

Honolulu, Hawaii

FEB 13 2009

RE: S.B. No. 1338
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Energy and Environment, to which was referred S.B. No. 1338 entitled:

"A BILL FOR AN ACT RELATING TO HOUSEHOLD ENERGY DEMAND,"

begs leave to report as follows:

The purpose of this measure is to prohibit real estate contracts, agreements, and rules from precluding or rendering ineffective the use of clotheslines on the premises of single-family dwellings.

Testimony in support of this measure was submitted by two private organizations. Testimony in support of this measure, with comments, was submitted by two private organizations. One private organization submitted testimony supporting the intent of this measure. Testimony in opposition to this measure was submitted by two private organizations and two individuals. Comments were submitted by one private organization.


Your Committee finds that this measure is a fair and balanced means to allow local residents to save money and save energy by using a clothesline to dry their clothes. Further, this measure does not prevent all homeowner association rules on clothesline usage, only those that are unreasonable.

In response to the recommendation expressed by the Sierra Club, your Committee has amended this measure by clarifying that homeowner association rules cannot limit access to air or sunlight reasonably necessary for the use of clotheslines.



As affirmed by the record of votes of the members of your Committee on Energy and Environment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1338, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1338, S.D. 1, and be referred to the Committee on Commerce and Consumer Protection.

Respectfully submitted on
behalf of the members of the
Committee on Energy and
Environment,

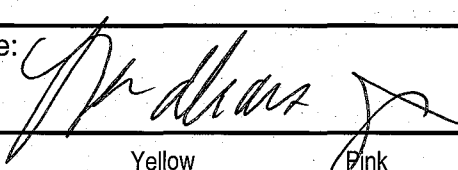


MIKE GABBARD, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Energy and Environment
ENE

Bill / Resolution No.:* SB 1338	Committee Referral: ENE, CPN	Date: 2-3-09		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
GABBARD, Mike (C)	✓			
ENGLISH, J. Kalani (VC)				✓
GREEN, M.D., Josh	✓			
HOOSER, Gary L.				✓
IHARA, Jr., Les	✓			
KOKUBUN, Russell S.				✓
HEMMINGS, Fred	✓			
TOTAL	4	0	0	3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

Report Title:

Solar Energy, Clotheslines, Household Energy Demand

Description:

Allows for the use of clotheslines at any privately owned single-family residential dwelling or townhouse. Allows reasonable restrictions on the use of clotheslines for aesthetic purposes. (SD1)

A BILL FOR AN ACT

RELATING TO HOUSEHOLD ENERGY DEMAND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that electric clothes
2 dryers make up over ten per cent of many households' total
3 energy use. Reducing the use of electric clothes dryers
4 statewide could substantially decrease the amount of energy that
5 households use and thereby reduce the amount of fossil fuels
6 used to generate electricity in the State.

7 The legislature finds that simple clotheslines make
8 efficient use of two abundant resources, sun and wind, to dry
9 clothing. For aesthetic reasons, however, many homeowners'
10 associations prohibit the use of clotheslines or render them
11 ineffective through unreasonably restrictive regulation. The
12 legislature further finds that although aesthetic concerns still
13 exist today, they are not necessarily incompatible with
14 environmental and energy security concerns, especially in the
15 current context of high energy costs, climate change issues, and
16 Hawaii's goal of increasing energy independence and maintaining
17 an aesthetically pleasing environment.

1 The purpose of this Act is to prohibit real estate
2 contracts, agreements, and rules from precluding or rendering
3 ineffective the use of clotheslines on the premises of
4 single-family dwellings.

5 SECTION 2. Section 196-7, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending subsection (a) to read:

8 "(a) Notwithstanding any law to the contrary, no person
9 shall be prevented by any covenant, declaration, bylaws,
10 restriction, deed, lease, term, provision, condition, codicil,
11 contract, or similar binding agreement, however worded, from
12 installing a solar energy device on any single-family
13 residential dwelling or townhouse that the person owns[-], or
14 erecting and using a clothesline for the purpose of drying
15 clothes on the premises of any detached single-family
16 residential dwelling or townhouse that the person owns; provided
17 that the board of directors with responsibility for the
18 single-family dwelling or townhouse or a private entity may
19 implement reasonable restrictions with regard to clotheslines,
20 provided that the restrictions do not prohibit the use of
21 clotheslines altogether or deny access to air or sunlight
22 requirements reasonably necessary for the effective use of the

1 clothesline. Any provision in any lease, instrument, or
2 contract contrary to the intent of this section shall be void
3 and unenforceable."

