

ACT 211

S.B. NO. 1087

A Bill for an Act Relating to Green Infrastructure.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that building Hawaii's clean energy infrastructure at the lowest possible cost is vital to the State's reaching its seventy per cent clean energy goal in 2030.

The legislature finds that significant investment in infrastructure installations is required to achieve the State's goals of energy self-sufficiency, greater energy security, and greater energy diversification, and to support the achievement of the renewable portfolio standards and energy efficiency portfolio standards, as established in chapter 269, Hawaii Revised Statutes. These green infrastructure investments are to support Hawaii's evolving energy market and ecosystem and to provide affordable energy options for all of Hawaii's consumers. Further, these infrastructure installations will require significant amounts of capital, and it is in the public interest to minimize these costs. A key component to minimizing costs is reducing the cost of capital required to finance infrastructure installations.

The legislature further finds that the upfront costs of green infrastructure equipment are a barrier preventing many electric utility customers from investing in these infrastructure installations. Existing programs and incentives do not serve the entire spectrum of the customer market, particularly those customers who lack access to capital or who cannot afford the large upfront costs required, thus creating an underserved market. It is in the public interest to make cost-effective green infrastructure equipment options accessible and affordable to customers in an equitable way.

A green infrastructure financing program administered by the State that capitalizes on existing ratepayer contributions for green infrastructure equipment can serve a critical role in ensuring all Hawaii electricity ratepayers receive the greatest opportunity for affordable and clean energy. The legislature further finds that the State would be best served by a State-administered green infrastructure financing program that:

- (1) Focuses on providing an alternative means of low-cost financing for green infrastructure equipment for Hawaii ratepayers, particularly those ratepayers not currently able to obtain such technology on reasonable financing terms;
- (2) Utilizes excess loan program funds as a funding source to finance additional green infrastructure installations, subject to regulatory guidelines and approval; and
- (3) Establishes clearly defined program procedures and targets that encourage effective coordination among state agencies, industry,

investors, and other critical energy industry stakeholders in order to help the State achieve its clean energy policy mandates and to provide customers affordable energy options.

The legislature further finds that the impact and reach of proven clean energy financing programs, such as on-bill financing or on-bill repayment, can be greatly enhanced through the use of low-cost capital made available through the green infrastructure financing program established by this Act.

The purpose of this Act is to establish a regulatory financing structure that authorizes the public utilities commission and the department of business, economic development, and tourism to acquire and provide alternative low-cost financing, to be deployed through a financing program to make green infrastructure installations accessible and affordable for Hawaii's consumers, achieve measurable cost savings, and achieve Hawaii's clean energy goals.

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

“PART . GREEN INFRASTRUCTURE LOANS

§196-A Definitions. As used in this part:

“Authority” means the Hawaii green infrastructure authority as established under section 196-C.

“Bond” means any bond, note, and other evidence of indebtedness that is issued by the State pursuant to part of chapter 269.

“Clean energy technology” means any technology as defined in section 269-121(b).

“Department” means the department of business, economic development, and tourism, or any successor by law.

“Director” means the director of business, economic development, and tourism, or the director's designee.

“Financing order” means the same as defined in section 269-A.

“Financing party” means the same as defined in section 269-A.

“Green infrastructure bond fund” means the special fund created pursuant to section 196-G.

“Green infrastructure charge” means the on-bill charges for the use and services of the loan program, including the repayment of loans made under the loan program, as authorized by the public utilities commission to be imposed on electric utility customers.

“Green infrastructure costs” means costs incurred or to be incurred by the electric utility customers to pay for clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure including, without limitation, the purchase or installation of green infrastructure equipment, programs, and services authorized by the loan program.

“Green infrastructure equipment” means infrastructure improvements, equipment, and personal property to be installed to deploy clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure.

“Green infrastructure fee” means the same as defined in section 269-A.

“Green infrastructure loan program order” means the same as defined in section 269-A.

“Green infrastructure property” means the same as defined in section 269-A.

“Green infrastructure special fund” means the special fund created pursuant to section 196-E.

“Loan program” and “green infrastructure loans” means the program established by this part and loans made to finance the purchase or installation of green infrastructure equipment for clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure, programs, and services as authorized by the public utilities commission using the proceeds of bonds or other proceeds.

§196-B Hawaii green infrastructure loan program. There is established a Hawaii green infrastructure loan program, which shall be a loan program as defined under section 39-51. The program shall be administered by the authority on behalf of the department in a manner consistent with chapter 39, part III. This loan program may include loans made to private entities, whether corporations, partnerships, limited liability companies, or other persons, which entities may lease or provide green infrastructure equipment to electric utility customers, as well as direct loans to electric utility customers, on terms approved by the authority.

