



**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](http://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

**SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT AND TOURISM  
& AGRICULTURE AND ENVIRONMENT**

Monday, February 14, 2022  
3:00 pm

State Capitol, Conference Room 224 & Videoconference

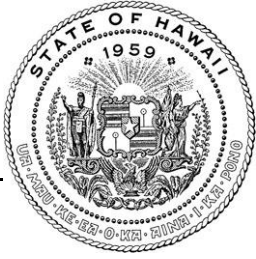
In consideration of  
**SB3302**  
**RELATING TO GREEN INFRASTRUCTURE.**

Chairs Wakai and Gabbard, Vice Chairs Misalucha and Nishihara, and members of the Committees.

The Department of Business, Economic Development, and Tourism **supports** SB3302, which proposes to require the Hawaii Green Infrastructure Authority to design and administer the Environmental and Economic Development Revolving Loan Fund and property assessment financing program, enabling 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 SB3302.



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  
**SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT & TOURISM and**  
**AGRICULTURE AND ENVIRONMENT**  
Monday, February 14, 2022  
Time: 3:00 P.M.  
State Capitol, Conference Room No. 224 & Videoconference

In consideration of  
**SENATE BILL NO. 3302**  
**RELATING TO GREEN INFRASTRUCTURE**

Chairs Wakai and Gabbard, Vice Chairs Misalucha and Nishihara, and Members of the Committees on Energy, Economic Development & Tourism and Agriculture and Environment:

Thank you for the opportunity to testify and provide comments on Senate Bill 3302, relating to green infrastructure. This bill requires the Hawaii Green Infrastructure Authority (“HGIA”) to design and administer a Property Assessed Financing Program. HGIA **supports** this bill.

Property assessed financing has been an effective means of financing energy efficiency upgrades, disaster resiliency improvements, water conservation measures and renewable energy installations for residential and commercial property owners.

HGIA respectfully requests the following amendments:

1. Replace “assessment” with “assessed” throughout the document when describing the program or contract (e.g., property assesseded financing and property assesseded financing assessment contracts);
2. On page 6, line 3, add “authorized under section 46-80(b)” after program, and add a new paragraph as follows:

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 6, line 10, add “on a benefitted property” after assessment.

4. On page 6, line 16, replace the paragraph with: (b) 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 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 residential ~~[commercial]~~ property ~~[that]~~ which is consented to the holders or loan servicers of any mortgage encumbering or otherwise secured by the property.
5. On page 7, line 6, replace paragraph (a) with:
  - (a) 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 ~~[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. ~~[, and]~~ The installation of qualifying improvements must be affixed to a building or facility or affixed to real property, subject to property assessed financing assessments.
6. On page 8, line 3, replace section (b) with:
  - (b) Before entering into a property assessed financing assessment contract, the property assessed financing lender shall reasonably determine that:
    - (1) Residential Properties. (a) The property owner has an ability to pay the estimated annual property assessed financing assessment; (b) 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; (c) There are no involuntary liens, including but not limited to construction liens, on the property; (d) 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 (e) The property owner is current on all mortgage debt on the property.

(2) Commercial Properties. (a) The property owner is able to borrow the amount of the property assessed financing using reasonable commercial underwriting practices; (b) All property taxes applicable to such property, and any other assessments levied on the same bill as property taxes, are paid; and (c) 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.

7. On page 9, line 3, add "as a non-ad valorem special tax assessment" after appear.
8. On page 9, line 5, add "by the property assessed financing lender" after recorded.
9. On page 9, line 8, replace sentence with: 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 9, line 15, replace section (e) with:

(e) Lienholders.

(1) Residential Properties. 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 the 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, shall not be enforceable. This section shall 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.

(2) 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 11, line 5, replace section (h) with:

(h) 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 shall ~~[may]~~ specify a deadline for commencement of the foreclosure sale and any other terms and conditions the county director of finance 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. On page 13, line 6, replace section (b) with and add section (c) as follows:

(b) The State hereby establishes a special improvement program to be known as a property assessed financing program which shall be administered by the authority. ~~[Notwithstanding any county ordinance to the contrary, if a property assessed financing program is implemented by the [a] county, a]~~ A property owner may apply to a property assessed financing lender, approved by the authority, for property assessed financing to pay the cost of qualifying improvements ~~[for an eligible purpose]~~ and enter into a property assessed financing contract with a ~~[an approved]~~ property 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 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.]~~ 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. Bonds issued to finance qualifying improvements, when the only security is the special tax assessment levied ~~[levy 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 article VII, section 13, of the Hawaii State Constitution.

