tax system was designed, purchased and implemented to support the collection of real property taxes. The required system and programming modifications and operational changes necessary to implement collection of the non-ad valorem special assessment will need to be funded by HB 2088, because no City funding is available. We would request that Sections 6 and 7 be made specific that funds appropriated could be spent for implementation, "*at the state and county level,*" and flexibility be provided beyond fiscal years 22-23, wherever possible, for the expenditure of those funds to match the timing of counties opting in to the program.

Without adequate resources to implement, we may be less likely to opt-in to the program as we would not want to constrain limited county capacity further and adversely affect the City's favorable general obligation bond ratings.

According to HB 2088, there are 11,000 cesspools on Oahu that all must be upgraded by 2050 and there is a need for financing options. HB 2088 is a financing option that could be attractive for some Honolulu City taxpayers.

Sincerely,

Andrew T. Kawano
Director
Department of Budget and Fiscal Services

OFFICE OF CLIMATE CHANGE, SUSTAINABILITY AND RESILIENCY

CITY AND COUNTY OF HONOLULU

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



RICK BLANGIARDI
MAYOR

MATTHEW GONSER, AICP, CFM
EXECUTIVE DIRECTOR &
CHIEF RESILIENCE OFFICER

FRIDAY, FEBRUARY 25, 2022, 1:30 P.M.

STATE OF HAWAII
HOUSE COMMITTEE ON FINANCE

**TESTIMONY ON HOUSE BILL 2088, HD2
RELATING TO FINANCING**

BY,

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

Dear Chair Luke, Vice Yamashita, and Members of the Committee:

The City and County of Honolulu (“City”) Office of Climate Change, Sustainability and Resiliency (“CCSR”) **supports HB2088, HD2** which establishes an at- or below-market interest loan program and authorizes property assessed financing for environmental, economic recovery, and economic diversification projects and initiatives.

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

CCSR reported to the Honolulu City Council in January 2020¹ after conducting research on potential feasibility of a similar financing mechanism just for clean energy improvements known as Commercial Property Assessed Clean Energy (C-PACE) Program, and found that a well-designed C-PACE program could complement fundamental energy- and cost-saving public policies outlined in the O’ahu Resilience

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

Chair Luke and Vice Chair Yamashita
HB2088, HD2
February 25, 2022
Page 2

Strategy to help advance City goals to reduce energy use and associated greenhouse gas emissions, improve affordability for island residents, build resilience to the impacts of climate change, and foster economic development.

CCSR acknowledges the potential notable set up costs and considerations for the City in implementation of such a property assessed financing program as proposed in HB2088, HD2, and as such, supports the proposal's state-wide approach for the City to opt into and partner with the Hawai'i Green Infrastructure Authority in implementation.

With more than seven billion dollars already invested in property assessed financing nationally for clean energy programs alone², such financing has become a proven mechanism for supporting increased resilience and affordability for our local residents. Thank you for the opportunity to testify in support of HB2088, HD2.

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

HB-2088-HD-2

Submitted on: 2/23/2022 11:31:46 PM

Testimony for FIN on 2/25/2022 1:30:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ted Bohlen	Hawai'i Reef and Ocean Coalition	Support	Yes

Comments:

To: The Honorable Sylvia Luke, Chair and Members of the House Committee on Finance

From: Hawai'i Reef and Ocean Coalition (by Ted Bohlen)

Re: Hearing **HB2088 HD2 RELATING TO FINANCING**

Hearing: Friday, February 25, 2022, 1:30 p.m., CR 308 and by videoconference

Aloha Chair Luke and Members of the House Committee on Finance:

Position: **Hawai'i Reef and Ocean Coalition (HIROC) STRONGLY SUPPORTS HB2088 HD2!**

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

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

The costs of upgrading cesspools are unaffordable for many homeowners. One of the primary roadblocks to increasing rates of cesspool conversion is financing. Without this bill, most homeowners won't have options for financing the mandated conversions/upgrades.

This bill will help homeowners finance those upgrades by enabling property-assessed financing. Non-traditional financing mechanisms like property assessed financing can help homeowners and others access capital through a loan fund to finance upgrades of cesspools. The bill is modeled after successful bills in other states. Thirty-seven states and D.C. have property-assessed financing legislation.