§196-C Hawaii green infrastructure authority. There is established the Hawaii green infrastructure authority as an instrumentality of the State comprising five members. The director, the director of finance, and the energy program administrator of the department shall be members of the authority. The governor shall appoint the other two members, pursuant to section 26-34. The director shall be the chairperson of the authority. The authority shall be placed within the department for administrative purposes, pursuant to section 26-35; provided that until the authority is duly constituted, the department may exercise all powers reserved to the authority and shall perform all responsibilities of the authority.

§196-D Functions, powers, and duties of the authority. (a) In the performance of, and with respect to the functions, powers, and duties vested in the authority by this part, the authority, as directed by the director and in accordance with a green infrastructure loan program order or orders under section 269-K or an annual plan submitted by the authority pursuant to this section, as approved by the public utilities commission may:

- (1) Make loans and expend funds to finance the purchase or installation of green infrastructure equipment for clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure, programs, and services;
- (2) Hold and invest moneys in the green infrastructure special fund in investments as permitted by law and in accordance with approved investment guidelines established in one or more orders issued by the public utilities commission pursuant to section 269-K;
- (3) Hire employees necessary to perform its duties, including an executive director. The executive director shall be appointed by the authority, and the employees' positions, including the executive director's position, shall be exempt from chapter 76;
- (4) 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 program;
- (5) Enter into contracts for the administration of the loan program, without the necessity of complying with chapter 103D;

- (6) Establish loan program guidelines to be approved in one or more orders issued by the public utilities commission pursuant to section 269-K to carry out the purposes of this part;
- (7) Be audited at least annually by a firm of independent certified public accountants selected by the authority, and provide the results of this audit to the department and the public utilities commission; and
- (8) Perform all functions necessary to effectuate the purposes of this part.

(b) The authority shall submit to the public utilities commission an annual plan for review and approval no later than ninety days prior to the start of each fiscal year. The annual plan submitted by the authority shall include the authority's projected operational budget for the succeeding fiscal year.

§196-E Hawaii green infrastructure special fund. (a) There is established the Hawaii green infrastructure special fund into which shall be deposited:

- (1) The proceeds of bonds net of issuance costs and reserves or overcollateralization amounts;
- (2) Green infrastructure charges received for the use and services of the loan program, including the repayment of loans made under the loan program;
- (3) All other funds received by the department or the authority and legally available for the purposes of the green infrastructure special fund;
- (4) Interest earnings on all amounts in the green infrastructure special fund; and
- (5) Such other moneys as shall be permitted by an order of the public utilities commission.

The Hawaii green infrastructure special fund shall not be subject to section 37-53. Any amounts received from green infrastructure charges or any other net proceeds earned from the allocation, use, expenditure, or other disposition of amounts approved by the public utilities commission and deposited or held in the Hawaii green infrastructure special fund in excess of amounts necessary for the purposes of subsection (b) shall be credited to electric utility customers as provided in a green infrastructure loan program order or orders. Funds that are transferred back to the electric utility in order to credit electric utility customers under this subsection shall not be considered revenue of the electric utility and shall not be subject to state or county taxes.

(b) Moneys in the Hawaii green infrastructure special fund may be used, subject to the approval of the public utilities commission, for the purposes of:

- (1) Making green infrastructure loans;
- (2) Paying administrative costs of the Hawaii green infrastructure loan program;
- (3) Paying any other costs related to the Hawaii green infrastructure loan program; or
- (4) Paying financing costs, as defined in section 269-A, to the extent permitted by the public utilities commission in a financing order issued pursuant to section 269-C.

(c) The authority may invest funds held in the Hawaii green infrastructure special fund in investments as permitted by law, and in accordance with approved investment guidelines established in one or more orders issued by the public utilities commission pursuant to section 269-K. All amounts in

the Hawaii green infrastructure special fund shall be exempt from all taxes and surcharges imposed by the State or the counties.

§196-F Use of Hawaii green infrastructure special fund; application. (a) The authority shall apply to the public utilities commission for one or more orders to effectuate the Hawaii green infrastructure loan program, pursuant to section 269-J.

Nothing herein shall preclude the department from applying for a financing order, pursuant to section 269-B, prior to the issuance of an order or orders to effectuate the Hawaii green infrastructure loan program under section 269-K, nor from requesting consolidation of the proceeding for a financing order with such a loan program implementation order.

(b) An application shall be submitted by the authority to the public utilities commission in accordance with section 269-J.

(c) In accordance with an approved green infrastructure loan program order or orders, the authority shall utilize the proceeds of bonds and other amounts deposited in the Hawaii green infrastructure special fund pursuant to 196-E, or to the extent permitted by a financing order, to pay financing costs, as defined in section 269-A.

