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HEARING:
Monday, February 10, 2014
2:45 PM
Conference Room 325

My name is John Morris and I am testifying against HB 1940. I work as an attorney representing condominium and other homeowner associations.

This bill indicates that at some point, there should be a re-evaluation of the legislature's efforts to benefit solar energy contractors by overriding the rights of homeowner associations and their members. The common elements in a town home condominium project, such as the roof, are owned by every member of the association in undivided shares. Through section 196-7, the legislature already allows an individual owner the place solar energy devices on common element roofs and other areas actually owned by everyone in the project. In other words, in enacting that section, the legislature took away the private property rights of every member of the association and gave them to an individual owner. Leaving aside the constitutionality of that action, the legislature should at least evaluate the unfairness of HB 1940.

HB 1940 seems to be even more biased in favor of solar energy companies and against those who actually own the property on which solar energy companies are proposing to install solar energy devices. For example, why should section 1 of the bill include a one-sided provision that only award legal fees to a solar energy contractor? What would happen if the solar contractor damaged the roof and caused leaks into the unit below that cost thousands of dollars to repair? Apparently, under this section, the association would be entitled to no legal fees whatsoever if it pursued that claim.

At a minimum, the section should state that the association is also entitled recover its legal fees if the solar energy company, or the owner who is asking them to install solar energy devices, violate the rules or the law, causes damage, etc. Instead, section 1 indicates a clear bias in favor of the solar company and against associations.

Similarly, section 2 of the bill proposes to override an association's (and its members') rights in their roof warranty and substitute what may end up being a worthless piece of paper. A roofing manufacturer has to have some substance because of the capital investment and the equipment necessary to actually produce materials for a roof.

In contrast, all the solar contractor may have is his license. He can just buy the solar panels and other materials when he actually needs them. Thus, in contrast to a company that manufactures roofing materials, the solar contractor can go into the solar business and out of the solar business easily, with almost no capital investment.

The newspapers are full of stories of the boom in solar contractors and, more recently, their complaints about lack of work because of the policies of HECO. Therefore, there is no reason to think some of those contractors could not go out of business. If they go out of the solar business, their warranty may be absolutely worthless to the association.

At a minimum, the bill should require the solar contract to provide evidence from a bonding company that the warranty will have some value, beyond the solar contract signature. For example, the bonding company should agree to perform if the solar contract fails to do so and the roof warranty needs to be acted on. Otherwise, once again, the legislature will be overriding the rights of associations in their members in favor of solar contractors.

Thank you for this opportunity to testify.

John Morris

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From: mailinglist@capitol.hawaii.gov
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Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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Hawaii Solar Energy Association
Serving Hawaii Since 1977

Before the House Committee on Consumer Protection & Commerce
Monday, February 10, 2014
HB 1940: Relating to Solar Energy Devices

Aloha Chair McKelvey, Vice-Chair Kawakami, and members of the House Committee on Consumer Protection & Commerce,

On behalf of the Hawaii Solar Energy Association (HSEA), I would like to testify in support for HB 1940, which requires award of reasonable attorney's fees and costs to prevailing plaintiff in action against condominium association for preventing solar energy device installation, and requires that the solar contractor provide a warranty for any roof penetrations made to install solar. HSEA is a non-profit trade organization that has been advocating for solar energy since 1977, with an emphasis on residential distributed generation and commercial for both solar hot water (SHW) and photovoltaics (PV). We currently represent 79 companies, which employ thousands of local employees working in the solar industry. With 37 years of advocacy behind us, HSEA's goal is to work for a sustainable energy future for all of Hawaii.

HRS 196-7 provides for the placement of solar energy devices on single family homes and townhouses which may be under the control of a home owner's association ("HOA"). The law mandates that individual HOAs draft rules that guide the placement of solar devices, and outlines limits which the HOAs must observe in their guidelines. Unfortunately, many HOAs have failed to draft rules for solar placement, and often prevent home owners from installing solar even though it has been the home owner's statutory right to do so since December 31, 2006. By ensuring that court costs would be paid to the prevailing party in a dispute over HRS 196-7, HOAs would be less inclined to ignore or override the rule as it currently stands.

With regards to the roof warranty, under HRS 196- the homeowner who has a solar system installed on his or her roof is mandated to obtain confirmation in writing from the company that issued the warranty that the installation of the solar energy device will not void the roof warranty. This requirement serves as a constant roadblock to homeowners whose properties fall under the control of an home owner's association as very few roofing contractors are willing—with good reason—to warranty the work of another contractor. This creates a frustrating loop where by the homeowner is unable to obtain confirmation from the roofing contractor, and is thus unable to install a solar device.

SB 2657 recognizes the current standard industry practice that the solar contractor warranties the penetrations into the roof that would be made to install and secure a solar device. The warranty of the roof is not impacted, and still stays with the contractor who installed the roof. If a roof leaks, for instance, because of the penetrations made by a solar contractor's work, it is the solar contractor who would be liable. However, if the roof leaks for any other reason, it is the roofer who installed the roof and gives the warranty who is still liable.

Thank you for the opportunity to testify.
Leslie Cole-Brooks
Executive Director
Hawaii Solar Energy Association