

A Bill for an Act Relating to the Department of Business, Economic Development, and Tourism.

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

SECTION 1. The legislature finds that significant investment in clean energy technology and infrastructure will be required to achieve the State's goals of energy self-sufficiency, energy security, and energy diversification. Additional investment is also needed to meet the renewable portfolio and energy efficiency portfolio standards in chapter 269, Hawaii Revised Statutes, as well as the Hawaii clean energy initiative's target of one hundred sixty-five million gallons of petroleum used per year for ground transportation by 2030. The current aggregate level of green infrastructure investment is in excess of \$15,350,000,000.

The legislature also finds that green infrastructure investment supports Hawaii's evolving energy market and provides affordable options for Hawaii's ratepayers. Due to the significant amount of capital required for green infrastructure investment, the State must leverage private investment with limited public funds. A growth in the clean energy market will reduce the cost of clean energy for ratepayers, drive job creation, and save billions of taxpayer dollars currently being spent on importing petroleum oil.

The legislature has made various efforts to invest in green technology. Act 155, Session Laws of Hawaii 2009, established the building energy efficiency revolving loan fund to provide low cost financing to eligible public, private, and nonprofit borrowers to make energy efficiency improvements to buildings. Act 211, Session Laws of Hawaii 2013, established the Hawaii green infrastructure authority to make cost-effective green infrastructure financing options accessible and affordable to customers under the green energy market securitization loan program.

The legislature further finds that a significant barrier to clean energy adoption has been the unavailability of flexible financing and low-cost capital. Building Hawaii's clean energy infrastructure at the lowest possible cost is vital to reach the State's goal of one hundred per cent clean energy by 2045. Public funds must be used in a sustainable manner to simultaneously spark customer demand for clean energy technology and attract private investment in green technology. It is the State's goal that each public dollar spent will have an investment multiplier effect throughout the green technology industry.

The legislature also finds that a variety of financing options must be available to support Hawaii's clean energy investment. Ratepayer-funded programs, such as energy efficiency rebates and the green energy market securitization loan program, have made progress but do not serve all ratepaying customers or the entire clean energy technology market. The green energy market securitization loan program has facilitated over \$110,000,000 in solar photovoltaic and energy efficiency projects, but the program is not able to serve all ratepayers and focuses only on established technology. The green energy market securitization bond was an innovative use of a rate reduction bond, but due to the time lag between the issuance of the bond and expenditures for improvements, using bond financing was inefficient compared to using revolving loan funds, which are expended annually and in a more expedient manner.

Further, the coronavirus disease 2019 pandemic has had significant negative impacts on Hawaii's tourism industry and economy, resulting in projections of severe state budgetary shortfalls over the next four years. With only a limited number of financing mechanisms available to install solar photovoltaic systems,

state agencies have historically lowered their energy costs by entering into energy performance contracts and power purchase agreements with private partners to install and own energy retrofits and solar systems on their behalf. While individual results are dependent on the negotiated terms of the consummated energy performance contract or power purchase agreement, many of these arrangements have successfully reduced the cost of energy for the State. Additionally, most agreements include an option for state agencies to purchase the installed equipment during the term of the agreement. For example, in examining a power purchase agreement executed on September 30, 2016, between a state agency and an investor for a twenty-year term, the agency is estimated to reduce its energy cost by forty-two per cent. If, however, this state agency had access to financing under the green infrastructure loan program to exercise its purchase option, the agency would be projected to reduce its energy cost by sixty-one per cent over the same twenty-year term of the power purchase agreement. This sixty-one per cent reduction in cost, which includes the loan repayment and ongoing equipment maintenance costs, creates a new source of cash flow for the agency.

With the number of energy performance contracts and power purchase agreements in existence throughout the State, there is a tremendous opportunity for additional energy savings to be utilized to finance the conversion of the State's retiring internal combustion fleet to short-term leases on electric vehicles as well as install electric vehicle charging systems while remaining budget neutral. Using the aforementioned example of the state agency with reduced energy costs, this agency could install one level three charging system and lease seven electric vehicles with its savings.

The purpose of this Act is to strengthen the Hawaii green infrastructure authority's ability to support investment in clean energy technology, including electric vehicles and electric vehicle charging systems and infrastructure, by:

- (1) Creating a clean energy and energy efficiency revolving loan fund to finance a broad range of clean energy technologies;
- (2) Repealing the building energy efficiency revolving loan fund;
- (3) Expanding the objective of the Hawaii green infrastructure special fund \$50,000,000 sub-fund to allow state agencies to finance their purchase option under existing energy performance contracts and power purchase agreements to further reduce and stabilize future energy costs, with the option to utilize savings to finance the installation of electric vehicle charging systems and lease or purchase electric vehicles; and
- (4) Making an appropriation out of the clean energy and energy efficiency revolving loan fund to provide clean energy investment loans or for other approved uses.