(d) Within the order or orders issued by the public utilities commission under section 269-K, the authority shall obtain approval from the public utilities commission requiring the electric utilities to serve as agents to bill and collect the green infrastructure charge imposed to repay green infrastructure costs and transfer all green infrastructure charges collected to the authority on behalf of the department. Notwithstanding anything to the contrary, electric utilities shall not be obligated to bill, collect, or remit green infrastructure charges from non-utility customers.

§196-G Hawaii green infrastructure bond fund. (a) There is established the Hawaii green infrastructure bond fund as a special fund into which all proceeds of the green infrastructure fee established pursuant to section 269-F and any other proceeds of green infrastructure property shall be paid. The Hawaii green infrastructure bond fund may also receive other moneys as the department may determine and as provided in a financing order, including, without limitation, green infrastructure charges.

(b) Moneys in the Hawaii green infrastructure bond fund shall be impressed with the lien created by, and shall be used solely for purposes set forth in, section 269-D. Upon payment or defeasance of all bonds and financing costs, moneys in the fund, at the direction of the department, may be transferred into the Hawaii green infrastructure special fund established pursuant to section 196-E or other purpose as the department shall specify.

(c) The Hawaii green infrastructure bond fund shall be audited at least annually by a firm of independent certified public accountants selected by the department, and the results of this audit shall be provided to the department and the public utilities commission.

(d) Pursuant to section 39-68, the department shall appoint a trustee to receive, hold, and disburse all amounts required to be held in the Hawaii green infrastructure bond fund upon terms and conditions as set forth in a certificate, indenture, or trust agreement.

The Hawaii green infrastructure bond fund shall not be subject to section 37-53.

§196-H Compliance with revenue bond law. For purposes of assuring conformity of and compliance with part III of chapter 39, it is determined as follows:

- (1) For purposes of section 39-51, “revenues” shall include the green infrastructure fee and the proceeds of green infrastructure property; “loan program” shall include the loan program authorized under section 196-B; and “undertaking” shall include financing of the loan program through the issuance of green infrastructure revenue bonds;
- (2) In addition and supplemental to any covenants recognized under section 39-60, any resolution, certificate, or indenture approved by the department may have additional or alternative covenants as may be consistent with this chapter, and the department may enter into a trust indenture, servicing agreement, or other financing documents having terms and conditions consistent with the financing order issued under section 269-C;
- (3) In addition and supplemental to the power to impose rates, rentals, fees, or charges required under section 39-61, the department shall impose, adjust, and collect the green infrastructure fee as provided in section 269-F and the financing order issued pursuant thereto; and
- (4) In addition and supplemental to the uses specified in section 39-62, the green infrastructure fee shall be applied as provided in this chapter, the financing order, the certificate issued by the department, and any financing documents executed by the department in connection with the bonds.

§196-I Reporting; annual report. The authority shall submit a report to the legislature on the authority’s activities in administering the loan program no later than twenty days prior to the convening of each regular session beginning with the regular session of 2015. The report shall include a description and uses of the loan program; summary information and analytical data concerning the implementation of the loan program; summary information and analytical data concerning deployment of clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure, programs, and services; and repayments made or credits provided to electric utility customers under this part or chapter 269, part .

§196-J Severability. If any provision of this part is held to be invalid or is superseded, replaced, repealed, or expires for any reason:

- (1) That occurrence shall not affect any action allowed under this part that is taken prior to that occurrence by the public utilities commission, an electric utility, the department, the authority, a bondholder, or any financing party, and any such action shall remain in full force and effect; and
- (2) The validity and enforceability of the rest of this part shall remain unaffected.”

SECTION 3. Chapter 269, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . GREEN INFRASTRUCTURE BONDS

§269-A Definitions. As used in this part:

“Ancillary agreement” means any bond insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other related bond document or other similar agreement or arrangement entered into in connection with the issuance of bonds that is designed to promote the credit quality and marketability of the bonds or to mitigate the risk of an increase in interest rates.

“Authority” means the Hawaii green infrastructure authority established under section 196-C.

“Bond” or “green infrastructure bond” means any bond, note or other evidence of indebtedness that is issued by the State, acting through the department, under a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance financing costs of clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure, programs, and services, and that are secured by or payable from green infrastructure property.

“Bondholder” means any holder or owner of a bond.

“Clean energy technology” means any technology as defined in section 269-121(b).

“Department” means the department of business, economic development, and tourism, or any successor by law.

