

Linda Lingle
GOVERNOR



ORLANDO "DAN" DAVIDSON
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO

Statement of
Orlando "Dan" Davidson
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING

January 31, 2008, 9:45 a.m.
Room 329, State Capitol

In consideration of
H.B. 2733
RELATING TO HOUSING.

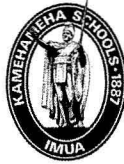
The HHFDC opposes sections 2 through 5 of H.B. 2733, and defers to the Hawaii Public Housing Authority with respect to the remainder of the bill.

Section 2 establishes a new chapter in the Hawaii Revised Statutes (HRS) superseding chapter 516, HRS (Residential Leaseholds). This proposed chapter is problematic for several reasons. We specifically oppose section 3 (page 4, lines 9-20) which allows lessees to redeem their leases to obtain fee simple title to their properties, and section 13 (page 9, lines 10-14), which mandates that any lease of residential real property executed after its enactment be for a period of 99 years, automatically renewable for another 99 years. This proposed chapter would be the end of residential leaseholds as a means to provide affordable for-sale options for Hawaii families.

The HHFDC is partnering with non-profit entities by providing suitable land at a nominal lease rent upon which they can develop affordable housing. Under this model, the leasehold transfer of land is a means by which the HHFDC may retain sufficient control to ensure that affordable housing developments remain affordable over the long term. However, the HHFDC may not be able to continue to do so if a leasehold transfer becomes essentially the equivalent of a fee simple transfer.

Sections 3 through 5 of H.B. 2733 impose an anti-speculation capital gains tax on real property and deposits the proceeds thereof into the HHFDC's Rental Housing Trust Fund. We appreciate the intent of these provisions, but oppose the imposition of a new tax.

Thank you for the opportunity to testify.



KAMEHAMEHA SCHOOLS

Written Testimony
To The House Committee on Human Services & Housing
By
Sydney WCK Keli`ipuleole, Director
Endowment/Residential Assets Division

Hearing Date: Thursday, January 31, 2008
9:45 a.m., Conference Room 329

Tuesday, January 29, 2008

Re: HB 2733 - Relating to Housing

To: Rep. Maile S.L. Shimabukuro, Chair
Rep. Karl Rhoads, Vice Chair

Thank you for the opportunity to comment on this bill and in particular the proposal for "Redemption". Under redemption a residential lessee is granted the right to terminate their lease upon 30-days notice to the lessor, provided the lessor is paid the capitalized value of the rent after lease termination, plus twelve percent interest. Upon termination and payment the fee simple interest in the property shall vest to the lessee.

Kamehameha Schools opposes this section of the bill allowing for redemption by the lessee.

1. The formula for determining Lessor's compensation is unfair and does not recognize accepted valuation and appraisal methodology and is defined as "owner-basis" in HRS Chapter 516-1. At any time throughout the lease term the value of the Lessor's interest is the discounted present value of the rent under the contract and the value of the reversionary interest. Furthermore as the lease term expires, the value of the reversionary interest grows. And for many condominium leases the lease contract stipulates that the reversionary interest includes both the condominium apartment, as well as the land there under. Thousands of lessees have purchased the landowner's leased fee interest based on this methodology. The proposed formula is also unfair to those thousands of lessees that purchased under that pricing methodology.
2. Redemption creates another form of eminent domain which is now provided for in HRS Chapter 516, but without fairness and due process for the lessor. Redemption will circumvent HRS Chapter 516 for the purposes of taking private and public leased fee interests in residential leaseholds.



KAMEHAMEHA SCHOOLS

Page 2 of 2

Thursday, January 29, 2008

3. While the stated purpose of HB 2733 is to address the State's housing shortage, the Redemption clause conflicts with HRS Chapter 516's provision for Sustainable Affordable Development residential leasing. Sustainable Affordable Development is provided in HRS Chapter 516 to provide for affordable housing utilizing residential leases. Furthermore, Sustainable Affordable Development leases are exempt from HRS Chapter 516 provisions for leasehold condemnation. Redemption may prevent landowners from considering Sustainable Affordable Development residential leases.

We therefore ask that the provision for Redemption be deleted from the proposed bill. And thank you for this opportunity to comment on HB 2733.



