HAWAII STATE ENERGY OFFICE
STATE OF HAWAII

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARK B. GLICK
CHIEF ENERGY OFFICER

235 South Beretania Street, 5th Floor, Honolulu, Hawaii 96813 Telephone: (808) 451-6648
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804 Web: energy.hawaii.gov

Testimony of
MARK B. GLICK, Chief Energy Officer

before the
HOUSE COMMITTEE ON FINANCE

Wednesday, February 28, 2024
12:00 PM
State Capitol, Conference Room 308 and Videoconference

Providing Comments on
HB 2738, HD1

RELATING TO RENEWABLE ENERGY.

Chair Yamashita, Vice Chair Kitagawa, and members of the Committee, the Hawai'i State Energy Office (HSEO) offers comments on HB 2738, HD1, which would require state agencies to prepare a report assessing the feasibility of installing distributed energy resource systems at each facility and would require state agencies to implement and install the distributed energy resource systems detailed in the reports no later than five years from the issue date of the reports.

HSEO appreciates the intent of this proposal to improve the efficiency and energy resilience of state facilities, particularly those of first responders.

HSEO's testimony does not address the requirement (page 5 lines 17-20, page 6 lines 1-2, and page 7 lines 3-8) calling for "applicable agencies" to assess the feasibility of developing resilience hubs, at public or private facilities, that "that when feasible should be equipped with distributed energy resource systems, that can provide emergency services and be open to the general public during times of emergency." HSEO defers to affected agencies on those provisions.

HSEO's testimony provides comments on the bill's requirements for state agencies to: research previous actions taken for each facility since 2010; develop a report on measures taken to assess the potential and feasibility of installing distributed

energy resource systems at each facility, with due dates based on whether or not actions had been taken for the facility since 2010; and implement and install systems within five years of the reports.

HSEO notes the recent passage of Act 239 (SLH 2022), codified as HRS section 196-31, requires state facilities to implement cost-effective energy efficiency measures in addition to maximizing energy and water efficiency and energy generation potential, and is similar in several respects to the requirements of HB 2738 HD1. The relevant statutory language from HRS sections 36-41 and 196 Part 2 is attached, FYI.

HSEO notes that solar and storage have always been eligible technologies, included with efficiency, demand management, and on-site generation. Pursuant to current law, HSEO supports State agencies with benchmarking their facilities which is an essential first step in determining cost-effective energy measures. HSEO has requested federal funding to benchmark energy-consuming, high-impact projects for inspections, analysis, and specialized equipment and support. Under this effort, HSEO would also develop a state facility energy strategy to assist departments in scoping, funding and executing facility-specific combined energy efficiency and renewable energy projects. Such a holistic approach was informed by a briefing and subsequent discussions with members of the House Majority Policy Committee during the Autumn of 2023.

Because the proposed state facility energy strategy project employs the Elective Pay option under the Inflation Reduction Act of 2022 government entities to monetize federal tax credits, HSEO suggests removing the language on Pg. 5, lines 11-12 for clarity:

> …**provided that no entity shall [~~claim tax credits or deductions, or~~] depreciate assets under title 14 for implementing energy efficiency**…

HSEO would also like to recommend merging the requirements and clarifying the priorities of this bill and the existing statutes. At the moment there are two priorities: facilities larger than 10,000 square feet, and facilities that have not taken steps to improve energy efficiency since 2010. This bill would add a new priority: facilities used by first responders. Although the majority of first responders (fire, police, ambulance, ocean safety) personnel are at the county level, there are several state agencies that do

provide those types of services. HSEO suggests removing the (“since 2010” on page 5, line 4, so all facilities could be reviewed initially.

Next steps would then be first responder facilities regardless of size followed by facilities of more than 10,000 square feet. Additional facilities could be pursued as time and resources permit.

Thank you for the opportunity to testify.

CHAPTER 36 - MANAGEMENT OF STATE FUNDS

PART II. INVESTMENTS; TRANSFERS

§36-41 Energy retrofit and performance contracting for public facilities.

(a) All agencies shall evaluate and identify for implementation energy efficiency retrofitting through performance contracting. Agencies that perform energy efficiency retrofitting may continue to receive budget appropriations for energy expenditures at an amount that shall not fall below the pre-retrofitting energy budget but shall rise in proportion to any increase in the agency's overall budget for the duration of the performance contract or project payment term.

