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SB 685 and SB 687 RELATING TO SOLAR RIGHTS

Statement for
Senate Committees on
Public Utilities
Economic Development
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Both SB 685 and SB 687 relate to solar rights. SB 685 would add a new chapter to Hawaii Revised Statutes. SB 687 would add two new sections without designated placements, three new sections to HRS 46, and an amendment of HRS 235-12. This statement on the bills does not reflect an institutional position of the University.

A court decision in the McCully-Citron Ltd. case indicates that there are at present in Hawaii no solar rights. The recognition of limited rights to the energy of the sun would be appropriate. However, the importance of limitations may be illustrated by a simple example. Suppose a new high-rise building were to cast a shadow half an hour before sunset on a solar cooker set up in a backyard half a mile away. Unless the solar rights of the backyard owner were limited, he would be entitled to sue the owner of the building for interference with his right to solar energy, even though the building complied with all zoning and building code requirements.

Both of the bills here considered establish some limits to solar rights, but neither recognizes the full complexity of the problem.

SB 685

In SB 685, the solar rights would pertain only to solar collectors of 25,000 BTU or more, used for heating or cooling of buildings, heating or pumping of water, industrial commercial or agricultural processes, or the generation of electricity, and the bill would establish a priority of time limitation. However, the right would not be limited with respect to solar angle, and there is no indication on the bill how the solar rights would relate to other priority rights.

Without further limitations and relation to other rights the courts would be at a loss how to adjudicate a solar rights case and might well dismiss it on the grounds that it would represent an unconstitutional taking.

SB 687

SB 687 is a more sophisticated bill. Section 3 would provide a statutory base for solar easements defined in terms of certain types of solar energy (collector) systems, types of vegetation, structures, etc. obstructing solar energy, and solar angles. Section 4 would permit the counties to require dedication of such easements as a condition in any new subdivision. Such easements would be binding only on the owners of property within the new subdivisions, not on the owners of adjacent property except by their agreement. These provisions may be appropriate, but would be of limited effectiveness in high density areas such as apartment zones. If applied unwisely by the counties, they would restrict the interest of land use in other zones, working against the effects of minimizing building setbacks etc.

Section 5 of SB 687 would amend the present law granting tax credits for the installation of solar energy devices to make it applicable to solar energy systems and the acquisition of solar easements. With the amendment, the allowable fraction of the cost of the devices of the systems and the allowable total creditable would be increased. These provisions would increase the incentives to install solar energy systems. They would probably serve also to increase the profits of those engaged in producing and installing such systems.

Even SB 687 does not seem to reflect an awareness of the developments of experience with solar rights in several foreign countries, notably France and Japan.