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## A BILL FOR AN ACT

RELATING TO FINANCING.

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

1       SECTION 1. The legislature finds that the tension between  
2 managing the health and safety of Hawaii's residents and  
3 visitors from the coronavirus and its highly contagious  
4 variants, while managing the economic health of Hawaii's  
5 hospitality industry and small businesses over the past two  
6 years, has heightened the importance of diversifying Hawaii's  
7 economic base while simultaneously investing resources toward  
8 recovery efforts. Additionally, while the pandemic has  
9 demonstrated the importance of ensuring the health of our people  
10 and economic health, the legislature also finds that it is  
11 equally important to invest resources to ensure Hawaii's  
12 environmental health.

13       As an example, the legislature finds that the State's  
14 streams, groundwater, and ocean are being harmed by nonpoint  
15 contamination sources that flow directly off the land, rather  
16 than through pipes or ditches. Cesspools are a nonpoint  
17 contamination source of great concern. These substandard

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1 systems are essentially holes in the ground that do not treat  
2 wastewater but merely dispose of polluted wastewater.

3 There are approximately 88,000 cesspools in the State, with  
4 nearly 50,000 on Hawaii island, approximately 14,000 on Kauai,  
5 over 12,000 on Maui, over 11,000 on Oahu, and approximately  
6 1,400 on Molokai. Collectively, the State's cesspools release  
7 more than 53,000,000 gallons of untreated sewage into the ground  
8 each day. Hawaii relies on groundwater for ninety per cent of  
9 its drinking water.

10 In response to the State's cesspool pollution problem,  
11 legislation was enacted in 2017 that requires all cesspools not  
12 excluded by the director of health to be upgraded or converted  
13 to septic systems or aerobic treatment unit systems, or  
14 connected to sewage systems by January 1, 2050; however,  
15 cesspool conversions, which are estimated to cost some  
16 \$1,300,000,000, have been lagging.

17 The legislature further finds that Hawaii is susceptible to  
18 property loss due to hurricanes, tropical storms, and strong  
19 winds. The best long-term solution to reducing potential damage  
20 is the statewide use of wind resistive devices. While residents  
21 should inspect, repair, and reinforce their residences to  
22 prepare for the possibility of a hurricane making landfall, said

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1 inspection, repair, and reinforcement consume resources from  
2 homeowners' budgets. Improved properties that are not using  
3 energy conservation or production strategies contribute to the  
4 burden and reliance on fossil fuels. Improved properties not  
5 protected with wind or flood resistant qualifying improvements  
6 contribute to the burden affecting all properties resulting from  
7 potential wind or flood damage. Improved properties that do not  
8 use septic tanks or are not connected to wastewater sewage  
9 systems contribute to water quality problems affecting the  
10 State, and properties that are not protected from harmful  
11 environmental health hazards contribute to the environmental  
12 health burdens affecting the State.

13 In order to make qualifying improvements more affordable  
14 and assist property owners who wish to undertake such  
15 improvements, the legislature finds that there is a compelling  
16 state interest in enabling property owners to voluntarily  
17 finance such improvements with local government assistance.  
18 Innovative, non-traditional financing options and repayment  
19 mechanisms help bridge financing gaps, attract private capital,  
20 and address specific market failures and institutional barriers.

21 Providing non-traditional financing options to assist low  
22 and moderate-income homeowners and other eligible property

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1 owners for the upgrade, conversion, or connection to municipal  
2 or private wastewater systems, installation of energy  
3 conservation, or renewable energy retrofits, improve a  
4 property's resilience and remove health hazards while  
5 facilitating other allowable purposes by addressing access to  
6 capital obstacles and enabling the financing of qualifying  
7 improvements through the execution of property assessment  
8 financing contracts. The related imposition of voluntary  
9 assessments is reasonable and necessary to serve and achieve a  
10 compelling state interest and is necessary for the prosperity  
11 and welfare of the State and its property owners.

12 Additionally, leveraging these non-traditional financing  
13 options and repayment mechanisms will accelerate economic  
14 recovery and economic diversification efforts statewide.

15 The purpose of this Act is to establish an at or below-  
16 market interest loan program and authorize property assessment  
17 financing for environmental, economic recovery, and economic  
18 diversification projects and initiatives.

