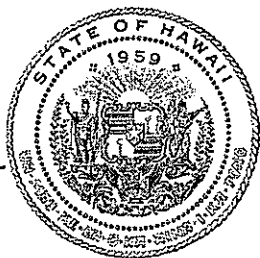


SB 19

RELATING TO RENEWABLE ENERGY.
Exempts landlords and lessors who install
renewable energy systems to their property
from the definition of "public utility".



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

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
Richard C. Lim
Director
Department of Business, Economic Development, and Tourism
before the
Senate Committee on Energy and Environment
Tuesday, February 5, 2013
2:45 PM
State Capitol, Conference Room 225

in consideration of

SB 19 RELATING TO RENEWABLE ENERGY.

Chair Gabbard, Vice Chair Ruderman, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of SB 19. This measure would exempt owners and lessors who install renewable energy systems on their property and sell the electricity generated to their tenants or lessees on the premise from the definition of "public utility".

We believe this bill will allow renters and lessees the ability to take advantage of lower priced fixed rate renewable energy, accelerating the adoption of renewable energy in Hawaii and helping the State meet its clean energy objectives. We respectfully defer to the Public Utilities Commission (PUC) regarding the regulatory aspects of this bill, and to the Consumer Advocate regarding the implementation of rates a non-utility generator could charge a tenant.

Thank you for the opportunity to offer these comments.



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

335 MERCHANT STREET, ROOM 310

P.O. Box 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

JO ANN UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

TUESDAY, FEBRUARY 5, 2013

2:45 P.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE MIKE GABBARD, CHAIR,
AND MEMBERS OF THE COMMITTEE

SENATE BILL NO. 19 - RELATING TO RENEWABLE ENERGY

DESCRIPTION:

This measure proposes to exempt landlords and lessors who install renewable energy systems to their property from the definition of "public utility."

POSITION:

The Division of Consumer Advocacy (Consumer Advocate) supports the intent of this bill with the comment that the bill is not necessary given the exceptions to the definition of public utility found in Hawaii Revised Statutes (HRS) section 269-1(2)(M).

COMMENTS:

The Consumer Advocate supports the intent of this bill that would exempt landlords and lessors who install renewable energy systems to their property from the definition of "public utility" in HRS Chapter 269. The Consumer Advocate agrees that a landlord who provides electricity to a tenant from a renewable energy source located on

the property occupied by the tenant should not be deemed to be a public utility under the definitions section of HRS section 269-1.

This was the position taken by the Consumer Advocate in Public Utilities Commission (PUC) Docket No. 2011-0329, Maui Kele Shopping Center's Request for a Declaratory Order. In that case, Maui Kele Shopping Center installed a solar photovoltaic system on the shopping center roof and proposed to sell electricity to its tenants at rates significantly below MECO's rates. Maui Kele sought a declaratory order from the PUC that Maui Kele would not be deemed to be a public utility under those facts and circumstances. The Consumer Advocate supported this position in its Statement of Position. The PUC in its decision and order determined that as long as Maui Kele did not deviate from its proposal, it would not be deemed to be a public utility.

HRS section 269-1(2) provides a list of exceptions to the definition of "public utility." The exception under section 269-1(2)(M) is applicable to the situation of a landlord or lessor providing electricity to a tenant from a renewable energy source. The applicable provision states as follows:

""Public utility":

(2) Shall not include:

(M) Any person who:

- (i) Owns, controls, operates, or manages a renewable energy System that is located on a customer's property; and
- (ii) Provides, sells or transmits the power generated from that renewable energy system to . . . the customer on whose property the renewable energy system is located"

Given this exception, the Consumer Advocate opines that this bill is not necessary.

Thank you for this opportunity to testify.

TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON ENERGY & ENVIRONMENT

FEBRUARY 5, 2013
2:45 p.m.

