

HB 1273
RELATING TO ENERGY
House Committee on Energy and Environmental Protection

Public Hearing – February 17, 2009
9:30 a.m., State Capitol, Conference Room 325

By
Peter Rappa, Environmental Center

HB 1273 allows for the use of clotheslines at any privately owned single-family residential dwelling or townhouse with reasonable restrictions on the use of clotheslines for aesthetic purposes. We are testifying as individual faculty and our views do not represent an official position of the University of Hawaii.

As a way of saving energy, hanging clothes on a clothesline seems to be the most simple of solutions. It is low-tech, has been proven to be effective over centuries of use, takes advantage of existing sources of non-fossil fuel energy and it requires only a small amount of physical labor in order to work (which is probably good for you in the long run). What's not to like about it? If residents want to use a clothesline they should be able to. We should be encouraging people to dry clothes in this manner rather than erecting barriers.

This bill seems to reasonably address the one drawback to allowing clotheslines - the impact on aesthetics - by allowing boards of directors for single-family or townhouse development to implement reasonable restrictions with regard to clotheslines, so long as the restrictions do not prohibit the use of clotheslines altogether.

Thank you for the opportunity to comment on this bill.

Bill No. HB 1273

Support Y N

Date 2/13

Time 1349

Cat AF AS AX B C

Type 1 2 WI

EEPtestimony

From: Bruce Howe [bruceh@hmcmtg.com]
Sent: Friday, February 13, 2009 9:53 AM
To: EEPtestimony
Subject: testing

Re: HB 1273
Committee on Energy and Environmental Protection
Hearing date: Tuesday, February 17, 2009, at 9:30 a.m.

My name is Bruce Howe.

I am with Hawaiiana Management Co., Ltd, with the largest portfolio of home owner associations in the State. I also serve on the Legislative Action Committee of CAI. I have managed community associations in Hawaii since 1992. This bill is too broad and should contain restrictions similar to those in the Mililani Town DCC&R's. Clothes lines should be in a fenced area where they are not visible from the street or from the neighboring property, when viewed from eye level from the exterior of the property.

Thank you for your consideration.

Bill No. HB 1273
Support Y N
Date 2/13
Time 953
Cat AF AS AX B C
Type 1 2 WI



Conservation Council for Hawaii

Testimony Submitted to the House Committee on Energy and Environmental Protection
and House Committee on Housing

Hearing: Tuesday, February 17, 2009

9:30 am

Room 325

Support for HB 1273 Relating to Energy

Aloha. My name is Marjorie Ziegler, and I am testifying on behalf of the Conservation Council for Hawaii and its 6,000 members.

We support HB 1273, which allows the use of clotheslines on any privately owned single-family residential dwelling or townhouse. HB 1273 will allow Hawaii residents to save energy and money, and reduce greenhouse gas emissions. Prohibiting the use of clotheslines on residential property based on aesthetic concerns is misguided and short-sighted given what we now know about climate change. Please pass this bill out of your committees.

Mahalo for the opportunity to testify.

Bill No. HB 1273

Support Y N

Date 2/13

Time 1726

Cat AF AS AX C

Type 1 2 WI



Working Today for the Nature of Tomorrow!

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Hawaii Affiliate of the National Wildlife Federation

President: Julie Lealoha • Vice-President: Nelson Ho • Secretary: Douglas Laranson • Treasurer: Kim Parnis •

Directors: Maura O'Connor • Melba Purell • George Robertson • Executive Director: Marjorie Ziegler

Bill No. HB 1273



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

Support Y N

Date 2/14

Time 2056

Cat AF AS AX B C

February 14, 2009

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

VIA EMAIL: EEPttestimony@Capitol.Hawaii.gov WI

Re: H.B. No. 1273 – Relating to Energy

Hearing: Tuesday, February 17, 2009, 9:30 am, Conf Room 325

Dear Chairs Morita and Cabanilla and Vice-Chairs Coffman and Chong and Members of the Committees:

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 the provisions of this 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. However, to improve this bill we request a new Section 1 be added to reflect the legislature's intent, as follows:

(NEW) SECTION 1. The legislature finds that electric clothes dryers make up over ten percent of many households' total energy use. Reducing the use of electric clothes dryers statewide could substantially decrease the amount of energy that households use and thereby reduce the amount of fossil fuels used to generate electricity in the state.

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

The purpose of this Act 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.

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, amended as requested, be passed.

