

SB 2197

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

State of Hawaii
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF RUSSELL KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON ENERGY AND ENVIRONMENT, AND
AGRICULTURE

Tuesday, February 14, 2011
Room 225
2:45 P.M.

SENATE BILL NO. 2197
RELATING TO LAND USE

Chairpersons Gabbard and Nishihara and Members of the Committees:

Thank you for this opportunity to provide testimony on Senate Bill No. 2197. This measure makes consistent the existing Section 201N-14(d)(3)(A) with Section 205-2(d)(6) and Section 205-4.5(a)(19) that permits solar energy facilities on "B" and "C" lands provided that the facilities not occupy more than ten percent of the acreage of the parcel, or twenty acres of land, whichever is less.

The Department of Agriculture supports efforts to diversify sources of renewable energy, provided that there is a benefit or relationship to agricultural uses or activities. The Department of Agriculture respectfully offers a proposed Senate Draft 1 that we believe advances the State's food and energy security initiatives.

The SD 1 amends the bill to limit the proposed subdivision to one leased parcel or one easement per legal lot. This will avoid multiple lot subdivisions and retain greater agricultural potential. The SD1 would permit a solar energy facility as long as its activity remains an accessory to the primary agricultural activity.



Thank you, again, for this opportunity to present our testimony.

S.B. NO. 2197 SD1 (Proposed)

A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. Section 201N-14, Hawaii Revised Statutes, is
2 amended by amending subsection (a)(2) to read as follows:

3 “§201N-14 Exemption from subdivision requirements.

4 *[Section repealed on July 1, 2020. L 2011, c 201, §4.]* (a)

5 Notwithstanding any other law or ordinance to the contrary:

6 (1) Lands within the agricultural or conservation state
7 land use district may be leased; and

8 (2) Easements may be created and granted over lands within
9 the agricultural or conservation state land use
10 district,

11 for the purpose of developing and financing a renewable energy
12 project or accessing a renewable energy project that is a
13 permitted use in the district, even if the leased land or
14 easement area has not been subdivided as a separate subdivided
15 lot or easement[~~-~~], and that no more than one easement per legal
16 lot for the purposes provided for in this section shall be
17 permitted within the agricultural state land use district.

18 Leases and easements authorized by this section shall be valid

S.B. NO. 2197_{SD1} (Proposed)

1 leases and easements for all purposes, but the exemption from
2 subdivision requirements authorized by this section shall be
3 subject to the requirements and limitations set forth in
4 subsection (d).“

5 SECTION [1]2. Section 201N-14, Hawaii Revised Statutes, is
6 amended by amending subsection (d) to read as follows:

7 "(d) The exemption from subdivision requirements
8 authorized by this section shall only apply to leases and
9 easements that meet the following requirements and shall be
10 subject to the following limitations:

11 (1) The lease or easement shall restrict the use of the
12 leased land or easement area to the development and
13 operation of a renewable energy project; provided
14 that, to comply with section 205-4.6, agricultural
15 uses and activities shall not be restricted on
16 agricultural land;

17 (2) The lease shall have an initial term of at least
18 twenty years;

19 (3) With respect to leases and easements on lands within
20 an agricultural state land use district, the exemption
21 from subdivision requirements provided by this section
22 shall be for:

S.B. NO. 2197 SD1 (Proposed)

- 1 (A) Solar energy facilities permitted under section
2 205-2(d)(6) and section 205-4.5(a)(19), on land
3 with soil classified by the land study bureau's
4 detailed land classification as overall (master)
5 productivity rating class B, C, D, or E;
- 6 (B) Wind energy facilities permitted under section
7 205-2(d)(4) and (8), including the appurtenances
8 associated with the production and transmission
9 of wind-generated energy; and
- 10 (C) Any renewable energy facilities approved by the
11 land use commission or county planning commission
12 under chapter 205;
- 13 (4) With respect to leases and easements on lands within a
14 conservation state land use district, the exemption
15 from subdivision requirements provided by this section
16 shall be for:
- 17 (A) Wind energy facilities, including the
18 appurtenances associated with the production and
19 transmission of wind-generated energy; and
- 20 (B) Any renewable energy facilities permitted or
21 approved by the board of land and natural
22 resources under chapter 183C; and

