

JAN 26 2022

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# A BILL FOR AN ACT

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RELATING TO GREEN INFRASTRUCTURE.

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

1       SECTION 1. The legislature finds that although the  
2 coronavirus disease 2019 pandemic demonstrated the importance of  
3 ensuring the health of our people and economy, it is equally  
4 important to invest resources sufficient to ensure Hawaii's  
5 environmental health. The legislature further finds that there  
6 is a compelling interest for state government to provide non-  
7 traditional financing options to assist low and moderate-income  
8 homeowners and other eligible property owners to voluntarily  
9 undertake projects for the upgrade, conversion, or connection to  
10 municipal or private wastewater systems, installation of energy  
11 conservation, or renewable energy retrofits because properties  
12 that are not protected from harmful environmental health hazards  
13 contribute to the environmental health burdens affecting the  
14 State. For example, properties that do not use energy  
15 conservation or production strategies are contrary to the state  
16 renewable energy standard and contribute to the reliance on  
17 fossil fuels. In addition, properties that do not use septic



1 tanks or are not connected to wastewater sewage systems  
2 contribute to water quality problems affecting the State.

3 The legislature also finds that innovative, non-traditional  
4 financing options and repayment mechanisms such as property  
5 assessment financing contracts and voluntary assessments are  
6 reasonable and necessary, not only to improve a property's  
7 resilience and remove health hazards, but to bridge financing  
8 gaps, attract private capital, and address specific market  
9 failures and institutional barriers; thereby accelerating  
10 economic recovery and economic diversification efforts  
11 statewide.

12 Accordingly, the purpose of this Act is to require the  
13 Hawaii green infrastructure authority to:

- 14 (1) Establish an at or below-market interest loan program  
15 to provide financial assistance to certain parties for  
16 certain green infrastructure improvements; and  
17 (2) Authorize property assessment financing through  
18 various mechanisms including but not limited to non-ad  
19 valorem special tax assessments and property assessed  
20 financing assessment contracts.



1       SECTION 2. Chapter 196, Hawaii Revised Statutes, is  
2 amended by adding five new sections to part IV to be  
3 appropriately designated and to read as follows:

4       "§196-A Environmental and economic development revolving  
5 loan program. The authority shall design and administer an  
6 environmental and economic development revolving loan program  
7 that provides at or below-market rates or other authorized  
8 financial assistance to eligible public, private, and nonprofit  
9 borrowers for environmental and economic diversification  
10 investments, qualifying improvements, or other authorized uses,  
11 on terms approved by the authority, including lessees on  
12 Hawaiian home lands with cesspools to be upgraded or converted  
13 to septic systems or aerobic treatment unit systems or connected  
14 to sewer systems.

15       §196-B Environmental and economic development revolving  
16 loan fund. (a) There is established, in the Hawaii green  
17 infrastructure special fund established under section 196-65,  
18 the environmental and economic development revolving loan fund  
19 into which shall be deposited:

20       (1) Funds from federal, state, county, private, or other  
21 funding sources;



1        (2) Investments from public or private investors;

2        (3) Moneys received as repayment of loans and interest

3        payments; provided that the repayment of loans and

4        interest payments under this paragraph shall not

5        include repayment of loans and interest collected as a

6        result of funds advanced from proceeds of the green

7        energy market securitization bonds; and

8        (4) Any fees collected by the authority under this

9        section; provided that moneys collected as a result of

10       the funds advanced from proceeds of the green energy

11       market securitization bonds shall be kept separate

12       from fees collected as a result of funds advanced from

13       proceeds of this fund.

14       (b) Moneys in the environmental and economic development

15 revolving loan fund shall be used to provide at or below-market

16 rates or other authorized financial assistance pursuant to the

17 environmental and economic development revolving loan program

18 established pursuant to section 196-A. Moneys from the fund may

19 be used to cover administrative and legal costs of fund

20 management and management associated with individual loans, to

21 include personnel, services, technical assistance, data



1 collection and reporting, materials, equipment, and travel for  
2 the purposes of this section.

