

JAN 24 2018

A BILL FOR AN ACT

RELATING TO GREEN INFRASTRUCTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 196-61, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding a new definition to be appropriately inserted
4 and to read as follows:

5 "Financing costs" means the same as defined in section
6 269-161."

7 2. By deleting the definition of "green infrastructure
8 fee".

9 ~~["Green infrastructure fee" means the same as defined in~~
10 ~~section 269-161."]~~

11 SECTION 2. Section 196-67, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) There is established the Hawaii green infrastructure
14 bond fund as a special fund into which all [~~proceeds of the~~
15 ~~green infrastructure fee established pursuant to section 269-166~~
16 ~~and any other~~] proceeds of green infrastructure property shall
17 be paid. The Hawaii green infrastructure bond fund may also



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

4 SECTION 3. Section 196-68, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~§~~196-68~~§~~] Compliance with revenue bond law. (a) For
7 purposes of assuring conformity of and compliance with part III
8 of chapter 39, it is determined as follows:

- 9 (1) For purposes of section 39-51, "revenues" shall
10 include the [~~green infrastructure fee and the~~]
11 proceeds of green infrastructure property; "loan
12 program" shall include the loan program authorized
13 under section 196-62; and "undertaking" shall include
14 financing of the loan program through the issuance of
15 green infrastructure revenue bonds; and
- 16 (2) In addition and supplemental to any covenants
17 recognized under section 39-60, any resolution,
18 certificate, or indenture approved by the department
19 may have additional or alternative covenants as may be
20 consistent with this chapter, and the department may
21 enter into a trust indenture, servicing agreement, or



1 other financing documents having terms and conditions
2 consistent with the financing order issued under
3 section 269-163 [7

4 ~~(3) In addition and supplemental to the power to impose~~
5 ~~rates, rentals, fees, or charges required under~~
6 ~~section 39-61, the department shall impose, adjust,~~
7 ~~and collect the green infrastructure fee as provided~~
8 ~~in section 269-166 and the financing order issued~~
9 ~~pursuant thereto; and~~

10 ~~(4) In addition and supplemental to the uses specified in~~
11 ~~section 39-62, the green infrastructure fee shall be~~
12 ~~applied as provided in this chapter, the financing~~
13 ~~order, the certificate issued by the department, and~~
14 ~~any financing documents executed by the department in~~
15 ~~connection with the bonds].~~

16 (b) Notwithstanding part III of chapter 39, financing
17 costs of green infrastructure bonds issued by the State pursuant
18 to part X of chapter 269 shall be paid with general funds."

19 SECTION 4. Section 269-161, Hawaii Revised Statutes, is
20 amended as follows:



1 1. By amending the definition of "electric utilities" to
2 read:

3 "Electric utilities" means all electric utilities subject
4 to billing, collecting, and remitting the public benefits fee[
5 ~~or the green infrastructure fee,~~] at the time the financing
6 order becomes final, and any other electric utility designated
7 in the financing order."

8 2. By amending the definitions of "financing order" and
9 "financing party" to read:

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

15 "Financing party" means:

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

18 (2) Any party to an ancillary agreement, the rights and
19 obligations of which relate to or depend upon the
20 existence of green infrastructure property [~~and green~~
21 ~~infrastructure fees~~], the enforcement and priority of



1 a security interest in green infrastructure property,
2 ~~[the timely collection and payment of green~~
3 ~~infrastructure fees,~~] or a combination of these
4 factors."

5 3. By amending the definition of "green infrastructure
6 property" to read:

7 "Green infrastructure property" means the property,
8 rights, and interests created by the public utilities commission
9 under a financing order, ~~[including the right to impose, charge,~~
10 ~~and collect from electric utility customers the green~~
11 ~~infrastructure fee that shall be used to pay and secure the~~
12 ~~payment of bonds and financing costs, including the right to~~
13 ~~obtain adjustments to the green infrastructure fee,~~] and any
14 revenues, receipts, collections, rights to payment, payments,
15 moneys, claims, or other proceeds arising from the rights and
16 interests created by the public utilities commission under any
17 financing order."

18 4. By deleting the definition of "green infrastructure
19 fee".

