



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
MIKE MCCARTNEY
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Thursday, February 3, 2022
9:05 AM
State Capitol, Conference Room 325 & Videoconference

In consideration of
HB2088
RELATING TO FINANCING.

Chair Lowen, Vice Chair Marten and members of the Committee.

The Department of Business, Economic Development, and Tourism **supports** House Bill 2088, 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.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

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

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
ON
HOUSE BILL NO. 2088

February 3, 2022
9:05 a.m.
Room 325 and Videoconference

RELATING TO FINANCING

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

House Bill No. 2088 establishes the Environmental and Economic Development Revolving Loan Fund (EEDRLF) within the Hawai'i Green Infrastructure Authority's (HGIA) Special Fund, similar to a revolving line of credit and to be administered by HGIA; allows property owners to finance qualified improvements through a non-ad valorem property assessment; and appropriates \$25,000,000 in general funds for FY 23 to be deposited into the EEDRLF, and appropriates \$25,000,000 out of the EEDRLF for FY 23 for loans, other financial assistance, and other allowable expenses (including implementation costs). Examples of qualified improvements include, but are not limited to: upgrading or converting cesspools to septic systems or aerobic treatment unit systems; home improvements for wind and/or flooding resiliency; installation of clean energy technologies; and other related improvements.

B&F notes that the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School

Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

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

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

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

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

Thank you for your consideration of our comments.



DAVID Y. IGE
GOVERNOR

GWEN S. YAMAMOTO LAU
EXECUTIVE DIRECTOR

HAWAII GREEN INFRASTRUCTURE AUTHORITY

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Testimony of
Gwen Yamamoto Lau
Executive Director
before the
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Thursday, February 3, 2022
Time: 9:05 A.M.
State Capitol, Conference Room No. 325 & Videoconference

In consideration of
HOUSE BILL NO. 2088
RELATING TO FINANCING

Chair Lowen, Vice Chair Marten, and Members of the Committee on Energy & Environmental Protection:

Thank you for the opportunity to testify and provide comments on House Bill 2088, 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") **supports** this bill.

Working together with the Counties to leverage a non-traditional financing mechanism capable of attracting private capital, as well as with the 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 upgrade aging cesspools and convert to clean energy. In addition to the obvious environmental benefits, property assessed financing will create higher paying jobs and have a significant multiplier impact on our economy.

HGIA respectfully requests the following amendments:

1. Replace "assessment" with "assessed" throughout the document when describing the program or contract (e.g., property assessed financing and property assessed financing assessment contracts);
2. On page 7, line 12, add a new paragraph (a) as follows:

§196-__ Property [~~assessment~~] assessed financing program. (a) Any county having a charter may authorize the authority, pursuant to this section, to offer a property assessed financing program within its jurisdiction and may contract with the authority for

such purpose, and any county having a charter may enact its own property assessed financing program, pursuant to this section, and sections 196-61, 196-64, and 46-80(b) and (c), Hawaii Revised Statutes.

3. On page 7, line 12, change ~~[(a)]~~ (b) and add “on a benefitted property” after assessment on line 15.

4. On page 7, line 21, change ~~[(b)]~~ (c) and add “authorized under section 46-80(b)” after program on line 22.

5. On page 8, line 2, add “elements” after following.

6. On page 8, line 3, replace (1) as follows:

(1) A property assessed financing lender may enter into a property assessed financing assessment contract to finance or refinance a qualifying improvement only with the record owner of the affected property and the authority. Each property assessed financing assessment contract shall be ~~[approved]~~ executed by the authority as administrator of the property assessed financing program ~~[administrator prior to execution]~~. A property assessed financing assessment contract ~~[may cause]~~ shall require the authority to assign, ~~[and]~~ pledge and transfer revenues to be derived from property assessed financing assessments to one or more property assessed financing lenders as security for their direct financing of qualifying improvements. The obligation of the authority to transfer such revenues to one or more property assessed financing lenders shall be evidenced by a revenue bond issued on behalf of the State by the authority in a form prescribed by the authority, which may be the property assessed financing assessment contract or other instrument, and no other ~~[No]~~ bonds are required to be issued by the State, the authority, any county or city, or any other public entity in order to cause qualifying improvements to be funded through a property assessed financing assessment contract;

7. On page 9, line 3, replace (3) as follows:

(3) Before entering into a property assessed financing assessment contract, the property assessed financing lender shall reasonably determine that:

(A) Residential properties. (i) [t] The property owner has an ability to pay the estimated annual property assessed financing assessment; (ii) [that-a] All property taxes, and any other assessments levied on the same bill as property taxes, are paid and have not been delinquent for the preceding three years or the property owner's period of ownership, whichever is less; (iii) [that-t] There are no involuntary liens, including but not limited to construction liens, on the property; (iv) [that-n] No notices of default or other evidence of

property-based debt delinquency have been recorded during the preceding three years or the property owner's period of ownership, whichever is less; and (v) ~~that t~~ The property owner is current on all mortgage debt on the property;

(B) Commercial properties. (i) The property owner is able to borrow the amount of the property assessed financing using reasonable commercial underwriting practices; (ii) All property taxes applicable to such property, and any other assessments levied on the same bill as property taxes, are paid; and (iii) There are no involuntary liens applicable to such property, including but not limited to construction liens, that will not be paid or satisfied upon the closing of the financing.

8. On page 10, line 1, add "as a non-ad valorem special tax assessment" after appear.

9. On page 10, line 3, replace (5) as follows:

(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 ~~that~~ of the levy of, and obligation of the property owner to pay, the property assessed financing assessment. The property assessed financing assessment ~~levied or~~ to be levied on the property shall be a non-ad valorem special tax assessment and ~~constitutes~~ a lien against the property ~~of equal dignity to county taxes and assessments~~ 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.[:]

10. On page 10, line 16, replace (6) as follows:

(6) Lienholders.

(A) Residential properties. (i) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by ~~the~~ residential property, the total principal amount funded through any property assessed financing assessment contract secured with ~~of any~~ a non-ad valorem special tax assessment for a residential property under this part ~~may~~ shall not exceed twenty per cent of the ~~just~~ market value of the property as determined by the county property appraiser. This limitation shall not apply to any property assessed financing assessment on ~~commercial~~ residential property which is consented to the holders or loan servicers of any mortgage encumbering or otherwise secured by the property; (ii) ~~(B)~~ At

least thirty days before entering into a property assessed financing assessment contract for residential property, 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 property assessed financing assessment contract together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount and any incidental fees. A verified copy or other proof of such notice shall be provided to the property assessed financing lender. A provision in any agreement between a mortgagee or other lienholder and a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a property assessed financing assessment contract as provided for in this section, is not enforceable. This section does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment;

(B) Commercial properties. Before entering into a property assessed financing assessment contract for any commercial property, the property owner shall provide the authority and the property assessed financing lender with evidence of the written consent of each holder or loan servicer of any mortgage that encumbers or otherwise secures such commercial property at the time of the execution of the property assessed financing assessment contract by the parties. Such consents shall be in a form prescribed by the authority.

11. On page 13, line 1, replace (9) as follows:

(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 [F] 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, be subject to the same penalties and the same procedure, sale, and lien priority (subject to the provisions of section 196-) 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 ~~may~~ 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 ~~may~~ shall specify a deadline for commencement of the foreclosure sale and any other terms and conditions the director of budget and fiscal services determines reasonable regarding the foreclosure sale. For property assessed financing assessments levied ~~imposed~~ 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."

12. Page 14, lines 4, 5, 6, and 7, replace such with "the".

13. Page 14, line 22, replace which with "that".

14. Page 15, line 3, replace (b) as follows:

(b) ~~[Notwithstanding any county ordinance to the contrary, if property assessment financing is implemented by a county, a]~~ The State hereby establishes a special improvement program to be known as a property assessed financing program which shall be administered by the authority. A property owner may apply to a property assessed financing lender, approved by the authority, for property ~~[assessment]~~ assessed financing to pay the cost of qualifying improvements ~~[for an eligible purpose]~~ and enter into a property ~~[assessment]~~ assessed financing contract with a ~~[n-approved]~~ property ~~[assessment]~~ assessed financing lender and the authority. Costs incurred for qualifying improvements shall be levied and collected by each county, as provided in section 196- , as a non-ad valorem special tax assessment on the benefitted property. The authority, on behalf of the State, may issue revenue bonds to finance or refinance such improvements, and the form of any such revenue bond may be a property assessed financing assessment contract or other

instrument prescribed by the authority. [The county may incur debt for the purpose of providing financing for qualified improvements, which is payable from revenues received from the improved property, or any other available revenue source authorized by law.] Bonds issued to finance qualifying [qualified] improvements, when the only security is the special tax assessment levied [y or lien imposed] against benefitted or improved property, shall be excluded from any determination of the power of the State [county] to issue general obligation bonds or funded debt for purposes of section 13 of article VII of the State Constitution."

