

SB2270

SD1

LATE

TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: mike.molina@co.maui.hi.us
Subject: Submitted testimony for SB2270 on Feb 21, 2014 11:30AM
Date: Thursday, February 20, 2014 6:05:28 PM

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
Mike Molina	Mayor Alan Arakawa, County of Maui	Oppose	No

Comments: Aloha Chairman Hee & Members, I oppose SB 2270 for the following reasons: -The bill could result in many frivolous and expensive lawsuits involving the counties -SB 2270 opens an avenue to bypass the counties own administrative process Thank You, Mayor Alan Arakawa

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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DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

February 21, 2014

The Honorable Clayton Hee, Chair
and Members of the Committee on
Judiciary and Labor
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Hee and Committee Members:

SUBJECT: Senate Bill No. 2270, SD1
Relating to County Zoning

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 2270, SD1, which would allow any property owner to file suit directly in Circuit Court to enforce zoning violations on neighboring properties that directly affect them.

State law already allows property owners to sue under county land use laws, but only after they've exhausted all administrative relief. This means property owners must wait until the county has had an opportunity to enforce the law before they can go to court to seek an injunction to enforce the law.

This Bill would essentially relinquish City authority and enforcement over the Land Use Ordinance (LUO) to people who are not familiar with county zoning laws. In essence, the Bill would deputize people who may not be happy with what a neighbor may lawfully be doing on private property and allow them to take enforcement matters into their own hands.

The LUO is a complex document, and interpreting what is permissible or not permissible within county zoning codes is already a complex process. Only trained staff, such as with the respective county planning departments, should be allowed to make these educated decisions. Giving a lay person the authority to make a judgment on these matters is a recipe for disaster.

This Bill also has the potential to create situations that pit neighbor against neighbor, and could lead to abuse by neighbors. Additionally, the cost and time associated with dealing with the litigation could be extremely expensive to all parties involved, including the City, and the court system.

In summary, the counties already have an administrative process when it comes to alleged violations of the LUO. To give private property owners the ability to skirt this process

The Honorable Clayton Hee, Chair
and Members of the Committee on Judiciary and Labor
Hawaii State Senate
Re: Senate Bill No. 2270, SD1
February 21, 2014
Page 2

and go directly to the courts to enforce alleged violations would significantly frustrate the legal system and the land use process. For these reasons, please hold Senate Bill No. 2270, SD1, in Committee.

Thank you for the opportunity to testify.

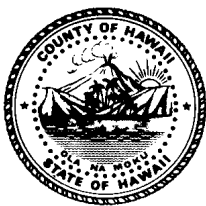
Very truly yours,

A handwritten signature in blue ink that reads "George I. Atta". The signature is written in a cursive style with a prominent "G" and "A".

George I. Atta, FAICP
Director

GIA:cl
SB2270SD1-cl

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

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

February 21, 2014, 11:30AM
Conference Room 016

By Duane Kanuha
Director of Planning, County of Hawai'i

Honorable Members of the Committee:

The Hawai'i County Planning Department offers our testimony in **OPPOSITION** to Senate Bill 2270. This bill confers upon a property owner a right of action and allows the property owner to pursue litigation directly to the circuit court to enforce zoning violations on neighboring properties that affect them.

The County's have the exclusive jurisdiction under HRS, Chapter 205-5 (Zoning) to govern zoning within all State Land Use Districts, except for the Conservation district. Under HRS, Chapter 46-4 (County Zoning), zoning power is vested with the Counties and shall be liberally construed in favor of the county exercising them, including the power of enforcement.

Interpreting what is permissible or non-permissible within County zoning categories is already a complex process, and one that can easily be subject to misinterpretation or just plain error.

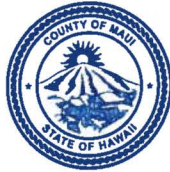
To convey the ability for landowners to file land use suits directly to the courts to enforce zoning violations without pursuing a system of due process beforehand would only significantly frustrate the legal system and the land use process.

Thank you for your consideration.

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI

DEPARTMENT OF PLANNING

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

21Day, February 21, 2014

11:30AM

Conference Room 016

Statement of William Spence

Maui County Planning Director

Honorable Members of the Committee:

The Maui County Planning Department OPPOSES SB 2270 sd1

On behalf of the County of Maui 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.

Authority over zoning matters is granted to the counties by HRS 46-4, not to the public. It confers legislative authority to create regulations, and administrative authority in how those regulations are applied and enforced. Consistent interpretation and application of zoning codes are essential to the function of administrative departments and the orderly development of the counties.

This proposed bill is contrary to HRS 46-4 as it grants the ability for virtually anyone to interpret zoning by going to court. As the Committee is no doubt aware, we already have many avenues in State law to contest or file suit over controversial developments. This proposed law would open the door wide for yet more "bites at the apple."

We have no doubt the proposed law would result in many lengthy and frivolous lawsuits between private parties or organizations; which would likewise entangle the counties as parties. The cost and time associated with dealing with legal suits could be extremely expensive to all parties involved, and clog the court system.

More directly of concern to the County is that it opens an avenue to bypassed the County own administrative enforcement process. Moving this administrative and investigative process to the judicial court system, which is ill equipped to deal with it, is a recipe for disaster.

Lastly, this bill has unintended consequences as it does not address zoning interpretations under HRS 205 and 205A. Many zoning calls made by the Counties are as a consequence of HRS 205, 205A 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.

Again, please vote No on SB 2270 S.D.1

[PLANNING\ALL\APO\Leg 2014\SB 2270 letter Committee.doc](#)

ONE MAIN PLAZA BUILDING / 2200 MAIN STREET, SUITE 315 / WAILUKU, MAUI, HAWAII 96793

MAIN LINE (808) 270-7735 / FACSIMILE (808) 270-7634

CURRENT DIVISION (808) 270-8205 / LONG RANGE DIVISION (808) 270-7214 / ZONING DIVISION (808) 270-7253

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: stus@lava.net
Subject: Submitted testimony for SB2270 on Feb 21, 2014 11:30AM
Date: Friday, February 21, 2014 8:51:22 AM

SB2270

Submitted on: 2/21/2014

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

Submitted By	Organization	Testifier Position	Present at Hearing
Stuart Simmons	Individual	Support	No

Comments: I strongly support SB 2270. It's apparent that not all zoning violations are being properly enforced by County officials due to various reasons, including lack of funds and resources. Citizens should have the private right to take legal action when zoning violations are causing them harm. SB 2270 clarifies the issue and allows the judicial system to properly resolve zoning violations that are not being resolved by County officials. Thank you for your consideration.

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