20 ~~["Green infrastructure fee" means the nonbypassable fees~~
21 ~~and charges authorized by section 269-166 and in a financing~~



1 ~~order authorized under this part to be imposed on and collected~~
2 ~~from all existing and future customers of electric utilities or~~
3 ~~any successor."~~]

4 SECTION 5. Section 269-162, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[+]§269-162[+] Applications to issue bonds [~~and authorize~~
7 ~~green infrastructure fee~~]. (a) In connection with the issuance
8 of bonds, the department may apply to the public utilities
9 commission for one or more financing orders, each of which
10 financing orders authorizes the following:

11 [~~(1)~~ ~~The imposition, charging, and collection on behalf of~~
12 ~~the department of the green infrastructure fee, to~~
13 ~~become effective upon the issuance of the bonds, and~~
14 ~~the adjustment of the green infrastructure fee on~~
15 ~~behalf of the department in accordance with an~~
16 ~~adjustment mechanism requested by the department under~~
17 ~~this part in amounts sufficient to pay the principal~~
18 ~~of and interest on bonds and all related financing~~
19 ~~costs on a timely basis;~~

20 ~~(2)]~~ (1) The creation of green infrastructure property
21 under the financing order; and



1 ~~[(3)]~~ (2) The deposit of the net proceeds of the bonds into
2 the green infrastructure special fund.

3 (b) The application shall include all of the following:

4 (1) The principal amount of the bonds proposed to be
5 issued;

6 (2) An estimate of the date each series of bonds is
7 expected to be issued;

8 ~~[(3)] The expected term, not to exceed thirty years, during~~
9 ~~which term the green infrastructure fee associated~~
10 ~~with the issuance of each series of bonds is expected~~
11 ~~to be imposed and collected;~~

12 ~~-(4)]~~ (3) An estimate of the financing costs associated
13 with the issuance of each series of bonds;

14 ~~[(5)]~~ (4) An estimate of the amount of ~~[the green~~
15 ~~infrastructure fee revenues]~~ funds necessary to pay
16 principal and interest on the bonds and related
17 financing costs as set forth in the application and
18 the calculation for that estimate, which calculation
19 shall take into account the estimated date or dates of
20 issuance and the estimated principal amount of each
21 series of bonds;



1 ~~[(6) A proposed methodology for allocating the green~~
2 ~~infrastructure fee among electric utilities and~~
3 ~~customer classes within each electric utility;~~
4 ~~(7) A description of a proposed formulaic adjustment~~
5 ~~mechanism for the adjustment of the green~~
6 ~~infrastructure fee to ensure the timely payment of~~
7 ~~principal and interest on the bonds and related~~
8 ~~financing costs;]~~ and

9 ~~[(8)]~~ (5) Any other information required by the public
10 utilities commission."

11 SECTION 6. Section 269-163, Hawaii Revised Statutes, is
12 amended to read as follows:

13 " ~~[+] §269-163~~ ~~[+]~~ Green infrastructure financing order. (a)
14 The public utilities commission shall issue its financing order
15 as final or if a finding in subsection (b) cannot be made, its
16 denial of a financing order, as expeditiously as possible and in
17 any event within ninety days from the date the completed
18 application is submitted.

19 (b) The public utilities commission may issue a financing
20 order if the public utilities commission finds that the creation
21 of the green infrastructure property to secure the payment of



1 the bonds [~~including the imposition of the green infrastructure~~
2 ~~fee,~~] will facilitate the acquisition of low-cost financing,
3 pursuant to an application under section 269-162.

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

6 (1) The maximum amount of bonds to be issued by the State
7 acting through the department under the financing
8 order;

9 (2) A description of the green infrastructure property,
10 the creation of which property is authorized by the
11 financing order;

12 (3) A description of the financing costs [~~that will be~~
13 ~~recoverable through green infrastructure fees~~],
14 including any reserves or overcollateralization
15 amounts required by the department to secure payment
16 of the bonds;

17 [~~(4) A description of the methodology to be applied by the~~
18 ~~public utilities commission, on behalf of the~~
19 ~~department, for calculating the green infrastructure~~
20 ~~fee, including the allocation of financing costs among~~
21 ~~electric utilities and customer classes;~~



1 ~~(5) A description of the formulaic adjustment mechanism to~~
2 ~~be used by the public utilities commission, on behalf~~
3 ~~of the department, to adjust the green infrastructure~~
4 ~~fee in order to ensure that the amount of the green~~
5 ~~infrastructure fee projected to be collected shall be~~
6 ~~sufficient to pay the principal and interest on the~~
7 ~~bonds, and all related financing costs on a timely~~
8 ~~basis, including the funding or maintenance of any~~
9 ~~reserves required to be maintained by the department;~~