(b) Any agency may enter into a multi-year energy performance contract for the purpose of undertaking or implementing energy conservation or alternate energy measures in a facility or facilities. An energy performance contract may include but shall not be limited to financing options such as leasing, lease-purchase, financing agreements, third-party joint ventures, guaranteed-savings plans, or energy service contracts, or any combination thereof; provided that in due course the agency may receive title to the energy system being financed. Except as otherwise provided by law, the agency that is responsible for a particular facility shall review and approve energy performance contract arrangements for the facility.

(c) Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an energy performance contract shall do so in accordance with the following provisions:

(1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103D, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment or both. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;

(2) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate;

(3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;

(4) The term of any energy performance contract entered into pursuant to this section shall not exceed twenty years;

(5) Any contract entered into shall contain the following annual allocation dependency clause:

"The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made";

(6) Any energy performance contract may provide that the agency shall ultimately receive title to the energy system, vehicles, fleet vehicles, and fueling and charging infrastructure being financed under the contract;

(7) Any energy performance contract shall provide that total payments shall not exceed total savings; and

(8) For any guaranteed-savings plan:

(A) The payment obligation for each year of the contract, including the year of installation, shall be guaranteed by the private sector person or company to be less than the annual energy cost savings attributable under the contract to the energy equipment and services. Such guarantee, at the option of the agency, shall be a bond or insurance policy, or some other guarantee determined sufficient by the agency to provide a level of assurance similar to the level provided by a bond or insurance policy; and

(B) In the event that the actual annual verified savings are less than the annual amount guaranteed by the energy service company, the energy service company, within thirty days of being invoiced, shall pay the agency, or cause the agency to be paid, the difference between the guaranteed amount and the actual verified amount.

(d) For purposes of this section:

"Agency" means any executive department, independent commission, board, bureau, office, or other establishment of the State or any county government, the judiciary, the University of Hawaii, or any quasi-public institution that is supported in whole or in part by state or county funds.

"Energy performance contract" means an agreement for the provision of energy services and equipment, including but not limited to building or facility energy conservation enhancing retrofits, water saving technology retrofits, electric vehicle charging infrastructure, and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a facility or electric vehicle charging system in exchange for a portion of the cost savings, lease payments, or specified revenues, and the level of payments is made contingent upon the verified energy savings, energy production, avoided maintenance, avoided energy equipment replacement, avoided vehicle

maintenance or fuel costs associated with the implementation of a vehicle fleet energy efficiency program pursuant to section 36-42, or any combination of the foregoing bases. Energy conservation retrofits also include energy saved off-site by water or other utility conservation enhancing retrofits.

"Facility" means a building, buildings, infrastructure, or similar structure, including any site owned or leased by, or otherwise under the jurisdiction or control of, the agency.

"Financing agreement" shall have the same meaning as in section 37D-2.

"Guaranteed-savings plan" means an agreement under which a private sector person or company undertakes to design, install, operate, and maintain improvements to an agency's facility or facilities and the agency agrees to pay a contractually specified amount of verified energy cost savings.

"Verified" means the technique used in the determination of baseline energy use, post-installation energy use, and energy and cost savings by the following measurement and verification techniques: engineering calculations, metering and monitoring, utility meter billing analysis, computer simulations, mathematical models, and agreed-upon stipulations by the customer and the energy service company.

[L 1986, c 72, §1; am L 1989, c 275, §1; am L Sp 1993, c 8, §54; am L 1997, c 192, §1; am L 2000, c 158, §1; am L 2004, c 98, §1; am L 2019, c 144, §3]

CHAPTER 196 - ENERGY RESOURCES

PART II. ENERGY EFFICIENCY IN STATE FACILITIES

§196-11 Definitions.

As used in this part:

"Acquisition" means acquiring by contract supplies or services, including construction, by and for the use of the State through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, or evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

"Agency" means any executive department, independent commission, board, bureau, office, or other establishment of the State, or any quasi-public institution that is supported in whole or in part by state funds.

"Commissioning" means a quality-oriented process, which takes place during design and construction, for achieving, verifying, and documenting that the performance of facilities, systems, and assemblies meets defined objectives and criteria with regards to energy conservation design strategies and the energy performance of buildings.

"Energy performance contract" shall have the same meaning as in section 36-41(d), and shall additionally include commissioning and retro-commissioning.

"ENERGY STAR" means a labeling program introduced by the United States Environmental Protection Agency in 1992 as a voluntary labeling program designed to identify and promote energy-efficient products, in order to reduce carbon dioxide emissions.

"Exempt facility" or "exempt mobile equipment" means a facility or mobile equipment for which an agency utilizes criteria established by the chief energy officer of the Hawaii state energy office to determine that compliance with this part is not practical.

