



Via Capitol Website

February 3, 2009

**Senate Committee on Energy and Environment
Hearing Date: Tuesday, February 3, 2009, 2:45 p.m. in CR 225**

Testimony in Opposition to SB 156– Relating to Energy Conservation
(Mandating Installation of Solar water heater systems in all new development projects with over fifty units.)

The Honorable Chair Mike Gabbard, Vice-Chair J. Kalani English &
Energy and Environment Committee Members:

Dear Chair Gabbard, Vice-Chair English and Members:

My name is David Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

While LURF and its members support and employ solar energy or comparable renewable energy devices and support the general intent of this bill, we must testify **in strong opposition to the current version of SB 156**, based on, among other things, the following grounds: "If it ain't broke, don't try to fix it." The present system of rebates is working, there is no need for any additional mandates that will result in increased costs to new homeowners; individual homeowner choices such as installing a costly solar water heater, should be left to each individual homeowner, rather than mandated by the government; a very serious impact of this bill is that it would increase the sales price and up front costs of new housing for homebuyers; the higher sales prices will detrimentally affect the ability to qualify for a mortgage loan; it will also cause the loss of tax credits for homeowners; it will cause the loss of HECO rebates for homeowners; and the regulatory process established by this bill is subjective, confusing, unenforceable and of questionable legality.

Instead of mandatory legislation, the legislature should encourage making solar water heaters or comparable renewable energy devices cost-neutral to new homebuyers and developers, by providing up front credits and incentives to developers to counteract the increased costs of such devices and the resulting increased prices of new homes and condominiums. This bill only applies to new developments of all new condominiums or townhouses with fifty units or more. Additionally, it directs the counties to establish new rules requiring installation of these solar water systems to be in place by January 1, 2009.

SB 156. The purpose of this bill is to increase the use of renewable energy to protect our environment, reduce pollution, and make housing more affordable by requiring the installation of solar water heater systems in all new condominiums or townhouses with fifty units or more and to require the counties to establish rules requiring the installation of solar water heater systems.

The current law requires this mandate of solar water heaters to go into effect on January 1, 2010 but only as applied to single-family dwellings; however, this bill mandates installation of solar water heaters for condominiums and townhouses with fifty units or more. There is an exemption for low-and-moderate income housing projects as defined in HRS §39A-281. The language regarding application for a variance remains in the bill.

The proposed bill requires that by January 1, 2009, all counties must establish rules that require the installation of solar water heater systems in the construction of (1) 25% of all new residential single-family residences, condominiums, and townhouses by 2015; and (2) 50% of all new residential single-family residences, condominiums, and townhouses, by 2020.

LURF's Position. While we agree that we, as a community, should work to conserve more energy, we believe that the choice of energy conservation devices should be governed by market forces and government incentives, rather than by government regulations. The grounds for our objections include, among other things, the following:

- The present system of rebates and incentives are working, there is no need for any additional regulation or increased costs to new homeowners;
- We believe the choice to install a solar water heater should be left to each individual owner of a condo or townhouse.
- This mandatory legislation will increase the sales prices of condos and townhouses in Hawaii since the cost of a solar water heater and installation will be "passed-on" to the new homebuyer.
- The increased sales prices caused by this bill will adversely impact the ability of new homebuyers to qualify for mortgage loans.
- Philosophically, this is the classic "Carrot versus the Stick" approach to influence peoples' behavior. We prefer the "carrot" approach and would recommend that incentives be increased for developers of new residential projects who install energy conservation devices, rather than require compliance through legislation. If the legislature grants sufficient incentives and tax credits to developers of new residential development projects, then the impact of this legislation could be cost-neutral for new homebuyers.

- The purported purpose of the bill is to significantly reduce the State's dependence on imported oil over time, however, it is curious that this bill does not require solar water heater systems to be installed on all state buildings – and makes an exception for low-and-moderate income housing projects. Instead, it only focuses on government requirements which would increase the costs of new condominiums or townhouses of fifty units or more. If the stated purpose of the bill is true, one wonders why government does not impose the same requirements upon itself and on low-and-moderate income housing projects.

Implementation Problems. The process established by this bill remains confusing, unfair impracticable:

- **Broad exceptions are unenforceable.** The criteria for granting exceptions (“impracticable due to poor solar resource;” or “cost prohibitive”) are subjective, lack consistent application, and therefore, are unenforceable. There are no definitions or technical standards to define “impracticable” or “cost prohibitive,” thus each architect or engineer can create their own interpretations to justify exceptions.
- **Unfunded Mandate?** Bill 156 would require all counties to establish rules that “require the installation of solar water heater systems in the construction of (1) 25% of all new residential single-family residences, condominiums , and townhouses by 2015; and (2) 50% of all new residential single-family residences, condominiums, and townhouses, by 2020.” Such a state law that requires the counties to establish and enforce rules, based on a state initiative or policy, could be an “unfunded mandate,” which the counties could refuse to implement.
- **Effective Date.** The bill, which would go into effect on January 1, 2010, is impracticable and not feasible especially in these hard economic times for developers and even small lot owners who want to develop multi-family residential units.

Thank you for the opportunity to express our concerns on this matter.