



Mililani Town Association

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

April 5, 2009

**Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice-Chair
Committee on Finance
State Capitol
Honolulu, HI 96813**

VIA E-Mail: FINtestimony@Capitol.hawaii.gov

**Re: S.B. No. 1338 SD2 HD1 – Relating to Household Energy Demand
Hearing: Monday, April 6, 2009, 2:00 pm, Conf Room 308**

Dear Chair Oshiro, Vice-Chair Lee and Committees Members:

My name is Will Kane, Vice-President of the Mililani Town Association (MTA). As you are no doubt aware, MTA encompasses 16,000 plus units involving both single family units and townhouse projects.

We can support this bill's intent and language, as amended, 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.

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 quite effective, but unfortunately, the practice ceased when homeowners began to rely primarily on electric clothes dryers.

We accordingly can support this bill's passage.

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
808.537.9019 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON FINANCE

April 6 2009, 2:00 P.M.
(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SB 1338 SD2, HD1

Aloha Chair Oshiro and Members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports SB 1338 SD2 HD1, ensuring that Hawai'i homeowners have the choice to save money and save energy by using a clothesline to dry their clothes.

We respectfully request this measure be amended to reflect the language contained in SB 1338 SD1 to ensure this measure actually allows individuals to dry their clothes, and not simply express toothless public policy. The suggested language on page 2, line 22 would be:

...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.

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 Hawaii'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."

The Sierra Club supports the amendments made to SB 1338, which ensure that clotheslines will actually be permitted and not unduly restrained by aesthetic concerns. ***The Sierra Club has been contacted by townhouse residents who have been forced to keep their clotheslines in a closed carport. Without the amendment incorporated in SD1, this bill would not prevent such absurd restrictions.***

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. If this bill is properly amended, it will balance the different interests but also allow individuals to save money by actually using their clothesline.

Thank you for the opportunity to testify.



P.O. Box 3000
Honolulu, HI 96802-3000

April 3, 2009

Testimony for SB 1338, SD2, HD1 Relating to Household Energy Demand

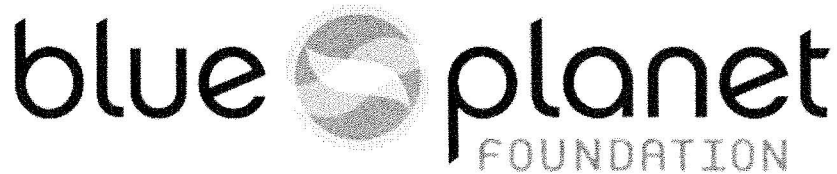
Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee on Finance:

My name is Stephanie Ackerman. I am Vice President Public Policy and Communications for The Gas Company. Thank you for the opportunity to provide testimony on SB 1338, SD2, HD1 Relating to Household Energy Demand.

The Gas Company supports the intent of SB 1338, SD2, HD1 which would allow homeowners to erect or use a clothesline and have reasonable access to sun and wind to dry their clothes.

The Gas Company supports the State's initiatives to promote renewable energy, energy efficiency, and the diversification of energy resources. The Gas Company therefore supports measures that promote consumer choices in adopting efficient alternative energy solutions included in SB 1338, SD2, HD1.

Thank you for the opportunity to offer these comments.



HOUSE COMMITTEE ON FINANCE

April 6, 2009, 2:00 P.M.

Room 308

(Testimony is 3 pages long)

TESTIMONY IN STRONG SUPPORT OF SB 1338 SD2 HD1 WITH AMENDMENTS

Chair Oshiro and members of the committee:

The Blue Planet Foundation strongly supports the intent of Senate Bill 1338 SD2 HD1, ensuring that Hawai'i homeowners have the choice to save money and save energy by using a clothesline to dry their clothes. We respectfully ask that the Committee on Finance amend this measure to clarify that homeowners will be allowed to use a clothesline for its intended purpose—drying clothes—not just disallowing their prohibition. **This can be accomplished by amending SB 1338 HD1 with language contained in SB 1338 SD1. Suggested new language (starting page 2, line 22):**

...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.