MEASURE: S.B. No. 19
TITLE: Relating to Renewable Energy

Chair Gabbard and Members of the Committee:

DESCRIPTION:

This measure proposes to create a specific exemption from the definition of "public utility" under Section 269-1, Hawaii Revised Statutes ("HRS"), for landlords and lessors who sell electricity produced by renewable energy systems located on the landlord's or lessor's property to tenants and lessees occupying such property.

POSITION:

The Public Utilities Commission ("Commission") believes this measure is unnecessary and would like to offer the following comments for the Committee's consideration.

COMMENTS:

S.B. No. 19 asserts that a property owner or lessor who installs a renewable energy system on his or her property and then sells electricity generated from that system to his or her tenants or lessees would be deemed a public utility within the definition of HRS Chapter 269. However, HRS § 269-1 includes an exception that the Commission believes would cover those electricity-producing property owners or lessors described in this bill. That exception reads that the following shall not be included within the definition of "public utility":

- (M) Any person who:
 - (i) Owns, controls, operates, or manages a renewable energy system that is located on a customer's property; and
 - (ii) Provides, sells, or transmits the power generated from that renewable energy system to an electric utility or to the customer

on whose property the renewable energy system is located; provided that, for purposes of this subparagraph, a customer's property shall include all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, and utility rights-of-way.

The Commission has determined that given a specific set of facts, a tenant/lessee could be defined as a "customer," therefore the existing exception can be broad enough to include landlord-tenant electricity sales transactions this measure purports to exempt. As such, the Commission has responded to a number of related inquiries from landlords and other interested parties regarding the sale of electricity generated on-site from renewable systems to tenants or lessees of the property. In each case, again, given specific set of facts, the Commission has responded that the electricity provider is not a "public utility" within the provisions of HRS § 269-1, relying on its interpretation of the existing exceptions.

The Commission defers to the Legislature if the Legislature believes the Commission's interpretation of the exception is incorrect, however, the Commission also cautions the Legislature that, given the variety of potential lease agreement terms, there may be a unique set of facts or circumstances where the exception should not apply.

Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Mike Gabbard, Chair
and Members of the Senate Committee on Energy and Environment

Date: Tuesday, February 5, 2013
Time: 2:45 p.m.
Place: Conference Room 225, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 19 Relating to Renewable Energy

The Department of Taxation (Department) supports S.B. 19 and provides the following information and comments for your consideration.

This measure exempts landlords who install renewable energy systems on their property and sell the electricity to their tenants from being considered a public utility and thus being subject to the public service company tax. The Department prefers landlords in this situation not be considered public utilities subject to the public service company tax but rather that they be considered regular business taxpayers subject to the general excise tax. The Department believes this is simpler for taxpayers and is more in keeping with the intent of these respective taxes.

Thank you for the opportunity to provide comments.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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Complete Construction Services Corp.

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BKA Builders, Inc.

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Marshall Hickox
Homeworks Construction, Inc.

Michael Watanabe
JW, Inc.

Ryan Engle
Bays Lung Rose & Holma

Scotty Anderson
Pacific Rim Partners

W. Bruce Barrett
Castle & Cooke Homes Hawaii, Inc.

Testimony to the Senate Committee on Energy and Environment
Tuesday, February 5, 2013
2:45 p.m.
State Capitol - Conference Room 225

RE: SENATE BILL NO. 19, RELATING TO RENEWABLE ENERGY

Chair Gabbard, Vice-Chair Ruderman, and members of the committee:

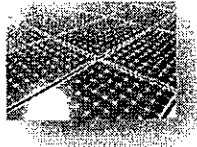
My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

BIA-Hawaii would like to offer **comments** on S.B. 19, which proposes to exempt landlords and lessors who install renewable energy systems to their property from the definition of "public utility."

The bill attempts to create an incentive for lessors to invest in alternative energy systems and by allowing the lessor to negotiate utility rates as a part of the lease. The bill is unclear as to whether or not the negotiated rates are tied to the prevailing rates regulated by the PUC. The concern is with the limited availability of real estate in this State; would the proposed bill create a situation where a lessee would be forced to pay a premium on the lease rent not only for location, but also to create a return on investment for the lessor's alternative energy system? If this premium on the negotiated lease also exceeds the prevailing PUC approved rates, this added cost would either be absorbed by the lessee or passed on to the consumer if the lessee were a commercial enterprise.