(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 "

13. On page 14, line 6, expand the definition of "Commercial property" in include: "Commercial property" means any existing or new real property not defined as a residential property [~~or in a residential property class~~], and shall include any such property where there is a leasehold or possessory interest in such property and any [~~including~~] agricultural property.
14. On page 14, line 9, add "or "county director of budget and fiscal services"" after finance.
15. On page 14, line 12, replace the definition as follows: "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.
16. On page 14, line 20, replace the definition as follows: "Property assessed financing assessment contract" means the financing contract, under the property assessed financing program, by and among [~~between~~] one or more [~~the~~] 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.
17. On page 15, line 6, add the following after financing and delete loans: assessment contracts, and which may include any successor or assignee of such lender as provided in a property assessed financing assessment contract [~~loans~~].
18. On page 15, line 7, insert the definition for "Property assessed financing program" as follows: "Property assessed financing program" means a program to finance qualifying improvements on commercial and residential properties that is repaid through a non-ad valorem special tax assessment on the property owner's property tax bill.

19. On page 15, line 11, replace the definition 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."

Thank you for this opportunity to provide comments and testify in support of SB 3302.



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  
HONOLULU, HAWAII 96810-0150

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 SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT, AND  
TOURISM AND AGRICULTURE AND ENVIRONMENT  
ON  
SENATE BILL NO. 3302

**February 14, 2022**  
**3:00 p.m.**  
**Room 224 and Videoconference**

RELATING TO GREEN INFRASTRUCTURE

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

Senate Bill No. 3302 amends Chapter 196, HRS, by adding five new sections that requires the Hawai'i Green Infrastructure Authority (HGIA) to design and administer the Environmental and Economic Development Revolving Loan (EEDRL) Program and the Property Assessment Financing Program; establishes the EEDRL Revolving Loan Fund (RLF); appropriates \$25,000,000 of general funds for FY 23 to be deposited into the RLF; and appropriates \$25,000,000 out of the RLF for FY 23 for the purposes of this measure. For clarification, B&F notes that similar to the Clean Energy and Energy Efficiency Revolving Loan Fund already under the administration of HGIA, the proposed RLF would be a special fund since it is established as a subaccount within the Hawai'i Green Infrastructure Special Fund.

B&F notes that, with respect to the general fund appropriation in this bill, 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:

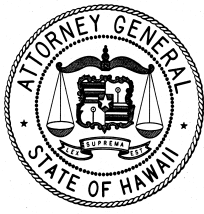
- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support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



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 3302, RELATING TO GREEN INFRASTRUCTURE.

**BEFORE THE:**

SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM  
AND ON AGRICULTURE AND ENVIRONMENT

**DATE:** Monday, February 14, 2022      **TIME:** 3:00 p.m.

**LOCATION:** State Capitol, Room 224, Via Videoconference

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

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Chairs Wakai and Gabbard and Members of the Committees:

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 9, lines 8 to 14, there is a provision that "[t]he recorded [property 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.

Thank you for the opportunity to provide comments.



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

**Testimony in SUPPORT of SB3302**  
**RELATING TO FINANCE**

SENATOR GLENN WAKAI, CHAIR  
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

SENATOR MIKE GABBARD, CHAIR  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
Hearing Date: 2/14/2022 Room Number: Via Videoconference

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.

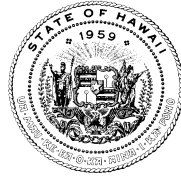
3 **Department Testimony:** The Department of Health (Department) supports this measure as long  
4 as it does not impact the priorities requested in the Executive Budget. Cesspools are a major  
5 source of pollution to Hawaii's waters. There are approximately 88,000 cesspools in the State,  
6 discharging 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 for upgrades and conversions to a director-approved  
13 wastewater system or connection to a sewage system.

14 There are other wastewater systems besides septic systems and aerobic treatment units  
15 that are available to replace cesspools. The Department is proposing an amendment to the  
16 measure to include all wastewater systems that are approved by the director of health.

- 1 **Offered Amendments:** Recommend revising proposed language under Section 196-A,
- 2 “cesspools to be upgraded or converted to septic systems or aerobic treatment unit systems” to
- 3 “cesspools to be upgraded or converted to director of health-approved wastewater systems”.
- 4 Also, under SECTION 5., the Department recommends revising “upgrade or convert a cesspool
- 5 to a septic system or an aerobic treatment unit system;” to “upgrade or convert a cesspool or
- 6 septic system to be upgraded or converted a director of health-approved wastewater system;”.
- 7 Thank you for the opportunity to testify on this measure.

