

SB2270

SD1

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Testimony before the Senate Judiciary Committee
IN OPPOSITION of Senate Bill 2270 Relating to County Zoning

February 21, 2014 11:30 AM
Conference Room 016

By Michael A. Dahilig
Director of Planning, County of Kauai

Honorable Members of the Committees:

On behalf of the County of Kaua'i Planning Department, I offer testimony **IN OPPOSITION** of Senate Bill 2270. As we understand, this bill confers upon a property owner a private right of action and allows the property owner to file suit directly in circuit court to enforce zoning violations on neighboring properties that directly affect them.

This bill has the potential to create situations that may pit neighbor against neighbor, and could lead to unfettered abuse by individuals. Additionally, the cost and time associated with dealing with a legal suit could be extremely expensive to all parties involved, and clog the court system.

More directly of concern to the County is the ability to *decline* enforcement. The decision to decline enforcement is in fact an exercise of County authority to enforce laws, just like a prosecutor electing not to prosecute a case. Providing this unfettered ability to privately enforce a zoning ordinance provides an end run around the County's authority by an unhappy neighbor and provides a lack of finality on enforcement calls leading to uncertainty about the interpretation of the zoning code.

At its face, Euclidian zoning depends on consistency of interpretations made by the administrative departments. This proposed bill will weaken this basic authority of County zoning and leave it up to the courts to create case law leading to ambiguous unenforceable precedent.

Lastly, this bill has unintended consequences as it does not address zoning interpretations under HRS 205. Many zoning calls made by the Counties are as a consequence of HRS 205 and related case law guidance, which is separate and apart from the HRS 46 authorization this bill addresses. County enforcement is aligned under all these superior statutes and this bill could unnecessarily create conflicts in how these alignments are established. Mahalo for your consideration.

February 21, 2014

The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor
State Capitol, Room 016
Honolulu, Hawaii 96813

RE: S.B. 2270, S.D.1, Relating to County Zoning

HEARING: Friday, February 21, 2014 at 11:30 a.m.

Aloha Chair Hee, Vice-Chair Shimabukuro, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,300 members. HAR **opposes** S.B. 2270, S.D.1 that confers upon a property owner a private right of action and allows the property owner to file suit directly in circuit court to enforce zoning violations on neighboring properties that directly affect them.

In *Pavsek v. Sanvold*, the Intermediate Court of Appeals held that HRS §46-4(a) creates a private right of action for alleged Land Use Ordinance (LUO) zoning violations, but the action is subject to primary jurisdiction, in which the party is required to seek an administrative determination of the claim before proceeding with the suit to obtain judicial enforcement of the LUO.

S.B. 2270, S.D.1 provides for one property owner to file suit directly against another property owner for county zoning violations, and proposes to circumvent administrative remedies and processes.

Additionally, HAR believes S.B. 2270, S.D.1, has the potential to create situations that may pit neighbor against neighbor, and could lead to abuse by neighbors. HAR further believes that the government should be the first line of remedy and the appropriate authority to enforce zoning disputes. County zoning and enforcement should be left with the respective counties, and such disputes should be filed with the appropriate county departments first, so that administrative measures and/or sanctions may be taken.

Mahalo for the opportunity to testify.



Hawaii Rifle Association

State Affiliate of the National Rifle Association

Founded in 1857

February 19, 2014

Testimony on SB2270, SD1

Before JDL, Friday, February 21, 2014, 11:30 am, Rm 016

IN OPPOSITION

HRA opposes this measure that would allow proliferation of nuisance suits by disgruntled neighbors of established firing ranges. Thank you for the opportunity to testify on behalf of HRA.

Dr. Maxwell Cooper,
HRA Legislative Liaison
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225-6944

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB2270 on Feb 21, 2014 11:30AM*
Date: Wednesday, February 19, 2014 3:36:09 PM

SB2270

Submitted on: 2/19/2014

Testimony for JDL on Feb 21, 2014 11:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: barteng@hawaii.rr.com
Subject: Submitted testimony for SB2270 on Feb 21, 2014 11:30AM
Date: Thursday, February 20, 2014 9:43:18 AM

SB2270

Submitted on: 2/20/2014

Testimony for JDL on Feb 21, 2014 11:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Lawrence Bartley	Individual	Comments Only	No

Comments: SUPPORT SB2270 TESTIMONY OF LAWRENCE BARTLEY HRS 46-4 already gives private right of action It clearly reads: "The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances." A recent decision by the Intermediate Court of Appeals makes it necessary Paraphrased from a recent Real Estate Law Journal article (attached): A lawsuit was filed by a North Shore resident (Pavsek-attached) after the C&C Honolulu failed to enforce its LUO. At issue was whether a state statute, HRS 46-4, creates a so-called "private right action" to sue in court to enforce county land use laws. The state court judge dismissed the lawsuit, finding that he did not have jurisdiction to issue an injunction. On appeal, the ICA ruled that "directly affected" property owners do have a private right to sue under county land use laws. However, that right is subject to the "doctrine of primary jurisdiction" - a legal way of saying that property owners must first demand that the county enforce the laws. In this case, the plaintiffs must first pursue resolution of their claim regarding illegal vacation rentals with the City Department of Planning & Permitting and then the Zoning Board of Appeals, before they can go to court. The ruling creates a dilemma for property owners who are aggrieved by a county's failure or refusal to enforce its own land use laws. The property owner must first spend its own time and money in an administrative proceeding - and essentially accuse the county of not doing its job before it can go to court to get an injunction to enforce the law. End paraphrasing Review of the attached Pavsek complaint reveals that Pavsek had repeatedly requested the City to enforce its LUO ? without result. The original legislative intent of 46-4 was clear, give affected parties the private right to sue. The ICA has effectively removed that right. SB2270 simply tells the court to follow the intent of the long-standing legislation and legislative intent. There is nothing new here, the private right to sue was long-established in HRS 46-4. SB2270 is just clarification for the courts. The infrequent previous use of this clause in 46-4 shows that the private right to sue is only used in very egregious violations of the LUO coupled with the City's failure to enforce. Pavsek may be the only private case filed to date under 46-4. Passage of SB2270 will not result in a rash of "neighbor vs.

neighbor" lawsuits, as is claimed by the testimony of the Hawaii Assn of Realtors. SB2270 will direct the courts to respect affected property owners' avenue of last resort. Lawrence Bartley 217 Ohana Street 261-0598 224-4040 cell

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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