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

“§196- Clean energy and energy efficiency revolving loan fund. (a) There is established in the Hawaii green infrastructure special fund established under section 196-65, the clean energy and energy efficiency revolving loan fund, similar to a revolving line of credit, which shall be administered by the authority. Funds deposited into the clean energy and energy efficiency revolving loan fund shall not be under the jurisdiction of, nor be subject to approval by, the commission and shall include:

- (1) Any amounts, up to a total amount not to exceed \$50,000,000, of moneys borrowed by the authority, with the approval of the gover-

nor, from federal, county, private, or other funding sources, pursuant to part III of chapter 39;

- (2) Funds from federal, state, county, private, or other funding sources;
- (3) Investments from public or private investors;
- (4) Moneys received as repayment of loans and interest payments; provided that the repayment of loans and interest payments under this paragraph shall not include repayment of loans and interest collected as a result of funds advanced from proceeds of the green energy market securitization bonds; and
- (5) Any fees collected by the authority under this section; provided that moneys collected as a result of the funds advanced from proceeds of the green energy market securitization bonds shall be kept separate from fees collected as a result of funds advanced from proceeds of the clean energy and energy efficiency revolving loan fund.

(b) Moneys in the clean energy and energy efficiency revolving loan fund shall be used to provide low-cost loans at below-market rates or other authorized financial assistance to eligible public, private, and nonprofit borrowers for clean energy investments or other authorized uses, or both, on terms approved by the authority. Moneys from the fund may be used to cover administrative and legal costs of fund management and management associated with individual loans, which include personnel, services, technical assistance, data collection and reporting, materials, equipment, and travel for the purposes of this section.

(c) Funds appropriated or authorized from the clean energy and energy efficiency revolving loan fund shall be expended by the authority. The authority may contract with other public or private entities for the provision of all or a portion of the services necessary for the administration and implementation of the loan fund program. The authority may set fees or charges for fund management and technical site assistance provided under this section.

(d) All interest earned on the loans, deposits, or investments of the moneys in the fund shall become part of the fund.

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

(f) The authority may adopt rules pursuant to chapter 91 to carry out the purposes of this section.”

SECTION 3. Section 196-61, Hawaii Revised Statutes, is amended as follows:

1. By adding fourteen new definitions to be appropriately inserted and to read:

““Clean energy investments” means the purchase, installation, or both, of clean energy technology, including energy-efficiency measures, green transportation infrastructure, recycling, and renewable energy technology.

“Electric vehicle” has the same meaning as defined in section 291-71.

“Electric vehicle charging system” has the same meaning as defined in section 291-71.

“Energy performance contract” has the same meaning as defined in section 36-41.

“Green energy money saver on-bill program” means the tariff-based on-bill repayment mechanism approved for the exclusive use of the authority by the commission.

“Limited liability company” means a limited liability company formed under chapter 428.

“Loan fund program” means the clean energy and energy efficiency revolving loan fund program.

“Option to purchase” means a legally binding agreement between a buyer and a seller, which gives the buyer the option, but not the obligation, to purchase the solar energy system or other installed equipment at an agreed upon price, prior to the maturity date of the power purchase agreement or energy performance contract.

“Power purchase agreement” means a contract between two parties, one that generates electricity, or the seller, and one that seeks to purchase electricity, or the buyer, that defines all of the commercial terms for the sale of electricity between the two parties.

“Qualified security” shall have the same meaning as defined in section 227D-1.

“Renewable energy” shall have the same meaning as defined in section 269-91.

“Renewable energy technology” means the equipment and related accessories required to generate or produce renewable energy.

“Special purpose entity” means a legal entity created to fulfill narrow, specific, or temporary objectives and is typically used by companies to isolate the firm from financial risk.

“Subaccount” means a fund that is established within, but separate from, another fund and is reserved for a specific purpose.”

2. By amending the definition of “loan program” and “green infrastructure loans” to read:

“~~“Loan program” and “green~~ “Green infrastructure [loans]” loan program” and “green infrastructure loans” means the program established by this part under section 196-62 and [loans made] capitalized by the issuance of green energy market securitization bonds 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~~].”

SECTION 4. Section 196-62.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§196-62.5] Financing for state government agencies.~~ (a) ~~[With the approval of the governor, a]~~ Any state agency may apply for financing, subject to availability under the revolving line of credit for fiscal year ~~[2018-2019,]~~ 2021-2022, and annually thereafter, from the green infrastructure loan program pursuant to section 196-65(b)(2), upon terms and conditions as are agreed to between the department or agency and the Hawaii green infrastructure authority; provided that the loans shall be issued at an interest rate of 3.5 per cent a year; provided further that the loans shall not adversely affect the sustainability of the sub-fund or Hawaii green infrastructure special fund such that the replenishment of funds requires a higher interest rate in other financing agreements or an appropriation from the general fund.