19 SECTION 2. Chapter 196, Hawaii Revised Statutes, is  
20 amended by adding to part IV two new sections to be  
21 appropriately designated and to read as follows:

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1        "§196-       Environmental and economic development revolving  
2 loan fund. (a) There is established in the Hawaii green  
3 infrastructure special fund created in section 196-65, the  
4 environmental and economic development revolving loan fund,  
5 similar to a revolving line of credit, which shall be  
6 administered by the authority. Funds deposited into the  
7 environmental and economic development revolving loan fund shall  
8 not be under the jurisdiction of nor be subject to Hawaii public  
9 utilities commission approval, and shall also include:

- 10        (1) Funds from federal, state, county, private, or other  
11        funding sources;  
12        (2) Investments from public or private investors;  
13        (3) Moneys received as repayment of loans and interest  
14        payments; provided that the repayment of loans and  
15        interest payments under this paragraph shall not  
16        include repayment of loans and interest collected as a  
17        result of funds advanced from proceeds of the green  
18        energy market securitization bonds; and  
19        (4) Any fees collected by the authority under this  
20        section; provided that moneys collected as a result of  
21        the funds advanced from proceeds of the green energy  
22        market securitization bonds shall be kept separate

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1           from fees collected as a result of funds advanced from  
2           proceeds of this environmental and economic  
3           development revolving loan fund.

4           (b) Moneys in the environmental and economic development  
5           revolving loan fund shall be used to provide at or below-market  
6           rates or other authorized financial assistance to eligible  
7           public, private, and nonprofit borrowers for environmental and  
8           economic diversification investments, qualifying improvements,  
9           or other authorized uses, on terms approved by the authority,  
10          including lessees on Hawaiian home lands with cesspools to be  
11          upgraded or converted to septic systems or aerobic treatment  
12          unit systems or connected to sewer systems. Moneys from the  
13          fund may be used to cover administrative and legal costs of fund  
14          management and management associated with individual loans, to  
15          include personnel, services, technical assistance, data  
16          collection and reporting, materials, equipment, and travel for  
17          the purposes of this section.

18          (c) Appropriations or authorizations from the  
19          environmental and economic development revolving loan fund shall  
20          be expended by the authority. The authority may contract with  
21          other public or private entities for the provision of all or a  
22          portion of the services necessary for the administration and

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implementation of the loan fund program. The authority may set fees or charges for fund management and technical site assistance provided under this section. The authority may adopt rules pursuant to chapter 91 to carry out the purposes of this section.

(d) All interest earned on the loans, deposits, or investments of the moneys in the environmental and economic development revolving loan fund shall become part of the environmental and economic development revolving loan fund.

(e) The authority may establish subaccounts within the fund as necessary.

**§196- Property assessment financing.** (a) The authority shall, as administrator of the property assessment financing program, coordinate with each county to bill and collect a non-ad valorem special tax assessment as a repayment mechanism on the real property tax bill. The non-ad valorem special tax assessment is not a generally applicable tax upon the real property but shall be collected in the same manner as real property taxes because of the benefit to the property owners for qualifying improvements.

(b) The authority shall design a property assessment financing program that addresses market needs while attracting

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1 private capital, and which shall, at a minimum, include the  
2 following:

3       (1) A property assessed financing lender may enter into a  
4       property assessed financing assessment contract to  
5       finance or refinance a qualifying improvement only  
6       with the record owner of the affected property. Each  
7       property assessed financing assessment contract shall  
8       be approved by the authority as property assessed  
9       financing administrator prior to execution. A  
10       property assessed financing assessment contract may  
11       cause the authority to assign and pledge revenues to  
12       be derived from property assessed financing  
13       assessments to property assessed financing lenders as  
14       security for their direct financing of qualifying  
15       improvements. No bonds are required to be issued by  
16       the State, the authority, any county or city, or any  
17       other public entity in order to cause qualifying  
18       improvements to be funded through a property assessed  
19       financing assessment contract;

20       (2) The installation of qualifying improvements must be  
21       affixed to a building or facility or affixed to real



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property, subject to property assessed financing  
assessments;