S.B. NO. 2197 SD1 (Proposed)

1 (5) The county agency charged with administering
2 subdivisions in the county in which the renewable
3 energy project is to be situated or, if the land is in
4 a conservation state land use district, the department
5 of land and natural resources, shall approve the
6 exemption from subdivision requirements within ninety
7 days after the project's developer and the owner of
8 the land on which the renewable energy project is to
9 be situated have submitted the conceptual schematics
10 or preliminary plans and specifications for the
11 renewable energy project to the county agency or the
12 department of land and natural resources, and have
13 provided to such county agency or the department of
14 land and natural resources, as applicable, a
15 certification and agreement that all applicable and
16 appropriate environmental reviews and permitting shall
17 be completed prior to commencement of development of
18 the renewable energy project. If, on the ninety-first
19 day, an exemption has not been approved, it shall be
20 deemed disapproved by the county agency or the
21 department of land and natural resources, whichever is
22 applicable."

S.B. NO. 2197^{SD1} (Proposed)

1 SECTION 3. Section 205-2, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) Agricultural districts shall include:

4 (1) Activities or uses as characterized by the cultivation
5 of crops, crops for bioenergy, orchards, forage, and
6 forestry;

7 (2) Farming activities or uses related to animal husbandry
8 and game and fish propagation;

9 (3) Aquaculture, which means the production of aquatic
10 plant and animal life within ponds and other bodies of
11 water;

12 (4) Wind generated energy production for public, private,
13 and commercial use;

14 (5) Biofuel production, as described in section
15 205-4.5(a)(15), for public, private, and commercial
16 use;

17 (6) Solar energy facilities; provided that:

18 (A) This paragraph shall apply only to land with soil
19 classified by the land study bureau's detailed
20 land classification as overall (master)
21 productivity rating class B, C, D or E; and

S.B. NO. 2197 SD1 (Proposed)

1 (B) Solar energy facilities placed within land with
2 soil classified as overall productivity rating
3 class B or C shall not occupy more than ten per
4 cent of the acreage of the parcel, or twenty
5 acres of land, whichever is lesser; and

6 (C) Solar energy facilities shall be permitted only
7 as an accessory use to an agricultural use or
8 activity as defined in subsections 205-
9 4.5(a) (1), (2) and (3) and occurring on the same
10 parcel;

11 (7) Bona fide agricultural services and uses that support
12 the agricultural activities of the fee or leasehold
13 owner of the property and accessory to any of the
14 above activities, regardless of whether conducted on
15 the same premises as the agricultural activities to
16 which they are accessory, including farm dwellings as
17 defined in section 205-4.5(a) (4), employee housing,
18 farm buildings, mills, storage facilities, processing
19 facilities, agricultural-energy facilities as defined
20 in section 205-4.5(a) (16), vehicle and equipment
21 storage areas, roadside stands for the sale of
22 products grown on the premises, and plantation

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1 community subdivisions as defined in section

2 205-4.5(a)(12);

3 (8) Wind machines and wind farms;

4 (9) Small-scale meteorological, air quality, noise, and
5 other scientific and environmental data collection and
6 monitoring facilities occupying less than one-half
7 acre of land; provided that these facilities shall not
8 be used as or equipped for use as living quarters or
9 dwellings;

10 (10) Agricultural parks;

11 (11) Agricultural tourism conducted on a working farm, or a
12 farming operation as defined in section 165-2, for the
13 enjoyment, education, or involvement of visitors;
14 provided that the agricultural tourism activity is
15 accessory and secondary to the principal agricultural
16 use and does not interfere with surrounding farm
17 operations; and provided further that this paragraph
18 shall apply only to a county that has adopted
19 ordinances regulating agricultural tourism under
20 section 205-5; and

21 (12) Open area recreational facilities.