We recommend that these issues be discussed further through the legislative process.

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



SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

February 5, 2013, 2:45 P.M.

Room 225

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SB 19

Chair Gabbard, Vice-Chair Rudeman, and members of the Committee:

The Blue Planet Foundation supports SB 19, ensuring that landlords who provide renewable energy to tenants are not erroneously classified as a “utility.”

Hawaii must do all it can to help residents—homeowners and renters alike—use renewable energy as a solution to high energy prices and detrimental reliance on fossil fuels. But current rules unfortunately prolong a “split incentive” problem in many rental contexts. Where a landlord would be responsible for purchasing renewable energy equipment, but the tenant would be responsible for paying the energy bill, their incentives are not aligned. Landlords would spend, but tenants would save. Thus, while many homeowners are accessing renewable energy, solutions for tenants have been more scarce. SB 19 helps to unlock these split incentives by allowing landlords to recoup the upfront cost of renewable energy from the savings that tenants will enjoy on their bills. SB 19 achieves this without imposing onerous regulations on landlords, and without imposing additional regulatory duties on the Public Utilities Commission.

We respectfully urge the committee to forward SB 19, and thank you for this opportunity to testify in support.

info@blueplanetfoundation.org

55 Merchant Street 17th Floor • Honolulu, Hawaii | 96813 • 808-954-6142 • blueplanetfoundation.org



2/5/2013

Senate Committee on Energy & Environment

ENE

2:45 p.m.

SB 19

TESTIMONY IN SUPPORT

Chair Gabbard, Vice Chair Ruderman, and Members of the Committee:

Hawaii PV Coalition strongly supports SB 19, which would amend Hawaii Revised Statutes, Chapter 269 to clarify that property owners who install a photovoltaic system or other renewable energy systems on their property can sell power they generate to their tenants without being deemed to be a "public utility" under Chapter 269.

Under the current law, there is no such explicit exclusion for property owners who sell power they generate to their tenants. As a result, there is some ambiguity as to whether such property owners could be considered to be a "public utility" by the Public Utilities Commission. This ambiguity leads owners of shopping centers, apartment buildings, and other commercial properties to either shy away entirely from installing photovoltaic solar systems on their property, or to install much smaller systems that serve only the common areas of the building and not the tenants.

Passing SB 19 and clarifying that property owners will not be deemed to be a public utility solely for selling power they generate to their tenants will further Hawaii's interest in promoting renewable energy. Many of the commercial properties that would be benefitted from the passage of SB 19 are ideal candidates for photovoltaic solar systems, since they have a large daytime electricity load. The enactment of SB 19 would also benefit tenants by allowing them to share in the electricity savings to the property owner.

We also note that SB 19 also includes appropriate safeguards to protect tenants – specifically, the new exception would only apply where the electricity rate charged to the tenant by the property owner is fixed in advance and is part of the lease agreement between the property owner and the tenant.

Property owners should not be deemed a "public utility" solely for selling power they themselves generate on their property to tenants on that property. SB 19 would ensure that these property owners are not considered a public utility and would allow them to participate in Hawaii's clean energy initiatives. We support SB 19 and urge you to pass it as drafted. Thank you for the opportunity to provide this testimony.

Sincerely,

Mark Duda
President, Hawaii PV Coalition

The Hawaii PV Coalition was formed in 2005 to support the greater use and more rapid diffusion of solar electric applications across the state. Working with business owners, homeowners and local and national stakeholders in the PV industry, the Coalition has been active during the state legislative sessions supporting pro-PV and renewable energy bills and helping inform elected representatives about the benefits of Hawaii-based solar electric applications.