(3) Before entering into a property assessed financing  
assessment contract, the property assessed financing  
lender shall reasonably determine that the property  
owner has an ability to pay the estimated annual  
property assessed financing assessment; that 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; that there are no involuntary liens, including  
but not limited to construction liens, on the  
property; that 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  
that the property owner is current on all mortgage  
debt on the property;

(4) The property assessed financing assessment contract  
shall include the amount of an annual assessment over

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1 a fixed term that will appear on the property owner's  
2 tax bill annually;

3 (5) The property assessed financing assessment contract,  
4 or summary memorandum of such contract, shall be  
5 recorded in the public records of the State or of the  
6 county within which the property is located within  
7 five days after execution by the parties to the  
8 contract. The recorded contract shall provide  
9 constructive notice that the property assessed  
10 financing assessment levied or to be levied on the  
11 property constitutes a lien of equal dignity to county  
12 taxes and assessments on a parity with the lien of  
13 general real property taxes and the lien of any other  
14 assessments levied under section 46-80, from the date  
15 of recordation entered into pursuant to this section;

16 (6) Lienholders.

17 (A) Without the consent of the holders or loan  
18 servicers of any mortgage encumbering or  
19 otherwise secured by the property, the total  
20 amount of any non-ad valorem special tax  
21 assessment for a property under this part may not  
22 exceed twenty per cent of the just value of the

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1 property as determined by the county property  
2 appraiser. This limitation shall not apply to  
3 any property assessed financing assessment on  
4 commercial property which is consented to the  
5 holders or loan servicers of any mortgage  
6 encumbering or otherwise secured by the property;

7 (B) At least thirty days before entering into a  
8 property assessed financing assessment contract,  
9 the property owner shall provide to the holders  
10 or loan servicers of any existing mortgages  
11 encumbering or otherwise secured by the property  
12 a notice of the owner's intent to enter into a  
13 property assessed financing assessment contract  
14 together with the maximum principal amount to be  
15 financed and the maximum annual assessment  
16 necessary to repay that amount and any incidental  
17 fees. A verified copy or other proof of such  
18 notice shall be provided to the property assessed  
19 financing lender. A provision in any agreement  
20 between a mortgagee or other lienholder and a  
21 property owner, which allows for acceleration of  
22 payment of the mortgage, note, or lien or other

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1           unilateral modification solely as a result of  
2           entering into a property assessed financing  
3           assessment contract as provided for in this  
4           section, is not enforceable. This section does  
5           not limit the authority of the holder or loan  
6           servicer to increase the required monthly escrow  
7           by an amount necessary to annually pay the  
8           qualifying improvement assessment;

9       (7) Sale of subject property. At or before the time a  
10       purchaser executes a contract for the sale and  
11       purchase of any property for which a non-ad valorem  
12       special tax assessment has been levied under this part  
13       and has an unpaid balance due, the seller shall give  
14       the prospective purchaser a written disclosure  
15       statement notifying the prospective purchaser of the  
16       property assessed financing assessment;

17       (8) The term of the property assessed financing assessment  
18       contract may not exceed the useful life of the  
19       qualifying improvement being installed or the weighted  
20       average useful life of all qualifying improvements  
21       being financed if multiple qualifying improvements are  
22       being financed, as determined by the authority; and

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(9) The county director of finance or budget and fiscal services may covenant, 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 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 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."

SECTION 3. Section 46-80, Hawaii Revised Statutes, is amended to read as follows:

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1        **"§46-80 Improvement by assessment; financing. (a)** Any  
2 county having a charter may enact an ordinance, and may amend  
3 the same from time to time, providing for the making and  
4 financing of improvement districts in the county, and such  
5 improvements may be made and financed under such ordinance. The  
6 county may issue and sell bonds to provide funds for such  
7 improvements. Bonds issued to provide funds for such  
8 improvements may be either bonds when the only security therefor  
9 is the properties benefited or improved or the assessments  
10 thereon or bonds payable from taxes or secured by the taxing  
11 power of the county. If the bonds are secured only by the  
12 properties benefited or improved or the assessments thereon, the  
13 bonds shall be issued according and subject to the provisions of  
14 the ordinance. If the bonds are payable from taxes or secured  
15 by the taxing power, the bonds shall be issued according and  
16 subject to chapter 47. Except as is otherwise provided in  
17 section 46-80.1, in assessing land for improvements a county  
18 shall assess the land within an improvement district according  
19 to the special benefits conferred upon the land by the special  
20 improvement; these methods include assessment on a frontage  
21 basis or according to the area of land within an improvement  
22 district, or any other assessment method which assesses the land

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1 according to the special benefit conferred, or any combination  
2 thereof.