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1 Agricultural districts shall not include golf courses and golf
2 driving ranges, except as provided in section 205-4.5(d).

3 Agricultural districts include areas that are not used for, or
4 that are not suited to, agricultural and ancillary activities by
5 reason of topography, soils, and other related characteristics."

6 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) Within the agricultural district, all lands with soil
9 classified by the land study bureau's detailed land
10 classification as overall (master) productivity rating class A
11 or B shall be restricted to the following permitted uses:

12 (1) Cultivation of crops, including crops for bioenergy,
13 flowers, vegetables, foliage, fruits, forage, and
14 timber;

15 (2) Game and fish propagation;

16 (3) Raising of livestock, including poultry, bees, fish,
17 or other animal or aquatic life that are propagated
18 for economic or personal use;

19 (4) Farm dwellings, employee housing, farm buildings, or
20 activities or uses related to farming and animal
21 husbandry. "Farm dwelling", as used in this
22 paragraph, means a single-family dwelling located on

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1 and used in connection with a farm, including clusters
2 of single-family farm dwellings permitted within
3 agricultural parks developed by the State, or where
4 agricultural activity provides income to the family
5 occupying the dwelling;

6 (5) Public institutions and buildings that are necessary
7 for agricultural practices;

8 (6) Public and private open area types of recreational
9 uses, including day camps, picnic grounds, parks, and
10 riding stables, but not including dragstrips,
11 airports, drive-in theaters, golf courses, golf
12 driving ranges, country clubs, and overnight camps;

13 (7) Public, private, and quasi-public utility lines and
14 roadways, transformer stations, communications
15 equipment buildings, solid waste transfer stations,
16 major water storage tanks, and appurtenant small
17 buildings such as booster pumping stations, but not
18 including offices or yards for equipment, material,
19 vehicle storage, repair or maintenance, treatment
20 plants, corporation yards, or other similar
21 structures;

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- 1 (8) Retention, restoration, rehabilitation, or improvement
2 of buildings or sites of historic or scenic interest;
- 3 (9) Roadside stands for the sale of agricultural products
4 grown on the premises;
- 5 (10) Buildings and uses, including mills, storage, and
6 processing facilities, maintenance facilities, and
7 vehicle and equipment storage areas that are normally
8 considered directly accessory to the above-mentioned
9 uses and are permitted under section 205-2(d);
- 10 (11) Agricultural parks;
- 11 (12) Plantation community subdivisions, which as used in
12 this chapter means an established subdivision or
13 cluster of employee housing, community buildings, and
14 agricultural support buildings on land currently or
15 formerly owned, leased, or operated by a sugar or
16 pineapple plantation; provided that the existing
17 structures may be used or rehabilitated for use, and
18 new employee housing and agricultural support
19 buildings may be allowed on land within the
20 subdivision as follows:

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- 1 (A) The employee housing is occupied by employees or
2 former employees of the plantation who have a
3 property interest in the land;
- 4 (B) The employee housing units not owned by their
5 occupants shall be rented or leased at affordable
6 rates for agricultural workers; or
- 7 (C) The agricultural support buildings shall be rented
8 or leased to agricultural business operators or
9 agricultural support services;
- 10 (13) Agricultural tourism conducted on a working farm, or a
11 farming operation as defined in section 165-2, for the
12 enjoyment, education, or involvement of visitors;
13 provided that the agricultural tourism activity is
14 accessory and secondary to the principal agricultural
15 use and does not interfere with surrounding farm
16 operations; and provided further that this paragraph
17 shall apply only to a county that has adopted
18 ordinances regulating agricultural tourism under
19 section 205-5;
- 20 (14) Wind energy facilities, including the appurtenances
21 associated with the production and transmission of
22 wind generated energy; provided that the wind energy

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1 facilities and appurtenances are compatible with
2 agriculture uses and cause minimal adverse impact on
3 agricultural land;

4 (15) Biofuel processing facilities, including the
5 appurtenances associated with the production and
6 refining of biofuels that is normally considered
7 directly accessory and secondary to the growing of the
8 energy feedstock; provided that biofuels processing
9 facilities and appurtenances do not adversely impact
10 agricultural land and other agricultural uses in the
11 vicinity.