This bill creates an environmental and economic development revolving loan fund to be administered by the Hawai'i Green Infrastructure Authority. **This revolving loan fund model,**

which has worked in many other states, can unlock new markets and inject needed capital to help resolve the serious statewide water pollution problem caused by cesspools.

This bill provides the Counties with several options:

- the option to participate (it's not a mandate);
- The option to issue bonds (or not); and
- It will provide funds to help upgrade the County's billing systems to accommodate the special tax assessments.

This bill is a creative way to provide financing to assist in protecting Hawaii's environment.

Please pass this bill!

Mahalo!

Hawai'i Reef and Ocean Coalition (HIROC) (by Ted Bohlen)



Hawaii Solar Energy Association
Serving Hawaii Since 1977

**Testimony of The Hawaii Solar Energy Association Regarding HB 2088 HD2, Relating to
Financing, Before the House Committee on Finance**

Friday, February 25, 2022

Chair Luke, Vice-Chair Yamashita, and members of the Committee, my name is Rocky Mould and I am the Executive Director of the Hawaii Solar Energy Association (HSEA). We **support HB 2088 HD2** which establishes a revolving loan fund and property assessment mechanism to provide ‘at or below market’ financing or other authorized financial assistance to eligible public, private, or nonprofit borrowers.

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

HSEA advocates for policies that provide cost-effective, equitable, and impactful solutions to achieve Hawaii’s climate and resilience goals by enabling residents and businesses to invest in and benefit from the transition to clean energy. Distributed energy resources (DERs) are the leading contributor to Hawaii’s clean energy transition with 45.7% of Hawaii’s renewable energy coming from customer-sited, grid-connected solar PV.¹ And now, Hawaii leads the nation, by far, in pairing solar PV with energy storage at 79% of all residential and 38% of all small-scale commercial installations.² These investments in resilient power systems not only save energy costs for residents and businesses, but also provide energy security and reliability for the entire electricity system as we retire fossil fuel power plants such the AES coal plant.

A revolving loan fund that has the authority to tap a variety of funding sources, deploy ‘at or below market rate’ loans, and use other funding mechanisms can be a powerful tool to invest in resilience, renewable energy and energy efficiency measures for underserved markets and communities. ***Importantly, these investments not only serve key public policy goals that make***

¹ See Hawaiian Electric’s “Key Performance Metrics, Renewable Portfolio Standard compliance” available at <https://www.hawaiianelectric.com/about-us/key-performance-metrics/renewable-energy>.

² See Lawrence Berkeley National Laboratory, *Tracking the Sun, Pricing and Design Trends for Distributed Photovoltaic Systems in the United States* (2021 Edition) at Slide 14 (finding that “Hawaii has, by far, the highest storage attachment rates of any state”).



Hawaii Solar Energy Association
Serving Hawaii Since 1977

our island more resilient to the accelerating risks and costs of climate change, but they also save money and reduce risks for borrowers and lenders which in turn improves credit quality for all lien holders regardless of priority. HSEA looks forward to working with stakeholders to establish a program that contributes to Hawaii's key public policy priorities and improves the livelihoods and well-being of all its residents and communities.

HSEA **supports HB 2088 HD2** and respectfully asks the committee to advance this measure.

Thank you for the opportunity to testify.



Testimony in consideration of House Bill No. 2088 (Saiki), relating to green infrastructure.

Before the Senate Committee on Finance

Date: Friday, Feb 25, 2022

Time: 1:30 PM

Location: State Capitol, Conference Room No. 308 & Videoconference

Testifier: Juan Martinez, Managing Director, Residential PACE Programs at PACENation

Greetings Chair Luke, Vice Chair Yamashita and members of the Finance Committee:

PACENation **strongly supports this bill**, because it provides homeowners a low-cost financing option for energy efficiency, clean energy, resiliency and cesspool conversion projects. To date, over 300,000 projects have been funded using PACE financing nationwide, investing more than \$9 billion in necessary improvements to homes and businesses, and the program can unlock enormous benefits for the people of Hawaii as well.

Residential PACE programs offer homeowners equitable access to affordable financing terms, including low, fixed interest rates, and a long repayment period. This combination of factors means monthly R-PACE assessment payments are much more affordable than other financing options like unsecured consumer loans and credit cards. R-PACE financing is also available to a broader segment of homeowners than traditional financing, because homeowners' applications are evaluated based on their mortgage and property tax payment history and ability to pay, as opposed to their credit score or zip code.

