

SB12

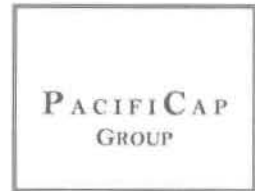
Submitted on: 2/7/2013

Testimony for ENE/CPN on Feb 7, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Leslie Cole-Brooks	Hawaii Solar Energy Association	Support	Yes

Comments: I apologize for this late testimony. I had a family emergency which prevented me from submitting on time.

LATE



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February 7, 2013

*Testimony for Hearing before the
Senate Committee on Energy and Environment
Senate Committee on Commerce and Consumer Protection
Thursday, February 7, 2013, 2:45 p.m.*

LATE

*State Capitol, Conference Room 225
415 South Beretania Street
Honolulu, Hawaii 96813*

*Re: Testimony In Support of SB 12, With Concerns
Relating to Renewable Energy*

Chair Gabbard, Chair Baker, Vice Chair Ruderman, Vice Chair Galuteria and Committee Members:

Aloha. It's nice to see you all again.

Thank you for the opportunity to submit testimony in support of SB 12 and to bring to your attention two concerns that I have with the current draft of this bill.

I am Jeff Au, Managing Director of PacifiCap, Hawaii's largest locally based venture capital investment firm.

For almost two years now, our firm and our investors have been considering providing financing to solar energy projects here in Hawaii. However, we have not yet made any investments to date, as we have been waiting for further clarification from the Legislature and the Department of Taxation as to what the "Rules of the Game" are and will be.

I therefore am very grateful to the Legislature, in particular, Senator Mike Gabbard, for all of your hard work and leadership in consulting and collaborating with a very wide and diverse range of constituencies, in both the private and public sectors, in formulating this bill, through a process of frank and substantive dialogue and debate, conducted in a good faith effort to fairly balance the various concerns and interests.

For those of us who may have grown frustrated and cynical over the years, you have restored our faith in how our legislative process can and should work, and I commend and thank you for your efforts.

I support the intent and most of the substance of this bill, but I respectfully ask you to consider two concerns in the current draft.

1. **Retroactivity:** Changes to existing law prescribed by the current draft of this bill apply to energy systems that are placed in service after December 31, 2012. In other words, these changes would apply retroactively to systems placed in service from January 1 of this year through the date that this bill becomes law.

From a legal standpoint, such retroactivity raises serious concerns, including under the "Due Process" clauses of both our U.S. and Hawaii State Constitutions, and possibly applicable case law. At worst, such retroactivity could trigger litigation against the State and cause this bill to be struck down by the courts. At best, it raises serious questions and ambiguities as to whether this bill would be enforceable if it became law, which could even raise questions and ambiguities as to how this bill should be "priced," or if its intended cost savings should even be counted at all, as it moves forward through the State's budgetary process.

From a business standpoint, such retroactive provisions in any bill moving through the legislature would raise very serious concerns among investors since we all know that legislative provisions and numbers can change at numerous junctures before a bill becomes law, but if investors do not know what these changes will be, but we just know that they will be applied retroactively to January 1, 2013, in all likelihood, most investors will not commit to or invest in any new energy project, bringing the entire industry to a halt, until the Legislature closes. Considering that most investment transactions need several months of lead time to structure, negotiate and document, the financing delays created by such retroactive legislation could delay any new funding of energy projects until the fourth quarter of this year at earliest, which I do not think is the intent of this bill.

Such retroactive legislation also creates a very bad precedent and sends a very bad message to the business community, both within and outside of Hawaii, about our local business environment.

I therefore respectfully request that you consider amending this bill to make it effective for energy property that is placed in service on or after the date that this bill becomes law.

2. **Section 235-12.5(k) – DBEDT Certification:** It appears that the cross references to subsections (a)(3) and (a)(6) in this section may be typographical errors that should instead refer to subsections (a)(5) and (a)(8).

Subsections (a)(3) and (a)(6) respectively apply to commercial non-utility scale solar energy property and residential wind energy property, for neither of which do the DBEDT reporting and certification requirements appear to be applicable.

Subsections (a)(5) and (a)(8) respectively apply to utility scale solar and wind energy property, to which the DBEDT reporting and certification requirements appear to be applicable.

Testimony in Support of SB 12, With Concerns
Relating to Renewable Energy
Senate Committee on Energy and Environment
Senate Committee on Commerce and Consumer Affairs
February 7, 2013,
Page 3

Thank you very much for your consideration.

Respectfully submitted,

Jeffrey K. D. Au
Managing Director and General Counsel
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