

STAND. COM. REP. NO. 1225

Honolulu, Hawaii

March 27, 2009

RE: S.B. No. 764
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Economic Revitalization, Business, & Military Affairs, to which was referred S.B. No. 764, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO REAL PROPERTY,"

begs leave to report as follows:

The purpose of this bill is to help small businesses leasing commercial space in Hawaii survive the economic downturn by requiring:

- (1) That leases existing on July 1, 2009, or entered into thereafter, and providing for the renegotiation of rent based upon fair and reasonable annual rent as of the commencement of the term:
 - (A) Be construed to require that the rent be fair and reasonable rent to both the lessor and the lessee; and
 - (B) Take into account use and intensity of use approved by the lessor, and neighborhood context;

and



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- (2) That a lessee's subtenants who have subleases providing for recovery by the lessee of ground lease rent, be charged their pro-rata share of the renegotiated fair and reasonable annual rent.

Citizens for Fair Valuation; Olelo Community Television; Servco Pacific, Inc.; Ben Franklin Crafts - Mapunapuna; American Electric; Bacon Universal Company, Inc.; McKillican American, Inc.; Sawdust; Oahu Metal & Supply, Ltd.; Grace Pacific Corporation; Intech, Inc.; and several concerned individuals supported this bill. The Hawaii Association of Realtors, Building Industry Association - Hawaii, HRPT Properties Trust, Queen's Health Systems, Kamehameha Schools, Land Use Research Foundation of Hawaii, and several concerned individuals opposed this measure. A concerned individual provided comments.

Given the complex nature of real property lease negotiations and their concomitant impact on Hawaii's economy, your Committee respectfully requests the Committee on Judiciary, to which this bill is referred, take a fresh look at the standards for "fair and reasonable" as used in this bill, as well as examine the constitutional contract clause issues that it raises.

Upon further consideration, your Committee has amended this bill by replacing its substance with that of H.B. No. 1593, which was reported out of your Committee earlier this session. As amended, this bill differs from the Senate Draft 2, in that the bill:

- (1) Does not specify that the lessor of the real property to which this bill applies must hold an "aggregate" of 50,000 square feet or more of industrial and commercial property; and
- (2) Takes effect upon its approval.

As affirmed by the record of votes of the members of your Committee on Economic Revitalization, Business, & Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 764, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 764, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.



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Respectfully submitted on
behalf of the members of the
Committee on Economic
Revitalization, Business, &
Military Affairs,



ANGUS L.K. MCKELVEY, Chair



