

SB 377



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

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Statement of
THEODORE E. LIU
Director

Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
Tuesday, February 3, 2009
2:45pm
State Capitol, Conference Room 225

in consideration of

SB377
RELATING TO RENEWABLE ENERGY

Chair Gabbard, Vice Chair English, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports of SB377 which requires expedited residential and commercial building permits for any state permit approval process for installation of photovoltaic systems. It also provides for approval by law of permit application if not granted or denied within sixty days for existing structures and within 180 days for new structures.

DBEDT supports expediting renewable energy projects and the use of renewable energy. By accelerating the installation of renewable energy technologies, the State of Hawaii moves closer to our Hawaii Clean Energy Initiative of 70 percent clean energy by 2030. Therefore, we support SB377 which provides that an application for a permit for a photovoltaic energy system shall be deemed approved, if within sixty days of receipt of the application for a permit for an existing structure or one hundred and twenty days for a new structure, the approving agency has

not taken action to grant or deny the application. We believe that the building permit applicant and design professional should bear the responsibility of meeting code requirements.

Thank you for the opportunity to offer these comments.

From: McGreevy, Rachel [rmcgreevy@ICSC.org]
Sent: Monday, February 02, 2009 12:07 PM
To: ENETestimony
Cc: Robert Jensen; Ann Kutaka; Kent Jeffreys; Scott, Dante; Jessica Hart
Subject: Testimony for SB 377 on 2/3/09
Attachments: LEED Talking Points 2008.pdf

Dear Committee Staff:

Please see attached testimony submitted on behalf of the International Council of Shopping Centers (ICSC) for SB 377. SB 377 will be heard on Feb. 3 in Senate Committee on Energy and Environment.

HAWAII S.B. 377 - GREEN BUILDINGS

Sponsor: Senator Shan Tsutsui (D)

Summary: Requires expedited processing of an application for state and county permits for projects incorporating energy and environmental design building standards (LEED.) Deems the application to be approved if no decision is made within 180 days of application.

Rachel McGreevy (Zagrabelny)

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Problems with LEED Standards in City and State Building Codes

The U.S. Green Building Council's "Leadership in Energy and Environmental Design" (LEED) certification process has become the gold standard of sustainability for many types of commercial and residential development. LEED certification is based upon specific levels of achievement in sustainable design and construction. The lowest LEED level is "certified" and the levels increase from "silver" to "gold" to "platinum." Successfully reaching a given LEED certification level requires a subject property to score specific point totals (which differ among building types). There is a "menu" of potential points available for various practices, which range from installing bike racks on site to documenting the source of the iron ore used in any steel used in construction. Even when a construction project does not choose to seek LEED certification, it may benefit from studying the guidelines and identifying sustainable practices that were not otherwise being utilized.

However, although the impulse is well intended, there are several potential problems with adopting LEED certification as a building code requirement.