"Facility" means a building or buildings or similar structure owned or leased by, or otherwise under the jurisdiction of, an agency.

"Life-cycle cost-effective" means the life-cycle costs of a product, project, or measure that are estimated to be equal to or less than the base case, i.e., current or standard practice or product.

"Life-cycle costs" means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure.

"Mobile equipment" means any state-owned vessel, aircraft, or off-road vehicle.

"Renewable energy" means energy produced by solar, energy conserved by passive solar design/daylighting, ocean thermal, wind, wave, geothermal, waste-to-energy, or biomass power.

"Renewable energy technology" means technology that uses renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities. The term includes the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design/daylighting.

"Retro-commissioning" means a quality-oriented process, which takes place after systems have been placed in operation, for achieving, verifying, and documenting that the performance of facilities, systems, and assemblies perform as closely as possible to defined performance criteria, with regards to energy conservation design strategies and the energy performance of buildings.

"Source energy" means the energy that is used at a site and consumed in producing and delivering energy to a site, including power generation, transmission, and distribution losses, and that is used to perform a specific function, such as space conditioning, lighting, or water heating.

"Utility" means a public utility as defined in section 269-1. Utility includes federally owned nonprofit producers, county organizations, and investor or privately owned producers regulated by the state or federal government, cooperatives owned by members and providing services mostly to their members, and other nonprofit state and county agencies serving in this capacity.

"Utility energy-efficiency service" means demand-side management services provided by a utility to improve the efficiency of use of the commodity, such as electricity and gas being distributed. Services may include energy efficiency and renewable energy project auditing, financing, design, installation, operation, maintenance, and monitoring.

[L 2002, c 77, pt of §9; am L 2007, c 157, §§1, 2; am L 2019, c 122, §3]

§196-12 to 17 REPEALED.

[L 2006, c 96, §§15 to 20.]

§196-18 REPEALED.

[L 2008, c 25, §1.]

§196-19 Life-cycle cost analysis.

Agencies shall use life-cycle cost analysis in making decisions about their investments in products, services, construction, and other projects to lower the State's costs and to reduce energy and water consumption. Where appropriate, agencies shall consider the life-cycle costs of combinations of projects, particularly to encourage bundling of energy efficiency projects with renewable energy projects.

Agencies shall retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs. Agencies that minimize life-cycle costs with efficiency measures shall be recognized in their scorecard evaluations established under section 196-17(a).

[L 2002, c 77, pt of §9]

Note

Section 196-17(a) referred to in text is repealed.

§196-20 REPEALED.

[L 2006, c 96, §21.]

§196-21 Financing mechanisms.

(a) Agencies shall maximize their use of available alternative financing contracting mechanisms, including energy-savings contracts, when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy-savings contracts shall include:

(1) Energy performance contracts;

(2) Municipal lease and purchase financing; and

(3) Utility energy-efficiency service contracts.

Energy-savings contracts shall provide significant opportunities for making state facilities more energy efficient at no net cost to taxpayers.

(b) Agencies that perform energy efficiency and renewable energy system retrofitting may continue to receive budget appropriations for energy expenditures at an amount that will not fall below the pre-retrofitting energy budget but will rise in proportion to any increase in the agency's overall budget for the duration of the performance contract or project payment term. A portion of the moneys saved through efficiency and renewable energy system retrofitting shall be set aside to pay for any costs directly associated with administering energy efficiency and renewable energy system retrofitting programs incurred by the agency.

(c) Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an energy performance contract shall do so in accordance with the following provisions:

(1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103D, concerning the provision of energy-efficiency services or the design, installation, operation, and maintenance of energy equipment. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation, and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;

(2) Upon receiving responses to the request for proposals, the agency shall select the most qualified proposal or proposals and may base its determination on the

basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, or other factors determined by the agency to be relevant and appropriate;

(3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;

(4) The term of any energy performance contract entered into pursuant to this section shall not exceed twenty years;

(5) Any energy performance contract may provide that the agency ultimately shall receive title to the energy system being financed under the contract; and

(6) Any energy performance contract shall provide that total payments shall not exceed total savings.

[L 2002, c 77, pt of §9; am L 2006, c 96, §7; am L 2007, c 157, §3]

§196-22 State energy projects.

State energy projects may be implemented under this chapter with the approval of the comptroller and the director of finance or their designees. In addition, this section shall be construed to provide the greatest possible flexibility to agencies in structuring agreements so that economic benefits and existing energy incentives may be used and maximized, and financing and other costs to agencies may be minimized. The specific terms of energy performance contracting under section 36-41 may be altered if deemed advantageous to the agency and approved by the director of finance and the comptroller.