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 SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT,  
AND TOURISM AND AGRICULTURE AND ENVIRONMENT  
HEARING ON FEBRUARY 14, 2022 AT 3:00PM VIA VIDEOCONFERENCE

**SB 3302, RELATING TO GREEN INFRASTRUCTURE**

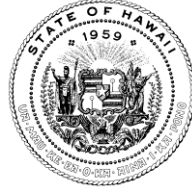
February 14, 2022

Aloha Chair Wakai, Chair Gabbard, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) supports this bill creating the environmental and economic development revolving loan program and property assessment financing program under the administration of the Hawaii Green Infrastructure Authority.

DHHL is especially supportive of the inclusion of lessees on Hawaiian Home Lands to at or below-market interest rate 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.



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  
Senate Committee on Energy, Economic Development, and Tourism  
and  
Senate Committee on Agriculture and Environment  
Monday, February 14, 2022  
3:00 PM  
Via Videoconference**

**On the following measure:  
S.B. 3302, RELATING TO GREEN INFRASTRUCTURE**

Chairs Wakai and Gabbard 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 require the Hawaii Green Infrastructure Authority (HGIA) to design and administer the Environmental and Economic Development Revolving Loan Program and the Property Assessment Financing Program, to create the Environmental and Economic Development Revolving Loan Fund, and to appropriate funds.

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)(4) 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 respectfully suggests the following amendments to the proposed HRS section 196-A(a)(4) to read as follows:

(4) 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 from fees collected as a result of funds advanced from proceeds of this fund so that no such separate moneys shall be used to fund or guarantee any environmental and economic development revolving loan purposes.

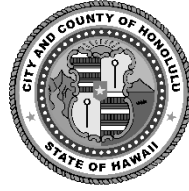
In addition, proposed HRS section 196-64(c)(3), which would allow the Authority to “[u]tilize all repayment mechanisms, including the green energy money saver on-bill repayment mechanism, property assessed financing assessment program, financing tools, servicing and other arrangements, and sources of capital available to the authority[]” could lead to electric ratepayer funds being used for unintended purposes. Therefore, the Department recommends deleting the language allowing repayments from the green energy money saver on-bill program as an allowable use for the environmental and economic development revolving loan fund purposes. Since 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-B (c), where it reads that the funds “deposited into the environmental and economic development revolving loan fund shall not be under the jurisdiction of nor subject to Hawaii public utilities commission approval.”), the inclusion of the proposed language creates a dilemma. The Department acknowledges that the PUC should not need to oversee how the environmental and economic development funds are used but the proposed language that allows funds collected from electric utility customers to be used for non-electric service purposes is not in the interest of those customers.

Thank you for the opportunity to testify on this bill.

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 13, 2022

The Honorable Glenn Wakai  
And Members of the Committee on  
Energy, Economic Development, and Tourism  
The Honorable Mike Gabbard  
And Members of the Committee on  
Agriculture and Environment  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Wakai, Chair Gabbard and Committee Members:

Re: Testimony in Opposition to Senate Bill 3302  
Hearing: Monday, February 14, 2022, 3:00 p.m., via videoconference

The City and County of Honolulu (the "City") thanks you for the opportunity to testify and **offers comments on** Senate Bill 3302 ("SB3302"), relating to the Clean Energy/Environmental Improvements, Bonds and County-Implemented Property Assessed Financing Program (C-PACE).

SB3302 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 and County supports preserving Oahu's natural resources for the health and safety of all Oahu residences and businesses. Although we support C-PACE as a response to improving our resources; we have concerns on SB3302 as it is currently written and therefore provide the following comments.

SB3302 would allow residential property owners to apply to the County 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's responsibilities are to provide core City services to our residents, businesses 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.

Over 25% of real property tax payments are made by mortgage companies through taxpayers' escrow accounts. SB3302 appears to place the non-ad valorem special tax assessment above all other senior lienholders solely as a result of the homeowner entering into a financing agreement for the cesspool financing. Financial institutions and other lenders may be greatly affected by the non-ad valorem special tax assessment, which may make the cesspool loan senior to real estate mortgages, lines of credit, and other liens causing significant negative financial impact to our important, valued, and critical financial partners.

The counties are not lenders, are not qualified to approve and manage loans, and these responsibilities are best handled by qualified financial institutions whose primary business is to manage lending and collections on various lines of credit and loans.

Staffing resources and expertise in the Real Property Assessment and Treasury Divisions are currently stretched and are unable to manage, implement and service the proposed SB3302. 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.

Implementing SB3302 as it is currently written could adversely affect the City's favorable general obligation bond ratings making it difficult for the City to acquire funding and negatively affect our solid history of prudent fiscal management.

