Bill No. 1338

Mililani Town Association
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Mililani Town, HI 96789
Phone (808) 623-7300

Support Y (N)

Date 3/15/09

Time 2203

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March 15, 2009

Representative Hermina Morita, Chair
Representative Denny Coffman, Vice-Chair
Committee on Energy & Environmental Protection
Representative Rida Cabanilla, Chair
Representative Pono Chong, Vice-Chair
Committee on Housing
State Capitol
Honolulu, HI 96813

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

Re: S.B. No. 1338 SD2 – Relating to Household Energy Demand
Hearing: Tuesday, March 17, 2009, 9:30 am, Conf Room 325

Dear Chairs Morita & Cabanilla, Vice-Chairs Coffman & Chong and Committees Members:

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities for 24 of the last 30 years serving on the board. 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. However, while this bill is very similar to HB 1273 HD 1, and also provides a win-win situation for both homeowners desiring to dry clothes naturally and the associations covered, the language of HB 1273 HD 1 is preferred.

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 can support this bill's passage, but would prefer this bill be deferred.

Sincerely yours,

Eric M. Matsumoto
Vice-President, Board of Directors

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

Bill No. 1338
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blue planet FOUNDATION

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
HOUSE COMMITTEE ON HOUSING
March 17, 2009, 9:30 A.M.
Room 325

(Testimony is 3 pages long)

TESTIMONY IN STRONG SUPPORT OF SB 1338 SD2

Chairs Morita and Cabanilla and members of the committees:

The Blue Planet Foundation strongly supports Senate Bill 1338 SD2, ensuring that Hawai'i homeowners have the choice to save money and save energy by using a clothesline to dry their clothes.

Blue Planet supports the amendment made by the previous committee to clarify that homeowners will be allowed to use a clothesline for its intended purpose—drying clothes—and that the measure doesn't just disallow their prohibition.

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.

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

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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 SD2 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 SD2 the following reasons:

1. Senate Bill 1338 SD2 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 SD2 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 SD2 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.

Thank you for the opportunity to testify.

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[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).

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EEPtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 15, 2009 10:09 PM
To: EEPtestimony
Cc: carl.imparato@juno.com
Subject: Testimony for SB1338 on 3/17/2009 9:30:00 AM

Testimony for EEP/HSG 3/17/2009 9:30:00 AM SB1338

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Carl Imparato
Organization: Individual
Address: PO Box 1102 Hanalei, HI
Phone: 808-826-1856
E-mail: carl.imparato@juno.com
Submitted on: 3/15/2009

Comments:
Aloha Committee Chairs and Members,

I urge you to reject SB 1338. The sanctity of contracts is an extremely important principle Our state and county governments should respect and uphold contracts - including deeds, leases, homeowner association covenants and similar binding agreements - and should interfere with such contracts only in the rare case in which a clear and overwhelming injustice must be redressed. That is clearly not the case with this "clotheslines" bill.

I believe that there is no legitimate justification for government interference with contracts in this instance: the goal of energy conservation falls far below the threshold that would justify the state government's voiding of pre-existing contracts. And I am also concerned that approval of SB 1338 would set a terrible precedent, starting government down the slippery slope of voiding contracts based on any number of trivial justifications and policies that might be in vogue in the future.

For these reasons, I respectfully ask you to uphold one of the most important principles of law by voting NO on SB 1338.

Thank you for this opportunity to testify,

Carl Imparato
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Hanalei, HI