

SB 1338



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

February 2, 2009

Testimony for SB 1338 Relating to Household Energy Demand

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

My name is Jeffrey Kissel, President and CEO of The Gas Company. Thank you for the opportunity to provide testimony on Senate Bill 1338 Relating to Household Energy Demand.

The Gas Company supports the intent of SB 1338, which would allow State law to take precedence when promoting energy efficiency options for any privately owned single-family residential dwelling or townhouse.

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 SB1338.

Thank you for the opportunity to offer these comments.



SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

February 3rd, 2008, 2:45 P.M.

Room 225

(Testimony is 2 pages long)

TESTIMONY IN SUPPORT OF SB 1338, SUGGESTED AMENDMENT

Chair Gabbard and members of the committee:

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

Blue Planet believes that this measure should be amended to clarify that homeowners will be allowed to use a clothesline for its intended purpose—drying clothes—not just disallowing their prohibition. To accomplish this outcome we suggest the following language to replace the bill's language starting at page 2 line 20: **"so long as such restrictions do not prohibit or unduly restrict the use of 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.

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 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.

Jeff Mikulina, executive director • jeff@blueplanetfoundation.org

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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 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.

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).



Hawaii Solar Energy Association
Serving Hawaii Since 1977

February 1, 2008

SB1338: 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 support all efforts to use renewable energy to supplant non-renewable energy. We therefore view SB1338 is an important, fundamental, and practical way to increase the penetration of sun and wind energy in our state.

HSEA makes the following comments in support of this measure:

HSEA believes that Hawai'i homeowners should have the choice to save money and save energy by using the state's abundant renewable energy to meet their energy needs. HSEA further believes in using the sun's energy in as direct a form as possible is the most efficient means of achieving various clean energy goals.

More to the point, the average family produces over one ton of greenhouse gas annually from typical electric clothes dryer usage. Further, clotheslines also save money. A family switching to a clothesline on Kauai can expect to save about \$450 annually, while a family on O'ahu would save about \$250. While restricting use of clotheslines may have been acceptable 20 years ago, it makes no sense today to restrict smart, energy-saving behavior given our state's need for energy security.

Ultimately, SB1338 is a comparatively unobtrusive step to permit broader access to free cloths drying. It does not prevent all AOA rules on clothesline usage, only those that

are “unduly or unreasonably restrictive, and it can be viewed as an extension of the largely uncontroversial Act 157 (2005) – the ‘right to solar’ - that disallowed most restrictions on solar device usage.

HSEA supports renewable energy measures such as SB1338 that make sense for individual state residents and serve the social good as well.

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February 2, 2009

Honorable Chair Senator Mike Gabbard
and Members of the Committee on Energy and Environment
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96817

**Re. SB 1338 – Relating to Planned Community Associations Hearing,
Tuesday, February 3, 2009, Conference Room 225, 2:25 PM (25
copies)**

Dear Senator Gabbard and Members of the Committee:

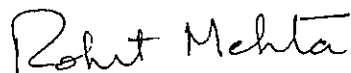
My name is Rohit J. Mehta, General Manager of the Princeville at Hanalei Community Association ("PHCA"), a Hawaii nonprofit corporation that for certain purposes is regulated as a planned community association under Chapter 421J, HRS, a law passed in 1997.

We are submitting testimony **in support** of SB 1338 as this Bill furthers the State's efforts towards sustainability and energy independence.

PHCA is one of the largest planned community associations in the State of Hawaii, with over 2,200 members. It is a resort community and its members include some 770 single-family homes, a hotel, 33 condominium or timeshare properties with a total of over 1,900 multi-family units.

Thank you for your consideration with this testimony.

PRINCEVILLE AT HANALEI COMMUNITY ASSOCIATION



Dr. Rohit J. Mehta, General Manager



Sierra Club Hawai'i Chapter

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

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

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

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SB1338 WITH AMENDMENT

Chair Gabbard and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports SB 1338, ensuring that Hawai'i homeowners have the choice to save money and save energy by using a clothesline to dry their clothes. The Sierra Club believes an amendment is necessary, however, to ensure that this bill actually allows the use of 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 Hawai'i 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."

To this end, the Sierra Club suggests that SB 1338 could be clarified to ensure that clotheslines will actually be permitted and not unduly restrained by aesthetic concerns. The measure, as currently stated, could prevent 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. Accordingly, page 2, lines 20 -21, of SB 1338 should be amended to state:

provided that the restrictions do not prohibit the use of clotheslines altogether or deny access to air or sunlight requirements reasonably necessary for the effective use of the clothesline.

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.



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February 2, 2009

The Honorable Mike Gabbard, Chair
Senate Committee on Energy and Environment
State Capitol, Room 225
Honolulu, Hawaii 96813

RE: S.B. 1338 Relating to Household Energy Demand

HEARING DATE: Tuesday, February 3, 2009 @ 2:45 p.m.