10 ~~(6)]~~ (4) The term of the bonds, as proposed by the
11 ~~department, [during which term the green~~
12 ~~infrastructure fee shall continue to be collected and~~
13 ~~pledged to pay the bonds,]~~ which [term] shall
14 ~~automatically be extended by the term of any refunding~~
15 ~~bonds, as approved in a subsequent financing order,~~
16 ~~issued in such principal amounts as the department may~~
17 ~~determine to be necessary to refund the bonds that are~~
18 ~~the subject of the original financing order;~~

19 ~~[(7) A requirement that the electric utilities, including~~
20 ~~any successors, serve as agents to collect the green~~
21 ~~infrastructure fee and transfer those surcharges to~~



1 ~~the trustee or other financing party as required by~~
2 ~~the financing order and any agreements with the~~
3 ~~department,~~

4 ~~(8) The procedures to be followed by the electric~~
5 ~~utilities in the event of nonpayment or partial~~
6 ~~payment of the green infrastructure fee by the~~
7 ~~electric utilities' customers, which procedures shall~~
8 ~~be consistent with the public utilities commission~~
9 ~~approved procedures for nonpayment and partial payment~~
10 ~~of rates, charges, and fees under the electric~~
11 ~~utilities' tariffs,] and~~

12 ~~[(9)]~~ (5) The distribution of the total amounts collected
13 by the electric utilities for amounts billed to
14 customers for the electric utilities' rates, fees,
15 ~~[the green infrastructure fee,]~~ other public utilities
16 commission approved fees, and for associated taxes, in
17 the event of partial payments of the billed amounts ~~[,~~

18 ~~(10) Terms satisfactory to the public utilities commission~~
19 ~~to ensure that the green infrastructure fee shall be~~
20 ~~nonbypassable and will be paid by all existing and~~



1 ~~future customers of an electric utility or any~~
2 ~~successor, and~~

3 ~~(11) Any other provision the public utilities commission~~
4 ~~considers appropriate to ensure the full and timely~~
5 ~~imposition, charging, collection, and adjustment,~~
6 ~~pursuant to an approved adjustment mechanism, of the~~
7 ~~green infrastructure fee described in this~~
8 ~~subsection].~~

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

12 (d) The public utilities commission, in a financing order,
13 may permit the department flexibility in establishing the terms
14 and conditions for the bonds to accommodate changes in market
15 conditions, including repayment schedules, interest rates,
16 financing costs, collateral requirements, required debt service
17 and other reserves, and the ability of the department, at its
18 option, to effect a series of issuances of bonds and correlated
19 assignments, sales, pledges, or other transfers of green
20 infrastructure property. Any changes made under this section to



1 terms and conditions for the bonds shall be in conformance with
2 the financing order.

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

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

14 SECTION 7. Section 269-164, Hawaii Revised Statutes, is
15 amended by amending subsections (b) and (c) to read as follows:

16 "(b) An electric utility shall have no ownership or
17 beneficial interest in nor any claim or right to the [green
18 infrastructure fee,] green infrastructure property, green
19 infrastructure equipment, or green infrastructure charge other
20 than the obligation to bill and collect the [green
21 infrastructure fee and] green infrastructure charge as agent for



1 the department or any financing party and remit the collected
2 revenue to the department or such financing party entitled to
3 receive those surcharges in accordance with the financing order.

4 ~~[The public utilities commission shall ensure that all~~
5 ~~reasonable costs incurred by electric utilities to implement the~~
6 ~~green infrastructure fee may be recovered as part of the~~
7 ~~electric utility's revenue requirement, including necessary~~
8 ~~billing system adjustments, costs arising out of the billing and~~
9 ~~collection of the green infrastructure fee, and any costs for~~
10 ~~the green infrastructure fee that are not recovered otherwise.]~~

11 The ~~[green infrastructure fee or]~~ green infrastructure property
12 shall not be considered revenue of any electric utility.

13 (c) The obligation of any electric utility customer to pay
14 the ~~[green infrastructure fee or]~~ green infrastructure charge
15 and, notwithstanding subsection (b), the obligation of the
16 electric utility to collect and remit the ~~[green infrastructure~~
17 ~~fee or]~~ green infrastructure charge shall not be subject to any
18 setoff, counterclaim, surcharge, or defense by the electric
19 utility or by any electric utility customer, or in connection
20 with a bankruptcy of any electric utility or any electric
21 utility customer."



