



Mililani Town Association

95-303 Kaloapau Street
Mililani Town, HI 96789
Phone (808) 623-7300

April 6, 2009

LATE

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Comm. on Commerce and Consumer Protection VIA EMAIL:CPNTestimony@Capitol.hawaii.gov
State Capitol
Honolulu, HI 96813

Re: H.B. No. 1273 HD 1 SD1– Relating to Energy
Hearing: Tuesday, April 7, 2009, 10:00 am, Conf Room 225

Dear Chair Baker, Vice-Chair Ige and Committees Members:

My name is Will Kane, Vice-President of the Mililani Town Association (MTA). As you may be aware, MTA encompasses 16,000 plus units involving both single family units and townhouse projects.

We while we support the *intent* of this amended bill to allow those members of planned communities and townhouses who desire to use clotheslines for drying clothes where otherwise would not be permitted, while at the same time allowing for the associations of planned communities and townhouses to have the ability to provide reasonable restrictions.

As you are aware, SB 1338 contains much the same language and stipulations that are found in HB1273, however with key differences, especially in regards to the statement found in Section II, subsection b, which states, "*or deny access to air or sunlight reasonably necessary for the effective use of the clotheslines.*" We believe this statement is too vague and ambiguous and should be removed. If left in its current state, MTA is unable to support HB1273's passage and would prefer to see it deferred, in favor of the language found in SB1338.

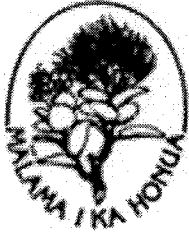
It should be noted that, in its governing documents, MTA does permit homeowners to erect clotheslines, which were in the past erected by the developer as a matter of the development plan for each unit until approximately the 1970's. They were effective in drying clothes, but unfortunately, the practice ceased when homeowners began to rely primarily on electric clothes dryers.

We accordingly urge this bill, as is, be deferred.

Sincerely yours,

Will Kane
Vice-President, Board of Directors

**Cc: Senator Kidani
Senator Bunda
Representative Lee
Representative Yamane**



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.537.8019 hawaii.chapter@sierraclub.org

LATE

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

April 7, 2009, 10:00 A.M.
(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF HB 1273 HD1, SD1

Aloha Chair Baker and Members of the Committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports HB 1273 HD1, SD1, ensuring that Hawai'i homeowners have the choice to save money and save energy by using a clothesline to dry their clothes. This bill reasonably compromises between aesthetic concerns and allowing residents to reduce their electrical bill.

Electric clothes dryers can consume over 10% of a household's energy demand. Reducing the use of clothes dryers could substantially decrease the amount of fossil fuel electricity that Hawai'i's households require.

Unfortunately, many homeowner associations prohibit the use of using the sun to dry clothes—clotheslines—and some simply make it very difficult to use a clothesline. For example, the Declaration of Covenants, Conditions, and Restrictions for the Ewa by Gentry development state that "...no outside clothes line or other outside clothes drying or airing facilities shall be maintained on any lot unless the same are screened from view and are not visible from neighboring property." This situation continues today -- the Sierra Club recently received a complaint about residents being forced to hang their clothes in closed carports.

As originally drafted, HB 1273 HD1 would deny residents the ordinary use of clotheslines by limiting access to air or sunlight (such as forcing homeowners to hang clotheslines in a carport). Such a result would gut the intent of this bill.

While we are searching for ways to reduce our dependency on fossil fuel, save residents' money, and decrease global warming pollution, let's not forget about the basic—and decidedly low-tech—approaches to energy conservation. **This bill, as amended, is a fair and balanced means to allow local residents to do the right thing for Hawai'i's environment and economy.**

Thank you for the opportunity to testify.



Via Capitol Website

April 7, 2009

**Senate Committee on Commerce and Consumer Protection
Hearing Date: Tuesday, April 7, 2009, 10:00 a.m. in CR 229**

**Testimony in Opposition HB 1273 HD1, SD1– Re Household Energy Demand
(Clothesline Bill)**

Honorable Chair Rosalyn Baker, Vice Chair David Ige and Senate Committee on
Commerce and Consumer Protection Members:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawai'i's significant natural and cultural resources and public health and safety.

While LURF and its members support the intent of this bill and recognize the importance of reducing the use of fossil fuels, LURF must testify **in opposition to the current version of HB 1273 HD1, SD1** because this bill is not the answer to a significant reduction in energy consumption; it is an unnecessary prohibition and mandate, as many homeowner associations already allow clotheslines; it will alter the existing and contractual terms and expectations of buyers in planned communities; it will impact aesthetics and decrease property values; and its terms are vague, ambiguous and subject to dispute and litigation.

HB 1273 HD1, SD1. The purpose of HB 1273 HD1, SD1 is to prohibit real estate contracts, agreements and rules from precluding or rendering ineffective the use of clotheslines on premises of single family dwellings and townhomes. Despite the fact that many planned communities allow clotheslines with certain restrictions, the purpose of this bill is to mandate a state-wide change in some existing contracts, agreements and rules, by prohibiting real estate contracts, agreements, and rules from precluding or rendering ineffective, the use of clotheslines on the premises of single-family dwellings. This bill will unfairly change the current rules and regulations of private home

associations, which are in place to protect property values and aesthetics of a planned community.

HB 1273 HD1, SD1 adds a new section to Chapter 196 as follows:

"§196- Placement of clotheslines. (a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, declaration, bylaws, restriction, deed, lease, term, provision, condition, codicil, contract, or similar binding agreement, however worded, from installing a clothesline on any single-family residential dwelling or townhouse that the person owns or in an area reserved for the exclusive use of the person. Any provision in any lease, instrument, contract, or other document listed above contrary to the intent of this section shall be void and unenforceable.