3 (c) The environmental and economic development revolving  
4 loan fund shall be similar to a revolving line of credit, which  
5 shall be administered by the authority. Appropriations or  
6 authorizations from the fund shall be expended by the authority.  
7 The authority may contract with other public or private entities  
8 for the provision of all or a portion of the services necessary  
9 for the administration and implementation of the environmental  
10 and economic development revolving loan program. The authority  
11 may establish subaccounts within the fund as necessary. The  
12 authority may set fees or charges for fund management and  
13 technical site assistance provided under this section. Funds  
14 deposited into the environmental and economic development  
15 revolving loan fund shall not be under the jurisdiction of nor  
16 be subject to Hawaii public utilities commission approval.

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

20 (e) The authority may adopt rules pursuant to chapter 91  
21 to carry out the purposes of this section.



1        §196-C Property assessment financing program. The  
2        authority shall design and administer a property assessment  
3        financing program to finance qualifying improvements on  
4        commercial and residential properties that is repaid through a  
5        non-ad valorem special tax assessment on the property owner's  
6        property tax bill. The program shall address market needs while  
7        attracting private capital.

8        §196-D Non-ad valorem special tax assessments. (a) The  
9        authority shall coordinate with each county to bill and collect  
10       a non-ad valorem special tax assessment as a repayment mechanism  
11       on the real property tax bill. The non-ad valorem special tax  
12       assessment shall not be a generally applicable tax upon the real  
13       property but shall be collected in the same manner as real  
14       property taxes because of the benefit to the property owners for  
15       qualifying improvements.

16       (b) Without the consent of the holders or loan servicers  
17       of any mortgage encumbering or otherwise secured by the  
18       property, the total amount of any non-ad valorem special tax  
19       assessment for a property under this part shall not exceed  
20       twenty per cent of the just value of the property as determined  
21       by the county property appraiser. This limitation shall not



1 apply to any property assessed financing assessment on  
2 commercial property that is consented to the holders or loan  
3 servicers of any mortgage encumbering or otherwise secured by  
4 the property.

5 §196-E Property assessed financing assessment contracts.

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



1 affixed to real property, subject to property assessed financing  
2 assessments.

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

6 (1) The property owner has an ability to pay the estimated  
7 annual property assessed financing assessment;

8 (2) All property taxes, and any other assessments levied  
9 on the same bill as property taxes, are paid and have  
10 not been delinquent for the preceding three years or  
11 the property owner's period of ownership, whichever is  
12 less;

13 (3) There are no involuntary liens, including but not  
14 limited to construction liens, on the property;

15 (4) No notices of default or other evidence of property-  
16 based debt delinquency have been recorded during the  
17 preceding three years or the property owner's period  
18 of ownership, whichever is less; and

19 (5) The property owner is current on all mortgage debt on  
20 the property.





1        (c) The property assessed financing assessment contract  
2        shall include the amount of an annual assessment over a fixed  
3        term that will appear on the property owner's tax bill annually.

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

15       (e) At least thirty days before entering into a property  
16       assessed financing assessment contract, the property owner shall  
17       provide to the holders or loan servicers of any existing  
18       mortgages encumbering or otherwise secured by the property a  
19       notice of the owner's intent to enter into a property assessed  
20       financing assessment contract together with the maximum  
21       principal amount to be financed and the maximum annual



1 assessment necessary to repay that amount and any incidental  
2 fees. A verified copy or other proof of the notice shall be  
3 provided to the property assessed financing lender. A provision  
4 in any agreement between a mortgagee or other lienholder and a  
5 property owner, which allows for acceleration of payment of the  
6 mortgage, note, or lien or other unilateral modification solely  
7 as a result of entering into a property assessed financing  
8 assessment contract as provided for in this section, shall not  
9 be enforceable. This section shall not limit the authority of  
10 the holder or loan servicer to increase the required monthly  
11 escrow by an amount necessary to annually pay the qualifying  
12 improvement assessment.

