



HOUSE COMMITTEE ON FINANCE

March 31, 2010, 7:00 P.M.

Room 308

(Testimony is 2 pages long)

TESTIMONY IN SUPPORT OF SB 2231 SD1 HD1

Chair Oshiro and members of the Committee:

The Blue Planet Foundation supports Senate Bill 2231 SD1 HD1, a measure that both provides a general excise tax exemption for electric vehicles and electric vehicle charge points for a set period of time and ensures that home and condo owners have the ability to install an electric vehicle charging system in parking spaces that they own. Electric vehicles not only provide clean, quiet mobility solutions to Hawai'i residents and visitors, but they can provide on-grid electricity storage for intermittent renewable energy sources.

Blue Planet greatly appreciates that the Committee on Energy & Environmental Protection amended this measure to remove an additional barrier to electric vehicle charging systems—restrictive rules and covenants that prohibit the use of charging systems in parking spots that residents own. We strongly support moving this measure forward with this amendment (as described in Section 2 of SB 2231 SD1 HD1).

Electric vehicles (EV) will play a large role in Hawaii's clean energy future. By using stored electrical energy, EVs can take advantage of intermittent solar, wind, and other clean energy resources. Most vehicles sit idle 22+ hours of the day, so they become de facto energy storage devices if their batteries are plugged into the grid when they are not in use. With smart grid infrastructure in place, EVs become an essential component to electricity load and clean energy resource balancing—in addition to providing clean mobility solutions for Hawai'i residents and visitors.

Electric vehicles today have evolved from their "golf cart" roots. In fact, one new production model, the Tesla Roadster, is a high-end sports car that can accelerate from zero to 60 miles per hour in under four seconds—beating almost all regular internal combustion engines on the road today. The drawback, however, is its price. As with most full performance EVs, the battery

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technology currently adds considerable expense to the cost of the EV. A GET waiver for EV purchase will help to overcome this barrier.

The availability of charging stations will be a key driver for EV use in Hawaii. Without widespread availability of EV charging infrastructure throughout the state, it is highly unlikely that there will be widespread adoption and use of EVs in Hawai'i. This policy proposes to facilitate early adoption of EVs and the development of both public and private EV charging infrastructure in Hawai'i by providing a GET exemption.

Future policy efforts to encourage EV adoption and use could include:

- A \$1500 tax credit or rebate for new charge spots installed in Hawai'i; and
- Creation of preferential electricity rates to encourage EV charging off-peak with electricity from clean energy sources. Such a policy would support three clean energy goals: encouraging EV use, increasing clean energy consumption, and leveling out the electricity demand on the grid.

Blue Planet greatly appreciates the addition by the previous Committee to include a new section that ensures that home and condo owners have the ability to install an electric vehicle charging system in parking spaces that they own. Unfortunately, some Hawai'i residents are currently prohibited from installing charge spots in parking spaces that they own.

The amendment language (Section 2 of SB 2231 SD1 HD1) is similar to previous successful legislative efforts to remove restrictive covenants and rules that prohibited the use of solar devices or clotheslines in homeowners associations. The language amends HRS 196 with a new section that disallows the prohibition of EV charging systems. The language allows the homeowner association ("private entity") to adopt rules regarding the placement of the devices, standards, required insurance, and other precautions. The private entity the private entity may also require fair payment for electricity used by such electric vehicle charging system.

Blue Planet believes that the proposed amendments are necessary, fair, and legal for the following reasons:

1. The proposed language allows the enactment of rules or bylaws governing EV charging systems as long as they are not unreasonable.
2. Locally, Act 157 (2005), disallowing most restrictions on solar device usage, has not been challenged.
3. Case law is supportive. In *Applications of Herrick and Irish*, 82 Hawai'i 329 (1996): "In deciding whether a state law has violated the federal constitutional prohibition against impairment of contracts, U.S. Const., art. I, § 10, cl. 1, we must assay the following criteria: (1) whether the state law operated as a substantial impairment of a contractual relationship; (2) whether the state law was designed to promote a significant and

legitimate public purpose; and (3) whether the state law was a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose."

4. The goal of this proposed amendment is to promote a significant and legitimate public purpose, namely, the critical goal of reducing Hawaii's expensive dependency on imported fossil fuel by encouraging electric vehicle use.
5. Nationally, association rules have been invalidated or overridden in the past: Jim Crow laws and the FCC allowing satellite dishes are two significant examples.
6. The courts have often found that prohibiting the enforcement of pre-existing restrictive covenants does not violate the contracts clause. "There is no unconstitutional retroactive impairment of contract rights where the legislature operates pursuant to a strong state interest, does not drastically alter the pre-enactment right and does not unreasonably destroy reliance on the right." *Westwood Homeowners Association v. Tenhoff*, 745 P.2d 976, 983 (Ariz. App. 1987) (retroactive application of public policy prohibiting enforcement of restrictive covenants that bar group homes for the disabled in residential neighborhoods does not violate the contracts clause)¹

Blue Planet believes that the Section 2 language that allows the installation of charging systems is a fair, balanced, and necessary policy to remove yet another barrier for local residents to do the right thing in decreasing their energy use.

We respectfully request that the Finance Committee forward SB 2231 SD1 HD1 as written or amended to include only the Section 2 language. We are happy to work with this Committee to further refine this language as necessary.

Thank you for the opportunity to testify.

¹ See also: *Ball v. Butte Home Health, Inc.* 70 Cal.Rptr.2d 246 (Cal App. 3 Dist. 1997) (retroactive application of law forbidding enforcement of restrictive covenants that prohibit group homes for the disabled does not violate the contracts clause).
Barrett v. Dawson, 71 Cal.Rptr.2d 899 (Cal.App.4 Dist. 1998) (retroactive application of statute prohibiting enforcement of restrictive covenant barring day cares homes in residential neighborhoods does not violate the contracts clause).