15. Page 15, line 20, add section (c) as follows:

(c) Any county having a charter may enact an ordinance, and may amend the same from time to time, to establish a special improvement program containing the same elements as the property assessed financing program authorized under Chapter 196, except that any such program so established shall be administered by the county in lieu of administration by the authority. The county shall assume all of the responsibilities of the authority as provided in Chapter 196, including determining qualifying improvements eligible for property assessed financing. A property owner may apply to the county for property assessed financing to pay the costs of qualifying improvements and enter into a property assessed financing contract with an approved property assessed financing lender and the county. Costs incurred for qualifying improvements shall be levied and collected by each county, as provided in Section 196- , as a non-ad valorem special tax assessment on the benefitted property. The county may issue revenue bonds to finance or refinance such improvements, and the form of any such revenue bond may be a property assessed financing assessment contract or other instrument prescribed by the county. Bonds issued to finance qualifying improvements, when the only security is the special tax assessment levied against benefitted or improved property, shall be excluded from any determination of the power of the county to issue general obligation bonds or funded debt for purposes of article VII, section 13, of the Hawaii State Constitution."

16. Page 16, line 1, replace "Commercial property" and "Non-ad valorem special tax assessment" and add "County director of finance" definitions as follows:

"Commercial property" means any existing or new real property not defined as a residential property [or in a residential property class], and shall include [ing] any such property where there is a leasehold or possessory interest in such property and any agricultural property.

"County director of finance" or "county director of budget and fiscal services" means the officer or officers of the county charged with the responsibility of administering the real property taxation function of the county.

"Non-ad valorem special tax assessment" means a special tax assessment or governmental charge levied by the county as provided in Section 196- on a benefitted property that ~~[is not based on the value of the property and]~~ appears on a property tax bill.

17 Page 16, line 12, replace "Property assessed financing assessment contract" and

"Property assessed financing lender" as follows:

"Property assessed financing assessment contract" means the financing contract, under the property assessed financing program, by and among ~~[between the]~~ one or more property assessed financing lenders, one or more ~~[and a]~~ property owners, and the authority as administrator of the property assessed financing program for the acquisition or installation of qualifying improvements.

"Property assessed financing lender" means a private or public lender approved by the property assessed financing administrator to originate property assessed assessment contracts, and which may include any successor or assignee of such lender as provided in a property assessed financing assessment contract ~~[loans]~~.

18. Page 17, line 7, replace "Residential property" as follows:

"Residential property" means any existing or new real property consisting of any single-family dwelling or townhouse or any multi-family ~~[residential]~~ dwelling or townhouse consisting of four or fewer units, and shall include any such property where there is a leasehold or possessory interest in such property."

19. Page 18, line 12, add "program" after assessment.

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



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

DATE: Thursday, February 3, 2022 **TIME:** 9:05 a.m.

LOCATION: State Capitol, Room 325, Via Videoconference

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

Chair Lowen 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 this bill, at page 10, lines 8 to 15, there is a provision that "[t]he recorded [assessed financing assessment] contract shall provide constructive notice that the property assessed financing assessment levied or to be levied on the property constitutes a lien of equal dignity to county taxes and assessments 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[.]" Establishing the PAF lien by law as "a lien of equal dignity to county taxes and assessments on a parity with the lien of general real property taxes" may run afoul of the Contracts Clause, since not only county taxes and assessments, but any other existing (senior) mortgage on the property, would be subordinated by this law to the PAF lien.

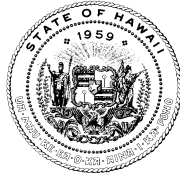
While the simple existence of a provision in state law impairing pre-existing contractual rights and obligations does not necessarily raise a constitutional issue (see *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 412 (1983)), the legal analysis validating it is more nuanced 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 just 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." For instance, if all holders and loan servicers were to avail themselves of the authority to increase escrow by the amount of the PAF assessment, it should eliminate all or at least materially lessen the pool of potential plaintiffs that might sue to prohibit the imposition of the PAF lien established by this bill.

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.

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
ENERGY & ENVIRONMENTAL PROTECTION
HEARING ON FEBRUARY 3, 2022 AT 9:05AM VIA VIDEOCONFERENCE

HB 2088, RELATING TO FINANCING

February 3, 2022

Aloha Chair Lowen, Vice Chair Marten, 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 qualified improvements through a non-ad valorem property assessment.

DHHL is especially supportive of the inclusion of lessees on Hawaiian Home Lands to at or below-market interest loans to offer financial assistance with cesspools to be upgraded or converted to septic systems or aerobic treatment unit systems, or connected 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.