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

20 (g) The term of the property assessed financing assessment  
21 contract shall not exceed the useful life of the qualifying



1 improvement being installed or the weighted average useful life  
2 of all qualifying improvements being financed if multiple  
3 qualifying improvements are being financed, as determined by the  
4 authority.

5 (h) The county director of finance may covenant, for the  
6 benefit of any property assessed financing lender or bondholder,  
7 to commence and diligently pursue to completion the foreclosure  
8 of delinquent property assessed financing assessments and any  
9 penalty, interest, and costs by advertisement and sale and with  
10 the same effect as provided by general law for sales of real  
11 property pursuant to default in payment of property taxes. The  
12 covenant may specify a deadline for commencement of the  
13 foreclosure sale and any other terms and conditions the county  
14 director of finance determines reasonable regarding the  
15 foreclosure sale. For property assessed financing assessments  
16 imposed but not paid when due pursuant to a property assessed  
17 financing assessment contract, the foreclosure of the lien of  
18 the property assessed financing assessment shall not accelerate  
19 or extinguish the remaining term of the property assessed  
20 financing assessment as approved in the property assessed  
21 financing assessment contract."



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

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



1 special improvement; these methods include assessment on a  
2 frontage basis or according to the area of land within an  
3 improvement district, or any other assessment method ~~[which]~~  
4 that assesses the land according to the special benefit  
5 conferred, or any combination thereof.

6 (b) Notwithstanding any county ordinance to the contrary,  
7 if a property assessment financing program is implemented by a  
8 county, a property owner may apply for property assessment  
9 financing for an eligible purpose and enter into a property  
10 assessment financing contract with an approved property  
11 assessment financing lender. Costs incurred for qualifying  
12 improvements shall be collected as a non-ad valorem special tax  
13 assessment. The county may incur debt for the purpose of  
14 providing financing for qualified improvements, which is payable  
15 from revenues received from the improved property, or any other  
16 available revenue source authorized by law. Bonds issued to  
17 finance qualified improvements, when the only security is the  
18 special tax assessment levy or lien imposed against improved  
19 property, shall be excluded from any determination of the power  
20 of the county to issue general obligation bonds or funded debt



1 for purposes of article VII, section 13, of the Hawaii State  
2 Constitution."

3 SECTION 4. Section 196-61, Hawaii Revised Statutes, is  
4 amended by adding eight definitions to be appropriately inserted  
5 and to read as follows:

6 "Commercial property" means any property not defined as a  
7 residential property or in a residential property class,  
8 including agricultural property.

9 "County director of finance" means the officer or officers  
10 of the county charged with the responsibility of administering  
11 the real property taxation function of the county.

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

15 "Property assessed financing assessment" means the non-ad  
16 valorem special tax assessment securing the repayment of  
17 financing obtained by an owner of commercial or residential  
18 property for a qualifying improvement that appears on a property  
19 tax bill.

20 "Property assessed financing assessment contract" means the  
21 financing contract, under the property assessed financing



1 program, between the property assessed financing lender and a  
2 property owner for the acquisition or installation of qualifying  
3 improvements.

4 "Property assessed financing lender" means a private or  
5 public lender approved by the property assessed financing  
6 administrator to originate property assessed financing loans.

7 "Qualifying improvement" means septic systems or aerobic  
8 treatment unit systems or connections to sewer systems, clean  
9 energy technologies, efficiency technologies, resiliency  
10 measures, and other improvements approved by the authority.

11 "Residential property" means any single-family or multi-  
12 family residential dwelling or townhouse."