“Electric utilities” means all electric utilities subject to billing, collecting, and remitting the public benefits fee, or the green infrastructure fee, at the time the financing order becomes final, and any other electric utility designated in the financing order.

“Financing costs” means any of the following:

- (1) Principal and interest payable on bonds;
- (2) Any payment required under an ancillary agreement;
- (3) Any amount required to fund or replenish a reserve account or another account established under any indenture, ancillary agreement, or other financing document relating to the issuance of bonds;
- (4) Any redemption or call premium or cost of redeeming or refunding any existing debt of the department in connection with either the issuance of, or the use of proceeds from, bonds;
- (5) Any costs incurred by the department to modify or amend any indenture, financing agreement, security agreement, or similar agreement or instrument securing any bond or any ancillary agreement;
- (6) Any costs incurred by the department to obtain any consent, release, waiver, or approval from any bondholder or of any party to an ancillary agreement that are necessary to be incurred for the department to issue bonds;
- (7) Any costs related to issuing or servicing bonds or related to obtaining a financing order, including servicing fees and expenses, trustee fees and expenses, legal, accounting, or other professional fees and expenses, administrative fees, placement fees, underwriting fees and discounts, capitalized interest and equity, and rating-agency fees; or loan program administration costs as authorized for recovery under a financing order or orders; or
- (8) Any other similar costs incident to the issuance, administration, or servicing of the bonds that the department finds appropriate.

“Financing order” means an order issued at the request of the department by the public utilities commission under this part that has become final as provided by law, and that authorizes the issuance of bonds and the imposition, adjustment from time to time, and collection of green infrastructure fees.

“Financing party” means:

- (1) Any trustee, collateral agent, or other person acting for the benefit of a bondholder; or
- (2) Any party to an ancillary agreement, the rights and obligations of which relate to or depend upon the existence of green infrastructure property and green infrastructure fees, the enforcement and priority of a security interest in green infrastructure property, the timely collection and payment of green infrastructure fees, or a combination of these factors.

“Green infrastructure bond fund” means the special fund created pursuant to section 196-G.

“Green infrastructure charge” means the on-bill charges as defined in section 196-A.

“Green infrastructure fee” means the nonbypassable fees and charges authorized by section 269-F and in a financing order authorized under this part to be imposed on and collected from all existing and future customers of electric utilities or any successor.

“Green infrastructure loan program order” means an order issued by the public utilities commission under section 269-K that establishes the use or other disposition of amounts deposited and held in the Hawaii green infrastructure special fund pursuant to section 196-E.

“Green infrastructure property” means the property, rights, and interests created by the public utilities commission under a financing order, including the right to impose, charge, and collect from electric utility customers the green infrastructure fee that shall be used to pay and secure the payment of bonds and financing costs, including the right to obtain adjustments to the green infrastructure fee, and any revenues, receipts, collections, rights to payment, payments, moneys, claims, or other proceeds arising from the rights and interests created by the public utilities commission under any financing order.

“Green infrastructure special fund” means the special fund created pursuant to section 196-E.

“Successor” means, with respect to any electric utility, another electric utility or other entity that succeeds voluntarily or by operation of law to the rights and obligations of the first electric utility or other entity pursuant to any bankruptcy, reorganization, restructuring, or other insolvency proceedings; any merger, acquisition, or consolidation; or any sale or transfer of assets, regardless of how any of these actions occurred.

“Trustee” means any trustee or fiscal agent appointed under an indenture or certificate of the director executed in connection with the issuance of bonds pursuant to section 39-68.

§269-B Applications to issue bonds and authorize green infrastructure fee.

(a) In connection with the issuance of bonds, the department may apply to the public utilities commission for one or more financing orders, each of which financing orders authorizes the following:

- (1) The imposition, charging, and collection on behalf of the department of the green infrastructure fee, to become effective upon the issuance of the bonds, and the adjustment of the green infrastructure fee on behalf of the department in accordance with an adjustment mechanism requested by the department under this part in amounts sufficient to pay the principal of and interest on bonds and all related financing costs on a timely basis;
- (2) The creation of green infrastructure property under the financing order; and

- (3) The deposit of the net proceeds of the bonds into the green infrastructure special fund.
- (b) The application shall include all of the following:
 - (1) The principal amount of the bonds proposed to be issued;
 - (2) An estimate of the date each series of bonds is expected to be issued;
 - (3) The expected term, not to exceed thirty years, during which term the green infrastructure fee associated with the issuance of each series of bonds is expected to be imposed and collected;
 - (4) An estimate of the financing costs associated with the issuance of each series of bonds;
 - (5) An estimate of the amount of the green infrastructure fee revenues necessary to pay principal and interest on the bonds and related financing costs as set forth in the application and the calculation for that estimate, which calculation shall take into account the estimated date or dates of issuance and the estimated principal amount of each series of bonds;
 - (6) A proposed methodology for allocating the green infrastructure fee among electric utilities and customer classes within each electric utility;
 - (7) A description of a proposed formulaic adjustment mechanism for the adjustment of the green infrastructure fee to ensure the timely payment of principal and interest on the bonds and related financing costs; and
 - (8) Any other information required by the public utilities commission.