Senate Committee on Energy and Environment
Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice-Chair

SB19: Relating to Renewable Energy

Testimony of
Frank Striegl, Senior Vice President, Capital Projects
Tuesday, February 5, 2013 at 2:45 p.m.
State Capitol, Conference Room 225

Dear Chair Gabbard, Vice Chair Ruderman, and Committee Members:

Carmel Partners **supports** Senate Bill 19, the bill that exempts landlords and lessors who install renewable energy systems to their property from the definition of "public utility."

Carmel Partners is a real estate investment company that acquires, rehabilitates and operates multi-family communities in Hawaii. We have been doing business in Hawaii for the last eight years and continue to commit to investing in Hawaii. We create quality communities using innovative ideas and solutions to enhance the value for our residents. Our first priority is to our tenants and prospective tenants.

According to the Center on Budget and Policy Priorities, at the end of 2012, 43% or 194,900 households in Hawaii are renters. Of those, over 143,900 or almost 74% spend 30% or more of their income on housing. SB19 could help many of these households.

The current statute, which would classify a landlord as a public utility if they provide renewable energy to tenants is a huge disincentive. The exemption that SB19 would provide the landlord or lessor could encourage investment to benefit the tenants served, by providing them energy produced by renewable sources such as solar photovoltaic.

We see the benefits to the tenants, who to date have not been able to participate in renewable energy initiatives, as multifold, including raising the consciousness of sustainable living and energy efficiency habits as well as with potentially more stable energy rates.

Thank you for the opportunity to testify on this matter.

Carmel Partners

A handwritten signature in black ink, appearing to read "Frank Striegl", written over a horizontal line.

Frank Striegl, SVP

FORESTCITY

Senate Committee on Energy and Environment
Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice-Chair

SB19: Relating to Renewable Energy

Testimony of
Jon Wallenstrom, Forest City Hawaii Residential Inc, President
Tuesday, February 5, 2013 at 2:45 p.m.
State Capitol, Conference Room 225

Dear Chair Gabbard, Vice Chair Ruderman, and Committee Members:

Forest City **supports** Senate Bill 19, the bill that exempts landlords and lessors who install renewable energy systems to their property from the definition of "public utility."

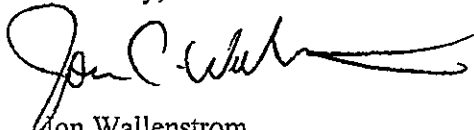
Forest City is one of the largest residential community and renewable-energy developers in the state of Hawaii. At Forest City, we leverage our real estate experience to create renewable energy projects. These developments help offset the high cost of energy in Hawaii for both our residents and the greater community, while also decreasing the state's dependence on fossil fuels.

The statute as written is a deterrent for landlords to develop renewable energy systems for tenants. The exemption that SB19 would provide the landlord or lessor could enable companies such as ours to invest in renewable solutions for our lessees.

There are numerous benefits to the tenants, which includes an awareness of energy efficient lifestyle as well as potentially more stable energy rates.

Thank you for the opportunity to testify on this matter.

Sincerely,



Jon Wallenstrom
President
Forest City Hawaii Residential Inc

Castle & Cooke
Hawai'i

680 Huihel Road, Suite 310
Honolulu, Hawai'i 96817
Oahu: (808) 548-4811 • Fax (808) 548-2980
Lana'i: (808) 965-3000 • Fax (808) 965-3512

Harry S. Saunders
President

Email Submittal: ENETestimony@capitol.hawaii.gov

Testimony by Harry Saunders
President, Castle & Cooke Hawai'i
February 4, 2013

Before the Senate committee on
ENERGY & ENVIRONMENT

February 5, 2013
2:45 p.m.
Room 225

In Support of SB 19
RELATING TO RENEWABLE ENERGY

Chair Gabbard, Vice Chair Ruderman and Members of the Senate Energy & Environment Committee.

Castle & Cooke Hawai'i supports SB 19 as it proposes to exempt landlords and lessors who install renewable energy systems to their property from the definition of "public utility."