3 (b) Notwithstanding any county ordinance to the contrary,  
4 if property assessment financing is implemented by a county, a  
5 property owner may apply for property assessment financing for  
6 an eligible purpose and enter into a property assessment  
7 financing contract with an approved property assessment  
8 financing lender. Costs incurred for qualifying improvements  
9 shall be collected as a non-ad valorem special tax assessment.

10 The county may incur debt for the purpose of providing financing  
11 for qualified improvements, which is payable from revenues  
12 received from the improved property, or any other available  
13 revenue source authorized by law. Bonds issued to finance  
14 qualified improvements, when the only security is the special  
15 tax assessment levy or lien imposed against improved property,  
16 shall be excluded from any determination of the power of the  
17 county to issue general obligation bonds or funded debt for  
18 purposes of section 13 of article VII of the State  
19 Constitution."

20 SECTION 4. Section 196-61, Hawaii Revised Statutes, is  
21 amended by adding new definitions to be appropriately inserted  
22 and to read as follows:

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1       "Commercial property" means any property not defined as a  
2 residential property or in a residential property class,  
3 including agricultural property.

4       "Non-ad valorem special tax assessment" means a special tax  
5 assessment or charge that is not based on the value of the  
6 property and appears on a property tax bill.

7       "Property assessed financing assessment" means the non-ad  
8 valorem special tax assessment securing the repayment of  
9 financing obtained by an owner of commercial or residential  
10 property for a qualifying improvement that appears on a property  
11 tax bill.

12       "Property assessed financing assessment contract" means the  
13 financing contract, under the property assessed financing  
14 program, between the property assessed financing lender and a  
15 property owner for the acquisition or installation of qualifying  
16 improvements.

17       "Property assessed financing lender" means a private or  
18 public lender approved by the property assessed financing  
19 administrator to originate property assessed financing loans.

20       "Property assessed financing program" means a program to  
21 finance qualifying improvements on commercial and residential



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1 properties that is repaid through a non-ad valorem special tax  
2 assessment on the property owner's property tax bill.

3 "Qualifying improvement" means septic systems or aerobic  
4 treatment unit systems or connections to sewer systems, clean  
5 energy technologies, efficiency technologies, resiliency  
6 measures, and other improvements approved by the authority.

7 "Residential property" means any single-family or multi-  
8 family residential dwelling or townhouse."

9 SECTION 5. Section 196-64, Hawaii Revised Statutes, is  
10 amended by amending subsections (c) and (d) to read as follows:

11 "(c) In the performance of the functions, powers, and  
12 duties vested in the authority by this part, the authority shall  
13 administer the clean energy and energy efficiency revolving loan  
14 fund pursuant to section 196-65.5 and the environmental and  
15 economic development revolving loan fund pursuant to section  
16 196- , and may:

17 (1) Make loans and expend funds to finance the purchase or  
18 installation of clean energy technology and  
19 services[+], upgrade or convert a cesspool to a septic  
20 system or an aerobic treatment unit system, or connect  
21 a cesspool to a sewer system, and finance eligible  
22 environmental, economic recovery and economic

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diversification projects and initiatives and other  
qualifying improvements;

(2) Implement and administer loan programs on behalf of  
other ~~[state departments or agencies]~~ government  
entities and municipalities through a memorandum of  
agreement and expend funds appropriated to the  
~~[department or agency]~~ government entity and  
municipality for purposes authorized by the  
legislature~~+~~, government entity, and municipality;

(3) Utilize all repayment mechanisms, including the green  
energy money saver on-bill program, property assessed  
financing assessment, financing tools, servicing and  
other arrangements, and sources of capital available  
to the authority;

(4) Exercise powers to organize and establish special  
purpose entities as limited liability companies under  
the laws of the State;

(5) Acquire, hold, and sell qualified securities;

(6) Pledge unencumbered net assets, loans receivable,  
assigned agreements, and security interests over  
equipment financed, as collateral for the authority's

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1 borrowings from federal, county, or private lenders or  
2 agencies;

