



Bill No. SB2231

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HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
March 9, 2010, 9:00 A.M.
Room 325

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SB 2231 SD1, PROPOSED AMENDMENT

Chair Morita and members of the Committee:

The Blue Planet Foundation supports Senate Bill 2231 SD1, a measure to provide a general excise tax exemption for electric vehicles and electric vehicle charge points for a set period of time. 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 respectfully asks that this measure be amended to remove an additional barrier to electric vehicle charging systems—detailed at the end of this testimony.

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

In addition to a GET exemption for EVs and EV charging infrastructure, Blue Planet supports the 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.

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. Blue Planet believes it would be more effective to extend a \$1500 tax credit or rebate for new charge spots installed in Hawai'i.

SUGGESTED AMENDMENT

Blue Planet respectfully asks that this Committee amend SB 2231 with 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. *Blue Planet's suggested language is being submitted in a separate file.*

The suggested amendment language 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 proposed 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 proposed amendments to allow 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 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).

A BILL FOR AN ACT

RELATING TO ELECTRIC VEHICLES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that to reach the Hawaii clean energy initiative's goal in transportation, Hawaii must deploy a significant number of electric drive vehicles and create an electric vehicle charging infrastructure. To encourage the widespread availability of electric vehicles and the creation of a vehicle charging infrastructure in Hawaii, it is necessary to attract the attention of automakers to encourage them to make electric vehicles available in Hawaii and encourage Hawaii consumers and vehicle dealers to select these vehicles. The transformation to a clean energy economy will reduce the impact on Hawaii of oil price volatility, provide a measure of energy security, provide economic diversification, and keep energy dollars circulating within Hawaii's economy.

The purpose of this Act is to encourage the deployment of electric vehicles in the State by exempting electric

vehicles and electric vehicle charging systems from the general excise tax and by preventing the restriction of placement of such charging systems in single-family and multi-family residential dwellings and townhouses.

SECTION 2. Section 237-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

"Electric vehicle" means a motor vehicle, including a plug-in hybrid electric vehicle that:

- (1) Draws propulsion using a traction battery with at least four kilowatt hours of capacity;
- (2) Uses an off-board source of energy to recharge the battery;
- (3) Is originally used by the taxpayer; and
- (4) Is acquired for use or lease by the taxpayer and not for resale.

"Electric vehicle charge point" means the part of the electric vehicle charging system that delivers electricity from a source outside an electric vehicle into an electric vehicle.

"Electric vehicle charging system" means a system that is designed in compliance with Article 625 of the National Electrical Code and delivers electricity from a source outside an electric vehicle into one or more electric

purchased or placed in service after July 1, 2015, and before January 1, 2020."

SECTION 4. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§196- Placement of Electric vehicle charging

system. (a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, declaration, bylaws, restriction, deed, lease, term, provision, condition, codicil, contract, or similar binding agreement, however worded, from installing an electric vehicle charging system on or near the parking stall of any single-family or multi-family residential dwelling or townhouse that the person owns. Any provision in any lease, instrument, or contract contrary to the intent of this section shall be void and unenforceable.

(b) Every private entity may adopt rules that reasonably restrict the placement and use of electric vehicle charging systems for the purpose of charging electrical vehicles in the parking stalls of any single-family or multi-family residential dwelling or townhouse; provided that those restrictions do not prohibit the placement or use of electric vehicle charging systems altogether. No private entity shall assess or charge any

homeowner any fees for the placement of any electric vehicle charging system; provided that the private entity may require fair payment for electricity used by such electric vehicle charging system.

(C) Any person may place an electric vehicle charging system on or near the parking stall of any single-family or multi-family residential dwelling or townhouse unit owned by that person, provided that:

(1) The system is in compliance with any rules and specifications adopted pursuant to subsection (b);

(2) The system is registered with the private entity of record within thirty days of installation; and

(3) If the system is placed on a common element or limited common element as defined by a project's declaration, the homeowner shall first obtain the consent of the private entity; provided further that such consent shall be given if the homeowner agrees in writing to:

(A) Comply with the private entity's design specification for the installation of the system;

(B) Engage a duly licensed contractor to install the system; and

(C) Within fourteen days of approval of the system by the private entity, provide a certificate of