§269-C Green infrastructure financing order. (a) The public utilities commission shall issue its financing order as final or if a finding in subsection (b) cannot be made, its denial of a financing order, as expeditiously as possible and in any event within ninety days from the date the completed application is submitted.

(b) The public utilities commission may issue a financing order if the public utilities commission finds that the creation of the green infrastructure property to secure the payment of the bonds, including the imposition of the green infrastructure fee, will facilitate the acquisition of low-cost financing, pursuant to an application under section 269-B.

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

- (1) The maximum amount of bonds to be issued by the State acting through the department under the financing order;
- (2) A description of the green infrastructure property, the creation of which property is authorized by the financing order;
- (3) A description of the financing costs that will be recoverable through green infrastructure fees, including any reserves or overcollateralization amounts required by the department to secure payment of the bonds;
- (4) A description of the methodology to be applied by the public utilities commission, on behalf of the department, for calculating the green infrastructure fee, including the allocation of financing costs among electric utilities and customer classes;
- (5) A description of the formulaic adjustment mechanism to be used by the public utilities commission, on behalf of the department, to adjust the green infrastructure fee in order to ensure that the amount of the green infrastructure fee projected to be collected shall be sufficient to pay the principal and interest on the bonds, and all related

- financing costs on a timely basis, including the funding or maintenance of any reserves required to be maintained by the department;
- (6) The term of the bonds, as proposed by the department, during which term the green infrastructure fee shall continue to be collected and pledged to pay the bonds, which term shall automatically be extended by the term of any refunding bonds, as approved in a subsequent financing order, issued in such principal amounts as the department may determine to be necessary to refund the bonds that are the subject of the original financing order;
 - (7) A requirement that the electric utilities, including any successors, serve as agents to collect the green infrastructure fee and transfer those surcharges to the trustee or other financing party as required by the financing order and any agreements with the department;
 - (8) The procedures to be followed by the electric utilities in the event of non-payment or partial payment of the green infrastructure fee by the electric utilities' customers, which procedures shall be consistent with the public utilities commission approved procedures for non-payment and partial payment of rates, charges, and fees under the electric utilities' tariffs;
 - (9) The distribution of the total amounts collected by the electric utilities for amounts billed to customers for the electric utilities' rates, fees, the green infrastructure fee, other public utilities commission approved fees, and for associated taxes, in the event of partial payments of the billed amounts;
 - (10) Terms satisfactory to the public utilities commission to ensure that the green infrastructure fee shall be nonbypassable and will be paid by all existing and future customers of an electric utility or any successor; and
 - (11) Any other provision the public utilities commission considers appropriate to ensure the full and timely imposition, charging, collection, and adjustment, pursuant to an approved adjustment mechanism, of the green infrastructure fee described in this subsection.

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

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

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

(f) Any adjustment to the green infrastructure fee made by the public utilities commission pursuant to the adjustment mechanism approved in the financing order shall be a ministerial act of the public utilities commission.

§269-D Green infrastructure property. (a) The green infrastructure property shall be created simultaneously with the issuance of the bonds and shall

immediately vest in the department, which shall pledge and create a lien on the property, together with all other money in the green infrastructure bond fund, solely and exclusively in favor of bondholders and financing parties, to secure the payment of bonds, amounts payable to financing parties and bondholders, amounts payable under any ancillary agreement, and other financing costs as provided in the financing documents executed by the department. Subject to this subsection, the lien and charge on green infrastructure property and all other moneys in the green infrastructure bond fund for the benefit of any financing party shall be governed by section 39-63.

(b) An electric utility shall have no ownership or beneficial interest in nor any claim or right to the green infrastructure fee, green infrastructure property, green infrastructure equipment, or green infrastructure charge other than the obligation to bill and collect the green infrastructure fee and green infrastructure charge as agent for the department or any financing party and remit the collected revenue to the department or such financing party entitled to receive those surcharges in accordance with the financing order. The public utilities commission shall ensure that all reasonable costs incurred by electric utilities to implement the green infrastructure fee may be recovered as part of the electric utility's revenue requirement, including necessary billing system adjustments, costs arising out of the billing and collection of the green infrastructure fee, and any costs for the green infrastructure fee that are not recovered otherwise. The green infrastructure fee or green infrastructure property shall not be considered revenue of any electric utility.

