

STAND. COM. REP. NO. 67

Honolulu, Hawaii

FEB 17 2009

RE: S.B. No. 606  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam:

Your Committee on Energy and Environment, to which was referred S.B. No. 606 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose of this measure is to provide the boards of directors of a condominium association with the same authority that condominium unit owners now have to install or allow the installation of solar energy or wind energy devices on the common elements, under appropriate circumstances, to further reduce Hawaii's dependence on energy generated from fossil fuels.

Testimony in support of this measure was submitted by four private organizations. One of these organizations, the Hawaii Chapter of the Community Associations Institute, also submitted oral testimony expressing concern that the measure, as drafted, would authorize the board of directors of a condominium association to permit an owner to install solar energy or wind energy devices within the common elements that could block the views of other owners. The Community Associations Institute suggested alternative language to address this possibility.

Your Committee finds that this measure is a logical extension of Act 157, Session Laws of Hawaii 2005, which prohibited restrictions preventing individuals from installing solar energy devices on houses or townhomes that they own. The present condominium law requires high levels of unit owner approval, typically, 67% or 75%, to lease even unused areas of the project,

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such as roofs. This measure allows the board, alone, to install solar energy devices or lease roof space and other unused areas of the project.

Your Committee has amended this measure by:

- (1) Revising the definition of "wind energy device" for clarity and consistency within the definition; and
- (2) Adopting the recommendation of the Community Associations Institute regarding the board's ability to permit installations.

As affirmed by the record of votes of the members of your Committee on Energy and Environment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 606, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 606, S.D. 1, and be referred to the Committee on Commerce and Consumer Protection.

Respectfully submitted on  
behalf of the members of the  
Committee on Energy and  
Environment,



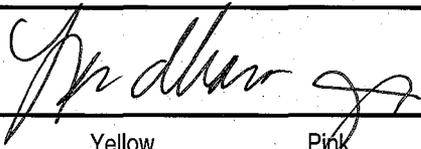
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MIKE GABBARD, Chair



The Senate  
Twenty-Fifth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Energy and Environment**  
**ENE**

Bill / Resolution No.:* <b>SB 606</b>	Committee Referral: <b>ENE, CPN</b>	Date: <b>2-3-09</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
GABBARD, Mike (C)	✓			
ENGLISH, J. Kalani (VC)				✓
GREEN, M.D., Josh	✓			
HOOSER, Gary L.				✓
IHARA, Jr., Les	✓			
KOKUBUN, Russell S.				✓
HEMMINGS, Fred	✓			
<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>3</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original    Yellow    Pink    Goldenrod File with Committee Report    Clerk's Office    Drafting Agency    Committee File Copy				

\*Only one measure per Record of Votes

**Report Title:**

Condominiums; Solar Energy; Wind Energy

**Description:**

Gives boards of directors authority to install or allow the installation of solar energy or wind energy devices on the common elements of condominiums. (SD1)

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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. At present, sections 514B-140 and 196-7, Hawaii  
2 Revised Statutes, give apartment owners broad authority to  
3 install solar energy devices for their personal use, to reduce  
4 Hawaii's dependence on fossil fuels. Nevertheless, the law does  
5 not give boards of directors the same authority on behalf of  
6 their associations, even though associations can also benefit  
7 from installing solar energy or wind energy devices on the  
8 common elements for the same purpose. Some companies are now  
9 proposing to lease areas of the common elements from  
10 associations to install solar energy or wind energy devices,  
11 thereby reducing the association's energy costs and dependence  
12 on fossil fuels.

13           The purpose of this Act is to amend section 514B-140,  
14 Hawaii Revised Statutes, to provide boards of directors with the  
15 same authority that owners now have to install or allow the  
16 installation of solar energy or wind energy devices on the  
17 common elements, under appropriate circumstances, to further

1 reduce Hawaii's dependence on energy generated from fossil  
2 fuels.