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 Hawaii'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." While such an aesthetic condition might have been acceptable 20 years ago, it makes no sense today to restrict smart energy-saving behavior given what we now know about global climate change.

Jeff Mikulina, executive director • jeff@blueplanetfoundation.org

55 Merchant Street 17th Floor • Honolulu, Hawai'i 96813 • 808-954-6142 • blueplanetfoundation.org

While we know this clothesline measure has drawn chuckles from some, its value is very serious: to provide residents the option of reducing their energy use if they chose. Given the cost of electricity and urgent need to move toward energy independence, Hawai'i homeowners should have the choice to save money and save energy by using the hot sun and trade winds to dry their clothes. This may sound frivolous, but when you consider that the average family produces over one ton of greenhouse gas annually from typical electric clothes dryer usage, any restriction on clothesline use seems inappropriate. Yet this measure doesn't prevent any homeowner association rules on clothesline usage, only those that are unreasonable. Clotheslines also save money. Families switching to a clothesline can expect to save hundreds annually on their electricity bill. Further, the household average annual clothes dryer use may produce over 1 ton of greenhouse gas.

This measure is a logical extension to the bill passed into law in 2005 prohibiting restrictions that prevent individuals from installing solar energy devices on houses or townhomes that they own. In fact, SB 1338 is arguable a housekeeping amendment to the law, as a clothesline could be considered a "solar energy device," pursuant to HRS 196-7, but it probably wouldn't be placed "on" a house like the allowed solar devices described in the current law.

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 removes yet another barrier to local residents doing the right thing for the environment and the economy.

Last year this measure passed the legislature with broad support. The bill, however, was vetoed by the Governor. Governor Linda Lingle suggested that the bill of concern because it may invalidate community associations existing contractual bylaws or rules. We do not believe this is a concern for SB 1338 the following reasons:

1. Senate Bill 1338 allows the enactment of rules or bylaws governing clotheslines as long as they are not unreasonable.
2. Locally, Act 157 (2005), disallowing most restrictions on solar device usage, has not been challenged.

3. Case law is supportive. In *Applications of Herrick and Irish*, 82 Hawai'i 329 (1996): "In deciding whether a state law has violated the federal constitutional prohibition against impairment of contracts, U.S. Const., art. I, § 10, cl. 1, we must assay the following criteria: (1) whether the state law operated as a substantial impairment of a contractual relationship; (2) whether the state law was designed to promote a significant and legitimate public purpose; and (3) whether the state law was a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose."
4. The goal of SB 1338 is to promote a significant and legitimate public purpose, namely, the critical goal of reducing Hawaii's expensive dependency on imported fossil fuel.
5. Nationally, association rules have been invalidated or overridden in the past: Jim Crow laws and the FCC allowing satellite dishes are two significant examples.
6. The courts have often found that prohibiting the enforcement of pre-existing restrictive covenants does not violate the contracts clause. "There is no unconstitutional retroactive impairment of contract rights where the legislature operates pursuant to a strong state interest, does not drastically alter the pre-enactment right and does not unreasonably destroy reliance on the right." *Westwood Homeowners Association v. Tenhoff*, 745 P.2d 976, 983 (Ariz. App. 1987) (retroactive application of public policy prohibiting enforcement of restrictive covenants that bar group homes for the disabled in residential neighborhoods does not violate the contracts clause)¹

Blue Planet believes that SB 1338 is a fair, balanced, and necessary policy to remove yet another barrier for local residents to do the right thing in decreasing their energy use. **Please amend the measure to ensure it accomplishes what it is intended to accomplish.**

Thank you for the opportunity to testify.

¹ See also: *Ball v. Butte Home Health, Inc.* 70 Cal.Rptr.2d 246 (Cal App. 3 Dist. 1997) (retroactive application of law forbidding enforcement of restrictive covenants that prohibit group homes for the disabled does not violate the contracts clause). *Barrett v. Dawson*, 71 Cal.Rptr.2d 899 (Cal.App.4 Dist. 1998) (retroactive application of statute prohibiting enforcement of restrictive covenant barring day cares homes in residential neighborhoods does not violate the contracts clause).