(b) ~~[A]n~~ As may be applicable, an agency shall consult with the public benefits fee administrator of the ~~[public utilities]~~ commission prior to planning an energy-efficiency measure subject to this section. The agency’s proposed energy-efficiency measures shall meet or exceed the public benefits fee administrator’s enhanced efficiency levels and requirements to be eligible for the Hawaii green infrastructure loan program. The agency shall coordinate with the public benefits fee administrator throughout the entire project cycle to ensure that energy efficiency is maximized. All supporting documentation required by the public benefits fee administrator shall be provided by the agency to ensure compliance with the State’s energy-efficiency portfolio standard under section 269-96.

(c) An agency shall submit an expenditure plan to the executive director of the Hawaii green infrastructure authority, who shall serve as the fiscal administrator for the loans issued pursuant to subsection (a) and shall make payment on behalf of the agency, as appropriate, upon submission of requests for payment from the agency.

(d) Beginning with fiscal year ~~[2018-2019,]~~ 2021-2022, and annually thereafter, an agency shall repay a loan issued pursuant to subsection (a) using general revenue savings that result from reduced ~~[utility]~~ energy costs due to ~~[implementation of]~~ financing the purchase of solar energy systems or other clean energy equipment, implementing energy-efficient lighting and other energy-efficiency measures[-], as well as operational and fuel cost savings achieved by the conversion of internal combustion vehicles to electric vehicles."

SECTION 5. Section 196-64, Hawaii Revised Statutes, is amended to read as follows:

~~“[§196-64]~~ **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 269-171 or an annual plan submitted by the authority pursuant to this section, as approved by the ~~[public utilities]~~ commission for the green infrastructure loan program, 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 269-171;
- (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 269-171 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 the green infrastructure loan program 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.

(c) In the performance of the functions, powers, and duties vested in the authority by this part, the authority shall administer the clean energy and energy efficiency revolving loan fund pursuant to section 196- and may:

- (1) Make loans and expend funds to finance the purchase or installation of clean energy technology and services;
- (2) Implement and administer loan programs on behalf of other state departments or agencies through a memorandum of agreement and expend funds appropriated to the department or agency for purposes authorized by the legislature;
- (3) Utilize all repayment mechanisms, including the green energy money saver on-bill program, financing tools, servicing and other arrangements, and sources of capital available to the authority;
- (4) Exercise powers to organize and establish special purpose entities as limited liability companies under the laws of the State;
- (5) Acquire, hold, and sell qualified securities;
- (6) Pledge unencumbered net assets, loans receivable, assigned agreements, and security interests over equipment financed, as collateral for the authority's 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 revolving loan fund to the legislature no later than twenty days prior to the convening of each regular session describing the projects funded and the projected energy impacts."

SECTION 6. Section 196-65, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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, including for installation costs for energy-efficient lighting and other energy-efficiency measures[;], to finance the option to purchase solar energy systems and other clean energy equipment under existing power purchase agreements and energy performance contracts, finance the purchase or lease of electric vehicles, and to install electric vehicle charging systems;
- (2) Creating a \$50,000,000 sub-fund, as a revolving line of credit within the Hawaii green infrastructure special fund, for any state agency to obtain financing to implement cost-effective energy-efficiency measures[;], finance the option to purchase solar energy systems and other clean energy equipment under existing power purchase agreements and energy performance contracts, finance the purchase

or lease of electric vehicles, and install electric vehicle charging systems;

- (3) Paying administrative costs of the Hawaii green infrastructure loan program;
- (4) Paying any other costs related to the Hawaii green infrastructure loan program; or
- (5) Paying financing costs, as defined in section 269-161, to the extent permitted by the ~~[public utilities]~~ commission in a financing order issued pursuant to section 269-163.”

SECTION 7. Section 201-12.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Subject to legislative appropriation, moneys from the fund may be expended by the Hawaii state energy office for the following purposes and used for no other purposes, except for those set forth in this section:

- (1) To support the Hawaii clean energy initiative program and projects that promote and advance dependable and affordable energy, renewable energy, energy efficiency, energy self-sufficiency, and greater energy security and resiliency for the State and public facilities;
- (2) To fund, to the extent possible, the climate change mitigation and adaptation commission and the greenhouse gas sequestration task force;
- (3) To support achieving the zero emissions clean economy target set forth in section 225P-5;
- ~~[(4) To fund the building energy efficiency revolving loan fund established in section 201-20;~~
- ~~[(5)]~~ (4) To fund projects and incentives to promote the adoption of clean transportation technologies, develop clean vehicle charging infrastructure, and upgrade infrastructure to support the development of clean vehicle charging infrastructure; and
- ~~[(6)]~~ (5) To fund, to the extent possible, the duties of the state building code council in section 107-24, as they relate to the development of energy conservation codes.”

SECTION 8. Section 201-20, Hawaii Revised Statutes, is repealed.

SECTION 9. There is appropriated out of the clean energy and energy efficiency revolving loan fund the sum of \$50,000,000 or so much thereof as may be necessary for fiscal year 2021-2022 to provide loans or other financial assistance to eligible borrowers for clean energy investments or other authorized uses.

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

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect on July 1, 2021.

(Approved June 28, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.