

STAND. COM. REP. NO. 1594

Honolulu, Hawaii

April 19, 2009

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

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

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 764, S.D. 2, H.D. 1, 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 endure times of 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
- (2) That a lessee's subtenants who have subleases providing for recovery by the lessee of ground lease rent, be

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charged their pro-rata share of the renegotiated fair and reasonable annual rent.

Citizens for Fair Valuation, Servco Pacific Inc., Inter-Island Solar Supply, Mr. Sandman Inc., McKillican American Inc., Ben Franklin Crafts, Bacon Universal Co., GP Roadway Solutions, Big Rock Manufacturers Inc., Grace Pacific Corporation, Plywood Hawaii, Pacific Jobbers Warehouse Inc., American Electric Co. LLC, Sawdust, Olelo Community Television, and several concerned individuals supported this bill. HRPT Properties Trust, Hawaii Association of REALTORS, Building Industry Association, Land Use Research Foundation of Hawaii, and The Queen's Medical Center opposed this measure. The Department of the Attorney General submitted comments.

Your Committee also finds that lands classified by the Land Study Bureau as Class A and Class B lands, which are the lands most suitable for intensive agricultural use, have rapidly dwindled in counties with a population over 500,000. Because these lands are fixed in availability and declining rapidly, protecting them becomes more important. Therefore, your Committee has amended this bill by adding an additional part to carry out the mandate of Article XI, section 3, of the Hawaii Constitution, which requires the conservation and protection of the most productive agricultural lands, and to assure the availability of productive agricultural lands in counties with a population over 500,000 by:

- (1) Extending current farming leases on land classified as Class A or B lands for a period of not less than 75 percent of the original term of the lease, whenever renegotiation of the rental amount and the term of the lease is provided for in an agreement or document for the lease of private agricultural lands and the lessee has made improvements or is seeking to make improvements on the land; and
- (2) Prohibiting the amendment of a land use district boundary for Class A and B agricultural lands that meet all four of the following criteria:
  - (A) A farming operation as defined in section 165-2, Hawaii Revised Statutes, is being conducted on the land;



- (B) The land is important for agriculture based on the stock of similarly suited lands in the area;
- (C) The district boundary amendment will harm the productivity or viability of existing agricultural activity in the area; and
- (D) The district boundary amendment will cause fragmentation of or intrusion of nonagricultural uses into largely intact areas of Class A and B agricultural lands.

Your Committee has further amended this bill by:

- (1) Deleting provisions requiring 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;
- (2) Clarifying provisions that establish certain limits on the renegotiation of commercial or industrial lease rent where the terms of the lease require the renegotiated annual rent to be fair and reasonable;
- (3) Specifying that the provision for renegotiation of a lease take into account any and all relevant attendant circumstances relating to the lease, including:
  - (A) Past renegotiation practices and policies throughout the previously renegotiated lease rents;
  - (B) The uses and intensity of the use of the leased property during the term of the lease approved by the lessor;
  - (C) The surface and subsurface characteristics of the leased property and the surrounding neighborhood of the leased property on the renegotiated date; and
  - (D) The gross income generated by the lessee on the renegotiated date;
- (4) Changing the effective date to January 1, 2046, to encourage further discussion; and



- (5) Making technical, nonsubstantive amendments for clarity, consistency, and style.

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

Respectfully submitted on behalf of the members of the Committee on Judiciary,

  
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JON RIKI KARAMATSU, Chair



