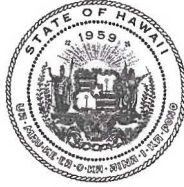


SB 3049

RELATING TO ENERGY

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

JOSEPH K. KIM
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 Lorraine R. Inouye, Chair
and Members of the Senate Committee on Transportation and Energy

Date: February 17, 2016

Time: 2:45 P.M.

Place: Conference Room 225, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 3049, Relating to Energy.

The Department of Taxation (Department) appreciates the intent of S.B. 3049 and offers the following comments for your consideration.

S.B. 3049 requires agreements governing the financing, sale, or lease of solar energy devices to contain several pieces of information, including some information pertaining to taxation. Agreements are required to contain a disclosure of any tax incentives available to the buyer or lessee as well as any tax obligations that the buyer or lessee may incur as a result of buying or leasing the solar energy device.

The Department notes that there is no indication in this measure as to what the result of the incorrect provision of tax information will be. Tax is a complex area of law, and it is possible for the seller or lessor of solar energy devices to act in good faith and still provide incorrect information. The IRS allows manufacturers of solar energy devices to certify to customers what tax incentives are available for the device purchased, but has provided detailed information as to the effect of providing erroneous information. The Department suggests an amendment to S.B. 3049 to provide further information regarding the effect of furnishing incorrect information.

Thank you for the opportunity to provide comments.



Before the Senate Committee on Transportation and Energy
Wednesday, February 17, 2016, 2:45 p.m., Room 225
SB 3049: RELATING TO ENERGY

Aloha Chair Inouye, Vice Chair Gabbard, and members of the Committee,

On behalf of the Distributed Energy Resources Council of Hawaii (“DER Council”), I would like to testify in support for SB 3049, which establishes requirements for financing, lease, or sale agreements for solar energy devices, including the buyer’s or lessee’s signature, a cancellation period, payment or financing details, disclosure of tax obligations, disclosure of maintenance and operation costs, disclosure of warranty obligations, and disclosure of the potential for variation in utility rates. The DER Council is a nonprofit trade organization formed to assist with the development of distributed energy resources and smart grid technologies to support an affordable, reliable, and sustainable energy supply for Hawaii.

The DER Council believes that the business practices of the distributed energy industry must embrace transparency, clarity, and full disclosure as the industry standard in all of its dealings with the public. Most energy companies work with integrity and a genuine desire to transform our electrical grid to a green energy system, and SB 3049 will ensure the highest standard with straightforward and fair practices. Energy transactions can be complex and hard to understand for the customer not steeped in the energy world, and it serves the entire industry to ensure that all customers are fully and fairly informed.

Thank you for the opportunity to testify

Leslie Cole-Brooks
Executive Director
Distributed Energy Resources Council of Hawaii



SENATE COMMITTEE ON TRANSPORTATION AND ENERGY

February 17, 2016, 2:45 P.M.

Room 225

(Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO SB 3049

Aloha Chair Inouye, Vice Chair Gabbard, and Committee members,

Blue Planet Foundation opposes SB 3049. The bill attempts to single out the solar industry for a series of consumer disclosures and requirements. These consumer protections are largely duplicative or existing consumer protections, and as a whole, they are unnecessary.

Blue Planet has polled Hawai'i residents across the state to understand their perspectives on renewable energy. Most recently, 96% support solar power, with 86% in "strong support." Only 1% oppose, with 0% "strongly opposing." These results are similar to sentiments gathered in a poll conducted by the U.H. Center on the Family.

The solar industry has not achieved this unprecedented level of support through a dangerous practice of dealing with consumers unfairly. Singling out the solar industry for the needless layer of hoops is therefore unnecessary, and is likely to needlessly slow the uptake of solar power.

Hawai'i law already contains powerful consumer protection mechanisms, if needed to address a small number of "bad seeds" in any given industry. For example, H.R.S. Ch. 480 enables consumers to recover *triple* damages if they are treated in an unfair or deceptive manner. Singling out the solar industry for extra layers of duplicative protection will not meaningfully add to this protection.

Furthermore, unlike Hawai'i's generally applicable consumer protection laws, this bill creates an imbalance by singling out solar but leaving out other industries. For example, The Gas Company (dba Hawai'i Gas) advertises purported benefits of switching to gas appliances rather than electric appliances. This bill would not require The Gas Company, nor retailers of expensive gas appliances, to satisfy the same disclosures as the solar industry regarding future energy costs and potential savings. This is plainly unfair.

Thank you for this opportunity to testify.

February 17, 2016

The Honorable Lorraine R. Inouye, Chair
Senate Committee on Transportation and Energy
State Capitol, Room 225
Honolulu, Hawaii 96813

RE: S.B. 3049, Relating to Energy

HEARING: Wednesday, February 17, 2016 at 2:45 p.m.

Aloha Chair Inouye, Vice-Chair Gabbard, and Members of the Committee:

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,800 members. HAR **supports the intent** of S.B. 3049 which:

1. Establishes requirements for financing, lease, or sale agreements for solar energy devices, including the buyer's or lessee's signature, a cancellation period, payment or financing details, disclosure of tax obligations, disclosure of maintenance and operation costs, disclosure of warranty obligations, and disclosure of the potential for variation in utility rates; and
2. Does not apply to agreements for financing, lease, or sale agreements for solar energy devices as part of sales or transfers of real property to which the devices are or will be affixed.

It is in the best interest for homeowners with energy improvements that they be disclosed with adequate disclaimers, disclosures, and information on the financial obligations required in these transactions. S.B. 3049 would establish minimum requirements for disclosure on all types of energy improvement products be transferable with minimal restrictions so homeowners aren't hindered when selling or trading.