SECTION 8. Section 269-165, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Once a financing order has become final as provided by law, the financing order shall become irrevocable. The public utilities commission ~~[may]~~ shall not directly or indirectly, ~~[except as provided in the adjustment mechanism approved in the financing order, reduce, impair, postpone, rescind, alter, or terminate the green infrastructure fee authorized in the financing order or]~~ impair the green infrastructure property ~~[or the collection of the green infrastructure fee]~~ so long as any bonds are outstanding ~~[or any financing costs remain unpaid]~~."

SECTION 9. Section 269-167, Hawaii Revised Statutes, is amended to read as follows:

"~~[+] §269-167 [+] Electric utility successor requirements [,-~~
~~default of electric utility]~~. ~~[-a-]~~ Any successor to an electric utility subject to a financing order shall be bound by the requirements of this part. The successor shall perform and satisfy all obligations of the electric utility under the financing order, in the same manner and to the same extent as the electric utility~~[-, including the obligation to collect and~~



1 ~~pay the green infrastructure fee to the department or to any~~
2 ~~financing party as required by a financing order.~~

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

17 SECTION 10. Section 269-168, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) In the furtherance of section 39-65, the ownership,
20 transfer, and pledge of the ~~[green infrastructure fee and]~~ green
21 infrastructure property and the imposition, charging,



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

7 SECTION 11. Section 269-169, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) In furtherance of section 39-61, the State pledges to
10 and agrees with the bondholders and any financing parties under
11 a financing order that the State will not take or permit any
12 action that impairs the value of green infrastructure property
13 under the financing order, [~~or reduce, alter, or impair the~~
14 ~~green infrastructure fee that is imposed, charged, collected, or~~
15 ~~remitted for the benefit of the bondholders and any financing~~
16 ~~parties,~~] until any principal, interest, and redemption premium
17 in respect of bonds, all financing costs, and all amounts to be
18 paid to a financing party under an ancillary agreement are paid
19 or performed in full or unless adequate provision has been made
20 by law for the protection of bondholders and other financing
21 parties."



SECTION 12. Section 269-166, Hawaii Revised Statutes, is repealed.

~~["§269-166] Green infrastructure fee; nonbypassable. (a) The public utilities commission may create, pursuant to a financing order approved pursuant to section 269-163, a utility-wide nonbypassable surcharge, referred to as the green infrastructure fee, which shall be deposited into the green infrastructure bond fund and be pledged to secure and be applied to the repayment of bonds and related financing costs as described in this part. The green infrastructure fee may be a usage-based surcharge, a flat user fee, or a charge based upon customer revenues as determined by the public utilities commission for each customer class in any financing order.~~

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

~~(c) As long as any bonds are outstanding and any financing costs have not been paid in full, the green infrastructure fee~~



1 ~~authorized under any financing order shall be nonbypassable.~~
2 ~~Subject to any exceptions provided in a financing order, the~~
3 ~~green infrastructure fee shall be paid by all existing and~~
4 ~~future customers of electric utilities or any successors.~~

5 ~~(d) The green infrastructure fee shall be collected by the~~
6 ~~electric utilities or their successors, as collection agents for~~
7 ~~the department or the financing parties, in full through a~~
8 ~~surcharge, fee, or charge that is separate and apart from the~~
9 ~~electric utilities' rates."]~~

10 SECTION 13. Section 269-176, Hawaii Revised Statutes, is
11 repealed.

12 ~~["§269-176 Financing order; adjustments to green~~
13 ~~infrastructure fee. The financing order shall include, without~~
14 ~~limitation, a procedure to require the public utilities~~
15 ~~commission, in accordance with a formula set out in the~~
16 ~~financing order and approved by the department, to expeditiously~~
17 ~~review and approve periodic adjustments to the green~~
18 ~~infrastructure fee to ensure the payment of the bonds and~~
19 ~~related financing costs on a timely basis."]~~

20 SECTION 14. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



S.B. NO. 3091

1 SECTION 15. This Act shall take effect upon its approval.

2

INTRODUCED BY:



By Request



S.B. NO. 3091

Report Title:

Green Infrastructure Bonds; Green Infrastructure Fee; Financing Costs

Description:

Repeals the authority of PUC to establish a green infrastructure fee to be imposed on electric utility customers to secure the payment of financing costs for green infrastructure bonds. Requires financing costs to be paid from general funds.

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