3 (7) Utilize the employees of the authority, including the  
4 executive director;

5 (8) Enter into contracts for the service of consultants  
6 for rendering professional and technical assistance  
7 and advice and any other contracts that are necessary  
8 and proper for the implementation of the loan fund  
9 program;

10 (9) Enter into contracts for the administration of the  
11 loan fund program exempt from chapter 103D;

12 (10) Establish loan fund program guidelines;

13 (11) Be audited at least annually by a firm of independent  
14 certified public accountants selected by the authority  
15 and provide the results of the audit to the department  
16 and legislature; and

17 (12) Perform all functions necessary to effectuate the  
18 purposes of this part.

19 (d) The authority shall submit an annual report for the  
20 clean energy and energy efficiency and environmental and  
21 economic development revolving loan [~~fund~~] funds to the  
22 legislature no later than twenty days prior to the convening of

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1 each regular session describing the projects funded and the  
2 projected energy, environmental, and economic development  
3 impacts."

4 SECTION 6. There is appropriated out of the general  
5 revenues of the State of Hawaii the sum of \$25,000,000 or so  
6 much thereof as may be necessary for fiscal year 2022-2023 to be  
7 deposited in the environmental and economic development  
8 revolving loan fund established pursuant to section 196-\_\_,  
9 Hawaii Revised Statutes.

10 The sum appropriated shall be expended by the Hawaii green  
11 infrastructure authority for the purposes of this Act.

12 SECTION 7. There is appropriated out of the environmental  
13 and economic development revolving loan fund the sum of  
14 \$25,000,000 or so much thereof as may be necessary to fiscal  
15 year 2022-2023 to provide loans or other financial assistance to  
16 eligible property owners and for other allowable purposes,  
17 including implementation costs.

18 The sum appropriated shall be expended by the Hawaii green  
19 infrastructure authority for the purpose of this Act.

20 SECTION 8. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

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1 SECTION 9. This Act shall take effect upon its approval.

2

3

INTRODUCED BY:



4

BY REQUEST

JAN 24 2022

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**Report Title:**

Hawaii Green Infrastructure Authority; Property Assessed Financing; Cesspool Upgrade and Conversion; Property Resilience; Environmental and Economic Development Financing

**Description:**

Creates the environmental and economic development revolving loan fund under the administration of the Hawaii Green Infrastructure Authority. Allows property owners to finance qualified improvements through a non-ad valorem property assessment. Appropriates funds.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO FINANCING.

PURPOSE: Establish 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 to septic systems or aerobic treatment unit systems, or connected to sewer systems, increase property resilience, for environmental and economic development projects and other qualifying improvements; and allow property owners to finance qualified improvements through a non-ad valorem property assessment.

MEANS: Add two new sections to part IV, chapter 196, Hawaii Revised Statutes (HRS), and amend sections 46-80, 196-61, and 196-64(c) and (d), HRS.

JUSTIFICATION: Cesspools are a nonpoint contamination source of great concern. Collectively, the State's cesspools release more than 53 million gallons of untreated sewage into the ground each day. Cesspool conversion costs are high, especially in remote locations, meaning that conversion options must be practical and regionally specific.

Many properties, especially residential properties are not hurricane resistant. Many rooftops are not solar-ready and some properties contain other harmful environmental health hazards. Financial assistance and cost mitigation mechanisms would help eligible property owners, including lessees comply with the cost of the legislative mandate and would address

water pollution and other issues, especially Hawaiian home land beneficiaries.

Impact on the public: This proposal further protects the interest of property owners, including beneficiaries of the Hawaiian Homes Commission Act of 1920, as amended, by establishing a low interest loan program to offer financial assistance cesspool conversions, hurricane mitigation, and other qualifying improvements, by offering at or below-market financing and leveraging a non-ad valorem property assessment repayment mechanism.

Impact on the department and other agencies: Reduce the number of cesspools across the State; increase the resiliency of homes and commercial property, increase clean energy adoption.

GENERAL FUND: \$25,000,000.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BED-138.

OTHER AFFECTED  
AGENCIES: Department of Health, Department of Hawaiian Home Lands, Hawaii State Energy Office, Department of Commerce and Consumer Affairs, Counties.

EFFECTIVE DATE: Upon approval.