This measure would encourage property owners and lessors to consider viable renewable energy programs that can lower or levelize their cost of electricity, pass on savings to tenants and help to reduce our reliance on foreign oil.

Mahalo for your consideration of our testimony. If you have any questions, please feel free to contact us.

Harry Saunders, President
Castle & Cooke Hawai'i
aktsukamoto@castlecooke.com
Phone: 548-4884

Richard Mirikitani, Senior Vice President and Counsel
Castle & Cooke Hawai'i
rmirikitani@castlecooke.com
Phone: 548-4890

Carleton Ching, Vice President -
Community and Government Relations
Castle & Cooke Hawai'i
cching@castlecooke.com
Phone: 548-3793



Distributed Energy Partners

Performance in Power

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
Tuesday, February 5, 2013, 2:45 p.m. – Senate Conference Room 225

TESTIMONY IN SUPPORT OF SB 19 RELATING TO RENEWABLE ENERGY

Chair Gabbard, Vice Chair Ruderman, and Members of the Committee:

Distributed Energy Partners is a Hawaii based, owned, and operated firm specializing in the development of commercial-scale distributed renewable energy projects, which include solar, wind, and emerging technologies.

Distributed Energy Partners strongly supports SB 19, which would amend Hawaii Revised Statutes, Chapter 269 to clarify that property owners who install a photovoltaic system or other renewable energy systems on their property can sell power they generate to their tenants without being deemed to be a "public utility" under Chapter 269.

Under the current law, there is no such explicit exclusion for property owners who sell power they generate to their tenants. As a result, there is some ambiguity as to whether such property owners could be considered to be a "public utility" by the Public Utilities Commission. This ambiguity leads owners of shopping centers, apartment buildings, and other commercial properties to either shy away entirely from installing photovoltaic solar systems on their property, or to install much smaller systems that serve only the common areas of the building and not the tenants.

Passing SB 19 and clarifying that property owners will not be deemed to be a public utility solely for selling power they generate to their tenants will further Hawaii's interest in promoting renewable energy. Many of the commercial properties that would be benefitted from the passage of SB 19 are ideal candidates for photovoltaic solar systems, since they have a large daytime electricity load. The enactment of SB 19 would also benefit tenants by allowing them to share in the electricity savings to the property owner.

We also note that SB 19 also includes appropriate safeguards to protect tenants – specifically, the new exception would only apply where the electricity rate charged to the tenant by the property owner is fixed in advance and is part of the lease agreement between the property owner and the tenant.

Property owners should not be deemed a "public utility" solely for selling power they themselves generate on their property to tenants on that property. SB 19 would ensure that these property owners are not considered a public utility and would allow them to participate in Hawaii's clean energy initiatives. We support SB 19 and urge you to pass it as drafted. Thank you for the opportunity to provide this testimony.

Sincerely,

John Cheever

SB19

Submitted on: 2/3/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Peter Li	Individual	Support	No

Comments: I believe installation of renewable energy technologies by landlords to reduce utility costs for renters is a great idea.

SB19

Submitted on: 2/4/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Petricci	Individual	Support	No

Comments: Feb 5, 2013 2:45 PM RE: SB19 Position Support Aloha Senator Gabbard and committee This makes sense, please support it. Robert Petricci

SB19

Submitted on: 2/3/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Baron	Individual	Support	No

Comments: Aloha kakou, I support on-bill financing and urge you to support this bill too. Without it, unnecessary obstacles prevent renters and landlords from moving forward with the rest of Hawaii into a greener future. Thank you for helping the rest of us participate in the conversion to a sustainable future. Mahalo, Laurie Baron

SB19

Submitted on: 2/4/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Davi-Ann Mendiola	Individual	Support	Yes

Comments: As a Hawaii renter, I strongly urge that this bill be passed.

SB19

Submitted on: 2/4/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Lezley P. Faleafine	Individual	Support	Yes

Comments: Dear Committee Members, As a resident and renter on the State of Hawaii I strongly urge you to pass SB19. Aloha, L.P. "Neenz" Faleafine