1. If local building codes adopt LEED certification standards by reference only, the public codes will be subject to change by every decision of the private U.S. Green Building Council (USGBC). Even representatives of the USGBC itself have argued against imposing LEED certification through building codes.
2. LEED was intended to be a "cutting edge" standard. It was never intended as a base-line requirement or as a prerequisite for a permit. LEED was intended to "push the envelope" and highlight the best of the best. Building codes are properly intended to establish a minimum standard for safety and other purposes. It is unclear how compatible these two goals can be in the long run.
3. LEED requirements can be in conflict with building codes in critical code categories. Institutions that mandate sustainability requirements often are unaware of the unintended consequences and impacts to the design and development process, and the resulting increases in time for approval and overall project costs.
4. Final LEED Certification is granted only after the subject building's construction has been completed or even after the building's mechanical systems have been operated for some period. Exactly what should happen if the building is not ultimately certified at the mandated level is unclear. Some agencies are requiring up to a \$2 million bond as a Certification Compliance Guarantee. There is no clear appeal process for disputes regarding final certification approval except through the USGBC itself.
5. Although USGBC does not charge directly for its certification standards (beyond a registration fee), the lengthy process can be an expensive one for developers. USGBC trains and licenses third party certification experts who do charge for their services. Although costs can vary greatly, achieving LEED certification can add approximately \$50,000 to the development of a small retail project. This additional expense does not cover all increases including those associated with design, material or equipment changes driven by the LEED guidelines. In addition, adopting LEED certification as part of a municipal building code effectively gives a monopoly to LEED AP certified examiners.
6. In recent years, the USGBC has intensely advertised programs of building and site certification despite having only a limited capacity to handle the resulting demand. More than 14,000 projects have been registered yet only about 1,700 have been processed (certified) to date. The Certification process is now seriously overloaded and USGBC is having difficulty handling the demand even as it continues to change the rules for new projects. Because the USGBC has insufficient staff resources for the influx of new certification requests, most requests are handled by other third-party consulting firms – and their individual decisions to accept or reject various sustainable designs are effectively final. As demand increases, the USGBC process could collapse under the weight of its own success with no foreseeable agency to replace it or maintain the process.
7. LEED standards do not apply directly to all types of construction. For example, the LEED certification standards for retail buildings are only now moving beyond the pilot phase (2008). And multiple site, "portfolio" certification (which can greatly reduce the per-unit cost of certification for national chains) have yet to be approved.
8. The entire LEED certification process is undergoing significant changes for 2009. This is partially in response to the relatively poor performance of LEED certified buildings in terms of energy efficiency. But it also demonstrates that LEED certification is a moving target that can greatly complicate compliance efforts.

**DOWLING
COMPANY, INC**

February 3, 2009

e-mail testimony to: ENETestimony@capitol.hawaii.gov

Hearing on SB377, Relating to Energy Resources
Before the Senate Committee on Energy and Environment
on Tuesday, February 3, 2009 at 2:45 p.m. in Conference Room 225

Dear Chairman Gabbard and members of the Committee:

My name is Jennifer Stites and I am the Green Development Manager for Dowling Company, Inc. ("DCI"). DCI is a Maui-based real estate development company that is committed to sustainable development. To guide this effort and determine our performance metrics, we have adopted the nationally recognized U.S. Green Building Council's ("USGBC") Leadership in Energy and Environmental Design ("LEED") rating system. We are especially proud and excited that DCI's first USGBC LEED certified project is our own office located in Wailuku, Maui. Our office was also the first USGBC LEED certified office on Maui.

Therefore, we applaud the Senate in introducing this bill which requires expediting processing of an application for State and County permits for projects incorporating LEED standards into its project design. **We are in strong support of SB377.**

This bill will expedite the process of developing and constructing projects that are environmentally friendly. Specifically in the areas of: sustainable site; water; energy and atmosphere; indoor environmental quality; and materials and resources. Thus, allowing us to develop in balance and to preserve Hawaii's natural beauty. .

Thank you for the opportunity to testify in support of this important measure, SB377.



SIERRA CLUB HAWAII CHAPTER

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SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

February 3, 2009, 2:45 P.M.

TESTIMONY IN OPPOSITION TO SB 377, SUGGESTED AMENDMENTS

Chair Gabbard and members of the Committee:

The Sierra Club, Hawai'i Chapter, with over 5000 dues paying members statewide, opposes SB 377 as written, establishing an expedited and automatic approval of LEED design building standards. We strongly support the intent of encouraging energy and environmental design building standards, but are concerned that the incentives in the measure may undermine the desired goals of the policy. We appreciate the leadership in developing a program that would raise the bar on how housing is developed in Hawai'i and strive to make developments more "island friendly" in regards to their environmental footprint. Our comments and concerns with the current draft, however, are as follows:

First, nothing prevents developers today from implementing the environmental design attributes described in SB 377. The fact that the LEED design standard has not been widely implemented suggests that companies developing in Hawai'i have other interests than Hawaii's long-term sustainability. Perhaps the environmental features described in SB 377 could simply be mandatory conditions on all future development in the islands going forward.

Second, the Sierra Club is very concerned about the "automatic approval" of any permits. This is completely antithetical to smart, sustainable planning. Consider:

1. What happens when additional information is required by the department or agency and the deadline passes?
2. What happens when there are complex environmental assessments and impact statements that need to be completed pursuant to Haw. Rev. Stat. Chapter 343 and the deadline passes?
3. What happens when a contested case hearing is requested pursuant to chapter 91, HRS, and for any other period for administrative appeals and review and the deadline passes?
4. Is it ever appropriate to automatically approve a permit that will irreparably damage the environment or native Hawaiian rights? Doesn't that violate protections provided by the State Constitution?