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January 31, 2008

The Honorable Maile S.L. Shimabukuro, Chair
House Committee on Human Services & Housing
State Capitol, Room 329
Honolulu, Hawaii 96813

RE: H.B. 2733 Relating to Housing
Hearing Date: January 31, 2008 @ 9:45 a.m., Room 329

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **strongly opposes Section 3** of H.B. 2733 which: (a) assesses a graduated anti-speculation tax on the capital gains realized on real property held from less than six months and up to twenty four months before sold; and (b) deposits the realizations to the Rental Housing Trust Fund.

H.B. 2733 imposes an additional anti-speculation capital gains tax of: (a) 60% of the capital gains tax owed if real property was held by the seller for less than six months; (b) 30% of the capital gains tax owed if real property was held by the seller for six months but less than twelve months; and (c) 15% of the capital gains tax owed if real property was held by the seller for twelve months up to and including twenty-four months.

Please note that under federal and Hawaii income tax law, gain received by a real estate dealer from his or her business operations will be taxed as ordinary income (not capital gain).

A real estate dealer is a person who buys and sells real property with a view to the trading profits to be derived and whose operations are so extensive as to constitute a separate business.

Whether the taxpayer is a real estate dealer or investor is a question of fact. A taxpayer may be found to be engaged in the business of buying and selling real estate by reason of the taxpayer's organization and method of activities.

The IRS is unlikely to challenge a taxpayer who claims to be a real estate dealer in order to pay tax at the ordinary income rate (which is the same as the short-term capital gain rate) and thereby avoid the anti-speculation capital gains tax under Section 3 of H.B. 2733. The entire burden of enforcing the anti-speculation capital gains tax will therefore fall on the State of Hawaii Department of Taxation.

HAR questions why the sale of unimproved land is not subject to Section 3 of H.B. 2733 as this could encourage the premature demolition of existing improvements and resulting

eviction of tenants so that an investor can sell vacant land and possibly avoid the additional tax imposed under Section 3 of H.B. 2733.

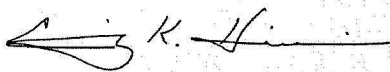
HAR respectfully submits that H.B. 2733 is unfair to small investors, will not materially impede the turnover of real property in Hawaii, and may not raise much additional revenue for the Rental Housing Trust Fund.

HAR strongly believes that the State's present course of increasing the supply of rental housing and owner occupied for sale housing is by far the better long-term solution to the present workforce and affordable housing shortage.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig K. Hirai". The signature is written in a cursive style with a large initial "C" and a long horizontal stroke at the end.

Craig Hirai, Member
Subcommittee on Taxation and Finance
Government Affairs Committee



Hawaii Reserves, Inc.
A LAND MANAGEMENT COMPANY

January 30, 2008

Via Facsimile (808) 586-6189

House Committee on Human Services & Housing
Rep. Maile S. L. Shimabukuro, Chair
Rep. Karl Rhoads, Vice Chair

Re: H.B. 2733 (Relating To Housing)
Testimony In Opposition
Hearing: Thursday, January 31, 2008, 9:45 a.m., Conf. Rm. 329
Copies Required: 3

Honorable Chair Shimbukuro, Vice Chair Rhoads and Committee Members:

Thank you for allowing me the opportunity to testify in opposition to House Bill 2733 on behalf of Hawaii Reserves, Inc., a land management company.

This bill would, among other things, allow a single lessee under a long-term residential lease to force the sale of the fee interest in the land. While the stated intent of this bill is to help address the State's housing shortage, it would actually threaten a viable means for government and private landowners to create and preserve affordable housing – the leasehold property interest.

Our company is planning to build a number of affordable housing units through the use of "sustainable affordable leases". Such leases are granted in a "sustainable affordable development" – development projects where 30% of the units must be affordable to persons in the county's median income range, and the sales price of at least 51% of the residential lots must be no higher than 80% of the fair market value of the lots in fee (HRS 516-1). Because such leases help address the State's affordable housing crisis, they were specifically exempted from Hawaii's lease to fee conversion law (HRS 516-201).

The passage of this bill would undermine the leasehold foundation of sustainable affordable developments and would therefore worsen, rather than help address, the State's housing shortage.

For these reasons and others we respectfully request that you hold H.B. 2733.

Kind regards,

Steve Keali'iwahamana Hoag, Esq.
Director of Human Resources
& Government Relations
and Assistant to the President



Brigham Young University Hawai'i

Office of the President

January 30, 2008

Via Facsimile 586-6189

House Committee on Human Services and Housing
Rep. Maile S. L. Shimabukuro, Chair
Rep. Karl Rhoads, Vice Chair

**Re: H.B. 2733 (Relating to Housing)
Testimony in Opposition
Hearing: Thursday, January 31, 2008, 9:45 a.m., Conf. Rm. 329
Copies Required: 3**

I appreciate this opportunity to testify in opposition to House Bill 2733 on behalf of Brigham Young University Hawai'i, a private university in Lā'ie.

