



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 834, RELATING TO SOLAR ENERGY.

**BEFORE THE:**

SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT AND ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

**DATE:** Monday, February 11, 2019      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 224

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Dawn T. Apuna, Deputy Attorney General

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Chairs Gabbard and Nishihara and Members of the Committees:

The Department of the Attorney General offers the following comments.

This bill would: (1) allow counties to create a process for the recordation and enforcement of solar easements; (2) allow individuals claiming a "solar right" to record that right by filing a declaration with the county clerk; (3) equate a "solar right" to an easement appurtenant; (4) allow a suit to enforce a "solar right" to be brought at law or in equity; and (5) allow counties to require the trimming of vegetation that blocks solar radiation from a solar energy device.

This bill appears to allow solar easement rights over private property where no such rights existed before. The bill would allow the unilateral declaration, recording, and legal entitlement of a landowner to enforce a solar easement across a neighbor's airspace to protect the landowner's solar access. Effectively, the solar easement may transfer airspace rights from neighbors to solar users without the consent or compensation of neighbors for their forfeited rights.

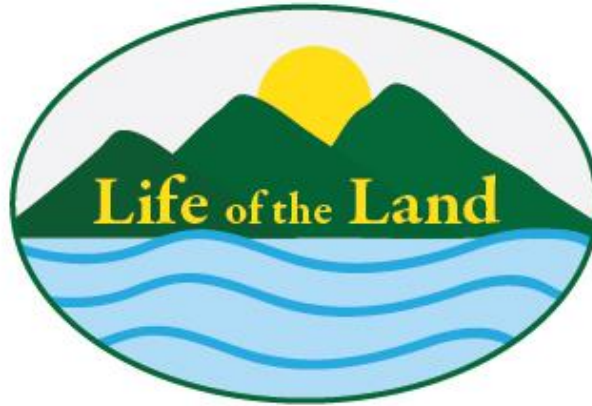
The Department has concerns that the bill may be challenged under the Takings Clause of the United States Constitution and the Hawaii State Constitution.

Under the Fifth Amendment of the U.S. Constitution and article I, section 20 of the Hawaii State Constitution, "private property [shall not] be taken for public use, without just compensation." A taking of private property requires both that the taking be for a "public use" and that just compensation be paid. The taking of private property

solely for the purpose of conferring a private benefit on another private party is unconstitutional, even if just compensation is paid. *Kelo v. City of New London*, 545 U.S. 469, 477 (2005). To the extent the bill benefits private property by encumbering neighboring private property, where no right to solar access previously existed, the bill could be subject to challenge on the grounds that either private property is unconstitutionally taken for private use alone or, alternatively, could lead to suits for just compensation.

Additionally, this bill fails to require notice to the affected neighbor that a claim will be made, and fails to require that the solar user actually install and utilize a solar energy device to claim the solar right. A property owner could simply claim the right over a neighbor's airspace, thereby restricting a neighbor's use and rights to the neighbor's property, when no solar energy device is ever utilized.

We respectfully ask the Committees to consider these comments.



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COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Senator Mike Gabbard, Chair  
Senator Russell E. Ruderman, Vice Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Senator Clarence K. Nishihara, Chair  
Senator Glenn Wakai, Vice Chair

DATE: Monday, February 11, 2019  
TIME: 2:00 p.m.  
PLACE: Conference Room 224

SB 834 Relating to Solar Energy

Comments, Amendment

Aloha Chairs Gabbard and Nishihara, Vice Chairs Ruderman and Wakai, and Members of the Committees

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 49 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

SB 834 Permits the governing body of a county to require, by ordinance, the trimming of vegetation that blocks solar radiation from solar energy devices.

**Amendment:** Nothing in this bill shall establish a right to unshaded solar from the natural growth of pre-existing vegetation on neighboring properties.

Mahalo  
Henry Curtis  
Executive Director

**SB-834**

Submitted on: 2/10/2019 1:34:27 PM

Testimony for AEN on 2/11/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

**SB-834**

Submitted on: 2/9/2019 8:48:21 PM

Testimony for AEN on 2/11/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dylan P. Armstrong	Individual	Support	No

Comments:

**SB-834**

Submitted on: 2/10/2019 1:32:51 PM

Testimony for AEN on 2/11/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support SB834.

Solar energy will help Hawaii to become more independent from extraneous sources and consequently makes us safer.

We also stand to lose valuable coastline due to climate change, which is already occurring. We need to be a leader in energy efficiency.

Thank you for the opportunity to present my testimony.

Sincerely,

Andrea Quinn