Sincerely yours,



**Eric M. Matsumoto
Vice-President, Board of Directors**

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



Bill No. HB1273
Support Y (N)
Date 2/15
Time 1108
Cat AF AS AX (B/C)
Type (1) 2 WI

Via Capitol Website

House Committee on Energy and Environmental Protection and
Committee on Housing

Hearing Date: Tuesday, February 17, 2009, 9:30 AM in CR 325

**Testimony in Opposition HB 1273 – Relating to Energy
(Clothesline Bill)**

Honorable Chairs Hermina Morita and Rida Cabanilla, Vice-Chairs Denny Coffman and Pono Chong and EEP and HSG 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 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. HB 1273 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 HB 1273.**

HB 1273. 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 residential dwelling or townhouse. 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 HB 1273, 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 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 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.

Based on the above, we respectfully request that **HB 1273 be held**.

Thank you for the opportunity to testify on this matter.



Bill No. HB 1273
Support Y N
Date 2/15
Time 2:55

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
HOUSE COMMITTEE ON HOUSING
February 17, 2008, 9:30 A.M.
Room 325

Cat AF AS AX B C
Type 1 2 WI

(Testimony is 3 pages long)

TESTIMONY IN SUPPORT OF HB 1273, SUGGESTED AMENDMENT

Chairs Morita and Cabanilla members of the committees:

The Blue Planet Foundation strongly supports the intent of House Bill 1273, 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 1 line 16: "**prohibit or unduly restrict the use of clotheslines.**"

Electric clothes dryers can consume upwards of 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." 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. 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, HB 1273 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 HB 1273 the following reasons:

1. House Bill 1273 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 HB 1273 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 HB 1273 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.

As Benjamin Franklin reminds us, "We must hang together...else, we shall most assuredly hang separately."

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).



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February 16, 2009

The Honorable Hermina M. Morita, Chair
House Committee on Energy & Environmental Protection
The Honorable Rida Cabanilla, Chair
House Committee on Housing
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1273 Relating to Household Energy Demand

HEARING DATE: Tuesday, February 17, 2009 at 9:30 a.m.

Aloha Chair Morita, Chair Cabanilla and Members of the Joint Committees:

I am Myoung Oh, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR") and its 9,600 members in Hawai'i. HAR provides **comments** on H.B. 1273 which allows for the use of clotheslines on any privately-owned single family residence or townhouse.

H.B. 1273 aims to regulate community and homeowners' associations, many of which have adopted Covenants, Conditions and Restrictions (CC&R) that already regulate the use or non-use of clotheslines in their respective communities.

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.

Bill No. HB 1273

Support Y N

Date 2/16

Time 749

Cat AF AS AX BC

Type 1 2 WI

Princeville at Hanalei Community Association
P.O. Box 223277, Princeville, Hawaii 96722
(808) 826-6687, Fax: (808) 826-5554
Email: pcainfo@pcaonline.org. Web Addr: www.pcaonline.org

February 16, 2009

Honorable Chair Representative Hermina M. Morita
and Members of the Committee on Energy & Environmental Protection
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96817

**Re. HB 1273 – Relating to Energy,
Hearing, Tuesday, February 17, 2009,
Conference Room 325, 9:30 AM**

Dear Representative Morita 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 HB 1273 as this Bill furthers the State's efforts towards sustainability and energy independence. We would, however, respectfully suggest that the language of HB 1273 be made consistent with that of the SB 1338 (attached).

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

Bill No. HB 1273

Support Y N

Date 2/16

Time 858

Cat AF AS AX B C

Type 1 2 WI



Sierra Club Hawai'i Chapter

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

Bill No. HB 1273

Support Y N

Date 2/16

Time 1327

Cat AF AS AX BC

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION HOUSE COMMITTEE ON HOUSING

Type 1 2 WI

February 17, 2009, 9:30 A.M.
(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF HB 1273 WITH AMENDMENT

Chair Morita, Chair Cabanilla, and members of the Committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports HB 1273, 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 accomplishes its goals and allows the orderly 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."

To this end, the Sierra Club suggests that HB 1273 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 1, line 16, of HB 1273 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 Hawaii's environment and economy.**

Thank you for the opportunity to testify.



Robert D. Harris, Director

EEPtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 13, 2009 2:57 PM
To: EEPtestimony
Cc: jillf2184@yahoo.com
Subject: Testimony for HB1273 on 2/17/2009 9:30:00 AM

Testimony for EEP/HSG 2/17/2009 9:30:00 AM HB1273

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Jill Friedman
Organization: Individual
Address:
Phone:
E-mail: jillf2184@yahoo.com
Submitted on: 2/13/2009

Comments:

I support HB1273 allowing clotheslines on any privately owned residence, for obvious reasons.

Bill No. HB1273
Support Y N
Date 2/13
Time 1457
Cat AF AS AX B C
Type 1 2 WI