[L 2002, c 77, pt of §9; am L 2004, c 216, §21; am L 2006, c 96, §8; am L 2007, c 157, §4]

§196-23 Energy efficient products.

(a) Agencies shall select, when life-cycle cost-effective, ENERGY STAR and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR labels are not yet available, agencies may select products that are in the upper twenty-five per cent of energy efficiency as designated by the United States Department of Energy, Office of Energy Efficiency and Renewable Energy, federal energy management program.

(b) Agencies shall incorporate energy-efficient criteria consistent with designated energy-efficiency levels into product specification language developed for all purchasing procedures.

(c) The State shall consider the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products.

(d) Agencies entering into leases, including the renegotiation or extension of existing leases, shall:

(1) Incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain

criteria encouraging sustainable design and development, energy efficiency, and verification of facility performance;

(2) Include a preference for facilities having an ENERGY STAR building label in their selection criteria for acquiring leased facilities; and

(3) Encourage lessors to apply for an ENERGY STAR building label and to explore and implement projects that will reduce costs to the State, including projects carried out through the lessors' energy-savings contracts.

[L 2002, c 77, pt of §9; am L 2006, c 96, §9]

§196-24 to 29 REPEALED.

[L 2006, c 96, §§22 to 27.]

§196-30 Public buildings; benchmarks; retro-commissioning guidelines; energy savings performance contracts.

(a) By December 31, 2010, each state department with responsibilities for the design and construction of public buildings and facilities shall benchmark every existing public building that is either larger than five thousand square feet or uses more than eight thousand kilowatt-hours of electricity or energy per year and shall use the benchmark as a basis for determining the State's investment in improving the efficiency of its own building stock. Benchmarking shall be conducted using the ENERGY STAR portfolio management or equivalent tool. The chief energy officer of the Hawaii state energy office shall provide training to affected departments on the ENERGY STAR portfolio management or equivalent tool.

(b) Public buildings shall be retro-commissioned no less often than every five years. The chief energy officer of the Hawaii state energy office shall establish retro-commissioning guidelines by January 1, 2010.

(c) Departments may enter into energy savings performance contracts with a third party to cover the capital costs of energy-efficiency measures and distributed generation provided the terms of the energy savings performance contracts conform to the benchmark standard. The comptroller may review and exempt specific projects as appropriate to take into account cost-effectiveness.

Energy savings performance contracts shall be executed according to state guidelines issued by the comptroller, and the contracts shall be reviewed by the comptroller. To expedite energy savings performance contracting for public buildings, the department of accounting and general services shall develop a master energy savings performance contracts agreement that any department may use to contract with an energy savings performance contracts provider for energy-efficiency and renewable energy services.

(d) For existing public buildings that undergo a major retrofit or renovation, the department or departments responsible for design and construction shall make investments in efficiency; provided that the cost of the measures shall be recouped within twenty years.

[L 2009, c 155, pt of §11; am L 2019, c 122, §3]

§196-31 Energy efficiency implementation for state facilities.

(a) State facilities shall implement cost-effective energy efficiency measures as follows:

(1) Beginning on January 1, 2024, for all state facilities that have not implemented section 36-41 since 2010; and

(2) Beginning on January 1, 2026, for all other state facilities;

provided that no entity shall claim tax credits or deductions, or depreciate assets under title 14 for implementing energy efficiency measures pursuant to this section; provided further that nothing in this subsection shall prohibit facilities from implementing energy efficiency measures sooner than indicated under paragraph (1) or (2).

(b) State facilities with an area under ten thousand square feet shall be exempt from the requirements of subsection (a).

(c) For purposes of this section:

"Cost-effective energy efficiency measure" means any energy efficiency measure where the cost of the energy efficiency measure is equal to or less than the estimated savings over a period of twenty years or the life of the installed components, whichever is less.

"Energy efficiency measure" means any energy services, projects, and equipment, including but not limited to building or facility energy conservation enhancing, demand management, or demand response retrofits, which may include energy saved offsite by water or other utility enhancing retrofits, to improve the energy efficiency or reduce energy costs of the facility.

[L 2022, c 239, pt of §2]

§196-32 Utility bills and energy usage data; state-owned facilities.

The Hawaii state energy office shall collect all utility bill and energy usage data for state-owned facilities monthly and shall make this information available in a publicly accessible format.

[L 2022, c 239, pt of §2]