HB-2088

Submitted on: 2/1/2022 5:57:52 PM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ted Bohlen	Hawaii Reef and Ocean Coalition	Support	No

Comments:

HIROC supports this bill, which will help homeowners and others finance upgrade of some cesspools.



Feb. 1, 2022

In Support of **HB2088** Relating to Financing
House Committee on Energy and Environmental Protection (EEP)
Hearing on Feb. 3, 9:05am

Aloha, Chair Lowen, Vice-Chair Marten 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.

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. 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!

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 and make properties more valuable, while also protecting our groundwater, streams, and the health of our coral reefs and coastal areas.

Hawaii is struggling with serious sewage pollution problems and the mandate to convert all cesspools 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 provide funds to upgrade each county's billing systems to accommodate these special tax assessments.

Based on successful bills 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



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February 1, 2022

The Hon. Nicole E. Lowen, Chair
Energy & Environmental Protection Committee
State Capitol
415 South Beretania Street
Honolulu, HI 96813

VIA EMAIL

RE: HB2088

Dear Chair Lowen:

I am writing on behalf of Petros PACE Finance, one of the nation's largest commercial PACE capital providers in the country, and a leader in developing and innovating commercial PACE policy and programs. We are writing in support of the principles underlying HB2088 but believe that it requires some amendments to create a strong commercial PACE program in Hawaii that aligns with best practices nationally.

Commercial PACE has seen tremendous growth across the country in the past few years. Just in the past few years alone states such as Washington, Nevada, Alaska, Tennessee, and Oklahoma have passed legislation and launched programs. All these statutes have built upon the legal and capital market foundations that have made commercial PACE a successful and sought-after form of financing that accomplishes the public policy goals of their enacting jurisdictions.

As presently structured, HB2088 requires some fine-tuning in order to meet these requirements. Petros, along with other capital providers, including its industry representative, the C-PACE Alliance, have been working with the bill authors to provide amendments that will achieve the public policy goals you seek and meet the very specific requirements that commercial rating agencies and capital markets require that allow us to make the lower interest, longer term financing that you are working to make available in Hawaii.

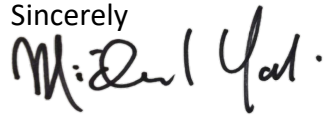
Briefly, as introduced HB2088 needs to clarify several issues that would ensure that it complies with best practices nationally. For example, the bill should clearly separate commercial PACE from residential PACE in its structure to conform to the clear distinctions in both programs. That bifurcation includes a clearer definition of what constitutes commercial properties; a strict requirement of lender consent for commercial PACE; the utilization of commercially reasonable underwriting, and not the merging of residential requirements with commercial that have

proven unsuccessful for either in other states. In addition, the bill has to clearly establish the constitutional and legal authority for HGIA or the counties to impose the assessment on property and the use of private capital in the stead of public finance, including the authorization to assign the collection of payments to capital providers and the availability of enforcement remedies that will also legally insulate the state and the counties from responsibility for the property debt.

These are all necessary and sufficient requirements for a successful commercial PACE program. Petros, other capital providers, and the C-PACE Alliance stand ready and available to you and other members of the Legislature to help you achieve your goals.

HB2088 is an important step towards establishing a successful commercial PACE program for businesses and property owners in Hawaii. We urge your support for advancing HB2088 through the legislative process as we continue working with the bill authors.

Sincerely

A handwritten signature in black ink that reads "Michael Yaki". The signature is written in a cursive, slightly stylized font.

MICHAEL YAKI

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

February 2, 2022

The Hon. Nicole E. Lowen, Chair
Energy & Environmental Protection Committee
State Capitol
415 South Beretania Street
Honolulu, HI 96813

CC: Hon. Speaker Saiki

Dear Chair Lowen,

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.

As the architects of the first statewide C-PACE Program in Connecticut and as longstanding participants in C-PACE programs across 30 states, our team believe that HB2088 requires certain amendments to create a strong program in Hawaii that aligns with best practices nationally.

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. 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. All states that have adopted C-PACE in the past seven years have clear language perfecting this assessment structure and further require that written consent be obtained from existing mortgage holders on a commercial property to ensure the proposed C-PACE funding has undergone thorough underwriting procedures and the project is a benefit to the building. These specific structures have enabled over \$2B in sustainable investment in 30 states.