Again, we understand and appreciate the intent of SB 377. If the legislature prefers not to require the environmental features in the measure be mandatory for all developments, perhaps other incentives besides "automatic approval" could be incorporated to make such developments more attractive to builders. For example, perhaps an ombudsman program could be developed to shepherd projects of this nature through the review process. Or an "expedited fee" could be charged to pay for additional review staff and resources that would automatically be refunded if the project is not approved within a set period of time?

Thank you for the opportunity to testify.



Hawaii Solar Energy Association
Serving Hawaii Since 1977

February 1, 2008

SB377: Testimony in Support

Dear Chair Gabbard, Vice Chair English, and Members of the Committee:

Hawaii Solar Energy Association (HSEA) is comprised of more than 30 installers, distributors, manufacturers and financiers of solar energy systems, both hot water and PV, most of which are Hawaii based, owned and operated. Our primary goals are: (1) to further solar energy and related arts, sciences and technologies with concern for the ecologic, social and economic fabric of the area; (2) to encourage the widespread utilization of solar equipment as a means of lowering the cost of energy to the American public, to help stabilize our economy, to develop independence from fossil fuel and thereby reduce carbon emissions that contribute to climate change; (3) to establish, foster and advance the usefulness of the members, and their various products and services related to the economic applications of the conversion of solar energy for various useful purposes; and (4) to cooperate in, and contribute toward, the enhancement of widespread understanding of the various applications of solar energy conversion in order to increase their usefulness to society.

HSEA members manufacture and install the majority of solar water heating systems and install the majority of solar PV systems in the State of Hawaii. Our comments on this measure are based on this expertise, and our related experience in other renewable energy technologies.

HSEA makes the following comment in support of this measure:

HSEA supports any legislation that will assist in expediting the permitting progress for energy efficiency and renewable energy in Hawaii. To the extent that it achieves these goals, SB377 will increase job growth and energy security in Hawaii, and reduce carbon emissions.



February 2, 2009

To: The Honorable Mike Gabbard, Chair
Senate Energy and Environment Committee

From: Tim Shestek
American Chemistry Council

Re: **SB 377 – February 3, 2009 Hearing, Senate ENE Committee**

On behalf of the member companies of the American Chemistry Council (ACC), I would like to respectfully offer the following comments relative to SB 377, legislation that provides expedited permit approval for buildings that incorporate the Leadership in Energy and Environmental Design (LEED) standards.

ACC supports the construction of buildings that save energy, use materials that promote resource conservation and offer employees a safe and healthy working environment. Many "green building" tools are available to architects, policymakers and others that combine life-cycle costs and assessment data to discern environmental and economic tradeoffs, allow for a fair comparison of products and rely on standards developed by consensus-based groups.

Our concern associated with this legislation is not an objection to LEED per se, but rather the legislation references only the LEED system when current state "green building law" acknowledges other green building rating systems that available to builders, architects, and others.

Hawaii Revised Statutes (HRS) section 196-9 reads in part:

[§196-9] Energy efficiency and environmental standards for state facilities, motor vehicles, and transportation fuel. (a) Each agency is directed to implement, to the extent possible, the following goals during planning and budget preparation and program implementation.

(b) With regard to buildings and facilities, each agency shall:

(1) Design and construct buildings meeting the Leadership in Energy and Environmental Design, silver or two green globes rating system or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, except when the guideline, standard, or system interferes or conflicts with the use of the building or facility as an emergency shelter;

ACC urges you to amend SB 377 so that the language relative to identifying specific green building rating systems is consistent with current state law. I appreciate the opportunity to express these comments and look forward to working with you and other stakeholders to promote energy efficiency, sustainable design, construction, and overall resource conservation.

If you have any questions, please contact me at 916-448-2581 or ACC's Hawaii based representatives Red Morris or John Radcliffe at 808-531-4551.