12 For the purposes of this paragraph:

13 "Appurtenances" means operational infrastructure
14 of the appropriate type and scale for economic
15 commercial storage and distribution, and other similar
16 handling of feedstock, fuels, and other products of
17 biofuels processing facilities.

18 "Biofuel processing facility" means a facility
19 that produces liquid or gaseous fuels from organic
20 sources such as biomass crops, agricultural residues,
21 and oil crops, including palm, canola, soybean, and
22 waste cooking oils; grease; food wastes; and animal

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1 residues and wastes that can be used to generate
2 energy;

3 (16) Agricultural-energy facilities, including
4 appurtenances necessary for an agricultural-energy
5 enterprise; provided that the primary activity of the
6 agricultural-energy enterprise is agricultural
7 activity. To be considered the primary activity of an
8 agricultural-energy enterprise, the total acreage
9 devoted to agricultural activity shall be not less
10 than ninety per cent of the total acreage of the
11 agricultural-energy enterprise. The agricultural-
12 energy facility shall be limited to lands owned,
13 leased, licensed, or operated by the entity conducting
14 the agricultural activity.

15 As used in this paragraph:

16 "Agricultural activity" means any activity
17 described in paragraphs (1) to (3) of this subsection.

18 "Agricultural-energy enterprise" means an
19 enterprise that integrally incorporates an
20 agricultural activity with an agricultural-energy
21 facility.

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1 "Agricultural-energy facility" means a facility
2 that generates, stores, or distributes renewable
3 energy as defined in section 269-91 or renewable fuel
4 including electrical or thermal energy or liquid or
5 gaseous fuels from products of agricultural activities
6 from agricultural lands located in the State.

7 "Appurtenances" means operational infrastructure
8 of the appropriate type and scale for the economic
9 commercial generation, storage, distribution, and
10 other similar handling of energy, including equipment,
11 feedstock, fuels, and other products of agricultural-
12 energy facilities;

13 (17) Construction and operation of wireless communication
14 antennas; provided that, for the purposes of this
15 paragraph, "wireless communication antenna" means
16 communications equipment that is either freestanding
17 or placed upon or attached to an already existing
18 structure and that transmits and receives
19 electromagnetic radio signals used in the provision of
20 all types of wireless communications services;
21 provided further that nothing in this paragraph shall
22 be construed to permit the construction of any new

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1 structure that is not deemed a permitted use under
2 this subsection;

3 (18) Agricultural education programs conducted on a farming
4 operation as defined in section 165-2, for the
5 education and participation of the general public;
6 provided that the agricultural education programs are
7 accessory and secondary to the principal agricultural
8 use of the parcels or lots on which the agricultural
9 education programs are to occur and do not interfere
10 with surrounding farm operations. For the purposes of
11 this section, "agricultural education programs" means
12 activities or events designed to promote knowledge and
13 understanding of agricultural activities and practices
14 conducted on a farming operation as defined in section
15 165-2; or

16 (19) Solar energy facilities that do not occupy more than
17 ten per cent of the acreage of the parcel, or twenty
18 acres of land, whichever is lesser, and solar energy
19 facilities shall be permitted only as an accessory to
20 agricultural uses or activities as defined in
21 subsection (a) (1), (2) and (3) and occurring on the
22 same parcel; provided that this use shall not be

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1 permitted on lands with soil classified by the land
2 study bureau's detailed land classification as overall
3 (master) productivity rating class A. "

4 SECTION [~~2~~]5. New statutory material is underscored.

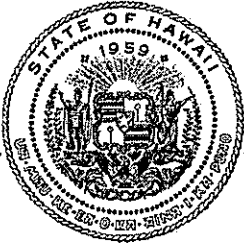
5 SECTION [~~3~~]6. This Act shall take effect upon its
6 approval.