Residential PACE financing is repaid as an assessment on the homeowner's property tax bill. PACE assessments, like all property taxes, have a senior lien position, which unlocks the ability to offer long-term financing and affordable monthly payments. Several years of PACE data from around the country shows that the property assessment mechanism reduces the risk of default-- fewer than 0.01% of homeowners fail to pay their R-PACE assessment, a rate that is twenty times lower than the rate of homeowners who fail to pay on their mortgage. Importantly, when a homeowner defaults on a mortgage, the entire balance of the mortgage "accelerates" and becomes due; in contrast, because PACE financing is repaid as an assessment, the remainder of the balance does not accelerate, and the only amount that is owed is that tax year's payment, which further protects the homeowner.

The benefits of R-PACE extend beyond providing individual homeowners with affordable financing. These investments also have significant community benefits. PACENation recently issued a reportⁱ which projects the program's benefits to Hawaii if only 15% of building owners use PACE over the next two generations. These new benefits include:

- Over 38,000 years of full-time work for carpenters, plumbers, electricians, administrative staff and other workers.
- Over 5.3 billion gallons of water saved through water conservation projects, which reduces the impact of droughts.
- Over 5 million fewer tons of carbon emitted into the air, the equivalent of operating nearly 70 new wind turbines.



We look forward to serving as a resource for the Legislature as you evaluate this bill, and are eager to see the enactment of this legislation.

ⁱ See, PACENation. *A PACE Enabled World*. Retrieved from <https://paceenabledworld.pacenation.org>. The projected impacts are derived by scaling recent research by the University of Southern California's Schwarzenegger Institute for State and Global Policy, titled "Impacts of the Property Assessed Clean Energy (PACE) Program on the Economies of California and Florida."

nuveen

GREEN CAPITAL

February 24, 2022

The Hon. Chair Luke,
Finance Committee
State Capitol, 415 South Beretania Street
Honolulu, HI 96813

RE: HB 2088
CC: Hon. Speaker Saiki

Chair Luke, Vice Chair Yamashita, and Members of the Committee on Finance:

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

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

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

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

Sincerely,



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



Feb. 24, 2022

In Support of **HB2088** Relating to Financing
House Committee on Finance (FIN)
Hearing on Feb. 25, 1:30pm

Aloha, Chair Luke, Vice-Chair Yamashita and Members of the Committee:

On behalf of the non-profit WAI: Wastewater Alternatives & Innovations, I am writing in **strong support of HB2088**. This bill would help homeowners with the costs of replacing their cesspools and other essential upgrades by creating a revolving loan fund under the administration of the Hawaii Green Infrastructure Authority that will spur environmental and economic development projects. This kind of property-assessed financing can unlock new markets and inject needed capital into upgrading cesspools and installing and installing energy upgrades.

Hawaii has more than 88,000 cesspools across the state, discharging 53 million gallons of raw sewage each day into Hawaii's waters. That's similar to a massive sewage spill every day! The people of Hawaii need this law to make sure their wastewater systems aren't polluting the groundwater or nearby surface waters. As a member of the State's Cesspool Conversion Working Group, I believe this bill provides an important economic tool for the state to fulfill its mandate under Act 125 to convert all cesspools by 2050.

WAI is dedicated to protecting our drinking water, groundwater and near-shore ecosystems by reducing sewage pollution from cesspools and failing septic systems. Our goal is to help find more innovative, affordable, and eco-friendly solutions to wastewater management. Better sanitation systems reduce sewage pollution, while also protecting our groundwater, streams and the health of our coral reefs and coastal areas. WAI is also helping to lead the Cesspool Task Force, a group with about 40 members (including researchers, scientists, environmentalists & NGO leaders) to support this bill and others to help convert cesspools, reduce sewage pollution and assist homeowners.

Hawaii is struggling with serious sewage pollution problems, and the state has a mandate to make sure all cesspools are converted in the next three decades. Most homeowners don't have enough money to convert their individual cesspools, but this law will help homeowners by creating property-assessed financing that will encourage banks and mortgage companies to lend them the needed funds. Thirty-seven other states have similar Property-Assessed Clean Energy (PACE) legislation. This bill will also provide funds to upgrade each county's billing systems to accommodate these special tax assessments.