(c) The obligation of any electric utility customer to pay the green infrastructure fee or green infrastructure charge and, notwithstanding subsection (b), the obligation of the electric utility to collect and remit the green infrastructure fee or green infrastructure charge shall not be subject to any setoff, counterclaim, surcharge, or defense by the electric utility or by any electric utility customer, or in connection with a bankruptcy of any electric utility or any electric utility customer.

§269-E Bonds financing order. (a) A financing order shall remain in effect until the bonds issued under the financing order and all financing costs related to the bonds have been paid in full or defeased by their terms. A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of any electric utility or any affiliate of the electric utility or the commencement of any judicial or nonjudicial proceeding on the financing order.

(b) Once a financing order has become final as provided by law, the financing order shall become irrevocable. The public utilities commission may 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.

(c) Under a final financing order, the department shall retain sole discretion to cause bonds to be issued, including the right to defer or postpone such issuance, assignment, sale, or transfer.

§269-F Green infrastructure fee; nonbypassable. (a) The public utilities commission may create, pursuant to a financing order approved pursuant to section 269-C, 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 authorized under any financing order shall be nonbypassable. Subject to any exceptions provided in a financing order, the green infrastructure fee shall be paid by all existing and future customers of electric utilities or any successors.

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

§269-G 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 pay the green infrastructure fee to the department or to any financing party as required by a financing order.

(b) The public utilities commission may require, in the financing order creating the green infrastructure fee and green infrastructure property, that, if a default by the electric utility in remittance of the green infrastructure fee collected arising with respect to green infrastructure property occurs, the public utilities commission, upon the application by the department, and without limiting any other remedies available to the department or any financing party by reason of the default, shall order the sequestration and payment to the beneficiaries of the green infrastructure fee collected arising with respect to the green infrastructure property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

§269-H Treatment of bonds, fees, and property. (a) In the furtherance of section 39-65, the ownership, transfer, and pledge of the green infrastructure fee and green infrastructure property and the imposition, charging, collection, and receipt of the green infrastructure fee and green infrastructure charge are exempt from all taxes and surcharges imposed by the State or the counties, including the general excise tax under chapter 237, public service company tax under chapter 239, public utility fee under section 269-30, and public utility franchise tax under chapter 240.

(b) Bonds issued under a financing order shall not be an obligation of any electric utility. The issuance of bonds shall not directly, indirectly, or contingently obligate the electric utility for payment of the principal of or interest on the bonds.

§269-I Green infrastructure property; non-impairment. (a) In furtherance of section 39-61, the State pledges to and agrees with the bondholders and any financing parties under a financing order that the State will not take or per-

mit any action that impairs the value of green infrastructure property under the financing order, or reduce, alter, or impair the green infrastructure fee that is imposed, charged, collected, or remitted for the benefit of the bondholders and any financing parties, until any principal, interest, and redemption premium in respect of bonds, all financing costs, and all amounts to be paid to a financing party under an ancillary agreement are paid or performed in full or unless adequate provision has been made by law for the protection of bondholders and other financing parties.

(b) In issuing the bonds, the department may include the pledge specified in subsection (a) of this section in the bonds, ancillary agreements, and documentation related to the issuance and marketing of the bonds.

§269-J Green infrastructure loan program order; application. (a) The authority shall submit an application to the public utilities commission for the use or other disposition of amounts deposited or held in the green infrastructure special fund pursuant to section 196-E prior to the allocation, use, expenditure, or other disposition of any such amounts; provided that this subsection shall not apply to the expenditure of amounts deposited or held in the green infrastructure special fund that have been reviewed and approved by the public utilities commission for operational or administrative expenses of the authority pursuant to section 196-D.

(b) An application submitted by the authority to the public utilities commission under this section shall include the following:

- (1) A description of each project, program, financing agreement, or other arrangement for which the authority seeks to allocate, use, expend, or otherwise dispose of amounts deposited or held in the green infrastructure special fund, including:
 - (A) The clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure, programs, and services to be financed;
 - (B) A description of the parties, both direct and incidental, intended to benefit from any financing made in connection with the green infrastructure special fund amounts requested by the authority in an application submitted to the public utilities commission under this section;
 - (C) A description of the loan programs or other arrangements designed, established, identified, agreed to, agreed to in principle, continued, carried over, or otherwise intended to be effectuated for the use of the green infrastructure special fund amounts requested by the authority in an application submitted to the public utilities commission under this section; and
 - (D) Any and all funding or credit sources identified, pledged, dedicated, or otherwise provided to supplement the green infrastructure special fund amounts requested by the authority in an application submitted to the public utilities commission under this section;
- (2) Minimum lending, crediting, or investing criteria in relation to each project, program, financing agreement, or other arrangement described in an application submitted to the public utilities commission under this section;
- (3) A description of the repayment processes, mechanisms, and applicable calculations for each project, program, financing agreement, or other arrangement described in an application submitted to the public utilities commission under this section;

- (4) An explanation of the anticipated impacts and benefits to electric utility ratepayers of any project, program, financing agreement, or other arrangement described under an application submitted by the authority to the public utilities commission under this section; and
- (5) Any other additional information determined to be necessary by the public utilities commission upon the review of an application submitted or resubmitted by the authority under this section.