(b) Any private entity may adopt rules that reasonably restrict the placement and use of clotheslines for the purpose of drying clothes on the premises of any single-family residential dwelling or townhouse; provided that those restrictions do not prohibit the use of clotheslines altogether or deny access to air or sunlight reasonably necessary for the effective use of the clotheslines. No private entity shall assess or charge any homeowner any fees for the placement of any clothesline located in an area the homeowner owns or in an area reserved for the exclusive use of the homeowner.

(c) For the purposes of this section:

"Clothesline" means a rope, cord, or wire or similar device on which laundry is hung to dry.

"Private entity" means any association of homeowners, community association, condominium association, cooperative, or any other non-governmental entity with covenants, bylaws, and administrative provisions with which the homeowner's compliance is required."

The provision regarding the allowing any private entity the ability to adopt rules that "reasonably restrict the placement" is vague and ambiguous provision, particularly where it provides that "...any private entity may adopt rules "that reasonably restrict the placement and use of clothesline" (emphasis added). This provision will lead to unnecessary disputes and litigation as to the "reasonableness" of any restrictions imposed by any private entity. This provision could lead to unnecessary disputes and litigation as to the what is considered a reasonable restriction, which would likely include enforcements by Board Associations.

The definition of "clotheslines" also is open to broad interpretation and dispute.

LURF's Position. LURF is concerned with this bill for the following reasons:

- **Unnecessary prohibition and mandate.** This bill is an unnecessary prohibition and mandate, as many of the established communities already have existing Design Covenants, Codes and Restrictions (DCCRs) in place which allow clotheslines, as long as the hanging laundry is not within the view of neighbors or

the public. Many existing developments and master-planned communities with single-family dwellings and multi-family townhouse developments which have been in existence for many years, have rules and regulations which allow clotheslines with some restrictions - - these restrictions recognize that the homes in the community were purchased by owners seeking a well-planned community that had rules that would protect their property values by maintaining the aesthetics around their property and ensure peace, health, comfort, safety and general welfare of the owners and their family members;

- **Issues relating to alleged “unreasonably restrictive clothesline regulations,” should be resolved through the mediation or arbitration provisions of DCCRs, and not through a state-wide statute? Does the number of homes affected warrant a statewide statute?** The text of the bill includes a claim that “many homeowners' associations prohibit the use of clotheslines or render them ineffective through unreasonably restrictive regulation” – What homeowner associations? What are the unreasonably restrictive regulations? How many homes are we talking about? Do the true facts warrant a statewide prohibition and mandate? Aren't there arbitration and mediation provisions in the DCCRs to address any “unreasonably restrictive” regulations? Again, does this situation really warrant a statewide prohibition and mandate which would change existing contracts, reduce property values and result in litigation?
- **How will this proposed mandate be administered or monitored? What are the penalties for violation? Will the boards of community associations be subject to criminal prosecution?** The proposed legislation does not include an enforcement provision – thus, there are several important unanswered questions - - Who decides what is an “unreasonable restriction” under the new law – a criminal judge? Will there be a sliding scale of what is an “unreasonable restriction,” depending on the type of community or housing complex, or the location of the clothesline (say next to a golf course hosting a nationally televised tournament)? Does the proposed law anticipate the criminal prosecution of board of directors who believe they have crafted DCCRs which allow clotheslines with reasonable restrictions? Will homeowner associations need to hire attorneys to draft clothesline rules and regulations and attorneys to provide a criminal defense for board members?
- **Alteration of existing contractual terms and homeowner expectations.** The bill seeks to change the terms and conditions of the DCCRs of planned community associations, many of which banned clotheslines and hanging laundry in plain view of neighbors and the general public. These aesthetics and DCCRs were relied on by buyers and made a part of the deeds for those properties. The new law would alter these contractual terms – make clotheslines and hanging of laundry allowable anywhere – except that the board could impose “reasonable restrictions;
- **Adverse impact on aesthetics and decrease in property values.** This bill could adversely affect aesthetics and decrease property values, by allowing the view of hanging laundry throughout a development. It is important to realize that the reason many homeowners buy into planned communities is because DCCRs are in place to regulate and ensure proper uses for the good of the whole; and

- **Disputes and litigation.** The provision allowing Board of Directors to determine what type of clotheslines would be allowed could open the door to disputes by residents who challenge the “reasonableness” of the regulations, or by residents who fail to conform with clothesline guidelines implemented by the board. This bill may also trigger other internal conflicts between home associations and homeowners and could lead to **unnecessary litigation** among homeowners and community associations.

Conclusion. While we support energy efficiency, the reduction of fossil fuels and the voluntary implementation of renewable energy, we must respectfully recommend that HB 1273 HD1, SD1 **be held**, because it is an unnecessary prohibition and mandate, in light of the fact that many homeowner associations already allow clotheslines; the proposed bill may alter the existing and contractual terms and expectations of buyers in planned communities; the “reasonable regulation” provisions of the bill will result in disputes and it could subject homeowner association board members to criminal prosecution if their rules or regulations relating to clotheslines were found to be “unreasonable;” it would adversely impact aesthetics and decrease property values; and the term “unreasonable restriction” is vague, ambiguous and subject to dispute and litigation. Instead of passing a bill with such a prohibition and mandate - - we would recommend that more incentives be implemented that encourage renewable energy installations that would reduce the consumption of fossil fuel generated electricity.

Based on the above, we respectfully request that HB 1273 HD1, SD1 be **held** in the Senate Committee on Commerce and Consumer Protection.

Thank you for the opportunity to testify on this matter.