Based on successful legislation and models in other states, this bill creates a practical and expedient way to convert cesspools with property-assessed financing through the Green Infrastructure Authority. It will also help homeowners, the counties and the state meet the mandate to convert all cesspools by 2050. Mahalo for your leadership on this issue and support of this bill.

Aloha,

Stuart Coleman

Stuart H. Coleman, Executive Director

WAI: Wastewater Alternatives & Innovations * 2927 Hibiscus Pl. * Honolulu, HI 96815
808-381-6220 * info@waicleanwater.org * www.WaiCleanWater.org

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: REAL PROPERTY, Property Assessed Financing

BILL NUMBER: HB 2088 HD 2

INTRODUCED BY: House Committee on Consumer Protection & Commerce

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

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

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

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

EFFECTIVE DATE: July 1, 2100

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

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

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

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

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

Advantages

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

Disadvantages

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

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

- California (10 active programs)

Re: HB 2088 HD 2

Page 3

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

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

Digested: 2/23/2022

Presentation to The
Committee on Finance
Friday, February 25, 2022, 1:30 p.m.
State Capitol Via Videoconference

Testimony on HB 2088, HD 2 In Opposition

TO: The Honorable Sylvia Luke, Chair
The Honorable Kyle T. Yamashita, Vice Chair
Members of the Committee

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

HBA opposes this bill because the PACE like loan funded by the state will be secured by a lien at the same priority of real property tax, or in other words, a super lien.

Why is a super lien needed? The state's position is that the super lien is required so the investors can be assured they will be repaid their investment. Conversely, the state is not concerned if the lenders of first mortgages do not receive payment of the loans that they fund from the deposits of their depositors. The lenders must endure not only the risks of loans they make but the additional risk imposed on the lenders by the state by making the lenders guarantors of the PACE like loans the state plans to fund.

The member banks of HBA have demonstrated their support of efforts to protect the environment. They have supported and support remedial action of the environment, as evidenced by the member banks philanthropic efforts. HBA supports efforts to enhance our environment.

HBA proposes an amendment to this bill which would avoid potential harm to homeowners who wish to sell their home and borrowers who wish to buy a home. The harm results from the impact of the super lien on the mortgage market. If the HBA amendment is included in the bill, loans enabling environmental remedies without the financial cost that accompanies a super lien loan program, may be made. The homeowners and borrowers only seek to receive a loan for the sale of their home and receive a loan to install protective environmental remedies. They do not care if their loan for fixing environmental issues is subordinate to a first mortgage. They expect that mortgages to sell and buy their home will be a first mortgage.

However, HBA cannot support putting an onerous burden on financial institutions by the imposition of a super lien for loans funded by the state so that investors who may help fund the loans get repaid first, before the financial institutions. Lenders would be blindsided by the super lien loan because there is no way to predict when such a loan will be made that will have a priority over the lender's mortgage lien. In essence, the lenders are unable to protect themselves from harm.

The impact on the community may be significant; all to make sure investors are paid. If there is a “qualifying improvement” on the property, the lenders may be reluctant to make a loan on the property because of the presence of the super lien. Thus, the property owner may be unable to find a buyer for the property due to the difficulty a buyer may have finding a loan of adequate size, or the property owner may not be able to get full value because the price has to be discounted for the super lien. If a loan to pay college tuition expenses is desired, it would be difficult to obtain a HELOC to fund education if the property is subject to a super lien.

The state believes the problem is solved by an assessment of the ability of the super lien borrower to repay the annual assessment but not an assessment of the ability to repay the entire loan. That, however, ignores the ability to repay rule imposed by the Consumer Financial Protection Bureau. That rule requires financial institutions to make the assessment to determine the borrower’s ability to repay the entire loan amount, not just the annual payment as the state desires. The state’s view of ability to repay assessment would not pass muster with the Consumer Financial Protection Bureau. The state’s assessment does little to assess whether the super lien borrower can make payment of the loan to protect the financial institutions who are subordinated to the super lien loan.

Every bank is required to conduct its business in a safe and sound manner and avoid risks that cannot be avoided. The state should do the same.