HAR would note that a disclaimer could be inserted as a requirement to the consumer that informs them some services may not increase the value of their property and that they should consult an appraiser for further information.

Mahalo for the opportunity to testify.



SENATE COMMITTEE ON TRANSPORTATION AND ENERGY

February 17, 2016
(*Testimony is 1 page long*)

TESTIMONY IN OPPOSITION TO SB 3049

Aloha Chair Inouye and Members of the Committee:

The Alliance for Solar Choice (TASC) appreciates the opportunity to comment on SB 3049, relating to energy. TASC respectfully opposes this measure.

TASC advocates for maintaining successful distributed solar energy policies and markets throughout the United States. Collectively, TASC members serve approximately half of the solar customers in Hawaii.

This bill purports to protect consumers. However, most of the provisions in SB 3049 are already covered by existing law, and government agencies are enforcing those laws. Duplicative regulation creates the potential for conflicting laws, increased government bureaucracy, and wasted government resources spent enforcing two sets of identical laws. The practical implication of the bill is to limit the ability of businesses to operate in Hawaii without actually bolstering consumer protection.

This bill is identical to one introduced by one of the most anti-solar utilities, APS, in Arizona. APS's purpose in introducing that measure was not to protect consumers, but rather on protecting itself from competition. Consider:

- Imagine a car lease that required the make and model of the components in it. How are consumers protected if they know the make and model number of each cupholder?
- Locking customers into a particular make and model of equipment is detrimental to the customer. Interconnection in Hawaii can take over a year to get approval. No customer should be locked into obsolete equipment simply because they signed a contract a year earlier.
- Projecting a 5% annual decrease in electrical utility costs is unfair and deceptive. No utility in the history of electrical regulation has seen a 5% annual decrease in rates over a 20 year period. Even Hawaiian Electric projects no rate reductions until 2030.

More importantly, unnecessary disclosure requirements will increase the length and cost of lease agreements without bolstering consumer protection – instead these requirements will increase consumer confusion and achieve the opposite of the stated goal. Many of the points addressed by this measure – such as notice to consumers and ability to cancel the contract – are already mandated under federal law. Adopting a different and possibly inconsistent standard would not increase consumer protection. It would only increase customer confusion, the cost to operate in Hawaii, and the ability of Hawaii residents to “go green” and install solar.

Mahalo for the opportunity to submit these comments.



Hawaii Solar Energy Association
Serving Hawaii Since 1977

**TESTIMONY OF THE HAWAII SOLAR ENERGY ASSOCIATION
IN REGARD TO SB 3049, RELATING TO ENERGY
BEFORE THE
SENATE COMMITTEE ON TRANSPORTATION AND ENERGY
ON
FEBRUARY 17, 2016**

Chair Inouye, Vice-Chair Gabbard and members of the committee, my name is Hajime Alabanza, and I represent the Hawaii Solar Energy Association, Inc. (HSEA)

HSEA opposes SB 3049 with comments. This measure amends §196, Hawaii Revised Statutes, by adding a new section that pertains to the sale and leasing of solar energy devices.

While HSEA supports the proper use of statutes to govern the sales of all goods and services, under credit or otherwise, we find that SB 3049 is duplicative and overly broad in a number of areas. While the intent of the bill may be to provide consumer protection, it instead creates conflicting laws and will lead to both governmental and consumer confusion.

Furthermore, there is no need for this legislation, as it fixes a problem that does not exist. There is no evidence that there is a widespread problem with the sale of solar leases. Additionally, the industry and its member organizations have proven themselves to be very capable of self-policing.

In several areas, SB 3049 will create statutes that are already covered by state or federal law. At a state level, the provisions in SB 3049 §196-(a)(1) are already covered by §656-1, Hawaii Revised Statutes, pertaining to fraud. Additionally, §196-(a)(2), (3), (5)(c), (7)(b), and (12) are all already covered under §476, Hawaii Revised Statutes, pertaining to credit sales. Finally, §196-(a)(4) and (8) are covered in Title 27, Hawaii Revised Statutes.

At a federal level, several laws already pertain to language introduced in SB 3049, making it redundant. Specifically, SB 3049 §196-(a)(2), (5)(c), and (7)(b) are covered in the code of Federal Regulations (CFR) Title 12, Chapter II, Subchapter A, part 213 and 213.4. SB 3049 §196-(a)(5)(c) is also covered under 12 CFR 226.17. Finally, SB 3049 §196-(a)(12)(d) is covered by the IRS in both IRS Notice 2009-41 and §1.6001-1(a), Income Tax Regulations as well as 12 CFR 226.17 (c) and 12 CFR 213.3 (d).

A majority of this bill has language that is duplicative and burdensome. SB 3049 §196-(a)(3) pertaining to a consumer “right to rescind” their lease agreement is unfair to the solar industry as it singles out one sale of one good over all others. Since there is no



Hawaii Solar Energy Association

Serving Hawaii Since 1977

blanket “right to rescind” statute within the HRS, this specific language might be better used in a bill dealing with the general sale of goods rather than just specifically solar systems.

As stated above, SB 3049 would make the sale and leasing of solar energy systems more complicated, more costly, and legally redundant. This bill would not protect the consumer and would instead put greater pressure on both the consumer and the seller. There is no reason for the language in this bill to be adopted. As demonstrated above, the sale and lease of solar systems are covered by numerous state statutes as well as over 26 separate agencies and regulations at the federal level.

Thank you for the opportunity to testify.