Aloha Chair Gabbard, Vice Chair English 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 which allows for the use of clothesline on any privately single family residence or townhouse.

S.B. 1338 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 an outright 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.

From: Peter Grieve [pmgrieve@tmgassociates.com]
Sent: Monday, February 02, 2009 11:50 AM
To: ENETestimony
Subject: SB1338 Kidani Clothesline Bill

To the Clerk of the ENE committee:

Dear Sirs:

Please accept this as my testimony before the committee considering the passage of the bill (SB1338 Kidani Clothesline Bill).

I am a homeowner and have the pleasure to serve as President of the Vintage at Kaanapali AOA representing a total of 73 homeowners in Kaanapali, Maui.

Clearly we are interested in energy conservation but not at the expense of a bill that would permit the unbridled use of clotheslines for drying clothes in our residential community. The use of clotheslines in our community would serve to deleteriously impact the view of our homes both within the complex and from the golf course that surrounds us. This would seriously devalue our homes and negatively impact tourist views of Kaanapali as a resort destination.

I ask you to seriously consider killing this bill and any other bill (i.e. The Sierra Club bill) that would permit the use of clotheslines in our community or any other.

Thank you for your consideration.

Peter M. Grieve

President, Vintage at Kaanapali AOA
138 Kualapa Place
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Mobile: 808-870-6476

C L A S S I C R E S O R T S

February 2, 2009

Committee on Energy and Environment

RE: SB 1338

Dear Committee Members:

I am writing in opposition to the so-called "Clothesline Bill" wherein in the name of energy savings, clotheslines would be allowed in planned unit developments where there are declarations, by laws or deed restrictions prohibiting their use.

What are the priorities of legislators who introduce such bills? Certainly everyone wants to save energy but this solution is hardly going to be impactful on energy but disastrous to the thousand of homeowners associations in the state. To even consider clotheslines on an energy par with wind and solar is ludicrous.

With all the important issues the legislature has to consider why they would insert themselves into the operation and aesthetics of a homeowners association, run by the property owners themselves, who can make much better decisions for their own property than any outside influence (read legislator).

These types of bills are outrageous and bring into question the judgment and priorities of those who introduce them and those who give them a second thought.

Please focus on the state's economy and its deteriorating infrastructure, and not on this legislative waste of time.

Sincerely,
Classic Resorts Limited



Jeff Halpin
President



Via Capitol Website

Senate Committee on Energy and Environment
Hearing Date: Tuesday, February 3, 2009, 2:45 p.m. in CR 225

**Testimony in Opposition SB 1338 – Relating to Household Energy Demand
(Clothesline Bill)**

Honorable Chair Mike Gabbard, Vice-Chair J. Kalani English and
Energy and Environment Committee Members:

My name is David 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 Hawaii's significant natural and cultural resources and public health and safety.

LURF and its members support the intent of this bill and recognize the importance of reducing the use of fossil fuels and voluntarily support renewable energy - in fact many of LURF's members install energy efficient appliances and include other renewable energy devices in the housing units they produce. Notwithstanding those facts, however, this bill is not the answer to significant reduction in energy consumption. SB 1338 would result in an unnecessary prohibition and mandate, as many developments and homeowner associations already allow clotheslines; it may alter the existing and contractual terms and expectations of existing residents; it could result in the criminal prosecution of homeowner association board members; laundry hanging in plain view will impact aesthetics and decrease property values; and its terms are vague, ambiguous and subject to dispute and litigation. Thus, LURF must testify in opposition to the current version of SB 1338.

SB 1338. Despite the fact that many existing developments and master 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 and multi-family townhouse developments. This proposal unfairly changes the current rules and regulations of private home associations, which are in place to protect property values and aesthetics for the good of the whole development.

This bill also includes the following vague and ambiguous provision, which provides that "...the board of directors.....may implement "reasonable restrictions" with regard to clotheslines, provided that the restrictions do not prohibit the use of clotheslines altogether." (emphasis added). This provision could lead to unnecessary disputes and litigation as to the "reasonableness" of any restrictions imposed by a board.

LURF's Position. LURF opposes SB 1338, based on the following concerns:

- **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 hanging laundry in plain view throughout a development. It is important to realize that the reason many homeowners buy into planned communities are 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 recommend that this bill 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; 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.

Thank you for this opportunity to testify on this matter.

From: Linda Millar-Vanpoucke [snookie@hawaii.rr.com]
Sent: Tuesday, February 03, 2009 9:14 AM
To: ENETestimony
Subject: S.B. 1338

To Whom It May Concern,

I am opposed to Bill SB 1338, otherwise known as the "Clothesline Bill", which is to be on the agenda Feb. 3rd at 2:45 PM.

Sincerely,
Linda Millar-Vanpoucek
165 Kualapa Place
Lahaina, HI 96761