7 INTRODUCED BY: _____

8

9 SB2197 PROPOSED SD1

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**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEES ON
ENERGY AND ENVIRONMENT
AND
AGRICULTURE**

Tuesday, February 14, 2012
2:45 PM
State Capitol, Conference Room 225

in consideration of
SB 2197
RELATING TO LAND USE.

Chairs Gabbard and Nishihara; Vice Chairs English and Kahele; and Members of the
Committees.

The Department of Business, Economic Development and Tourism (DBEDT) supports
with comments SB 2197, which amends the subdivision exemption process under Chapter 201N-
14, Hawai'i Revised Statutes (HRS) to make lands with B or C Land Study Bureau (LSB) rating
eligible for the exemption from subdivision requirements.

HRS 205-2(d)(6) and Act 217, Session Laws of Hawaii (2011), allow solar energy
facilities on B or C rated agricultural lands only if the solar energy facility does not occupy more
than 10% of the parcel acreage or 20 acres of land, whichever is lesser. Currently, HRS 201N-
14(d)(3) specifies the subdivision exemption is allowed only for solar energy facilities on D or E

lands. Therefore, developers of solar energy facilities allowed on B or C lands cannot utilize the HRS 201N-14 subdivision exemption process.

As a result of Act 217, numerous solar energy developers are planning the use of limited B and C lands for solar energy development. These facilities, however, typically do not need the entire parcel. HRS 201N-14 allows for the delineation of separate lots (easement, lease, or other possessory interest) for financing purposes without requiring applicants to go through the formal subdivision process. The two separate lots become recordable and can be financed independent of one another, allowing a renewable energy project on one lot and the remainder lot open for other uses. Per HRS 201N-14, when the renewable energy project is no longer operational, the exemption no longer applies and the lots would revert back to the one original parcel.

Given food and energy independence/security are Administration priorities, DBEDT has coordinated with the Department of Agriculture and the State Office of Planning to address concerns that the further subdivision of higher quality B and C rated agricultural lands could lead to higher density and increased land values in the Agricultural District. The temporary nature of the HRS 201N-14 exemption process, as opposed to permanent subdivision, does not create a non-conforming lot that could lead to higher density in the Agricultural District.

To make HRS 201N-14 consistent with HRS 205(d)(6) allowances, DBEDT suggests the following amendment to SB 2197, page 2, lines 1 through 5:

"(A) Solar energy facilities permitted under section 205-2(d)(6) ~~on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E~~"

Thank you for the opportunity to offer these comments in support of SB 2197.



Hawaii Solar Energy Association
Serving Hawaii Since 1977

February 14, 2012
2:45 PM

SENATE
COMMITTEE ON ENERGY & ENVIRONMENT
AND
COMMITTEE ON AGRICULTURE
SB 2197

Mark Duda
President

TESTIMONY IN STRONG SUPPORT

Aloha Chair Gabbard, Chair Nishihara, Vice Chairs and Members of the Committee:

SB 2197 addresses a technical incompatibility between HRS 205(d)(6) and HRS 201N-14. HRS 205(d)(6) defines solar energy facilities as an approved use on agricultural lands rated B, C, D, and E. If the productivity rating is B or C, however, only a small portion of the land may be used for solar energy facilities. (The allowable portion is 10 percent of the total parcel or 20 acres, whichever is smaller). The real world problem faced by solar developers that the B and C provisions in HRS 205(d)(6) solve is that on a parcel that blends multiple classifications, it may make sense to use a portion of the higher rated land, for example to locate inverter pads near the utility point of interconnection or to complete a rectilinear module layout.

Meanwhile, in order to develop a solar energy project it is often necessary to designate and record an interest in a portion of that parcel. This is the case because land for ground mounted solar projects is typically leased. Because the systems are not permanent improvements, developers often avoid formally subdividing the property so that the leased portion can be reincorporated into the larger parcel once the useful life of the system has ended. In order to do this, some developers use the exemption outlined in 201N-14(d)(3)(a). The problem is that this exemption is currently allowed only for lands rated D and E. As a result, the process would be made more straightforward if the subdivision exemption were open to all projects that complied with the concept of approved agricultural use for solar energy use articulated in HRS 205(d)(6).