3 SECTION 2. Section 514B-140, Hawaii Revised Statutes, is  
4 amended by amending subsection (d) to read as follows:

5 "(d) Notwithstanding any other provisions to the contrary  
6 in this chapter or in any declaration or bylaws:

7 (1) Regarding the installment of telecommunications  
8 equipment:

9 (A) The board shall have the authority to install or  
10 cause the installation of antennas, conduits,  
11 chases, cables, wires, and other television  
12 signal distribution and telecommunications  
13 equipment upon the common elements of the  
14 project; provided that the same shall not be  
15 installed upon any limited common element without  
16 the consent of the owner or owners of the unit or  
17 units for the use of which the limited common  
18 element is reserved; and

19 (B) The installation of antennas, conduits, chases,  
20 cables, wires, and other television signal  
21 distribution and telecommunications equipment  
22 upon the common elements by the board shall not

1 be deemed to alter, impair, or diminish the  
2 common interest, common elements, and easements  
3 appurtenant to each unit, or to be a structural  
4 alteration or addition to any building  
5 constituting a material change in the plans of  
6 the project filed in accordance with sections  
7 514B-33 and 514B-34; provided that no such  
8 installation shall directly affect any  
9 nonconsenting unit owner; [~~and~~]

10 (2) Regarding the abandonment of telecommunications  
11 equipment:

12 (A) The board shall be authorized to abandon or  
13 change the use of any television signal  
14 distribution and telecommunications equipment due  
15 to technological or economic obsolescence or to  
16 provide an equivalent function by different means  
17 or methods; and

18 (B) The abandonment or change of use of any  
19 television signal distribution or  
20 telecommunications equipment by the board due to  
21 technological or economic obsolescence or to  
22 provide an equivalent function by different means

1 or methods shall not be deemed to alter, impair,  
2 or diminish the common interest, common elements,  
3 and easements appurtenant to each unit or to be a  
4 structural alteration or addition to any building  
5 constituting a material change in the plans of  
6 the project filed in accordance with sections  
7 514B-33 and 514B-34~~[-]~~; and

8 (3) Regarding the installation of solar energy devices and  
9 wind energy devices:

10 (A) The board shall have the authority to install or  
11 cause the installation of solar energy devices  
12 and wind energy devices on the common elements of  
13 the project, including leasing or licensing the  
14 common elements for such installations; provided  
15 that the same shall not be installed upon any  
16 limited common element without the consent of the  
17 owner or owners of the unit or units for the use  
18 of which the limited common element is reserved;  
19 and

20 (B) The installation of solar energy devices and wind  
21 energy devices on the common elements of the  
22 project by the board shall not be deemed to

1           alter, impair, or diminish the common interest,  
2           common elements, and easements appurtenant to  
3           each unit, or to be a structural alteration or  
4           addition to any building constituting a material  
5           change in the plans of the project filed in  
6           accordance with sections 514B-33 and 514B-34;  
7           provided that no such installation shall directly  
8           affect any nonconsenting unit owner.

9           As used in this subsection:

10           "Directly affect" means the installation of television  
11 signal distribution and telecommunications equipment, solar  
12 energy devices, and wind energy devices in a manner which would  
13 specially, personally, and adversely affect a unit owner in a  
14 manner not common to the unit owners as a whole.

15           "Solar energy device" means the same as in subsection (c).

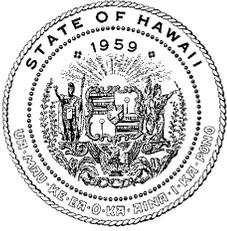
16           "Television signal distribution" and "telecommunications  
17 equipment" shall be construed in their broadest possible senses  
18 in order to encompass all present and future forms of  
19 communications technology.

20           "Wind energy device" means any new identifiable facility,  
21 equipment, apparatus, or the like which makes use of wind energy  
22 for producing electricity or reducing the use of other types of

1 energy dependent upon fossil fuel for its generation; provided  
2 that if the facility, equipment, apparatus, or the like cannot  
3 be used as a wind energy device without its incorporation with  
4 other equipment, it shall be installed in place and be ready to  
5 be made operational in order to qualify as a wind energy  
6 device."