As currently written, HB2088 requires adjustment to conform to this structure. 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 property owners and counties from financial risk. We can provide these proposed amendments in detail, however in summary, the bill must:

- More clearly establish the constitutional and legal authority for the Hawaii Green Infrastructure Authority (HGIA) and counties to impose the assessment on benefitting property.
- More clearly establish the use of private capital in the stead of public finance, and limitation of notes issued to special revenues collected and not any general liability or indebtedness of the state or counties.
- More clearly authorize and direct the relevant parties to collect and enforce assessment payments, including clarification around the agreements executed among counties, the HGIA, and capital providers in the program.
- Explicitly separate commercial property requirements from residential property requirements to ensure necessary underwriting and eligibility requirements conform to national best-practice. That bifurcation includes a clearer definition of what constitutes commercial properties; a strict requirement of lender consent for commercial C-PACE; the utilization of commercially reasonable underwriting, and not the merging of residential requirements with commercial that have proven unsuccessful for either in other states.

These are all necessary and sufficient requirements for a successful C-PACE 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 as we continue working with the bill authors.

Sincerely,



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



February 2, 2022

Capital Providers

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

The Hon. Nicole E. Lowen, Chair
Energy & Environmental Protection Committee
State Capitol
Honolulu, HI 96813

RE: Support for HB2088

Dear Chair Lowen:

We are writing to express our support for HB2088 to establish Commercial Property Assessed Clean Energy (C-PACE) financing in Hawaii.

The C-PACE Alliance (CPA) and its members have a long partnership with the PACE Wisconsin program, and we have worked with C-PACE programs across the country to promote best practices and consistency in the marketplace. As a business association, C-PACE Alliance authors white papers on industry practices and educates members, state and local policymakers and legislators, and other constituencies about C-PACE financing. For more information, please refer to the website www.c-pacealliance.com.

Law Firms

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

C-PACE financing is available in 27 states and the District of Columbia as a financing tool for commercial property owners who wish to upgrade their building with energy efficiency or renewable energy improvements. C-PACE financing is supplied entirely by the private sector at no cost or financial risk to the state or local government.

We do support modest changes to HB2088 as introduced to clarify several issues that would ensure that it complies with best practices nationally. For example, the bill should clearly separate commercial PACE from residential PACE in its structure to conform to the clear distinctions in both programs. That bifurcation includes a clearer definition of what constitutes commercial properties; a strict requirement of lender consent for commercial PACE; the utilization of commercially reasonable underwriting; and removing requirements meant for residential properties from the commercial PACE portion of the program, as is best practice in other states with both commercial PACE and residential PACE.

Accounting Firms

- Novogradac & Company

In addition, the bill must clearly establish the constitutional and legal authority for HGIA or the counties to impose the assessment on property and the use of private capital in the stead of public finance, including the authorization to assign payments received by the counties to capital providers and the availability of enforcement remedies that will also legally insulate the state and the counties from responsibility for the property debt.

Service Provider

- Citadel SPV

Thank you for your leadership on this legislation.

Sincerely,

Clifton G. Kellogg
Executive Director

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, SB 3056

INTRODUCED BY: HB by SAIKI by request, SB by KOUCHI by request (Governor's Package)

EXECUTIVE SUMMARY: 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: Upon Approval

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, SB 3056

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: 2/1/2022



Hawaii Solar Energy Association
Serving Hawaii Since 1977

**Testimony of The Hawaii Solar Energy Association Regarding HB2088, Relating to Financing,
Before the House Committee on Energy and Environmental Protection**

Thursday, February 3, 2021

Chair Lowen, Vice-Chair Marten, 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 the intent HB 2088** 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. Our advocacy is designed to create policies that provide the most cost-effective, equitable, and impactful solutions to allow residents and other market participants to invest in Hawaii's clean energy transformation. We believe that a broad expansion of customer-sited, distributed energy resources such as rooftop solar, energy storage, and electric vehicle charging offers one the most optimal pathways to achieving these goals.

Structured properly and with transparent governance structures in place, 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 such as grant funding or direct investments can be a powerful tool to invest in resilience, environmental, renewable and energy efficiency measures for underserved markets and communities. HSEA looks forward to working with stakeholders to launch a program that contributes to Hawaii's public policy priorities and improves the livelihoods and well-being of all its residents and communities.

HSEA **supports the intent of HB 2099** and respectfully asks that that the committee advance it.

Thank you for the opportunity to testify.

HB-2088

Submitted on: 2/1/2022 8:30:55 PM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Barbara Barry	Individual	Support	No

Comments:

Aloha,

I support HB 2088,

Mahalo,

Barbara Barry

HB-2088

Submitted on: 2/2/2022 1:07:40 PM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Johnnie-Mae L. Perry	Individual	Support	No

Comments:

I, Johnnie-Mae L. Perry a DHHL beneficiary strongly **SUPPORT HB 2088.**

Mahalo for your consideration of my testimony.