§269-K Green infrastructure loan program order; issuance. (a) The public utilities commission may issue a program order authorizing the allocation, use, expenditure, or other disposition of any amounts deposited or held in the green infrastructure special fund upon the submission by the authority to the commission of a completed application, as described in this section. A green infrastructure loan program order issued by the public utilities commission shall include the following, where determined necessary and applicable by the commission:

- (1) An identification and description of each project, program, financing agreement, or other arrangement approved by the public utilities commission for which amounts deposited or held in the green infrastructure special fund may be allocated, used, expended, or otherwise disposed of;
 - (2) Minimum criteria for the lending, crediting, or investing of amounts deposited or held in the green infrastructure special fund;
 - (3) A description of the repayment processes, mechanisms, and applicable calculations for each project, program, financing agreement, or other arrangement approved by the public utilities commission for which amounts deposited or held in the green infrastructure special fund may be allocated, used, expended, or otherwise disposed of;
 - (4) A review of the anticipated impacts and benefits to electric utility ratepayers of any project, program, financing agreement, or other arrangement approved under a green infrastructure loan program order; and
 - (5) Any other provision or information determined to be necessary by the public utilities commission.
- (b) The public utilities commission shall issue an order under this section as expeditiously as possible upon the receipt from the authority of a completed application submitted pursuant to section 269-J.
- (c) The order shall specify the following, including:
- (1) The procedures to be followed by the electric utilities in the event of non-payment or partial payment of the green infrastructure charge by the electric utilities' customers, which procedures shall be consistent with the public utilities commission's approved procedures for non-payment and partial payment of rates, charges, and fees under the electric utilities' tariffs; and
 - (2) The distribution of the total amounts collected by the electric utilities for amounts billed to customers for the electric utilities' rates, fees, and charges, for the green infrastructure charge, for other fees and charges approved by the public utilities commission, and for associated taxes, in the event of partial payments of the billed amounts.

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

§269-L Electric utilities; cost recovery; billing agent. (a) The public utilities commission shall ensure that all reasonable costs incurred by electric utili-

ties to start up and implement the loan program may be recovered as part of the electric utility's revenue requirement, including necessary billing system adjustments, costs arising out of the billing and collection of green infrastructure charges, and any costs for green infrastructure charges that are not recovered via participating customers' green infrastructure bill payments, or otherwise.

(b) The green infrastructure charge shall not be considered revenue of the electric utilities and accordingly, shall not be subject to state or county taxes, including the general excise tax under chapter 237, the public service company tax under chapter 239, the public utility fee under section 269-30, and the public utility franchise tax under chapter 240.

(c) The loan program or the act of serving as an agent to bill and to collect the green infrastructure charge shall not cause any electric utility to be subject to the laws that regulate financial institutions, escrow depositories, or collection agencies. An electric utility shall not be responsible for lending, underwriting, and credit determinations.

§269-M Severability. If any provision of this part is held to be invalid or is superseded, replaced, repealed, or expires for any reason:

- (1) That occurrence shall not affect any action allowed under this part that is taken prior to that occurrence by the public utilities commission, an electric utility, the department, the authority, a bondholder, or any financing party, and any such action shall remain in full force and effect; and
- (2) The validity and enforceability of the rest of this part shall remain unaffected.

§269-N Miscellaneous. Neither the department nor a financing party shall be considered an electric utility or person providing electric service by virtue of engaging in the transactions described in this part.

§269-O Revenue bonds; exclusion from debt limit. Green infrastructure bonds are revenue bonds issued under article VII, section 12, of the Hawaii state constitution, and chapter 39, part III, as modified by this part, and the department shall ensure that any bonds issued under this part are excluded from the calculation of the State's debt limit pursuant to article VII, section 13, of the Hawaii state constitution.

§269-P Financing order; adjustments to green infrastructure fee. The financing order shall include, without limitation, a procedure to require the public utilities commission, in accordance with a formula set out in the financing order and approved by the department, to expeditiously review and approve periodic adjustments to the green infrastructure fee to ensure the payment of the bonds and related financing costs on a timely basis."