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

15 "(c) In the performance of the functions, powers, and  
16 duties vested in the authority by this part, the authority shall  
17 administer the clean energy and energy efficiency revolving loan  
18 fund pursuant to section 196-65.5 and the environmental and  
19 economic development revolving loan fund pursuant to section  
20 196-B and may:



- 1           (1)    Make loans and expend funds to finance the purchase or  
2                    installation of clean energy technology and services;  
3                    upgrade or convert a cesspool to a septic system or an  
4                    aerobic treatment unit system; connect a cesspool to a  
5                    sewer system; and finance eligible environmental,  
6                    economic recovery, and economic diversification  
7                    projects and initiatives, and other qualifying  
8                    improvements;
- 9           (2)    Implement and administer loan programs on behalf of  
10                   other ~~[state departments or agencies]~~, government  
11                   entities or counties through a memorandum of agreement  
12                   and expend funds appropriated to the ~~[department or~~  
13                   ~~agency]~~ government entity or county for purposes  
14                   authorized by the legislature~~[+]~~, government entity,  
15                   and county;
- 16          (3)    Utilize all repayment mechanisms, including the green  
17                   energy money saver on-bill program, property assessed  
18                   financing assessment program, financing tools,  
19                   servicing and other arrangements, and sources of  
20                   capital available to the authority;





- 1           (4)   Exercise powers to organize and establish special
- 2                   purpose entities as limited liability companies under
- 3                   the laws of the State;
- 4           (5)   Acquire, hold, and sell qualified securities;
- 5           (6)   Pledge unencumbered net assets, loans receivable,
- 6                   assigned agreements, and security interests over
- 7                   equipment financed, as collateral for the authority's
- 8                   borrowings from federal, county, or private lenders or
- 9                   agencies;
- 10          (7)   Utilize the employees of the authority, including the
- 11                   executive director;
- 12          (8)   Enter into contracts for the service of consultants
- 13                   for rendering professional and technical assistance
- 14                   and advice and any other contracts that are necessary
- 15                   and proper for the implementation of the loan fund
- 16                   program;
- 17          (9)   Enter into contracts for the administration of the
- 18                   loan fund program exempt from chapter 103D;
- 19          (10)   Establish loan fund program guidelines;
- 20          (11)   Be audited at least annually by a firm of independent
- 21                   certified public accountants selected by the authority



1           and provide the results of the audit to the department  
2           and legislature; and

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

5       (d) The authority shall submit an annual report for the  
6       clean energy and energy efficiency revolving loan fund and the  
7       environmental and economic development revolving loan fund to  
8       the legislature no later than twenty days prior to the convening  
9       of each regular session describing the projects funded and the  
10      projected energy, environmental, and economic development  
11      impacts."

12       SECTION 6. There is appropriated out of the general  
13      revenues of the State of Hawaii the sum of \$25,000,000 or so  
14      much thereof as may be necessary for fiscal year 2022-2023 to be  
15      deposited in the environmental and economic development  
16      revolving loan fund established pursuant to section 196-B,  
17      Hawaii Revised Statutes.

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

20       SECTION 7. There is appropriated out of the environmental  
21      and economic development revolving loan fund the sum of



1 \$25,000,000 or so much thereof as may be necessary for fiscal  
2 year 2022-2023 to provide loans or other financial assistance to  
3 eligible property owners and for other allowable purposes,  
4 including implementation costs.

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

7 SECTION 8. In codifying the new sections added by section  
8 2 of this Act, the revisor of statutes shall substitute  
9 appropriate section numbers for the letters used in designating  
10 the new sections in this Act.

11 SECTION 9. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 10. This Act shall take effect on July 1, 2022.

14  
INTRODUCED BY:

Bennette J. Misaluch



# S.B. NO. 3302

**Report Title:**

Hawaii Green Infrastructure Authority; Environmental and Economic Development Revolving Loan Program; Environmental and Economic Development Revolving Loan Fund; Property Assessment Financing Program; Non-Ad Valorem Special Tax Assessment; Property Assessed Financing Assessment Contract; Appropriation

**Description:**

Requires the Hawaii Green Infrastructure Authority to design and administer the Environmental and Economic Development Revolving Loan Program and the Property Assessment Financing Program. Creates the Environmental and Economic Development Revolving Loan Fund. 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.*

