

JAN 26 2022

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

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

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

SECTION 2. Chapter 196, Hawaii Revised Statutes, is amended by adding to part IV two new sections to be 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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1 implementation of the loan fund program. The authority may set
2 fees or charges for fund management and technical site
3 assistance provided under this section. The authority may adopt
4 rules pursuant to chapter 91 to carry out the purposes of this
5 section.

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

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

12 **\$196- Property assessment financing.** (a) The authority
13 shall, as administrator of the property assessment financing
14 program, coordinate with each county to bill and collect a non-
15 ad valorem special tax assessment as a repayment mechanism on
16 the real property tax bill. The non-ad valorem special tax
17 assessment is not a generally applicable tax upon the real
18 property but shall be collected in the same manner as real
19 property taxes because of the benefit to the property owners for
20 qualifying improvements.

21 (b) The authority shall design a property assessment
22 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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1 property, subject to property assessed financing
2 assessments;

3 (3) Before entering into a property assessed financing
4 assessment contract, the property assessed financing
5 lender shall reasonably determine that the property
6 owner has an ability to pay the estimated annual
7 property assessed financing assessment; that all
8 property taxes, and any other assessments levied on
9 the same bill as property taxes, are paid and have not
10 been delinquent for the preceding three years or the
11 property owner's period of ownership, whichever is
12 less; that there are no involuntary liens, including
13 but not limited to construction liens, on the
14 property; that no notices of default or other evidence
15 of property-based debt delinquency have been recorded
16 during the preceding three years or the property
17 owner's period of ownership, whichever is less; and
18 that the property owner is current on all mortgage
19 debt on the property;

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

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

(8) The term of the property assessed financing assessment
contract may not exceed the useful life of the
qualifying improvement being installed or the weighted
average useful life of all qualifying improvements
being financed if multiple qualifying improvements are
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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1 diversification projects and initiatives and other
2 qualifying improvements;

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

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

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

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

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

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

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

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

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

(10) Establish loan fund program guidelines;

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

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

(d) The authority shall submit an annual report for the clean energy and energy efficiency and environmental and economic development revolving loan ~~[fund]~~ funds to the 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.

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INTRODUCED BY: 

4

BY REQUEST

S.B. NO. 3056

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.