The City's real property tax program was designed, purchased and implemented to support the collection of real property taxes. Significant programming modifications and operational changes would be cost prohibitive to implement, and impact the City's ability to make necessary programmatic changes, improvements and enhancements to support the City Council's directives and better serve our valued taxpayers. Funding to manage program enhancements and operations is currently not available.

According to SB3302, 11,000 cesspools reside on Oahu. The City currently has a Septic Tank Cesspool Replacement Tax Credit program under Section 8-16.2 of the Revised Ordinances of Honolulu 1990, as amended. Since 2006, only 10 taxpayers applied and were approved for this credit.

The Honorable Chair, Glen Wakai  
The Honorable Chair, Mike Gabbard  
February 13, 2022  
Page 3

If enacted, the proposed effective date of July 1, 2022 will not provide enough time to properly implement SB3302. A more reasonable effective date would be July 1, 2024.

Sincerely,

Andrew T. Kawano  
Director  
Department of Budget and Fiscal Services



February 11, 2022

State Senator Glenn Wakai, Senate District 15  
Chairperson, Senate Committee on Energy, Economic Development, and Tourism

State Senator Mike Gabbard, Senate District 20  
Chairperson, Senate Committee on Agriculture and Environment

Hawaii State Senate  
Honolulu, HI 96813

*Sent via E-mail*

Dear Chairperson Wakai and Chairperson Gabbard:

On behalf of CleanFund Commercial PACE Capital, Inc., I am writing to you in support of Hawaii's Property Assessment Financing enabling legislation as introduced in bill SB3302 to allow Hawaii's commercial property owners to finance energy efficiency, renewable energy, and resiliency improvements in new and existing properties.

CleanFund supports commercial Property Assessment Financing because it is a commonsense, market-based tool that helps unlock private investment into clean energy, energy efficiency, and other types of environmentally beneficial improvements for new and existing commercial buildings. Based in Stamford, CT, CleanFund is the leading provider of long-term commercial PACE financing for energy efficiency, water conservation, renewable energy and resiliency improvements for commercial, multifamily and other nonresidential properties in the U.S. With the proposed legislation, CleanFund would bring its many years of experience and expertise into Hawaii's proposed commercial Property Assessment Financing market by investing in improving all types of commercial properties, helping the state meet its sustainability and resiliency policy goals.

Nationwide, C-PACE financing is available in more than 27 states and territories, which has provided over \$2 billion in private financing to upgrade commercial building infrastructure. This shows and proves that C-PACE has and continues to be a powerful tool for fostering private investment into clean energy projects across the country. By having your state take action on this legislation, commercial Property Assessment Financing will become an important tool to improve Hawaii's environment and its economy at the same time.

If enacted, your bill will create access to this affordable financing tool, thereby enabling more job creation, private investment, and the retrofitting and new construction of long-term assets that are safe and efficient. Doing these projects are entirely voluntary and is 100% private financed, with no taxpayer dollars used or at risk in these projects.

In closing, CleanFund supports enthusiastically the proposed Hawaii enabling legislation to create a Property Assessment Financing program for commercial properties.

Thank you for your time and attention to creating this program in Hawaii. Please don't hesitate to let my company know if we can be of assistance in any way to help pass this legislation.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Gutierrez".

**Lain Gutierrez**  
*Chief Executive Officer*



**Hawaii Solar Energy Association**  
*Serving Hawaii Since 1977*

**Testimony of The Hawaii Solar Energy Association Regarding SB 3302, Relating to Green Infrastructure, Before the Senate Committees on Energy, Economic Development, and Tourism and Agriculture and Environment**

**Monday, February 14, 2022**

Chairs Wakai and Gabbard, Vice-Chairs Misalucha and Nishihara, and members of the Committees, my name is Rocky Mould and I am the Executive Director of the Hawaii Solar Energy Association (HSEA). We **support SB 3302** 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.<sup>1</sup> 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.<sup>2</sup> 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.

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

<sup>2</sup> 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*

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 energy and energy efficiency measures for underserved markets and communities. HSEA looks forward to working with stakeholders to establish 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 SB 3302** and respectfully asks that that the committees advance it.

Thank you for the opportunity to testify.





Feb. 13, 2022

In Support of **SB3302** Relating to Green Infrastructure  
Senate Committees on Energy, Econ. Dev. & Tourism (EET) and Agriculture & the Enviro. (AEN)  
Hearing on Feb. 14, 3:00pm

Aloha Chairs Wakai & Gabbard, Vice-Chairs Misalucha & Nishihara and Members of the Committees:

On behalf of the non-profit WAI: Wastewater Alternatives & Innovations, I am writing in **strong support of SB3302**. 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 energy upgrades.