4 2. By amending subsection (f) to read:

5 "(f) For the purposes of this section:

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

11 "Solar energy device" means any identifiable facility,
12 equipment, apparatus, or the like~~[, including a photovoltaic~~
13 ~~cell application,]~~ that is applicable to a single-family
14 residential dwelling or townhouse and makes use of solar energy
15 for heating, cooling, or reducing the use of other types of
16 energy dependent upon fossil fuel for generation~~[,]~~ including
17 but not limited to photovoltaic cell applications and
18 clotheslines; provided that for the purposes of this section,
19 "clothesline" means a rope, cord, or wire on which laundry is
20 hung to dry; provided further that "solar energy device" shall
21 not include skylights or windows."

1 SECTION 3. Section 235-12.5, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) For the purposes of this section:

4 "Actual cost" means costs related to the renewable energy
5 technology systems under subsection (a), including accessories
6 and installation, but not including the cost of consumer
7 incentive premiums unrelated to the operation of the system or
8 offered with the sale of the system and costs for which another
9 credit is claimed under this chapter.

10 "Renewable energy technology system" means a new system
11 that captures and converts a renewable source of energy, such as
12 wind, heat (solar thermal), or light (photovoltaic) from the sun
13 into:

14 (1) A usable source of thermal or mechanical energy;

15 (2) Electricity; or

16 (3) Fuel[~~-~~];

17 provided that for the purposes of this section "renewable energy
18 technology system" shall not include skylights, windows, or
19 clotheslines.

20 "Solar or wind energy system" means any identifiable
21 facility, equipment, apparatus, or the like that converts
22 insolation or wind energy to useful thermal or electrical energy

1 for heating, cooling, or reducing the use of other types of
2 energy that are dependent upon fossil fuel for their
3 generation[-]; provided that for the purposes of this section,
4 "solar or wind energy system" shall not include skylights,
5 windows, or clotheslines."

6 SECTION 4. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun, before its effective date.

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval.

February 26, 2009

The Honorable Rosalyn Baker, Chair
Senate Committee on Energy and Environment
State Capitol, Room 231
Honolulu, Hawaii 96813

RE: S.B. 1338, S.D.1 - Relating to Household Energy Demand

HEARING DATE: Friday, February 27, 2009 at 9:30 a.m.

Aloha Chair Baker and Members of the Committee:

On behalf of our 9,600 members in Hawai'i, the Hawai'i Association of REALTORS® (HAR) provides **comments** on S.B. 1338, S.D.1 which allows for the use of clothesline on any privately single family residence or townhouse.

S.B. 1338, S.D.1 allows for the use of clotheslines on privately single family residences or townhouses by allowing community and homeowner associations to impose reasonable regulations on clotheslines, but prohibiting an outright ban on clotheslines. HAR would suggest that, rather than prohibiting a ban on clotheslines, community and homeowner associations should be encouraged to promote the use of clotheslines through their existing governance procedures.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.



Mililani Town Association

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

February 24,, 2009

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Committee on Commerce & Consumer
Protection
State Capitol
Honolulu, HI 96813

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

Re: S.B. No. 1338 SD1 – Relating to Household Energy Demand
Hearing: Friday, February 27, 2009, 9:30 am, Conf Room 229

Dear Chair Baker, Vice-Chair Ige and Committee 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 strongly support this bill's intent and language 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. This bill provides a win-win situation for both homeowners desiring to dry clothes outside and the associations covered.

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.

As we now face the need to increase the use of green energy resources, this bill would help promote making a full circle in using the sun's energy to dry clothes.

We accordingly request this bill be passed.

Sincerely yours,

Eric M. Matsumoto
Vice-President, Board of Directors

Cc: Sen Kidani, Sen Bunda
Rep Lee, Rep Yamane



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

February 27, 2009, 9:30 A.M.

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SB 1338 SD1

Aloha Chair Baker and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports SB 1338 SD1, ensuring that Hawai'i homeowners have the choice to save money and save energy by using a clothesline to dry their clothes.

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. **This bill, as amended, is a fair and balanced means to allow local residents to do the right thing for Hawaii's environment and economy.**

Thank you for the opportunity to testify.



SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

February 27th, 2008, 9:30 A.M.

Room 229

(Testimony is 3 pages long)

TESTIMONY IN STRONG SUPPORT OF SB 1338 SD1

Chair Baker and members of the committee:

The Blue Planet Foundation strongly supports Senate Bill 1338 SD1, 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, it's 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

Jeff Mikulina, executive director • jeff@blueplanetfoundation.org

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

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. A family switching to a clothesline on Kauai—where the cost of electricity exceeds \$0.40 per kilowatt-hour—can expect to save about \$450 annually, while a family on O'ahu would save about \$250. 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 SD1 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 SD1 the following reasons:

1. Senate Bill 1338 SD1 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 SD1 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 SD1 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.

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).