To this end we support this measure and note that the language proposed by DBEDT (and included below) may offer a simpler and more parsimonious way to accomplish the intent of SB 2197. We note, however, that the DBEDT language and the current language would have an identical impact on PV development at this time.

Thank you for the opportunity to testify on this measure.

Mark Duda
President, Hawaii Solar Energy Association

About Hawaii Solar Energy Association

Hawaii Solar Energy Association (HSEA) is comprised of installers, distributors, manufacturers and financiers of solar energy systems, both hot water and PV, most of which are Hawaii based, owned and operated. Our primary goals are: (1) to further solar energy and related arts, sciences and technologies with concern for the ecologic, social and economic fabric of the area; (2) to encourage the widespread utilization of solar equipment as a means of lowering the cost of energy to the American public, to help stabilize our economy, to develop independence from fossil fuel and thereby reduce carbon emissions that contribute to climate change; (3) to establish, foster and advance the usefulness of the members, and their various products and services related to the economic applications of the conversion of solar energy for various useful purposes; and (4) to cooperate in, and contribute toward, the enhancement of widespread understanding of the various applications of solar energy conversion in order to increase their usefulness to society.

DBEDT Proposed Language

To make HRS 201N-14 consistent with HRS 205(d)(6) allowances, DBEDT suggests the following amendment to SB 2197, page 2, lines 1 through 5:

"(A) Solar energy facilities permitted under section 205-2(d)(6) ~~on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E.~~"

Testimony for ENE/AGL 2/14/2012 2:45:00 PM SB2197

Conference room: 225
Testifier position: Comments Only
Testifier will be present: No
Submitted by: Penny Levin
Organization: Individual
E-mail: pennysfh@hawaii.rr.com
Submitted on: 2/6/2012

Comments:

Aloha Chair and honorable committee members;

I am testifying as an individual today.

My first comment is in regards to agricultural lands designations and their meaning. This bill is a sweeping waiver of the permitting process that will apply to a broad range of lands, topography and soil types. In 2010, the Taro Security and Purity Task Force noted that the current agriculture designations were made in relation to lands suitable for sugar and pineapple (A). Fine agricultural lands can be found in the B-D category where sometimes the designation relates to a lack of water resources or road infrastructure but is not a reflection of soil quality. These lands can still be highly productive. I would hesitate to make waive the permitting process on all of these lands.

My second comment is in regards to state land leases as a whole. The state has yet to implement or enforce a mitigation requirement for all lessees that would require them to 1) remove the remnants of their projects; and 2) mitigate the damage of their projects - from erosion and quarrying to leaving materials and structures to rust at state and county expense for cleanup. I would urge a clause be inserted into this bill that requires any lessee of state land, no matter the project, to leave the land as, or better, than when they came to it; as well as, a requirement for the removal of any and all equipment, materials, trash, structures etc within 1 year of vacating, where the quality and life of the structure(s) are not worth rehabilitating or at the end of their life or the state does not propose to take possession and use thereof in a timely manner. If the state takes possession and then lets a structure fall into disuse, as has happened many times, the state should be liable for the cleanup.

The footprint state land lessees have been allowed to leave in the past walks upon all of our futures.

Mahalo for this opportunity to testify.

Penny Levin
Wailuku, Maui

Testimony for ENE/AGL 2/14/2012 2:45:00 PM SB2197

Conference room: 225

Testifier position: Support

Testifier will be present: No

Submitted by: Raymond E Hoe

Organization: Individual

E-mail: hanahoe@yahoo.com

Submitted on: 2/13/2012

Comments:

I support the proposed bill, and find that harvesting solar rays and turning it into electricity is much more efficient and environmentally cleaner than growing biofuels to generate the same power.