The homeowners 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, protect public health and make properties more valuable, while also protecting our groundwater, streams, coral reefs and coastal areas.

Hawaii is struggling with serious sewage pollution problems, and we need to convert 88,000 cesspools in the next three decades. Most people don't have enough money to pay for these conversions, but this law will help homeowners by creating property-assessed financing that will encourage banks and mortgage companies to lend 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 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*

**SB-3302**

Submitted on: 2/13/2022 1:24:31 PM

Testimony for EET on 2/14/2022 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Ted Bohlen	Testifying for Hawai'i Reef and Ocean Coalition	Support	No

Comments:

To: The Honorable Glenn Wakai, Chair, The Honorable Bennette Misalucha, Vice Chair and members of the Senate Committee on Energy, Economic Development, and Tourism, and

The Honorable Michael Gabbard, Chair, The Honorable Clarence Nishihara, Vice Chair, and Members of the Senate Committee on Agriculture and Environment.

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

Hearing: RELATING TO GREEN INFRASTRUCTURE, Monday February 14, 2022 3:00 p.m.

**Hawai'i Reef and Ocean Coalition (HIROC) supports this bill**, which creates an environmental and economic development revolving loan fund under the Hawai'i Green Infrastructure Authority. This will help homeowners and others access capital through the loan fund to finance upgrade of some cesspools. This revolving loan fund model, which has worked in other states, can unlock new markets and inject needed capital to help resolve the serious statewide water pollution problem caused by cesspools.

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

**SB-3302**

Submitted on: 2/13/2022 1:24:58 PM

Testimony for EET on 2/14/2022 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Lauren Blickley	Testifying for Surfrider Foundation	Support	No

Comments:

Surfrider Foundation strongly **supports SB3302**. This bill will allow property owners to finance qualified improvements (including cesspool upgrades) through this loan fund. Cesspools do NOT treat household wastewater and instead release untreated contaminants and nutrients. These are known to pollute both drinking water and coastal ocean water, causing public health hazards and environmental damage.

Last week, Surfrider Foundation’s Blue Water Task Force team was interviewed on Hawai’i News Now to discuss the results of its annual water quality monitoring. In 2021, water quality monitoring results indicated that coastal waters at Kahalu’u, Hakipu’u Boat Ramp, and Waiāhole on the East side had at least 77% of their samples exceed state health standards.

From the press received, Surfrider Foundation was contacted by Kāne’ohe Bay residents who were interested in learning more about how to convert their cesspools and inquired about subsidies for conversions.

SB3302 would establish a revolving loan fund through the Hawai’i Green Infrastructure Authority that would help homeowners access capital to convert cesspools. It is therefore a critical part of addressing the chronic coastal pollution issues along coastal areas with high concentrations of cesspools.

Mahalo for your support of SB3302.



O: 512.599.9038 ♦ FAX: 512.532.0792  
300 West 6th St. Suite 1540, Austin, Texas 78701  
[www.petros-pace.com](http://www.petros-pace.com)

February 13, 2022

The Hon. Glenn Wakai, Chair  
Committee on Energy & Environmental Protection and Tourism

The Hon. Mike Gabbard, Chair  
Committee on Agriculture and Environment

State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

VIA EMAIL

RE: SB 3302

Dear Chair Wakai and Chair Gabbard:

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 SB3302 but believe that it requires some amendments, many of which are reflected in the amendments incorporated in HB2088, 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.

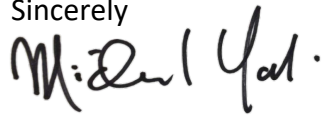
As presently structured, SB3302 requires some fine-tuning in order to meet these requirements. Petros, along with other capital providers, including its industry representative, the C-PACE Alliance, have been working with the bill authors to provide amendments that will achieve the public policy goals 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 needs to SB 3302 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 payments to capital providers and the availability of enforcement remedies by the authority or county that are required by the C-PACE capital markets. Most of these concerns are remedied in the amendments adopted in HB 2088, and we hope they are incorporated in SB3302 as well.

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.

SB3302 is an important step towards establishing a successful commercial PACE program for businesses and property owners in Hawaii. We urge your support for advancing SB3302 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, flowing style.

MICHAEL YAKI

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

**SB-3302**

Submitted on: 2/10/2022 9:31:44 PM

Testimony for EET on 2/14/2022 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Gerard Silva	Individual	Oppose	No

Comments:

This is a Wast of time and money. What we need to do is see who is pushing this and investigate how much they are getting payed to push this, Just like the 2 Senators who got cought for getting payed to put Bills in and then Kill them . It is all about the Money!!