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

"§269-5 Annual report and register of orders. The public utilities commission shall prepare and present to the governor, through the director of finance, in the month of January in each year a report respecting its actions during the preceding fiscal year. This report shall include summary information and analytical, comparative, and trend data concerning major regulatory issues acted upon and pending before the commission; cases processed by the commission, including their dispositions; utility company operations, capital improvements,

and rates; utility company performance in terms of efficiency and quality of services rendered; financing orders issued, adjustments made to the public benefits fee, and repayments or credits provided to electric utility customers pursuant to part or chapter 196, part ; environmental matters having a significant impact upon public utilities; actions of the federal government affecting the regulation of public utilities in Hawaii; long and short-range plans and objectives of the commission; together with the commission's recommendations respecting legislation and other matters requiring executive and legislative consideration. Copies of the annual reports shall be furnished by the governor to the legislature. In addition, the commission shall establish and maintain a register of all its orders and decisions, which shall be open and readily available for public inspection, and no order or decision of the commission shall take effect until it is filed and recorded in this register."

SECTION 5. Section 269-121, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The public benefits fee shall be used to support [energy efficiency] clean energy technology, demand response technology, and energy use reduction and demand-side management infrastructure, programs, and services, subject to the review and approval of the public utilities commission. These moneys shall not be available to meet any current or past general obligations of the State; provided that the State may participate in any [energy efficiency or] clean energy technology, demand response technology, or energy use reduction and demand-side management infrastructure, programs, and services on the same basis as any other electric consumer.

"Clean energy technology" means any commercially available technology that enables the State to meet the renewable portfolio standards under section 269-92, or the energy efficiency portfolio standards under section 269-96, and approved by the public utilities commission by rule or order."

SECTION 6. (a) The legislature finds and declares that the issuance of revenue bonds under this Act is in the public interest and for the public health, safety, and welfare.

(b) The department of business, economic development, and tourism is authorized to issue revenue bonds pursuant to part III of chapter 39, Hawaii Revised Statutes, as amended and supplemented by this Act, in a principal amount not to exceed \$200,000,000 to establish and administer the Hawaii green infrastructure loan program pursuant to section 196-B, Hawaii Revised Statutes.

(c) The department of business, economic development, and tourism is authorized to issue from time to time refunding bonds in such principal amounts as the department shall determine to be necessary to refund the green infrastructure bonds authorized under this Act, to the extent permitted by the financing documents.

(d) To the extent there is any conflict between this Act and part III of chapter 39, Hawaii Revised Statutes, this Act shall prevail.

SECTION 7. There is appropriated out of the Hawaii green infrastructure special fund established pursuant to section 196-E, Hawaii Revised Statutes, the sum of \$100,000,000 or so much thereof as may be necessary for fiscal year 2013-2014 and the same sum or so much thereof as may be necessary for fiscal year 2014-2015.

The sums appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 8. There is appropriated out of the Hawaii green infrastructure bond fund established pursuant to section 196-G, Hawaii Revised Statutes, the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2013-2014 and the sum of \$20,000,000 or so much thereof as may be necessary for fiscal year 2014-2015.

The sums appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 9. The department of business, economic development, and tourism, with the assistance of the Hawaii green infrastructure authority, shall submit a report on the status of the Hawaii green infrastructure authority's activities, including approved loan program description and uses; summary information and analytical data concerning implementation of the loan program; summary information and analytical data concerning the deployment of clean energy technology, demand response technology, and energy use reduction and demand-side management infrastructure, programs, and services; and repayments made or credits provided to electric utility customers under section 196-E and part of chapter 269, Hawaii Revised Statutes, no later than twenty days prior to the convening of the regular session of 2014.

SECTION 10. The Hawaii green infrastructure authority shall conduct a study in the 2015 calendar year to determine:

- (1) The extent to which the Hawaii green infrastructure authority's activities have benefitted the State by advancing the State's renewable energy goals and reducing energy costs for consumers by providing affordable alternative energy options; and
- (2) Whether the loan program shall be extended, eliminated, or otherwise modified beginning July 1, 2016.

The Hawaii green infrastructure authority shall submit a report of its findings from the study to the Legislature no later than twenty days prior to the convening of the regular session of 2016.

SECTION 11. In codifying the new part added to chapter 196, Hawaii Revised Statutes, by section 2 of this Act and the new part added to chapter 269, Hawaii Revised Statutes, by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

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

SECTION 13. This Act shall take effect upon its approval; provided that sections 7 and 8 shall take effect on July 1, 2013.

(Approved June 27, 2013.)