7 SECTION 3. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

**LINDA LINGLE**  
GOVERNOR  
**THEODORE E. LIU**  
DIRECTOR  
**MARK K. ANDERSON**  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [www.hawaii.gov/dbedt](http://www.hawaii.gov/dbedt)

Telephone: (808) 586-2355  
Fax: (808) 586-2377

**Statement of  
THEODORE E. LIU  
Director**  
Department of Business, Economic Development, and Tourism  
before the

**SENATE COMMITTEE ON  
COMMERCE & CONSUMER PROTECTION**

Friday, February 27, 2009

9:30 a.m.

State Capitol, Conference Room 229

in consideration of  
**SB606, SD1**  
**RELATING TO CONDOMINIUMS.**

Chair Baker, Vice Chair Ige, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of SB606, SD1, which would allow condominium boards of directors to install or permit installation of solar or wind energy devices in common element areas of condominiums.

Putting rooftop spaces to work collecting solar or wind energy could be a significant source of clean, renewable electrical energy while benefiting condominiums economically. We understand that companies are asking associations to lease the roofs of condominium projects to install solar energy devices. The proposals from companies usually compensate associations for the use of the project roofs or provide them with electricity at lower rates. Most condominiums are located in areas receiving high amounts of sunshine.

**Installation of energy devices will result in reduced dependence on imported fossil fuel, increase the use of renewable energy resources, and bring Hawaii a step closer to realizing the Hawaii Clean Energy Initiative's goal of achieving a 70% clean energy economy by the year 2030.**

**Thank you for the opportunity to comment on this bill.**



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.537.9019 hawaii.chapter@sierraclub.org

## SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

February 27, 2009, 9:30 A.M.  
(*Testimony is 1 page long*)

### TESTIMONY IN SUPPORT OF SB 606 SD1

Aloha Chair Baker and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports SB 606 SD1, which ensures that condominiums have the choice to save money and energy by using solar and wind devices.

This measure is a logical extension to the bill passed into law in 2005 prohibiting restrictions that prevented individuals from installing solar energy devices on houses or townhomes that they own. Large common areas, such as laundry or exercise facilities, could help decentralize our energy system and allow condominium boards to fulfill their fiduciary duties by saving on electrical expenses. In short, SB 606 SD1 removes yet another barrier to local residents doing the right thing for the environment and the economy.

Thank you for the opportunity to testify.



**SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

February 27<sup>th</sup>, 2008, 9:30 A.M.

Room 229

**(Testimony is 1 page long)**

**TESTIMONY IN SUPPORT OF SB 606 SD1**

Chair Baker and members of the committee:

The Blue Planet Foundation supports Senate Bill 606 SD1, giving boards of directors authority to install or allow the installation of solar energy or wind energy devices on the common elements of condominiums. This common sense measure will encourage further adoption of energy- and money-saving clean energy devices and move Hawai'i closer to energy independence.

Blue Planet believes Hawai'i's clean energy future will be largely decentralized and diversified, meaning our power will be generated from a variety of sources across the islands. Putting our rooftop spaces to work collecting solar energy will likely be a significant source of tomorrow's energy. The most populated parts of the state receive between 450 and 500 calories of solar radiation per square centimeter every day<sup>1</sup>. To put into perspective, an average rooftop space of 1100 square feet receives the energy equivalent of approximately 15 gallons of gasoline daily. Common areas of condominiums or other shared living structures are likely much larger and could produce substantial amounts of power—if they are put to work.

Enabling associations to install solar or wind devices or lease their common area space for such a purpose is smart clean energy policy.

Thank you for the opportunity to testify.

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<sup>1</sup> State of Hawai'i (2003). Hawaii Statewide GIS Program Solar Radiation Maps.