When lenders make a loan they do a loan-to-value (LTV) analysis which is basically the ratio of a loan to the value of the property. For example, if the property is valued at \$300,000 and the loan is \$240,000, the LTV is 80% which is standard. If the LTV is greater than 80%, then the lender will require the borrower to obtain private mortgage insurance (PMI). The LTV is greater than 80% when the borrower’s down payment is less than the usual 20% down payment. With the super lien, the LTV will exceed 80% because of the super lien loan. Thus, the amount of the super lien loan must be taken into account when calculating the LTV. Since the super lien loan can go up to 20% of the property value, the LTV could be 100% of the property assuring the lender will suffer a loss unless PMI is paid by the borrower. That is a cost that will make the cost of a super lien loan greater than the below market rate which is claimed to be a goal by the state. It should also be noted that a super lien loan which is 20% of the home value essentially makes the first mortgage now a second mortgage, and depending on timing of the super lien loan, it could leave the first mortgage under secured.

We also note the constitutional concerns expressed by the Attorney General, and their thought that the requirement of analyzing the ability to repay the super lien loan, limiting the loan amount, and an escrow account, makes the bill more “reasonable”. It does not make the bill more “reasonable” because if the borrower cannot pay, then in a foreclosure, the only remedy for the lender is that the proceeds of sale will make the lender whole. When the super lien loan cuts in front of the loan the lender made in good faith, the state gets its loan proceeds before the lender, which means there is less for the lender to recover and the lender will not receive the benefits it bargained for in the mortgage contract. As stated earlier, the state’s determination of ability to repay the super lien loan is not an assessment of the ability to repay the amount of the super lien loan but an assessment of only one year’s payment. That is hardly likely to comfort the lender whose loan has fallen into second priority.

The Attorney General’s memo also did not consider the Hawai`i Supreme Court case on contract clause. *Anthony v. Kualoa Ranch, Inc.*, 69 Hawaii 112, 736 P.2d 55, (Padgett, J.):

Here we have a statute which has a substantial, material, and, as illustrated by the facts of the present case, even a drastic, and confiscatory effect, on existing contractual obligations, and property rights. The statute, moreover, is limited in effect, to contractual obligations and remedies, as distinguished from one imposing a generally applicable rule of conduct designed to advance broad societal interests.

If the expressed desire of the legislature to accomplish equity can justify this substantial and material change in the contractual obligations and remedies in all existing leases, it could also be used to justify changing any of the other material terms of existing lease agreements, such as rent, term of lease, etc. Such changes can be made in emergency situations and for limited periods. See *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413 (1934). Here, there was no emergency and no limitation on the duration of the change.

This statute, as applied to leases already in effect, purely and simply, is an attempt by the legislature to change contractual remedies and obligations, to the detriment of all lessors and to the benefit of all lessees, without relation to the purposes of the leasehold conversion act; without the limitations as to leaseholds subject thereto contained in the conversion provisions; not in the exercise of the eminent domain power; but simply for the purpose of doing equity, as the legislature saw it. If there is any meaning at all to the contract clause, it prohibits the application of HRS § 516-70 to leases existing at the time of the 1975 amendment. Accordingly, that section, as applied to leases existing at the time of the adoption of the 1975 amendment, is declared unconstitutional. The order appealed from is reversed, and the case is remanded for further proceedings consistent herewith.

(Emphasis added.)

To ameliorate this situation, HBA asks that the provision for the super lien be deleted from the bill so the priority of the pace like loan will be junior to all previously recorded or registered liens, just the same as any other consensual lien.

Starting on page 12 of HD 1, subsection (c)(5), the present language should be deleted, and the following amendment should be substituted thereof:

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

Also, starting on page 16, line 9, in subsection (c)(9), the currents (c)(9) should be deleted and the following amendment should be substituted thereof:

(9) Prior to the execution by the authority of the first property assessed financing assessment contract in a county, the authority shall enter into a contract with the county director of finance or county director of budget and fiscal services to cause such director to levy and collect any property assessed financing assessment approved and certified by the authority to the director for collection. The director shall levy and collect any property assessed financing assessment approved by the authority. Each property assessed financing assessment so approved for collection shall be a non-ad valorem special tax assessment and shall be collected in the same manner as general real property taxes are collected and be subject to the same penalties and same procedure, sale, [and] except for lien priority which

lien priority shall be in the order of recordation or registration except for the lien for general real property taxes, subject to this section, in case of delinquency as is provided by general law for default of the payment of real property taxes, unless another procedure is agreed upon by the authority and the director. The director may add to any property assessed financing assessment such reasonable administrative costs as are agreed upon by the authority and the director. The director shall remit any property assessed financing assessments collected, less any reasonable administrative costs added by the director, to or on the direction of the authority, for further application by the authority to pay each property assessed financing lender and to pay the reasonable administrative costs of the authority in accordance with each property assessed financing assessment contract. The director shall covenant in a contract or instrument, for the benefit of any property assessed financing lender or bondholder, to commence and diligently pursue to completion the foreclosure of delinquent property assessed financing assessments and any penalty, interest, and costs by advertisement and sale and with the same effect as provided by general law for sales of real property pursuant to default in payment of property taxes. The covenant shall specify a deadline for commencement of the foreclosure sale and any other terms and conditions the director of finance or director of budget and fiscal services determines reasonable regarding the foreclosure sale. For property assessed financing assessments levied but not paid when due pursuant to a property assessed financing assessment contract, the foreclosure of the lien of the property assessed financing assessment shall not accelerate or extinguish the remaining term of the property assessed financing assessment as approved in the property assessed financing assessment contract.

HBA also notes other proposed bills on remedying cesspools and hurricane protection issues which do not include a provision for a super lien. Those bills are HB 1805, HD 1, HB 2195, HD 2 and HB 2195, HD 2. HB 1976 HD 1 seeks to provide financial relief for hurricane relief. Thus, there are other vehicles to attain the same goal as this bill.

Thank you for the opportunity to submit this testimony in opposition to HB 2088, HD2. Please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161



Testimony to the House Committee on Finance
February 25, 2022
1:30 PM
Via Videoconference

In Opposition to HB 2088 HD2, Relating to Financing

To: The Honorable Sylvia Luke, Chair
The Honorable Kyle Yamashita, Vice-Chair
Members of the Committee

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

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

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

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

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

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



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

February 24, 2022

To: The Honorable Sylvia Luke, Chair
The Honorable Kyle T. Yamashita, Vice Chair
Members of the Committee

Re: HB 2088 HD2 Relating to Finance

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

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

The MBAH is opposed to the bill because the bill will create a super lien of up to 20% of the property value. Lenders lend based on a loan to value of 80%. This bill will place the lien created by these loans as a superior lien to the first mortgage a lender may make to a consumer after the first mortgage is consummated. Assuming a consumer purchases a home at 80% loan to value and then procures a loan of up to 20% of the property value for qualifying improvements under the bill, the lender is now at 100% loan to value. If the borrower defaults on the mortgage and the lender forecloses, the lender is automatically at a loss of 20% of the amount loaned to the consumer.

Lenders in Hawaii sell mortgages on the secondary market to Fannie Mae, Freddie Mac and private investors. This lien may deem the mortgage unsaleable in the secondary market due to the added risk the super lien will impose.

Borrowers in Hawaii have many other financing options available to use for improvements to their home. This bill brings risk and uncertainty to the mortgage market.

Thank you for the opportunity to present this testimony.

Linda Nakamura
Mortgage Bankers Association of Hawaii

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

February 25, 2022

Rep. Sylvia Luke, Chair
Rep. Kyle T. Yamashita, Vice Chair
and members of the House Committee on Finance
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **H.B. 2088, H.D. 2 (Financing)**
Hearing Date/Time: Friday, February 25, 2022, 1:30 p.m.

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

The HFSA opposes this Bill as drafted.

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

The HFSA opposes the provisions in this Bill which will enable a loan for improvements that are financed through the environmental and economic development revolving loan fund to have a super-lien priority over all mortgages on a property.

The testimonies of the Hawaii Bankers Association, the Hawaii Credit Union League, and the Mortgage Bankers Association of Hawaii, which all oppose this Bill, explain why this super-lien priority would create havoc for mortgage lenders and for mortgage loans.

Accordingly, the HFSA requests that the provisions in this Bill for a super-lien be deleted so that the priority of a loan financed from the revolving fund will be junior to all previously recorded mortgages and liens. With the deletion, the revolving loan’s lien priority would be treated the same way as any other consensual lien, including a recorded mortgage.

Thank you for considering our testimony.


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