To address the lack of affordable housing in Hawai'i, BYU-Hawai'i is planning to build a number of housing units for our faculty and staff through "sustainable affordable leases." This would allow our employees to afford homes and for the university to preserve its housing inventory. Because these leases addressed the State's affordable housing crisis, they were exempted from Hawai'i's lease to fee conversion law (HRS 516-201).

While we recognize that the purpose of this bill is to address the housing shortage in Hawai'i, it would actually threaten the opportunities for government and private landowners, such as BYU-Hawai'i, to provide and preserve affordable housing. It would allow a single lessee with a long-term lease to force the sale of the fee interest in the land.

We feel that if this bill were passed it would prevent the leasehold foundation of sustainable affordable developments and would further undermine, rather than assist, the State's housing shortage.

For these reasons, we respectfully request that you hold H.B. 2733.

Sincerely

A handwritten signature in black ink that reads "Steven C. Wheelwright".

Steven C. Wheelwright, President

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E-mail: wheelwrights@byuh.edu

-----Original Message-----

From: Joel Fischer [mailto:jfischer@hawaii.edu]
Sent: Wednesday, January 30, 2008 3:13 PM
To: HSHtestimony
Cc: jfischer@hawaii.edu
Subject: HB2723; HSH, 1/31; 9:45AM; Rm 329
Importance: High

HB 2723

HB2723, Relating to Housing
HSH, Chair, Rep. Shimabukuro

PLEASE PASS THIS BILL.

This "omnibus" housing bill has many important provisions that can help our people deal with the incredible housing crisis in Hawai'i. For example, can you imagine the tremendous cruelty involved in denying PUBLIC housing rent supplements because a family is too large? What an awful, anti-family housing policy that would be. This bill would ban that practice.

I urge your committee to pass this bill out without removing any of the key provisions.

Thank you.

Aloha, joel

Dr. Joel Fischer, ACSW
President, 19-3, Democratic Party

Professor
University of Hawai'i, School of Social Work
Henke Hall
Honolulu, HI 96822

"It is reasonable that everyone who asks justice should DO justice."
Thomas Jefferson

"There comes a time when one must take a position that is neither safe, nor politic, nor popular, but one must take it because one's conscience tells one that it is right."

Dr. Martin Luther King, Jr.

"Never, never, never quit."
Winston Churchill



January 30, 2008

Representative Maile Shimabukuro, Chair
Representative Karl Rhoads, Vice-Chair
Human Services and Housing Committee
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: H.B. NO. 2733, RELATING TO HOUSING

Dear Chair Shimabukuro, Vice Chair Rhoads and Committee Members:

Thank you for allowing me the opportunity to testify in opposition to House Bill 2733 on behalf of UniDev Hawaii, LLC, a workforce housing development company.

UniDev Hawaii, along with others is engaged in the development of affordable housing units that will be sold subject to long term "sustainable affordable leases". Such leases are granted in a "sustainable affordable development", where 30% of the units must be affordable to persons within the County's median income range, and the sales price of at least 51% of the residential units must be no higher than 80% of the fair market value of the units in fee (HRS 516-1). Because "sustainable affordable leases" provide for the creation of permanently affordable residential units they have been granted an exemption from the lease to fee conversion law (HRS 516.201).

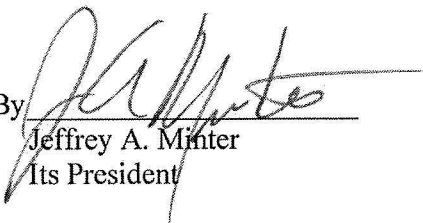
The passage of this bill will allow a single lessee under a long term residential lease to force the sale of the fee interest in the land and would undermine the leasehold foundation of sustainable affordable developments. This would undermine the State's efforts to promote the development of affordable housing for the residents of Hawaii.

For this reason, we respectfully request that projects being developed as "sustainable affordable development" utilizing a "sustainable affordable lease" program be specifically exempted from the provisions of H.B. 2733.

Thank you for your consideration of the foregoing.

Very truly yours,

UNIDeV HAWAII, L.L.C.

By 
Jeffrey A. Minter
Its President

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